

CHAPTER 1**(HB 170)**

AN ACT relating to revenue and taxation and declaring an emergency.

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

Section 1. KRS 141.010 is amended to read as follows:

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

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ~~1997~~~~1995~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~1997~~~~1995~~, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam; and

- (i)
 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code.
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. The provisions of this Act apply to tax years beginning after December 31, 1996.

Section 3. Whereas the filing deadline for income taxes is April 15, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved February 6, 1998

CHAPTER 2

(HB 64)

AN ACT relating to elections.

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

Section 1. KRS 118.015 is amended to read as follows:

- (1) A "political party" within the meaning of this chapter, is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and ***whose candidate received***~~(which cast)~~ at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for.
- (2) The word "election" used in reference to a state, district, county or city election, includes the decisions of questions submitted to the qualified voters as well as the choice of officers by them.
- (3) A "ballot" or "official ballot" means the voting machine ballot label, ballot cards, paper ballots, an absentee ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary, general or special election by the Secretary of State or the county clerk.

- (4) "Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines.
- (5) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device.
- (6) "Voting machine" or "machine" shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his votes in an election.
- (7) The word "resident" used in reference to a candidate in a state, district, county or city election shall mean actual resident, without regard to the residence of the spouse of the candidate.

Section 2. KRS 118.105 is amended to read as follows:

- (1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall nominate all of its candidates for elective offices to be voted for at any regular election at a primary election held as provided in this chapter, and the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office other than by primary elections as provided in this chapter.
- (2) Any political organization not constituting a political party as defined in KRS 118.015 may make its nominations as provided in KRS 118.325.
- (3) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the *certification of candidates* ~~ballots are printed~~ for the regular election *made under KRS 118.215*, because of death, disqualification to hold the office sought, or severe disabling condition which arose after the nomination, the governing authority of the party may provide for filling the vacancy, but only following certification to the governing authority, by the Secretary of State, that a vacancy exists for a reason specified in this subsection. When such a nomination has been made, the certificate of nomination shall be signed by the chairman and secretary of the governing authority of the party making it, and shall be filed in the same manner as certificates of nomination at a primary election.
- (4) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the *certification of candidates* ~~ballots are printed~~ for the regular election, and if that party's nominee was the only candidate for the office sought, the governing authority of each party may nominate a candidate for the regular election, provided that no person has sought that party's nomination by filing a notification and declaration.
- (5) If a vacancy occurs in the nomination of a candidate under the conditions of subsections (3) or (4) of this section after the *certification of candidates* ~~ballots are printed~~ for the regular election but not later than the second Thursday preceding the date of the regular election, certificates of nomination for replacement candidates shall be filed in the same manner as provided in subsections (3) and (4) not later than 4 p.m. five (5) days after the vacancy occurs.
- (6) If a vacancy in candidacy described in subsection (5) of this section occurs later than the second Thursday preceding the date of the regular election, no certificates of nomination shall be filed and any candidate whose name does not appear on the ballot may seek election by write-in voting pursuant to KRS 117.265.
- (7) This section does not apply to candidates for members of boards of education, or presidential electors, nor to candidates participating in nonpartisan elections.

Section 3. KRS 118.165 is amended to read as follows:

- (1) Except as provided in KRS Chapters 116 to 121, candidates for offices to be voted for by the electors of one (1) county or of a district less than one (1) county, except members of Congress and members of the General Assembly, shall file their nomination papers with the county clerk of the county *not earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot and* not later than the last Tuesday in January preceding the day fixed by law for holding the primary election. Candidates for offices to be voted for by the electors of more than one (1) county, and for members of Congress and members of the General Assembly, shall file their nomination papers with the Secretary of State *not earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot and* not later than the last Tuesday in January preceding the day fixed by law

for holding the primary election. All nomination papers shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers may be filed.

- (2) The Secretary of State or the county clerk shall examine the notification and declaration form of each candidate to determine whether it is regular on its face. If there is an error, the proper officer shall notify the candidate by certified mail within twenty-four (24) hours of filing.

Section 4. KRS 118.212 is amended to read as follows:

- (1) If, before the time of certification *of candidates who will appear on the ballot* provided in KRS 118.215, any candidate whose notification and declaration or certificate or petition of nomination has been filed in the office of the Secretary of State dies or notifies the Secretary of State in writing, signed and properly notarized that he will not accept the nomination or election, the Secretary of State shall not certify his name.
- (2) If, *after the certification of candidates who will appear on the ballot*~~before the ballots are printed~~, any candidate whose notification and declaration or certificate or petition of nomination has been filed in the office of the county clerk dies or notifies the clerk, in the manner described in subsection (1) of this section, that he will not accept the nomination or election, the clerk shall *ensure that notice is provided to the appropriate precincts as provided in subsection (5) of this section*~~not cause his name to be printed on the ballot~~.
- (3) If, *after the certification of candidates who will appear on the ballot*~~before the ballots are printed~~, any candidate whose notification and declaration or certificate or petition of nomination has been filed in the office of the Secretary of State dies or notifies the Secretary of State in the manner described in subsection (1) of this section, that he will not accept the nomination or election, the Secretary of State shall immediately notify the appropriate county clerk, and the clerk shall *ensure that notice is provided to the appropriate precincts as provided in subsection (5) of this section*~~not cause his name to be printed on the ballot~~.
- (4) If, after the *certification of candidates who will appear on the ballot*~~ballots are printed~~, any candidate whose name appears *on the ballot*~~thereon~~ shall officially withdraw or die, neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.
- (5) If, after the *certification of candidates who will appear on the ballot*~~ballots are printed~~, any candidate whose name appears *on the ballot*~~thereon~~ shall officially withdraw or die, the county clerk shall provide a notice to the precinct election officers who shall see that the notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notice required by this subsection and the precinct officers fail to post the notice at the polling place, the precinct officers shall be guilty of a violation subject to a fine of not less than ten dollars (\$10) nor more than two hundred fifty dollars (\$250).

Section 5. KRS 118.315 is amended to read as follows:

- (1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provisions of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate, nor shall any person be eligible to election as an independent candidate who was a registered member of a political party at the time of the last preceding regular election. This restriction shall not apply to candidates to those offices specified in KRS 118.105(5), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.
- (2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. *Signatures for a petition of nomination for a candidate seeking any office shall not be solicited prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot.* A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include his residence, Social Security number or date of birth, and post-office address. Failure of a voter to include his Social Security number or date of birth and address shall result in his

signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his signature is affixed.

- (3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.
- (4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

Section 6. KRS 118.325 is amended to read as follows:

- (1) Any political organization not constituting a political party within the meaning of KRS 118.015 but *whose candidate received*~~[which cast]~~ two percent (2%) of the vote of the state at the last preceding election for presidential electors may nominate, by a convention or primary election held by the party in accordance with its constitution and bylaws, candidates for any offices to be voted for at any regular election, except the office of member of a board of education, for which nominations shall be made as provided in KRS 160.220. Any political party, as defined in KRS 118.015, and any political organization not constituting such a political party but *whose candidate received*~~[which cast]~~ two percent (2%) of the vote of the state at the last preceding election for presidential electors, may nominate, by a convention or primary election held by the party or organization in accordance with its constitution and bylaws, as many electors of President and Vice President of the United States as this state is entitled to elect.
- (2) The certificate of nomination by such a convention or primary election shall be in writing, shall contain the name of each person nominated, his residence and the office to which he is nominated, and shall designate a title for the party or principle that such convention or primary election represents, together with any simple figure or device by which its list of candidates may be designated on the voting machines. The certificate shall be signed by the presiding officer and secretary of the convention, or by the chairman and secretary of the county, city or district committee, who shall add to their signatures their respective places of residence, and acknowledge the same before an officer duly authorized to administer oaths. A certificate of the acknowledgment shall be appended to the certificate of nomination. In the case of electors of President and Vice President of the United States the certificate of nomination shall state the names of the candidates of the party for President and Vice President.
- (3) Any person desiring to become a candidate for an office, the nomination to which is to be made by a convention pursuant to subsections (1) and (2) of this section, except for the office of elector of President and Vice President of the United States, shall file a statement with the official designated in KRS 118.165 with whom notification and declaration forms are filed for the office. The form of the statement shall be prescribed by the State Board of Elections. Such statement shall be filed as prescribed by KRS 118.365.
- (4) If the certificate of nomination of any state convention requests that the figure or device selected by such convention be used to designate the candidates of such party on the voting machines for all elections throughout the state, that figure or device shall be used until changed by request of a subsequent state convention of the same party. The device may be any appropriate symbol other than the coat of arms or seal of this state or of the United States, the national flag, or any other emblem common to the people at large.
- (5) In case of death, resignation or removal of any such candidate subsequent to nomination and before the *certification of candidates for the regular election made under KRS 118.215*~~[ballot labels are printed]~~, the chairman of the state, county or city district committee shall fill the vacancy, unless a supplemental certificate or petition of nomination is filed. In the case of electors of President and Vice President of the United States, a vacancy may be filled by the chairman of the state committee at any time before the meeting of the electors, whether the vacancy occurs before or after the election.
- (6) If any political party entitled to nominate by convention fails to do so, the names of all nominees by petition for any office who are designated in their petition as members and candidates of that party shall be printed under the device and title on the voting machines as if nominated by a convention. If two (2) or more persons who have filed certificates of nomination under this section claim to be the nominee of the same political party, the governing authority of that party shall designate to the Secretary of State and county clerk, in writing, which of

the candidates is entitled to the party emblem. If there are two (2) or more contending executive committees of the same party in the county or district, the county or district executive committee that is recognized by the state governing authority of the party, by the written certificate of its chairman, shall be recognized by the Secretary of State and county clerk.

Section 7. KRS 118.365 is amended to read as follows:

- (1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. The certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.
- (2) Petitions of nomination for candidates for city offices except as provided in KRS 83A.047, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and*** not later than the second Tuesday in August preceding the day fixed by law for the holding of regular elections ***for the offices sought.***
- (3) Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file the statements required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and*** not later than the second Tuesday in August preceding the regular election ***for the office sought.***
- (4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but ***whose candidate received***~~which cast~~ two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and*** not later than the second Tuesday in August preceding the day fixed by law for the election of the person in nomination.
- (5) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and*** not later than the second Tuesday in August preceding the day fixed by law for the holding of general elections ***for the offices sought.*** Certificates of nomination shall be filed with the Secretary of State or county clerk, as required by law, ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and*** not later than the second Tuesday in August preceding the day fixed by law for the holding of general elections ***for the offices sought.***
- (6) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which there is an election for President and Vice President of the United States and*** not later than the first Tuesday in September preceding the date fixed by law for the election of the electors.
- (7) Petitions for recall elections or elections on public questions shall be filed as required with the county clerk not later than the second Tuesday in August preceding the day fixed by law for holding a general election.
- (8) Petitions of any kind named in this section, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which such papers are permitted to be filed.

Section 8. KRS 118.415 is amended to read as follows:

- (1) The General Assembly may state the substance of the amendment proposed to the Constitution of Kentucky in the form of a question in a manner calculated to inform the electorate of the substance of the amendment. When an amendment to the Constitution has been proposed by the General Assembly, the Secretary of State shall cause the question calculated to inform the electorate of the substance of the amendment which is prepared by the General Assembly or the Attorney General to be published at least one (1) time in a newspaper of general circulation published in this state, and shall also cause to be published at the same time and in the

same manner the fact that the amendment will be submitted to the voters for their acceptance or rejection at the next regular election at which members of the General Assembly are to be voted for. The publication shall be made not later than the first Tuesday in August preceding the election at which the amendment is to be voted on.

- (2) The Attorney General shall, if the General Assembly has not already done so, state the substance of an amendment to the Constitution of Kentucky which has been proposed by the General Assembly in the form of a question in a manner calculated to inform the electorate of the substance of the amendment, and, not later than fourteen (14) days preceding the first Tuesday in August preceding the next regular election at which members of the General Assembly are to be chosen, shall certify the question to the Secretary of State to be placed on the voting machine.
- (3) The Secretary of State, not later than the second Monday after the second Tuesday in August preceding the next regular election at which members of the General Assembly are to be chosen ***in a year in which there is not an election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President and Vice President of the United States***, shall certify the substance of the amendment, as stated and certified by the General Assembly or by the Attorney General, to the county clerk of each county, and the county clerk shall have the substance of the amendment, as so certified, indicated on the voting machines.
- (4) The votes cast for and against the amendment shall be counted, canvassed, and certified to the Secretary of State in the same manner as the votes cast for any officer elective by the votes of the whole state. If a majority of the votes cast on the question are for the amendment, it shall become a part of the Constitution.
- (5) The expenses of the publications provided for in this section shall be paid as are the expenses of other publications that the Secretary of State is required to make in connection with elections.

Section 9. KRS 118.551 is amended to read as follows:

As used in KRS 118.561 to 118.651, "political party" means each political party ***whose candidates received***~~that cast~~ ten percent (10%) or more of the vote for Governor ***and Lieutenant Governor*** in the preceding election, or has a registration equal to ten percent (10%) or more of the total registered voters in the Commonwealth.

Section 10. KRS 118A.060 is amended to read as follows:

- (1) Except as provided in KRS 118A.100, no person's name shall appear on a ballot label or absentee ballot for an office of the Court of Justice without first having been nominated as provided in this section.
- (2) Each candidate for nomination shall file a petition for nomination with the Secretary of State ***not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and*** not later than the last Tuesday in January preceding the day fixed by law for holding the primary election ***for the office***. The petition shall be signed by the candidate and by not less than two (2) registered voters from the district or circuit from which he seeks nomination. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (3) The petition for nomination shall be in the form prescribed by the State Board of Elections. Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (4) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing. The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the last Tuesday in January preceding the primary election.
- (5) Not later than the third Tuesday in February preceding the primary election, and after the order of names on the ballot has been determined as required in subsection (4) of this section, the Secretary of State shall:
 - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and

numbered division thereof if divisions exist, as specified in the petitions for nomination filed with him; and

- (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (7) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the primary the names of the candidates for offices in the Court of Justice.
- (8) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot." The words "Vote for one," or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (9) The two (2) candidates receiving the highest number of votes for nomination for justice or judge of a district or circuit, or numbered division thereof if divisions exist, shall be nominated. Certificates of nomination shall be issued as provided in KRS 118A.190.
- (10) If it appears after expiration of the time for filing petitions for nomination that there are not more than two (2) candidates who have filed the necessary petitions for a place on the ballot in the regular election, no drawing for ballot position shall be held and the Secretary of State shall immediately issue and file in his office certificates of nomination, and send copies to the candidates.

Section 11. KRS 118A.090 is amended to read as follows:

- (1) For the regular election, the order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (2) Not later than the second Monday after the filing deadline for the regular election ***in a year in which there is no election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President and Vice President of the United States***, and after the order of names on the ballot has been determined as required in subsection (1) of this section, the Secretary of State shall:
 - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as certified under KRS 118A.060; and
 - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (3) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk. The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the regular elections the names of the candidates for offices of the Court of Justice.
- (4) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in such a manner that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (5) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

Section 12. KRS 118A.100 is amended to read as follows:

- (1) Candidates for an unexpired term of a judicial office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in KRS 118A.060 if the vacancy occurs not later than the second Tuesday in January preceding the primary. If the vacancy occurs on or after that date, the election to fill the unexpired term shall be held in accordance with the procedures described in this section and Section 152 of the Constitution of Kentucky.
- (2) If in a regular election for judicial office no candidates nominated as provided in KRS 118A.060 are available due to death, incapacity, or withdrawal, and the candidates have not been replaced as provided in KRS 118A.060, the election to fill the regular term shall be conducted in the manner prescribed in subsections (3) through (11) of this section.
- (3) Each candidate shall file a petition for candidacy with the Secretary of State *not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the election for the unexpired term will be held and* not later than the second Tuesday in August preceding the day fixed by law for holding the regular election *for the unexpired term*. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (4) The petition for candidacy shall be in the form prescribed by the State Board of Elections. Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (5) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (6) The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (7) Not later than the second Monday after the filing deadline for the regular election *in a year in which there is no election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President and Vice President of the United States*, and after the order of names on the ballot has been determined as required in subsection (6) of this section, the Secretary of State shall:
 - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for candidacy filed with him; and
 - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (8) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (9) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the absentee ballots for the regular election the names of the candidates for offices of the Court of Justice.
- (10) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in such a manner that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (11) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

Section 13. KRS 118A.150 is amended to read as follows:

- (1) In certification of candidates for judicial office, no reference shall be made to political affiliation.

- (2) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate who has not filed the required nomination or candidacy papers, nor knowingly fail to certify the name of any candidate who has filed the required nomination or candidacy papers.
- (3) No county clerk shall knowingly cause to be printed on the ballot labels or absentee ballots for any election, the name of a candidate for an office of the Court of Justice who has not been certified in the manner specified in this chapter.
- (4) If, before the time of certification *of candidates who will appear on the ballot* provided for in this chapter, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in writing, signed and properly notarized, that he will not accept the nomination or election, the Secretary of State shall not certify his name.
- (5) If, *after the certification of candidates who will appear on the ballot*~~before the ballots are printed~~, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in the manner described in subsection (4) of this section, that he will not accept the nomination or election, the Secretary of State shall immediately notify the appropriate county clerk, and the clerk shall *ensure that notice is provided to the appropriate precincts as provided in subsection (7) of this section*~~not cause his name to be printed on the ballot~~.
- (6) If after the *certification of candidates who will appear on the ballot*~~ballots are printed~~, any candidate whose name appears *on the ballot*~~thereon~~ shall withdraw or die, neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.
- (7) If, after the *certification of candidates who will appear on the ballot*~~ballots are printed~~, any candidate whose name appears *on the ballot*~~thereon~~ shall withdraw pursuant to KRS 118.212 or die, the county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation, subject to a fine of not less than ten dollars (\$10) nor more than two hundred fifty dollars (\$250).

Section 14. KRS 83A.045 is amended to read as follows:

- (1) Except as provided in KRS 83A.047, partisan elections of city officers shall be governed by the following provisions, regardless of the form of government or classification of the city:
 - (a) A candidate for party nomination to city office shall file his nomination papers with the county clerk of the county *not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and* not later than the last Tuesday in January before the day fixed by KRS Chapter 118 for holding a primary election *for the office sought*. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.
 - (b) An independent candidate for nomination to city office shall not participate in a primary election, but shall file his nomination papers with the county clerk of the county *not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and* not later than the second Tuesday in August before the day fixed by KRS Chapter 118 for holding a regular election *for the office*. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.
 - (c) A candidate for city office who is defeated in a partisan primary election shall be ineligible as a candidate for the same office in the regular election. However, if a vacancy occurs in the party nomination for which he was an unsuccessful candidate in the primary election, his name may be placed on the voting machines for the regular election as a candidate of that party if he has been duly made the party nominee after the vacancy occurs, as provided in KRS 118.105.
- (2) Except as provided in KRS 83A.047, nonpartisan elections of city officers shall be governed by KRS 83A.050, 83A.170, 83A.175, and the following provisions, regardless of the form of government or classification of the city:
 - (a) A candidate for city office shall file his nomination papers with the county clerk of the county *not earlier than the first Wednesday after the first Monday in November of the year preceding the year in*

which the office will appear on the ballot and not later than the last Tuesday in January before the day fixed by KRS Chapter 118 for holding a primary election *for nominations for the office*. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed;

- (b) Any city of the fourth to sixth class may by ordinance provide that the nomination and election of candidates for city office in a nonpartisan election shall be conducted pursuant to the provisions of this subsection:
1. A city may forgo conducting a nonpartisan primary election for the nomination of candidates to city office, regardless of the number of candidates running for each office, and require all candidates to file their nomination papers with the county clerk of the county *not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and* not later than the second Tuesday in August before the day fixed by KRS Chapter 118 for holding a regular election *for the office*.
 2. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.
 3. If a city does not conduct a primary election pursuant to this subsection, the election of candidates to city office shall be governed by the provisions of this subsection, KRS 83A.175(2) to (6), and KRS Chapters 116 to 121.
 4. In the absence of a primary pursuant to this subsection, the number of candidates equal to the number of city offices to be filled who receive the highest number of votes cast in the regular election for each city office shall be elected.
 5. Candidates shall be subject to all other applicable election laws pursuant to this chapter and KRS Chapters 116 to 121.
 6. If a vacancy occurs in a candidacy for city office in any city which has not held a primary pursuant to this subsection after the expiration of time for filing nomination papers, or if there are fewer candidates than there are offices to be filled, the vacancy in candidacy shall be filled by write-in voting.
- (c) A candidate for city office who is defeated in a nonpartisan primary election shall be ineligible as a candidate for the same office in the regular election.

Section 15. KRS 83A.170 is amended to read as follows:

- (1) In any city which has under the provisions of KRS 83A.045 or 83A.050 required nonpartisan city elections, or in any city of the second class operating under the city manager form of government pursuant to KRS 83A.150, no person shall be elected to city office except as provided in this section or as otherwise provided in this chapter relating to nonpartisan elections.
- (2) No person shall be elected to city office without being nominated in the manner provided in this section at a nonpartisan primary election to be held at the time prescribed by KRS Chapters 116 to 121, except as otherwise provided in this chapter. Nonpartisan primary elections shall be conducted by the same officers, chosen and acting in the same manner, with the same rights and duties as in regular elections.
- (3) Each applicant for nomination shall, *not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than* ~~by at least~~ the last date prescribed by the election law generally for filing notification and declaration forms with the county clerk or the Secretary of State as provided in KRS 83A.047, ~~file with the county clerk~~ a petition of nomination, which shall be in the form prescribed by the State Board of Elections signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.
- (4) The county clerk or the Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk *or the Secretary of State* shall notify the candidate by certified mail within twenty-four (24) hours of filing.

- (5) Immediately upon expiration of the time for filing petitions, the county clerk~~[or the Secretary of State]~~ shall have published in accordance with KRS Chapter 424 the names of the applicants as they will appear before the voters at the primary.
- (6) Subsection (5) of this section shall not apply if it appears, immediately upon expiration of the time for filing petitions, that there are not more than two (2) applicants for nomination for each city office to be filled, or, when the nominations are for city legislative body members in cities electing legislative body members at large, and there are no more than twice the number of applicants for nomination for the number of offices to be filled. In that case, the applicants for nomination shall thereby be nominated and no drawing for ballot position nor primary election shall be held for that office.
- (7) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (8) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk or the Secretary of State dies or notifies the clerk or the Secretary of State in writing, signed and properly notarized, that he will not accept the nomination, the clerk shall not cause his name to be printed on the ballot.
- (9) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,
 - (a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.
 - (b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.
- (10) Names of applicants for each nomination shall be placed before the voters of the city. The voters shall be instructed to vote for one (1) candidate, except that they shall be instructed to vote for the number of legislative body members to be elected in cities nominating legislative body members at large. No party designation or emblem of any kind nor any sign indicating any applicant's political belief or party affiliation shall be used.
- (11) Persons qualified to vote at a regular election shall be qualified to vote at a nonpartisan primary election and the law applicable to challenges made at a regular election shall be applicable to challenges made at a nonpartisan primary election.
- (12) Votes shall be counted as provided in general election laws, pursuant to KRS Chapters 116 to 121, and the result shall be published as provided in KRS Chapter 424.
- (13) The two (2) applicants receiving the highest number of votes for nomination for each city office shall be nominated; or where the nominations are for city legislative body members in cities electing legislative body members at large, there shall be nominated the number of applicants receiving the highest number of votes equal to twice the number of offices to be filled.
- (14) At the regular election following a nonpartisan primary election, the names of the successful nominees and candidates who have filed a petition of candidacy as provided in this chapter to fill a vacancy shall be placed before the voters.
- (15) The nominee or candidate receiving the greater number of votes cast for each city office shall be elected.
- (16) KRS Chapters 116 to 121 prescribing duties of county clerks and other public officers in the conduct of elections shall be applicable in all respects to nonpartisan city elections, except no election officer or other person within a polling place shall tell or indicate to a voter, by word of mouth or otherwise, the political affiliation of any candidate for city office.

Section 16. KRS 83A.175 is amended to read as follows:

- (1) The election to fill the regular term of a nonpartisan city office shall be conducted in the manner prescribed in KRS 83A.165 when, in a regular election for nonpartisan city office no candidates nominated to an office as provided in KRS 83A.170 are available due to death, incapacity, or withdrawal, or when city legislative body members are to be elected at large and there are fewer nominees than there are offices to be filled, or when a city of the fourth to sixth class has not conducted a primary election pursuant to KRS 83A.045.

- (2) Each candidate shall, *not earlier than the first Wednesday after the first Monday in November of the year before the year in which the office will appear on the ballot and not later than*~~[by at least]~~ the last date prescribed by the election law generally for filing petitions of nomination with the county clerk or the Secretary of State *as provided in KRS 83A.047*, file~~[with the county clerk or the Secretary of State]~~ a petition for candidacy. The petition shall be prescribed by the State Board of Elections and shall be signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.
- (3) The county clerk or the Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk or the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (4) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (5) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk or the Secretary of State, dies or notifies the clerk or the Secretary of State in writing, signed and properly notarized, that he will not accept the election, the clerk shall not cause his name to be printed on the ballot.
- (6) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,
 - (a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.
 - (b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.

Became law February 9, without Governor's signature

CHAPTER 3

(HB 176)

AN ACT relating to aquaculture.

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

Section 1. KRS 260.960 is amended to read as follows:

- (1) The General Assembly recognizes the importance of *aquaculture*~~[fish farming]~~ to the agricultural economy of the state.
- (2) *"Aquaculture" means the science, art, and business of producing and raising aquatic organisms under controlled or semicontrolled conditions*~~["Farm raised fish" means native or exotic fish species spawned or raised under controlled conditions in private waters for commercial purposes].~~
- (3) The State Department of Agriculture shall promote the development of markets for *aquacultural products*~~[farm raised fish]~~. The department shall work cooperatively with Kentucky State University's aquaculture program utilizing its expertise in the area of *aquaculture*~~[fish farming]~~. The department also shall work cooperatively with other state agencies in assisting *aquaculture producers*~~[fish farmers]~~ to obtain the necessary permits.

~~{(4) This section shall not affect the powers of the Fish and Wildlife Resources Commission or the Department of Fish and Wildlife Resources as contained in KRS Chapter 150.}~~

Approved February 17, 1998

CHAPTER 4

(HB 6)

AN ACT relating to voting and declaring an emergency.

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

Section 1. KRS 118.035 is amended to read as follows:

- (1) The polls shall be opened ***on the day of a primary, runoff primary, special election, or regular election*** at 6 a.m., prevailing time, and ***shall*** remain open ~~continuously~~ until ***each*** ~~6 p.m., prevailing time. Any~~ voter who is waiting in line at the polls ***at 6 p.m., prevailing time, has voted. At 6 p.m., prevailing time, if voters are waiting at the polls to vote, the precinct election sheriff shall announce that a voter wishing to vote must immediately get in line. When all voters waiting at the polls at that time are in line, the precinct election sheriff shall then determine which voter is the last in line, and that voter shall be the last voter permitted to vote. The precinct election sheriff shall wait in line with the last voter who shall be permitted to vote until that voter has voted and shall inform a voter who subsequently arrives at the polls that no one shall be permitted to vote after the last voter in line at 6 p.m., prevailing time. After the last voter waiting in line at 6 p.m., prevailing time, has voted, the polls shall then be closed*** ~~to cast his vote at closing time, and who has been unable to cast his vote before closing time because of the large numbers of voters casting their votes, shall be allowed to cast his vote as soon after closing time as practicable; provided, however, that no vote shall be cast after 7 p.m. No voter who arrives at the polls after 6 p.m., prevailing time, shall be allowed to cast his vote.~~
- (2) As provided in Section 148 of the Constitution of Kentucky, any person entitled to a vote at any election in this state shall, if he has made application for leave prior to the day he appears before the county clerk to request an application for or to execute an absentee ballot, be entitled to absent himself from any services or employment in which he is then engaged or employed for a reasonable time, but not less than four (4) hours on the day he appears before the clerk to request an application for or to execute an absentee ballot, during normal business hours of the office of the clerk or to cast his ballot on the day of the election between the time of opening and closing the polls. The employer may specify the hours during which an employee may absent himself.
- (3) No person shall be penalized for taking a reasonable time off to vote, unless, under circumstances which did not prohibit him from voting, he fails to vote. Any qualified voter who exercises his right to voting leave under this section but fails to cast his vote, under circumstances which did not prohibit him from voting, may be subject to disciplinary action.
- (4) Any person selected to serve as an election officer shall be entitled to absent himself from any services or employment in which he is then engaged or employed for a period of an entire day to attend training or to serve as an election officer. The person shall not, because of so absenting himself, be liable to any penalty. The employer may specify the hours during which the employee may absent himself. No person shall refuse an employee the privilege hereby conferred, or discharge or threaten to discharge an employee or subject an employee to a penalty, because of the exercise of the privilege.

Section 2. Whereas the date of the next political party primary precedes the normal effective date for legislation enacted during this regular session, and whereas some voters in that primary may be disenfranchised without the change in the time for closing the polls as prescribed in this Act being applied to that primary, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved February 17, 1998

CHAPTER 5

(HB 28)

AN ACT changing the classification of the City of Crescent Springs, in Kenton County.

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

NOW, THEREFORE,

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

Section 1. The City of Crescent Springs, in Kenton County, is transferred from the fifth to the fourth class of cities.

Approved February 17, 1998

CHAPTER 6

(HB 67)

AN ACT relating to school attendance.

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

Section 1. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

- (1) "Average daily attendance" means the aggregate days attended by pupils in a public school~~[-]~~ divided by the actual number of days the school is in session, ***after the five (5) days with the lowest attendance have been deducted***;
- (2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;
- (3) "Board" means the board of education of any county or independent school district;
- (4) "District" means any school district as defined by law;
- (5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;
- (6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;
- (7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session, ***after the five (5) days with the lowest attendance have been deducted***. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;
- (8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;
- (9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;
- (10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year.

- (11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;
- (12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;
- (13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;
- (14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;
- (15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year.
- (16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board.

Approved February 19, 1998

CHAPTER 7

(HB 256)

AN ACT relating to charitable food kitchens and declaring an emergency.

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

Section 1. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) The term "secretary" means the secretary of the Cabinet for Human Resources;
- (2) The term "cabinet" means the Cabinet for Human Resources or its designee;
- (3) The term "person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (4) The term "food" means:
 - (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (5) The term "drug" means:
 - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

- (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (6) The term "device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments, apparatus and contrivances, including their components, parts and accessories, intended:
 - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;
- (7) The term "cosmetic" means:
 - (a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of any such articles, except that such term shall not include soap;
- (8) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (9) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (10) The term "immediate container" shall not include package liners;
- (11) The term "labeling" means all labels and other written, printed or graphic matter:
 - (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (12) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (13) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (14) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;
- (15) The term "new drug" means:
 - (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;

- (16) The term "contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;
- (17) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;
- (18) The term "federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);
- (19) The term "flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (20) The term "enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;
- (21) The terms "bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;
- (22) The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;
- (23) The term "practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;
- (24) The term "prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropractor, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (25) The term "Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);
- (26) The term "Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85-172; 71 Stat. 441, including any amendments thereto;
- (27) The term "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;
- (28) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide,

Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;

- (29) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (30) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
- (a) A pesticide chemical in or on a raw agricultural commodity; or
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;
- (31) (a) The term "color additive" means a material which:
- 1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or
 - 2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;
- (b) The term "color" shall include, but not be limited to black, white, and intermediate grays;
- (c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.
- (32) The term "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;
- (33) The term "retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (34) The term "food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; *charitable food kitchens*; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;
- (35) The term "temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;

- (36) The term "retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but shall not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (37) The term "salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (38) The term "salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (39) The term "food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and
- (40) The term "food storage warehouse" means any establishment in which food is stored for subsequent distribution.

Section 2. KRS 217.125 is amended to read as follows:

- (1) The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is hereby vested in the secretary. The secretary may make the regulations promulgated under KRS 217.005 to 217.215 consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits. The authority to promulgate regulations pursuant to KRS 217.005 to 217.205 is restricted to the Cabinet for Human Resources.
- (2) No person shall operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant without having obtained an annual permit to operate from the cabinet. An application for the permit to operate shall be made to the cabinet upon forms provided by it and shall be accompanied by the required fee as shall be provided by regulation. The secretary shall establish a fee schedule according to authorization in the state budget document. Fees collected by the cabinet shall be deposited in the State Treasury and credited to a revolving fund account for use by the cabinet in carrying out the provisions of KRS 217.025 to 217.390 and the regulations adopted by the secretary pursuant thereto. The balance of the account shall lapse to the general fund at the end of each biennium.
- (3) No person shall operate a retail food establishment without having obtained a permit to operate from the cabinet. An application for a permit to operate any retail food establishment shall be made to the cabinet upon forms provided by it and shall contain the information the cabinet may reasonably require.
- (4) Except as otherwise provided in subsection (6) of this section, each application for a temporary food service establishment or for an annual permit to operate a retail food establishment shall be accompanied by the required fee. The secretary shall establish a fee schedule according to authorization in the state budget document.
- (5) Upon receipt of an application for a permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment accompanied by the required fee, the cabinet shall issue a permit if the establishment meets the requirements of KRS 217.005 to 217.215 and regulations adopted by the cabinet. Retail food establishments holding a valid and effective permit on January 1, 1973, even though not fully meeting the construction requirements of KRS 217.005 to 217.215 and the regulations adopted pursuant thereto, may continue to be eligible for permit renewal if in good repair and capable of being maintained in a safe and sanitary manner.
- (6) Private, parochial, and public school cafeterias or lunchroom facilities through the twelfth grade, *charitable food kitchens*, and all facilities operated by the Cabinet for Human Resources or Department of Corrections shall be exempt from the payment of fees, but shall comply with all other provisions of KRS 217.005 to 217.215 and the state retail food establishment code. *For this subsection, the term "charitable food kitchens"*

means a not-for-profit, benevolent food service establishment where more than one-half (1/2) of the employees are volunteers.

- (7) Each annual permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment, unless previously suspended or revoked, shall expire on December 31 following its date of issuance, and be renewable annually upon application accompanied by the required fee, except as otherwise provided in subsection (6) of this section, and if the establishment is in compliance with KRS 217.005 to 217.215 and regulations of the cabinet.
- (8) Each permit to operate a food processing establishment, food storage warehouse, salvage distributor, salvage processing plant, or a retail food establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

Section 3. This Act is retroactive to January 1, 1998.

Section 4. Whereas payment of required fees places undue hardship upon the operation of charitable food kitchens, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved February 19, 1998

CHAPTER 8

(HB 54)

AN ACT relating to shooting ranges.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 and 3 of this Act:

- (1) *"Shooting range" or "range" means an area designated and operated by a person for the shooting of firearms and not available for that use by the general public without payment of a fee, membership contribution, or dues, or by invitation of an authorized person; or any area so designated and operated by a unit of government, regardless of the terms of admission thereto.*
- (2) *"Unit of government" means any of the departments of state government or political subdivisions of the state, cities, counties, urban-counties, or charter counties, or any of their respective departments, agencies, or authorities.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

- (1) *No shooting range shall be or shall become a nuisance, either public or private, solely as a result of changed conditions in or around the locality of the range if the range has been in operation for one (1) year since the date on which it commenced operation as a shooting range. Subsequent physical expansion of the range or expansion of the types of firearms in use at the range shall not establish a new date of commencement of operations for purposes of this section unless the change triples the amount of the noise produced by the shooting range. The increase in the noise level at the shooting range shall be measured by an independent testing agency or a unit of government and shall compare the highest noise levels during any one (1) month during which the range is in full operation with a subsequent month in which the range is in full operation and conducting a comparable level of shooting activities. Only a person who lives adjacent to the shooting range shall have standing to bring an action under this section.*
- (2) *No shooting range or unit of government or person owning, operating, or using a shooting range for the shooting of firearms shall be subject to any action for civil or criminal liability, damages, abatement, or injunctive relief resulting from or relating to noise generated by the operation of the range if the range remains in compliance with noise control or nuisance abatement administrative regulations, statutes, or ordinances applicable to the range on the date on which it commenced operation.*
- (3) *No administrative regulations, statutes, or ordinances relating to noise control, noise pollution, or noise abatement adopted or enacted by a unit of government shall be applied retroactively to prohibit conduct at a*

shooting range, which conduct was lawful and being engaged in prior to the adoption or enactment of the administrative regulations, statutes, or ordinances.

SECTION 3. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 1 and 2 of this Act shall be retroactive and shall apply to covered actions either before, on, or after the effective date of this Act.

Approved February 20, 1998

CHAPTER 9

(HB 87)

AN ACT relating to the Kentucky Uniform State Building Code.

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

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

As used in this chapter, unless otherwise provided:

- (1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:
 - (a) Armories;
 - (b) Assembly halls;
 - (c) Auditoriums;
 - (d) Bowling alleys;
 - (e) Broadcasting studios;
 - (f) Chapels;
 - (g) Churches;
 - (h) Clubrooms;
 - (i) Community buildings;
 - (j) Courthouses;
 - (k) Dance halls;
 - (l) Exhibition rooms;
 - (m) Gymnasiums;
 - (n) Hotels;
 - (o) Lecture rooms;
 - (p) Lodge rooms;
 - (q) Motels;
 - (r) Motion picture theaters;
 - (s) Museums;
 - (t) Night clubs;
 - (u) Opera houses;
 - (v) Passenger stations;
 - (w) Pool rooms;
 - (x) Recreation areas;

- (y) Restaurants;
 - (z) Skating rinks;
 - (aa) Television studios;
 - (bb) Theaters.
- (2) "Attic" means the space between the ceiling beams of the top habitable story and the roof rafters.
- (3) "Basement" means that portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling and ventilating facilities, but which is not ordinarily used for purposes of general household habitation.
- (4) "Building" means any combination of materials, whether portable or fixed, which comprises a structure or nonmine underground area affording facilities or shelter for any human occupancy, whether infrequent or regular, **and also means single-family dwellings, including those sold or constructed under a trade or brand name.** The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a manufactured home **governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. sec. 5401 et seq.** ~~mobile home,~~ or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if ~~the~~ ~~such~~ farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products. ~~This chapter shall not apply to any single family dwelling except those sold or constructed under a trade or brand name.~~
- (5) ~~Any city, county, or urban county government of the Commonwealth may extend, by ordinance, the application of this chapter to those single family dwellings exempted under subsection (4) of this section, but may not enforce any building code other than the Uniform State Building Code on such dwellings.~~
- (6) ~~Nothing in this chapter shall be construed to exempt single family dwellings from those provisions of the Uniform State Building Code that relate to the National Electric Code and the State Plumbing Code.~~
- (7) ~~"Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling, or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard, including among others:~~
- (a) Banks;
 - (b) Barber shops;
 - (c) Beauty parlors;
 - (d) Department stores;
 - (e) Garages;
 - (f) Markets;
 - (g) Service stations;
 - (h) Offices;
 - (i) Stores;
 - (j) Radio stations;
 - (k) Telephone exchanges;
 - (l) Television stations.

- ~~(6)~~~~(8)~~ "Certified building inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state building inspector within the Commonwealth.
- ~~(7)~~~~(9)~~ "Certified plans and specifications inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state plans and specifications inspector within the Commonwealth.
- ~~(8)~~~~(10)~~ "Certified plumbing inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 and 318.140, or 318.090 to practice as a city, county, or state plumbing inspector within the Commonwealth.
- ~~(9)~~~~(11)~~ "Commissioner" means the commissioner of housing, buildings and construction.
- ~~(10)~~~~(12)~~ "Construction" means the erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein, but shall not include the ordinary repair of a building or structure.
- ~~(11)~~~~(13)~~ "Department" means the Department of Housing, Buildings and Construction.
- ~~(12)~~~~(14)~~ "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction, including among others:
- (a) Academies;
 - (b) Care centers;
 - (c) Colleges;
 - (d) Kindergartens;
 - (e) Libraries;
 - (f) Preschools;
 - (g) Relocatable classroom units;
 - (h) Schools;
 - (i) Seminaries;
 - (j) Universities.
- ~~(13)~~~~(15)~~ "Equipment" means facilities or installations, including but not limited to, heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations.
- ~~(14)~~~~(16)~~ "High hazard occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable, or explosive materials or which has inherent characteristics that constitute a special fire hazard, including among others:
- (a) Aluminum powder factories;
 - (b) Charging or filling stations;
 - (c) Distilleries;
 - (d) Dry cleaning plants;
 - (e) Dry dyeing plants;
 - (f) Explosive-manufacture, sale or storage;
 - (g) Flour and feed mills;
 - (h) Gasoline bulk plants;
 - (i) Grain elevators;
 - (j) Lacquer factories;
 - (k) Liquefied petroleum gas;

- (l) Mattress factories;
- (m) Paint factories;
- (n) Pyroxylin-factories, or warehouses;
- (o) Rubber factories.

~~(15)~~~~(17)~~ "Industrial occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, except for occupancies of high hazard, including among others:

- (a) Assembly plants;
- (b) Creameries;
- (c) Electrical substations;
- (d) Factories;
- (e) Ice plants;
- (f) Laboratories;
- (g) Laundries;
- (h) Manufacturing plants;
- (i) Mills;
- (j) Power plants;
- (k) Processing plants;
- (l) Pumping stations;
- (m) Repair garages;
- (n) Smokehouses;
- (o) Workshops.

~~(16)~~~~(18)~~ "Industrialized building system" means any structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site.

~~(17)~~~~(19)~~ "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment, or by persons involuntarily detained, including among others:

- (a) Asylums;
- (b) Homes for the aged;
- (c) Hospitals;
- (d) Houses of correction;
- (e) Infirmaries;
- (f) Jails;
- (g) Nursing homes;
- (h) Orphanages;
- (i) Penal institutions;
- (j) Reformatories;
- (k) Sanitariums;
- (l) Nurseries.

- (18)~~(20)~~ "Mobile home" means mobile home as defined in KRS 227.550.
- (19)~~(21)~~ "Ordinary repair" means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance, or decoration, and shall include, but not be limited to, the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to, or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.
- (20)~~(22)~~ "Story" means that part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.
- (21)~~(23)~~ "Person with a physical disability" means a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary, or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he is insecure or exposed to danger; a person whose hearing is so impaired that he is unable to hear warning signals; and a person whose mobility, flexibility, coordination and perceptiveness are significantly reduced by aging.
- (22)~~(24)~~ "Facility for persons with physical disabilities" means any convenience or device which facilitates the health, safety or comfort of a person with a disability, including, but not limited to, ramps, handrails, elevators, and doors.
- (23)~~(25)~~ "Manufactured home" is defined as in KRS 227.550.

Section 2. KRS 198B.060 is amended to read as follows:

- (1) Each local government~~in the State of Kentucky~~ shall employ a building official or inspector and other code enforcement personnel as necessary, or shall contract for inspection and code enforcement services in accordance with subsections (8) and (11) of this section to enforce the Uniform State Building Code within the boundaries of its jurisdiction,~~and shall neither adopt nor enforce any other ordinance regulating buildings which conflicts with the Uniform State Building Code,~~ except that ***permits, inspections, and certificates of occupancy shall not be mandatory for single-family residences unless a local government passes an ordinance requiring inspections of single-family residences***~~[a building code adopted by a local government prior to March 28, 1978, may continue in effect until the time the Uniform State Building Code becomes mandatory within that local government jurisdiction].~~
- (2) Local governments shall be responsible for the examination and approval or disapproval of plans and specifications for churches having a capacity of four hundred (400) or less persons, and six thousand (6,000) or less square feet of total floor area, and buildings of no more than three (3) stories in height, exclusive of attic and basement, which do not contain more than twenty thousand (20,000) square feet of floor area, and are not intended for educational, institutional, or high hazard occupancy; or assembly, business, or industrial occupancy in excess of one hundred (100) persons, except churches as stated in this subsection, or for use as a frozen food locker plant as defined in KRS 221.010. Local governments shall be responsible for the issuance and revocation of building permits, licenses, certificates, and similar documents which cover activities within their area of responsibility, and the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. Each local government issuing a building or demolition permit or an initial certificate of occupancy on a new structure shall send a copy of the permit or certificate to the commissioner for his use in maintaining an accurate housing inventory for Kentucky.
- (3) Urban-county governments may determine service districts within their boundaries within which farm dwellings and other farm buildings, not used in the business of retail trade or as a place of regular employment for ten (10) or more people, shall be exempt from the requirements of the Uniform State Building Code. The determination may be reviewed and altered by the board.
- (4) ***With the exception of single-family dwellings***, the department shall be responsible for the examination and approval or disapproval of plans and specifications for all buildings which are not the responsibility of local governments. The department may issue and revoke permits, licenses, certificates, and similar documents within its area of responsibility, and shall have concurrent jurisdiction with local governments for the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. If the commissioner determines that the local jurisdiction is not adequately performing any portion of its

program, he may recommend to the board that the department preempt that portion of a local program, *except that the commissioner shall not preempt or assert jurisdiction for the enforcement of the code on single-family dwellings*. The commissioner shall explain his reasons for preemption in writing and provide a copy to the board and the local jurisdiction. The local jurisdiction may appeal the recommended preemption directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. No preemption by the department shall take place until the final decision of the board. If the department preempts any portion of a local program, it shall collect the fees applicable to that portion of the program.

- (5) Any local government may petition the commissioner requesting that additional plan review functions be allocated to that local government. The petition shall include evidence of the local government's capability to perform additional plan review functions. The commissioner, after review of the petition and supporting evidence, may grant or deny to the local government any part of a request for additional responsibility. If the commissioner denies any part of a petition, he shall explain his reasons for denial in writing, and provide a copy to the board and the local government. A local government may appeal the denial directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. If the local government is granted additional responsibility by the commissioner or the board, the department shall hold concurrent jurisdiction over the additional responsibility, but the local government shall collect any fees for functions it performs pursuant to the additional responsibility.
- (6) Any local government may also petition the commissioner requesting that plans and specifications inspection, building inspection, and approval responsibility relating to the application of local plumbing permits for local installations be allocated to the local government. The petition shall not be granted unless the local government has demonstrated to the commissioner that it can perform these functions in accordance with the provisions of KRS 198B.050 to 198B.090.
- (7) The commissioner shall expedite the review of plans and specifications by assigning responsibilities and coordinating review activities among the department's various functional offices so as to prevent unnecessary duplication in the review of plans and specifications.
- (8) ~~Upon the effective date of the Uniform State Building Code,~~ No building shall be constructed in this state until a local building official and an official representing the department, if the department has jurisdiction, issue a permit for the construction. ***Nothing in this subsection shall require a single-family dwelling to be permitted or inspected unless a local government has established a building inspection program as set out in this section.***
- (9) The local building official or the representative of the department shall issue a permit if the proposed building satisfies the requirements of the Uniform State Building Code and if the party desiring to construct the building has complied with all other legal requirements concerning the location and construction of the building. The applicant for a building permit, by the act of applying for the permit, shall be deemed to have consented to inspection~~+~~ by the local government or the department, of the building during construction and upon the completion of construction for the purpose of determining that the building is constructed in compliance with the Uniform State Building Code.
- (10)
 - (a) No permit for building, construction, reconstruction, renovation, demolition, or maintenance or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be issued by any building department or by any political subdivision of the Commonwealth of Kentucky to any person seeking the permit unless the person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, on activity covered by the permit shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
 - (b) Any person who fails to comply with the assurances required under paragraph (a) of this subsection upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000) or an amount equal to the sum of all uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
 - (c) The penalty imposed in paragraph (b) of this subsection shall be enforced by the county attorney for the county in which the violation occurred.

- (11) *A certified electrical inspector shall be employed by, or contracted for, or contracted with a local government having responsibility over buildings as set out in this section as part of its building inspection program.* After a certified electrical inspector has been ~~employed, contracted for or with, or otherwise~~ provided for by the local government or the department, no utility shall initiate permanent electrical service to any new building, *or any building which has been moved*, until a final certificate of approval has been issued by a certified electrical inspector. Unless the department shall notify the utility in writing as to which buildings are subject to departmental approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government. However, nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.
- (12) This section shall apply to industrialized building systems, but destructive disassembly of industrialized building systems which carry a seal of approval pursuant to a manufactured building law in the state in which they were manufactured, which seal of approval is accepted by the Board of Housing, Buildings and Construction, shall not be performed in order to conduct the tests or inspections.
- (13) No building on which construction was begun nor any industrialized building system on which site preparation and assembly were begun after the Uniform State Building Code became effective shall be occupied until the local building official or a representative of the department issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Uniform State Building Code, or assembled or installed in conformance with applicable instructions. *Nothing in this subsection shall be construed to require a certificate of occupancy to be issued for any single-family dwelling unless a local government has established jurisdiction for the enforcement of the Uniform State Building Code under this section.*
- (14) A local government may associate with other local governments, and may seek the technical assistance of other agencies or area development districts in order to provide for the local enforcement of the Uniform State Building Code.
- (15) Local governments or associations of local governments may contract with a person, firm, or company to perform the plans and specifications inspection or building inspection functions required of the local government by the provisions of this section if:
- (a) The person performing the plans and specifications inspection is certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a certified plans and specifications inspector;
 - (b) The person performing the building inspection is certified by the department as having successfully completed the test requirements provided in KRS 198B.090 to practice as a certified building inspector;
 - (c) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities;
 - (d) The person performing the plumbing inspection is certified by the department as having successfully completed the requirements provided in KRS 318.140 to practice as a certified plumbing inspector; and
 - (e) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities.
- (16) If the department has reason to believe that an inspector is not enforcing, or is improperly enforcing, the provisions of the Kentucky building codes, it shall conduct an informal hearing to review the inspector's procedures and return in written form the required corrections resulting from the hearing to the inspector, or may take action to suspend or revoke the inspector's certificate.
- (17) If, after written notification from the department to the inspector of any corrections required, the inspector fails to comply within sixty (60) days, the department shall suspend the inspector's certification until the inspector complies. Any action to suspend or revoke an inspector's certificate may be appealed to the board, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (18) Each local government and the department may establish a schedule of fees for the functions performed under the provisions of this chapter. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the department shall be paid into the State Treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.

Section 3. KRS 67.380 is amended to read as follows:

The fiscal court of any county shall have authority, by order or resolution, to adopt, and to enforce, regulations governing construction as defined by KRS 198B.010~~{(42)}~~ pursuant to the provisions of KRS 198B.060.

Approved February 25, 1998

CHAPTER 10

(SB 1)

AN ACT relating to planning and zoning in counties containing a city of the first class.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

It is the intent of Sections 1 to 10 of this Act to strengthen the enforcement of binding elements which have been approved as part of a land use development plan in a county containing a city of the first class. This is intended to be done by extending to a planning commission in counties containing a city of the first class the authority to issue remedial orders and impose civil fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with approved land use plans as they apply to binding element agreements. Sections 1 to 10 of this Act is intended and shall be construed to provide an additional or supplemental means of obtaining compliance with local zoning ordinances and nothing contained in Sections 1 to 10 of this Act shall prohibit the enforcement of local zoning ordinances by any other means authorized by law.

SECTION 2. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 10 of this Act, unless the context otherwise requires:

- (1) *"Land use enforcement officer" in a county containing a city of the first class means a zoning enforcement officer employed by a planning commission.*
- (2) *"Land use ordinance" in a county containing a city of the first class means an official action of a local government body which is a regulation of a general and permanent nature relating to the use and development of land within the jurisdictional boundary of the planning commission. It is enforceable as a local law and shall include any provision of a code of ordinances adopted by a local government which embodies all or part of an ordinance.*
- (3) *"Local government" means a county containing a city of the first class and all cities of the first through fourth classes within that county.*
- (4) *"Binding element" in a county containing a city of the first class means a binding requirement, provision, restriction, or condition imposed by a planning commission or its designee, or a promise or agreement made by an applicant in writing in connection with the approval of a land use development plan or subdivision plan.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

- (1) *The planning commission in counties containing a city of the first class may issue remedial orders and impose civil fines as a method of enforcing a binding element when a violation of that binding element has been classified as a civil offense in accordance with this section.*
- (2) *Subject to the limitations set forth in subsections (1) and (3) of this section, if a local government elects to enforce a binding element as a civil offense, it shall do so by ordinance, which shall provide:*
 - (a) *That a violation of the binding element is a civil offense; and*
 - (b) *A maximum civil fine that may be imposed for each violation of a binding element.*
- (3) *No local government shall classify the violation of a binding element as a civil offense if the violation would also constitute an offense under any provision of the KRS, including specifically, and without limitation, any provision of the Kentucky Penal Code and any moving motor vehicle offense.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

Each planning commission which is given the authority by the local government to enforce binding elements shall have the power to:

- (1) *Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the requirements of Sections 1 to 10 of this Act.*
- (2) *Conduct hearings to determine whether there has been a violation of a binding element.*
- (3) *Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the planning commission may be served by any land use enforcement officer.*
- (4) *Take testimony under oath. The chairman of the planning commission may administer oaths to witnesses prior to their testimony before the planning commission on any matter.*
- (5) *Make findings and issue orders that are necessary to remedy any violation of a binding element.*
- (6) *Impose civil fines as authorized in the ordinance on any person found to have violated any binding element that the planning commission is authorized to enforce.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

- (1) *When a land use enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a violation of a binding element has occurred, the officer may issue a warning notice and citation to the offender. Prior to issuing a citation, the officer shall issue a warning notice giving the offender a specified period of time in which to remedy the violation. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the land use enforcement officer may issue a citation. However, if the violation is deemed by the land use enforcement officer to be a threat to public safety, then a citation shall be immediately issued without a prior warning notice.*
- (2) *Enforcement proceedings shall be initiated by the issuance of a citation by a land use enforcement officer.*
- (3) *The citation issued by the land use enforcement officer shall be in a form prescribed by the planning commission and shall contain, in addition to any other information required by the planning commission:*
 - (a) *The date and time of issuance;*
 - (b) *The name and address of the person to whom the citation is issued;*
 - (c) *The date and time the violation of the binding element was committed;*
 - (d) *The facts constituting the violation of the binding element;*
 - (e) *A specific description of the binding element violated;*
 - (f) *The name of the land use enforcement officer;*
 - (g) *The civil fine that will be imposed for the violation if the person does not contest the citation;*
 - (h) *The procedure for the person to follow in order to pay the civil fine or to contest the citation; and*
 - (i) *A statement that if the person fails to pay the civil fine set forth in the citation or to contest the citation within the time allowed, the person shall be deemed to have waived the right to a hearing before the planning commission to contest the citation, and that the determination that a violation was committed shall be final.*
- (4) *After issuing a citation to an alleged violator, the land use enforcement officer shall notify the planning commission by delivering the citation to the administrative official designated by the planning commission.*
- (5) *All citations issued shall be hand delivered to the alleged violator.*
- (6) *When a citation is issued, the person to whom the citation is issued shall respond to the citation within fourteen (14) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the planning commission to contest the citation. If the person fails to respond to the citation within fourteen (14) days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the planning commission shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

- (1) *When a hearing before a planning commission has been requested, the planning commission, through its clerical and administrative staff, shall schedule a hearing. The hearing shall be conducted within thirty (30) days of the date of the request, unless the person who requested the hearing requests or agrees to a*

continuance not to exceed thirty (30) days. All continuances must receive the approval of the planning commission. Not less than seven (7) days before the date set for the hearing, the planning commission shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing before the planning commission who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the planning commission shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

- (2) *Each case before a planning commission shall be presented by an attorney who shall be counsel to the commission.*
- (3) *All testimony shall be under oath and shall be recorded. The planning commission shall take testimony from the land use enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the land use enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.*
- (4) *After the hearing, the planning commission shall determine, based on the evidence presented, whether a violation was committed. When the commission determines that no violation was committed, an order dismissing the citation shall be entered. When the commission determines that a violation has been committed, the commission shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by the ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by the ordinance.*
- (5) *Every final order of a planning commission shall be reduced to writing, which shall include the date the order was issued, and a copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order of the planning commission is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

- (1) *An appeal from any final order issued by a planning commission may be made to the District Court of the county in which the planning commission is located. The appeal shall be taken within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the commission's order in the same manner as any civil action under the Rules of Civil Procedure. The action shall be tried de novo and the burden shall be upon the planning commission to establish that a violation has occurred. If the court finds that a violation occurred, judgment shall be entered ordering the offender to pay to the planning commission all fines assessed for the violation. If the court finds a violation did not occur, the complaint shall be dismissed.*
- (2) *A judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.*
- (3) *If no appeal from a final order of a planning commission is filed within the time period set forth in this section, the planning commission's order shall be deemed final for all purposes.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

The person or entity found to have committed a violation of a binding element shall be responsible for the amount of all fines assessed for the violation. A planning commission may bring a civil action against the person or entity and shall have the same remedies as provided for the recovery of a debt.

SECTION 9. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

Nothing contained in Sections 1 to 10 of this Act shall prohibit a local government from taking immediate action to remedy a violation of a binding element when there is reason to believe that the existence of the binding element violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the binding element violation will be irreparable or irreversible.

SECTION 10. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 1 to 10 of this Act may be cited as the "Binding Element Enforcement Act."

Approved February 25, 1998

CHAPTER 11

(SB 37)

AN ACT relating to the licensure of interpreters for the deaf and hard of hearing.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context otherwise requires:

- (1) *"Board" means Kentucky Board of Interpreters for the Deaf and Hard of Hearing.*
- (2) *"Committee" means Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.*
- (3) *"Consumer" means a person who is deaf, hard of hearing, or who requires special communication techniques in order to communicate.*
- (4) *"Interpreter" means a person who engages in the practice of interpreting.*
- (5) *"Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or the translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabularies include, but are not limited to, American Sign Language, English-based sign language, cued speech, and oral interpreting.*
- (6) *"Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include but are not limited to the Registry of Interpreters for the Deaf, the National Association of the Deaf, and the National Training, Evaluation and Certification Unit.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *Effective July 1, 2003, no person shall represent himself or herself as an interpreter or engage in the practice of interpreting as defined in Section 1 of this Act unless he or she is licensed in accordance with the provisions of Sections 1 to 12 of this Act.*
- (2) *The provisions of Sections 1 to 12 of this Act shall not apply to:*
 - (a) *Nonresident interpreters working in the Commonwealth less than twenty (20) days per year;*
 - (b) *Interpreters working at religious activities;*
 - (c) *Interpreters working as volunteers without compensation. However, all volunteers interpreting for state agencies must be eligible for licensure as described in Section 8 of this Act;*
 - (d) *Interpreters working in an emergency. An emergency is a situation where the consumer decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;*
or
 - (e) *The activities and services of an interpreter intern or a student in training who is:*
 1. *Enrolled in a program of study in interpreting at an accredited institution of higher learning;*
 2. *Interpreting under the supervision of a licensed interpreter as part of a supervised program of study; and*
 3. *Identified as an interpreter intern or student in training.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created a board to be known as the "Kentucky Board of Interpreters for the Deaf and Hard of Hearing."*

- (2) *The board shall consist of seven (7) members appointed by the Governor as follows:*
 - (a) *Five (5) practicing interpreters who hold current nationally recognized certification and have at least five (5) years interpreting experience;*
 - (b) *One (1) deaf interpreter with past or current nationally recognized certification; and*
 - (c) *One (1) consumer with knowledge about interpreter issues.*
- (3) *After the initial term of each appointment, all members shall be appointed for a term of four (4) years.*
- (4) *Board members shall not be allowed to succeed themselves but a former member may be reappointed to the board if that member has not served in the preceding four (4) years.*
- (5) *The members of the board shall receive no compensation for their services on the board, but they shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.*
- (6) *The board shall annually elect a chairman, a vice chairman, and a secretary-treasurer from the members of the board.*
- (7) *The board shall hold at least one (1) meeting annually and additional meetings as the board may deem necessary. The additional meetings may be held upon call of the chairman or upon written request of a quorum. Four (4) members of the board shall constitute a quorum to conduct business.*
- (8) *Upon recommendation of the board, the Governor may remove any member of the board for neglect of duty or malfeasance in office.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure and the issuance of licenses.*
- (2) *The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter.*
- (3) *The board shall promulgate necessary and reasonable administrative regulations in accordance with KRS Chapter 13A and this chapter to effectively carry out and enforce the provisions of Sections 1 to 12 of this Act, including regulations to establish authorized fees. Fees shall not exceed amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of Sections 1 to 12 of this Act.*
- (4) *The board may conduct hearings in accordance with KRS Chapter 13B and keep records and minutes necessary to carry out the functions of Sections 1 to 12 of this Act.*
- (5) *The board may renew licenses and require continuing education as a condition for renewal.*
- (6) *The board may suspend or revoke licenses, or impose supervisory or probationary conditions upon licensees, or impose administrative disciplinary fines, issue written reprimands, or any combination thereof.*
- (7) *The board may seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of interpreting by unlicensed persons.*
- (8) *The board may employ any persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.*
- (9) *Beginning in 1999, on October 1 of each year, the board shall submit a report to the Legislative Research Commission indicating:*
 - (a) *The current number of licensed interpreters; and*
 - (b) *The number of complaints received against interpreters and any disciplinary action taken within the previous calendar year.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *All fees and other moneys received by the board under the provisions of Sections 1 to 12 of this Act shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.*
- (2) *No part of this revolving fund shall revert to the general fund of this Commonwealth.*

- (3) *This revolving fund shall pay for the reimbursement of board members for actual and necessary expenses incurred in the performance of their official duties, the compensation of all of the employees of the board, and those operational expenses incurred in fulfilling the board's duties as described in administrative regulation.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created a committee to be known as the "Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee."*
- (2) *The committee shall consist of eleven (11) members as follows:*
- (a) *The president or a designee of:*
1. *Kentucky Association of the Deaf; and*
 2. *Kentucky Registry of Interpreters for the Deaf;*
- (b) *A representative from:*
1. *Kentucky Commission on the Deaf and Hard of Hearing (KCDHH);*
 2. *Eastern Kentucky University Interpreter Training Program;*
 3. *Kentucky Department of Education;*
 4. *Kentucky Department of Vocational Rehabilitation;*
 5. *Kentucky School for the Deaf;*
 6. *Cabinet for Families and Children; and*
 7. *Cabinet for Health Services; and*
- (c) *Two members-at-large, who are consumers, appointed by the board.*
- (3) *The members of the committee shall receive no compensation for their services on the committee. The member from the Kentucky Association of the Deaf, the member from the Kentucky Registry of Interpreters for the Deaf, and the members-at-large shall be reimbursed for actual and necessary expenses incurred in the performance of their committee duties.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *The committee shall provide ongoing advice and input to the board regarding the criteria for licensure and the ratio between consumer demand and the existing supply of licensed interpreters or those eligible for licensure.*
- (2) *The committee shall make recommendations to the board regarding the content of relevant administrative regulations.*
- (3) *The committee shall provide ongoing review of professional development and support systems for interpreters including existing public and private education programs and training resources within the Commonwealth.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *To be eligible for licensure by the board as an interpreter, the applicant shall submit an application which includes:*
- (a) *An application fee; and*
- (b) *Current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board and promulgated by administrative regulation.*
- (2) *The board shall issue an interpreter license to an applicant who fulfills these requirements. The front of the license shall clearly list all certifications held by the licensee.*
- (3) *The board may issue a temporary license as an interpreter to an applicant who is certified at a level below that required for licensure in subsection (1) of this section. A temporary license shall be available for a person who is training under the supervision of a licensed interpreter under circumstances defined by the*

board in administrative regulation. A temporary license is valid for only a certain period until the licensee achieves the minimum level of certification required for licensure under subsection (1) of this section. A temporary license is not renewable although extensions may be granted under circumstances defined by administrative regulation.

- (a) For graduates of a baccalaureate interpreter training program, a temporary license shall be valid for up to one (1) year.*
 - (b) For graduates of an associate of arts interpreter training program, a temporary license shall be valid for up to two (2) years.*
 - (c) For nondegree applicants, a temporary license shall be valid for up to two (2) years.*
- (4) Upon payment of the application fee, the board shall grant licensure to an applicant holding a valid license, certificate, or equivalent issued by another state if it is based upon standards equivalent to or exceeding the standards required by Sections 1 to 12 of this Act.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) Each person licensed as an interpreter shall annually, on or before July 1, submit to the board current proof of nationally recognized certification and pay a fee for the renewal of the interpreter license. The amount of the fee shall be promulgated by administrative regulation of the board. All licenses not renewed by July 1 of each year shall expire.*
- (2) A sixty (60) day grace period shall be allowed after July 1, during which time individuals may continue to practice and may renew their licenses upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the board.*
- (3) All licenses not renewed by August 31 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.*
- (4) After the sixty (60) day grace period, but before five (5) years from the date of termination, individuals with a terminated license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the board.*
- (5) A suspended license is subject to expiration and termination and may be renewed as provided in Sections 1 to 12 of this Act. Renewal shall not entitle the licensee to engage in the practice of interpreting until the suspension has ended or is otherwise removed by the board and the right to practice is restored by the board.*
- (6) A revoked license is subject to expiration and termination but shall not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (4) of this section and the renewal fee as set forth in subsection (1) of this section.*
- (7) The board may require that a person applying for renewal or reinstatement of licensure show evidence of completion of continuing education as prescribed by the board by administrative regulation.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) The board shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in Sections 1 to 12 of this Act or under other provisions of law.*
- (2) The board may investigate allegations of wrongdoing upon complaint or upon its own volition. The board shall establish procedures for receiving and investigating complaints by administrative regulation.*
- (3) If the board's investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before suspending, revoking, imposing probationary or supervisory conditions or an administrative fine, issuing a written reprimand, or any combination of actions regarding any license under the provisions of this chapter.*
- (4) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the*

right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

- (5) *After denying an application under the provisions of Sections 1 to 12 of this Act, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may refuse to issue a license or suspend, revoke, impose probationary conditions upon, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee has:*
- (a) *Been convicted of a crime as described in KRS 335B.010(4) or an offense that otherwise directly relates to the occupation of interpreter. A plea of "no contest" may be treated as a conviction for purposes of disciplinary action;*
 - (b) *Knowingly misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;*
 - (c) *Committed any fraudulent act or practice;*
 - (d) *Been incompetent or negligent in the practice of interpreting;*
 - (e) *Violated any state statute or administrative regulation governing the practice of interpreting;*
 - (f) *Violated the code of ethics of the national organization issuing the licensee's certification as incorporated in administrative regulation; or*
 - (g) *Violated any federal or state law considered by the board to be applicable to the practice of interpreting.*
- (2) *When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.*
- (3) *At any time during the investigative or hearing processes, the board may accept an assurance of voluntary compliance from the licensee which effectively deals with the complaint.*
- (4) *The board may reconsider, modify, or reverse its probation, suspensions, or other disciplinary action.*
- (5) *Five (5) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to competently engage in the practice of interpreting.*
- (6) *Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

Any person who shall violate or aid in the violation of any of the provisions of Section 2 of this Act shall be guilty of a Class B misdemeanor.

Section 13. The original members of the board created in Section 3 of this Act shall be appointed before October 1, 1998, as follows: One (1) member to a one (1) year term, two (2) members to a two (2) year term, two (2) members to a three (3) year term, and two (2) members to a four (4) year term. All members thereafter shall be appointed for a term of four (4) years. Any vacancy in the membership of the board shall be filled for the unexpired term by appointment by the Governor.

Approved February 25, 1998

CHAPTER 12**(SB 154)**

AN ACT relating to reorganization.

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

Section 1. KRS 147A.002 is amended to read as follows:

- (1) The Department of Local Government shall be headed by a commissioner, and shall be divided for administrative purposes into the Division of Community ~~Development~~~~Programs~~ and such other divisions as the commissioner, with the approval of the Governor, determines. The Division of Community ~~Development~~~~Programs~~ shall be responsible for the administration of Title I of the Housing and Community Development Act of 1974 as amended through 1981, which includes the community block grant program and the 107 technical assistance program.
- (2) The commissioner, with the approval of the Governor, shall appoint necessary deputies, assistants, attorneys and other employees and shall fix their compensation and authorize payment of their expenses according to law.

Section 2. The General Assembly confirms Executive Order 97-1391, dated October 21, 1997, relating to the reorganization of the Department of Local Government, to the extent that it is not otherwise confirmed by this Act, and which creates the Division of Community Development, Division of Support Services, Division of Financial Services, and Division of Training and ADD Services, which abolishes the Division of County and Municipal Accounting, Division of Administrative Services, Division of Community Programs, and Division of Development Finance, which expands the office of the Commissioner to include an additional principal assistant to be appointed by the Commissioner, which assigns the Water Resource Development Commission to the office of the Commissioner, and which orders the secretaries of the Finance and Administration Cabinet and Personnel Cabinet and the commissioner of the Department of Local Government to take all steps necessary to effectuate its provisions.

Approved February 27, 1998

CHAPTER 13**(SB 148)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 96-716, issued June 5, 1996, which transferred all personnel, equipment, supplies, records, and funds relating to the Veterans Division and the Kentucky Center for Veteran Affairs, formerly in the Department of Military Affairs, from the Department of Military Affairs to the Department of Veterans' Affairs.

Approved February 27, 1998

CHAPTER 14**(HJR 33)**

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 1526 between Blue Lick Road and KY 61, also known as the Brooks Extension Road, the "John Harper Road" and to erect appropriate highway signs.

WHEREAS, John Harper ably served the citizens of Bullitt County in the General Assembly as Representative of the Forty-ninth House District from 1985 through 1993; and

WHEREAS, John Harper has continued to serve the citizens of Bullitt County as County Judge Executive from 1993 to the present, leading the county during a period of great growth and prosperity; and

WHEREAS, John Harper has contributed his time and talents to a host of charitable, civic, and social organizations in Bullitt County; and

WHEREAS, all who know John Harper as a legislator, county judge, neighbor, and friend have been touched by his integrity, intelligence, dedication, good humor, and kindness;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name KY 1526 between Blue Lick Road and KY 61, also known as the Brooks Extension Road, the "John Harper Road."

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "John Harper Road" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Louisville, Kentucky.

Approved February 27, 1998

CHAPTER 15

(HB 265)

AN ACT relating to motor vehicles.

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

Section 1. KRS 186.042 is amended to read as follows:

- (1) For the purposes of this section, "persons with disabilities which limit or impair the ability to walk" means persons who, as determined by a licensed physician:
 - (a) Cannot walk two hundred (200) feet *or sixty-one (61) meters* without stopping to rest;
 - (b) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistant device;
 - (c) Are restricted by lung disease to the extent that the person's forced respiratory and expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest;
 - (d) Use portable oxygen;
 - (e) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
 - (f) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.
- (2) On the application of any person with disabilities which limit or impair the ability to walk, who has lost the use of an arm or both arms, or who is blind, the Transportation Cabinet shall issue the person with a disability an accessible parking registration plate or renewal decal designating the vehicle licensed as being owned by or leased by a person with a disability. The license plate or renewal decal may be issued for a passenger car as set forth in KRS 186.050(1), *for a motorcycle as set forth in KRS 186.050(2)*, or for a commercial vehicle as set forth in KRS 186.050(3)(a). The registration plates issued shall bear the international symbol of access adopted by Rehabilitation International in 1969, reading from left to right and shall be followed by numbers or letters the cabinet finds expedient. The cabinet shall not issue the registration plates so designated to any person other than a person with a disability as described above. The cabinet shall not charge any fee, other than the regular fee for annual registration, for the issuance of the registration plate or renewal decal.
- (3) The application for a license plate for a person with a disability shall be made on a form prepared by the Transportation Cabinet. For every person seeking this accessible parking license plate, proof of the disability shall be required by:
 - (a) The county clerk issuing the license plate ascertaining that the applicant is obviously disabled as described in this section; or

- (b) A statement from a licensed physician that the applicant is a person with disabilities which limit or impair the ability to walk, a person who has lost the use of an arm, or any person who is blind.
- (4) Upon the sale, transfer, or termination of lease of a vehicle licensed as authorized under this section, the owner or lessee shall remove the license plate and return it and the certificate of registration to the county clerk. The clerk shall issue a regular license plate and certificate of registration upon the payment of an eleven dollar fifty cent (\$11.50) state fee and a three dollar (\$3) clerk's fee. When the accessible parking plate has been presented to the clerk, he shall reissue the plate, free of charge by the Transportation Cabinet and upon payment of a two dollar (\$2) clerk's fee, for use on any other vehicle owned or leased by the same person who purchased the accessible parking plate for the current licensing period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who shall forward the license plate to Frankfort.
- (5) When a motor vehicle bearing plates issued to a person with a disability as prescribed in this section is being operated by or for the benefit of the person with a disability, who is in the motor vehicle when the motor vehicle is being operated, the motor vehicle may be parked for a period of two (2) hours in excess of the legal parking period permitted by local authorities, except if local ordinances or police regulations prohibit parking on a highway for the purpose of creating a fire lane; if the ordinances or police regulations provide for the accommodation of heavy traffic during morning, afternoon, or evening hours; or if the motor vehicle is parked in such a manner as to clearly be a traffic hazard.
- (6) Any person with a disability seeking to obtain a license plate according to this section who has been provided an automobile pursuant to an occupation shall conform to the requirements of KRS 186.050(14).
- (7) Registration under this section shall expire July 31.
- (8) The cabinet may promulgate the administrative regulations necessary to further the purpose of this section.

Approved February 27, 1998

CHAPTER 16

(HB 248)

AN ACT relating to highways.

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

Section 1. To honor veterans from Letcher County who have served the Commonwealth and our great nation in the armed services, US highway 119 from KY 15 at Whitesburg to US 23 near Jenkins shall be named "The Letcher County Veterans Memorial Highway". The Transportation Cabinet is directed to erect the necessary signs at the start of each end of the designated segment.

Approved February 27, 1998

CHAPTER 17

(HB 137)

AN ACT relating to the funding of public transportation.

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

Section 1. KRS 96A.095 is amended to read as follows:

- (1) The Transportation Cabinet is authorized and empowered to receive and accept from the Commonwealth or any of its agencies and from federal agencies appropriations or grants to ***promote, develop, and provide capital and operating subsidies for***~~accomplish the promotion and development of~~ mass transit services in Kentucky, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value to promote mass transit services. Subject to the provisions of Section 230 of the Constitution of the Commonwealth of Kentucky, any ***of these***~~such~~ funds, property, or things of value received by the Transportation Cabinet may be given directly to a local transit authority as created under this chapter or to a city or a county or other public mass transit providers, in order to accomplish the purposes of this section.

- (2) The Transportation Cabinet is authorized and directed to apply for any available federal funds for operating subsidies, either on a matching basis or otherwise and to make any *of these* ~~said~~ funds received available to transit authorities created under this chapter or to a city or a county or other public mass transit providers in order to accomplish the purposes of this section; or in *those* ~~such~~ cases where federal laws or regulations preclude the Transportation Cabinet from direct application for *this type of* ~~such~~ federal funds, the cabinet is authorized and directed to provide assistance to local transit authorities or a city or a county or other public mass transit providers as necessary to enable it to apply for and obtain *this type of* ~~such~~ federal funds, in order to accomplish the purposes of this section.
- (3) The Transportation Cabinet is authorized to assist cities and counties in the formation of local transit authorities in conformance with this chapter, but nothing in this chapter shall be construed as preventing the Transportation Cabinet from providing such assistance as authorized in this chapter to cities or counties where local transit authorities do not exist.

Section 2. KRS 96A.096 is amended to read as follows:

There is ~~hereby~~ created in the State Treasury a special fund to be known as the "Kentucky Public Transportation Development Fund." All moneys deposited or paid into this fund are appropriated and shall be available to the cabinet for the purposes of KRS 96A.095. All moneys in *this* ~~such~~ fund shall be expended ~~solely~~ for *public transportation capital and operating subsidies*, public transportation development, or ~~the~~ administrative costs incidental to *these* ~~said~~ developments. The fund shall consist of all money appropriated by the state and all money received from the United States or from any other source for the purpose of *providing public transportation capital and operating subsidies and* public transportation development *funds*. All moneys in the Kentucky public transportation development fund shall be deposited, administered, and dispersed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that any balance in this fund shall not lapse at any time but shall be continuously available to the cabinet for the purposes of carrying out the provisions of KRS 96A.095. A general statement that all continuing appropriations are repealed shall not be construed as abolishing this fund.

Approved February 27, 1998

CHAPTER 18

(SCR 3)

A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans, and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems which threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping resolve those problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of threats to the program, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

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

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Staff services to be utilized by the Task Force are estimated to cost \$20,000 and are to be provided by the Commission from its regular budget, subject to the limitations and other research responsibilities of the Commission.

Approved February 27, 1998

CHAPTER 19

(SB 22)

AN ACT relating to state veterans' cemeteries.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Veterans' Affairs shall establish and maintain state veterans' cemeteries in the Commonwealth for the purpose of providing for the interment of Kentucky veterans of the United States Armed Forces and for their next of kin, as determined by the department.*
- (2) *The Kentucky state veterans' cemeteries shall be under the administrative authority and control of the Department of Veterans' Affairs. The Department of Veterans' Affairs may promulgate administrative regulations necessary to operate the cemeteries in compliance with applicable state and federal statutes and regulations.*
- (3) *The Department of Veterans' Affairs is authorized to seek federal and private funding for the construction, renovation, and operation of Kentucky state veterans' cemeteries.*

Approved February 27, 1998

CHAPTER 20

(HB 112)

AN ACT relating to securities.

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

Section 1. KRS 292.310 is amended to read as follows:

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

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, *except as otherwise provided in this chapter.*
 - (a) ~~but~~ "Agent" does not include an individual who represents:
 - I. An issuer in:
 - a. ~~(a)~~ Effecting a transaction in a security exempted by subsections (1), (2), (3), (10), or (11) of KRS 292.400, or subsections (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities *or effecting a transaction in a security exempted by subsection (15) of Section 12 of this Act even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by subsection (15) of Section 12 of this Act;*
 - b. ~~(b)~~ Effecting transactions exempted by KRS 292.410 unless otherwise required; ~~(c)~~
 - c. *Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;*
 - d. ~~(e)~~ Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any

person in this state; ~~or~~ ~~[- A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an agent only if he otherwise comes within this definition;]~~

- e. *Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or*
2. *A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.*
- (b) *A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;*
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
 - (a) An agent, issuer, bank, savings institution, or trust company,
 - (b) *A person that effects transactions in this state exclusively in securities exempted by subsection (15) of Section 12 of this Act;*
 - (c) A person who has no place of business in this state:
 1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;~~[-]~~ or
 2. ~~[(c) A person who has no place of business in this state]~~ If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in *this* paragraph~~[- (b)]~~;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "Commissioner" means the commissioner of the Department of Financial Institutions *or any individual employee of the Department of Financial Institutions expressly designated by order of the commissioner to act in the commissioner's place;*
- (5) *"Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-3;*
- (6) *"Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;*
- (7) *"Department" means the Department of Financial Institutions of the Commonwealth of Kentucky;*
- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- ~~(9)(6)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- ~~(10)(7)~~ "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
 - (a) A bank, savings institution, or trust company;
 - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

- (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
- (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
- (f) A person who has no place of business in this state if:
 1. His only clients in this state are other investment advisers, **covered advisers**, broker-dealers, banks, savings institutions, trust companies, insurance companies, ~~investment companies as defined in the Investment Company Act of 1940,~~ pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or
 2. During any period of twelve (12) consecutive months he does not **have**~~direct business communications into this state in any manner to~~ more than five (5) clients other than those specified in subparagraph 1.: ~~or~~
- (g) **An investment adviser representative or a person excluded from the definition of investment adviser representative;**
- (h) **A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisors Act of 1940;**
- (i) **A covered adviser; or**
- (j) Such other persons not within the intent of this subsection as the **commissioner**~~director~~ may by rule or order designate;

(11) "Investment adviser representative" means:

- (a) **With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:**
 1. **Makes any recommendations or otherwise renders advice regarding securities;**
 2. **Manages accounts or portfolios of clients;**
 3. **Determines which recommendation or advice regarding securities should be given;**
 4. **Solicits, offers, or negotiates for the sale of or sells investment advisory services; or**
 5. **Supervises employees who perform any of the functions described in this paragraph; and**
- (b) **With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 of the Securities Exchange Act of 1934.**

~~(12)(8)~~ "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;

~~(13)(9)~~ "Nonissuer" means not directly or indirectly for the benefit of the issuer;

~~(14)(10)~~ "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

- (15) *"Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;*
- (16)~~(11)~~ "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (17)~~(12)~~ "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;
- (18)~~(13)~~ "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract *under which an*~~for variable annuity contract issued by any~~ insurance company *promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;*
- (19)~~(14)~~ "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico; *and*
- (20)~~(15)~~ Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 2. KRS 292.313 is amended to read as follows:

- (1) KRS 292.320(1), 292.330(1), 292.340, 292.450, and 292.480 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.
- (2) KRS 292.320(1), 292.330(1), and 292.450 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.
- (3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- (4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).
- (5) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months, or a radio or television program originating outside this state is received in this state.
- (6) Subsections (2), (3), and (4) of KRS 292.320, as well as KRS 292.330(1) and 292.450 so far as investment advisers *or investment adviser representatives* are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Section 3. KRS 292.320 is amended to read as follows:

- (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
 - (a) To employ any device, scheme, or artifice to defraud;
 - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
 - (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
 - (a) To employ any device, scheme, or artifice to defraud the other person; or
 - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
- (3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
 - (a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
 - (b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
 - (c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. ~~Paragraph (a) of subsection (3) of this section shall not prohibit investment advisers to investment companies as defined in the Investment Company Act of 1940 from charging any incentive compensation fee not in violation of the Investment Company Act of 1940 or the rules and regulations promulgated by the Securities and Exchange Commission thereunder, provided that the commissioner shall approve in writing the incentive compensation fee arrangement as being fair and reasonable.~~ "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Section 4. KRS 292.325 is amended to read as follows:

- (1) ***Except as otherwise provided in this section***, the commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, radio, television, or other advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, as part of a registered offering or as a part of an exemption offering required to be filed under KRS 292.415.
- (2) ***The provisions of this section shall not require a covered adviser to file with the commissioner any documents listed in subsection (1) of this section or any document, except a prospectus, relating to a covered security.***

Section 5. KRS 292.330 is amended to read as follows:

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless he is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is

registered. ***It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter.*** It is unlawful for any person to transact business in this state as an investment adviser unless:

- (a) He is so registered under this chapter;~~{-}~~ or
- (b) He is registered as a broker-dealer under this chapter~~{-or}~~
- ~~(c) His only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.~~

(2) ***It is unlawful for any covered adviser to transact business in this state unless:***

- (a) ***The person has made a notice filing with the commissioner consisting of a copy of those documents that have been filed by the covered adviser with the U.S. Securities and Exchange Commission and that the commissioner by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;***
- (b) ***The person is registered as a broker-dealer under this chapter;***
- (c) ***The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or***
- (d) ***The person is excluded from the definition of investment adviser under subsection (10)(a) to (h) and (j) of Section 1 of this Act.***

It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the commissioner unless the investment adviser representative is registered under this chapter.

(3) A broker-dealer, agent,~~{-or}~~ investment adviser, ***or investment adviser representative*** may apply for registration by filing with the commissioner or the commissioner's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection ~~(11){(10)}~~.

- (a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection ~~(13){(12)}~~) without the filing of applications for registration as agents or the payment of fees for registration as agents.
- (b) ***Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.***
- (c) The ***registration*** application shall contain whatever information the commissioner requires concerning such matters as:
 - 1.~~{(a)}~~ The applicant's form and place of organization;
 - 2.~~{(b)}~~ The applicant's proposed method of doing business;
 - 3.~~{(c)}~~ The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;
 - 4.~~{(d)}~~ Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
 - 5.~~{(e)}~~ The applicant's financial condition and history.

- (4)~~(3)~~ If no denial order is in effect and no proceeding is pending under subsection (13)~~(12)~~, registration becomes effective at noon of the thirtieth day after an application is filed, *except as otherwise noted in this subsection:*~~[-]~~
- (a) The commissioner may specify an earlier effective date and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.
 - (b) The commissioner may by rule establish a procedure for transfer of an agent *or an investment adviser representative* whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.
 - (c) *The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the commissioner notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.*
- (5)~~(4)~~ The commissioner may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.
- (6)~~(5)~~ *Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940*, the commissioner may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.
- (7)~~(6)~~ *Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940*, the commissioner may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within *three (3)*~~two (2)~~ years after *the later of* the sale or other act upon which it is based *or the discovery of the sale or act*.
- (8)~~(7)~~ *Subject to the limitations of Section 15 of the Securities Exchange Act of 1934*, the commissioner may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.
- (9)~~(8)~~ Every registration of a broker-dealer, agent,~~[-or]~~ investment adviser, *and investment adviser representative and every notice filing* shall be effective until December 31 of the year of registration *or notice* unless the commissioner by rule extends or lessens *the*~~such~~ registration *or notice period*~~and~~ may be renewed as hereinafter provided. The commissioner may by rule increase or reduce the registration fee *or notice filing fee* set forth in subsection (11)~~(10)~~ of this section should *the*~~such~~ registration period *or notice period* be extended or lessened.
- (a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the commissioner or the commissioner's designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the commissioner or the commissioner's designee.
 - (b) *The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the commissioner*

or the commissioner's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the commissioner or the commissioner's designee.

- (10)~~(9)~~ Registration of a broker-dealer, agent,~~or~~ investment adviser, *or investment adviser representative* may be renewed by filing with the commissioner or the commissioner's designee prior to the expiration thereof an application containing ~~the~~~~such~~ information~~as~~ the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent,~~or~~ investment adviser, *or investment adviser representative* filed with the commissioner or the commissioner's designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. *A notice filing by a covered adviser may be renewed by filing with the commissioner or the commissioner's designee a notice filing consisting of any documents filed with the U.S. Securities and Exchange Commission as the commissioner may require by rule or order.* A registered broker-dealer or investment adviser may file an application for registration of a successor *and a covered adviser may file a notice filing for a successor*, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.
- (11) (a)~~(10)~~ The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, *fifty dollars (\$50) for an investment adviser representative*, and fifty dollars (\$50) for transfer of an agent *or investment adviser representative*, none of which fees shall be refundable.
- (b) *The fee for notice filings shall be two hundred dollars (\$200) for a covered adviser.*
- (12)~~(11)~~ (a) Every registered broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule prescribes. All records required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the commissioner, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. *If a broker-dealer is registered with the U.S. Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.*
- (b) Every registered broker-dealer and investment adviser shall file such reports as the commissioner by rule prescribes. *If a broker-dealer is registered with the U.S. Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.*
- (c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer *or investment adviser, as applicable*, shall promptly file a correcting amendment. *In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.*
- (d) The commissioner may make periodic examinations, within or without this state, of each broker-dealer and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

- (e) The commissioner may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.
 - (f) The commissioner may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.
 - (g) The commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the commissioner be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The commissioner may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The commissioner may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.
- (13)~~(12)~~ (a) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, agent,~~(or)~~ investment adviser, ***or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky,*** if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;
 3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;
 4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
 5. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent,~~(or)~~ investment adviser, ***or investment adviser representative;***
 6. ***Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:***
 - a. ***An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;***
 - b. ***An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;***
 - c. ***A United States Postal Service fraud order;***
 - d. ***A cease and desist or other administrative order entered after notice and opportunity for hearing by the commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or***

- e. *An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act*~~Is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer or agent, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but:~~
- a. ~~The commissioner may not institute a revocation or suspension proceeding under this paragraph more than one (1) year from the date of the order relied on; and~~
- b. ~~He may not enter any order under this paragraph on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section};~~
7. Has engaged in dishonest or unethical practices in the securities business;
8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;~~{or}~~
9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the commissioner may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:
- a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees *or investment adviser representatives* if he is an investment adviser; or
- b. Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days; *or*

10. *Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.*
- (b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:
1. The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;
 2. The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
 3. The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
 4. The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

5. The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser **or an investment adviser representative**, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser **or an investment adviser representative**;
 6. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as **investment adviser representatives and** persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- (c) The commissioner may by order summarily postpone **an application for registration** or suspend a registration pending final determination of any proceeding under this section. **A summary suspension of an existing registration shall only be made based upon a finding by the commissioner that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law.** Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.
 - (d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent,~~or~~ investment adviser, **or investment adviser representative**, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.
 - (e) Withdrawal from registration as a broker-dealer, agent,~~or~~ investment adviser, **or investment adviser representative** becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. **A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the commissioner; the withdrawal or termination is effective upon receipt by the commissioner of the notice.**
 - (f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent **or representative**), opportunity for hearing, and written findings of fact and conclusions of law.
- (14) **Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the commissioner expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The commissioner may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the commissioner deems necessary and appropriate in the public interest or for the protection of investors and the commissioner may**

impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

Section 6. KRS 292.340 is amended to read as follows:

It is unlawful for any person to offer or sell any security in this state, *unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security* ~~except securities exempt under KRS 292.400 or when sold in transactions exempt under KRS 292.410, unless such security is registered under this chapter.~~

Section 7. KRS 292.360 is amended to read as follows:

- (1) Any security for which a registration statement ~~has been filed~~ under the Securities Act of 1933 *or an offering statement under Regulation A of the Securities Act of 1933 has been filed with the Securities and Exchange Commission* in connection with the same offering may be registered by coordination.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380, and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
 - (a) *One(1) copy* ~~Three (3) copies~~ of the latest form of prospectus *or offering circular* filed under the Securities Act of 1933 *or Regulation A promulgated under that Act* together with all amendments thereto;
 - (b) The amount of securities to be offered in this state;
 - (c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
 - (d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;
 - (e) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) *of the issuer* currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
 - (f) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933 *or Regulation A promulgated under that Act*; and
 - (g) An undertaking to forward promptly *to the commissioner* all amendments to the federal registration statement *or offering statement*, other than an amendment which merely delays the effective date.
- (3) A registration statement under this section automatically becomes effective *with the commissioner* at the moment the federal registration statement *or offering statement* becomes effective *or is qualified*, if all the following conditions are satisfied:
 - (a) No stop order is in effect and no proceeding is pending under KRS 292.390;
 - (b) The registration statement has been on file with the commissioner for at least ten (10) days; and
 - (c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone, ~~or~~ telegram, *or other electronic means* of the date and time when the federal registration statement *or offering statement* became effective *or was qualified* and the content of the price amendment, if any, and shall promptly file a post-effective amendment, containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.
- (4) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (3) of this section, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter

or telegram when he notifies by telephone) ~~after~~ the issuance of the order. If the registrant proves compliance with the requirements of subsection (3) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in paragraphs (b) and (c) of subsection (3) of this section. If the federal registration statement *or offering statement* becomes effective *or is qualified* before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective *with the commissioner* as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement *or offering statement* is expected to become effective *or to be qualified*, the commissioner shall promptly advise the registrant by telephone, ~~or~~ telegram, *or other electronic means*, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under KRS 292.390; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

- (5) *Notwithstanding subsection (3) of this section, a registration statement under the Securities Act of 1933 that becomes effective immediately upon filing with the Securities and Exchange Commission shall become effective under this section automatically at the time the registration statement, in the form filed with the Securities and Exchange Commission, is properly filed, along with the appropriate fee, with the commissioner.*

Section 8. KRS 292.370 is amended to read as follows:

- (1) Any security may be registered by qualification.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
 - (a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
 - (b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three (3) years or proposed to be effected by him or any of his associates as defined in the rules promulgated under the Securities Exchange Act of 1934;
 - (c) With respect to persons covered in paragraph (b): the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries), and the amount paid and to be paid to each of those who received or are to receive more than fifteen thousand dollars (\$15,000);
 - (d) With respect to any person not named in paragraph (b), owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraphs (b) and (c) other than his occupation;
 - (e) With respect to every promoter, not named in paragraphs (b) and (d), if the issuer was organized within the past three (3) years: the information specified in paragraphs (b) and (c), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;
 - (f) The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, good will, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

- (g) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price or the method by which it is to be computed; and any variation therefrom at which any portion of the offering is to be made to any persons or class of persons, other than the underwriters, with a specification of such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering); the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (h) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including good will) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the cost basis or book value of the assets in the hands of the vendors (if they are officers, directors, partners, or controlling shareholders of the issuer), the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expenses in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (i) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (c), (d), (e), (g), or (h) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
- (j) The dates of, parties to, and general effect, concisely stated, of every management, employment, or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer or any of its significant subsidiaries is a party and which may materially affect its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (k) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (l) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;
- (m) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;
- (n) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (o) A signed or conformed copy of an opinion of counsel, as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state, in addition to such matters as the commissioner may request whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer, and whether or not the offering, as contemplated in the registration statement will comply with the requirements of any claimed exemption from the registration provisions of the Securities Act of 1933;
- (p) ***Financial statements of the issuer that meet the following requirements:***
 - 1. ***If the maximum proceeds to be received from the offering do not exceed two million dollars (\$2,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and***

statements of income for the last fiscal year preceding the date of the most recent balance sheet filed and for the period, if any, between the close of such fiscal year and the date of the most recent balance sheet filed. The balance sheet and income statement for the most recent fiscal year shall be audited if the financial statements have previously been audited for other purposes. Otherwise, all financial statements may be unaudited;

2. *If the maximum proceeds to be received from the offering do not exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the two (2) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;*
3. *If the maximum proceeds to be received from the offering exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the three (3) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;*
4. *Notwithstanding the provisions of this paragraph, if the issuer has been in existence for less than one (1) fiscal year, the balance sheet shall be as of a date not more than four (4) months prior to the date of filing of the registration statement, and the statements of income, cash flows, and changes in stockholders equity shall be for the period from inception through the date of the balance sheet filed;*
5. *If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues for its most recent fiscal year are in excess of twenty percent (20%) of the issuer's sales or revenues for its most recent fiscal year or involves the acquisition of assets in excess of twenty percent (20%) of the issuer's assets as of its most recent fiscal year end, except as specifically exempted by the commissioner, the same financial statements which would be required if that business were the issuer shall be filed;*
6. *The commissioner, where necessary or appropriate in the public interest or for the protection of investors, may permit the omission of one (1) or more of the financial statements or the substitution of appropriate statements of comparable character, and may waive the requirement that the financial statements be audited; and*
7. *The financial statements required by this subsection shall be prepared as to form and content in accordance with generally accepted accounting principles*~~[A balance sheet of the issuer as of a date not more than four (4) months prior to the date of filing of the registration statement, a balance sheet certified by an independent public or certified public accountant as of the close of the last fiscal year; statements of income, changes in stockholders equity and changes in financial position for each of the issuers three (3) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of such fiscal years and date of the most recent balance sheet filed, or, if the issuer has been in existence for less than three (3) years, such statements for the period preceding the date of the most recent balance sheet filed, and if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant. The statements of income, changes in stockholders equity, and changes in financial position shall be certified for the latest fiscal year presented];~~

- (q) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement; and
- (r) Such additional information as the commissioner requires by rule or order.

Section 9. KRS 292.380 is amended to read as follows:

- (1) Except as otherwise expressly provided in this chapter, a registration statement under this chapter becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this chapter that a prospectus containing any designated part of the appropriate information specified in this chapter be sent or given to each person to whom an offer is made before or concurrently with:
 - (a) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
 - (b) The confirmation of any sale made by or for the account of any such person;
 - (c) Payment pursuant to any such sale; or
 - (d) Delivery of the security pursuant to any such sale, whichever first occurs; but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.
- (2) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this chapter or a predecessor law within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (3) The commissioner may require as a condition of registration by qualification or coordination that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount or (b) any security issued within the past three (3) years, or to be issued, to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be delivered in escrow. The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder. The commissioner shall not reject a depository solely because of location in another state. All securities delivered in escrow to the commissioner or some other depository satisfactory to him prior to January 1, 1968, which have not previously been released shall be released from escrow and all securities delivered in escrow to the commissioner or some other depository satisfactory to him subsequent to January 1, 1968 which have not previously been released shall be released from escrow no later than ten (10) years after the date of delivery into escrow.
- (4) The commissioner may also require as a condition of registration by qualification that the issuer undertake to keep the securities registered under this chapter for a period of up to five (5) years or until the securities become exempt securities under *Section 12 of this Act or become covered securities* [KRS 292.410], and that the issuer forward to its security holders audited annual *financial statements* [financials] during the period for which the shares are registered. The commissioner may by rule or order impose other undertakings.
- (5) For the registration of securities by notification, ~~or~~ coordination, or qualification, there shall be paid to the commissioner an examination fee of one hundred twenty-five dollars (\$125) and a registration fee of three-fiftieths of one percent (0.06%) of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be less than sixty dollars (\$60) nor more than one thousand two hundred dollars (\$1,200). The examination fee and the registration fee shall be payable in separate checks. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under KRS 292.390, the commissioner shall retain the examination fee. ~~For the registration of securities issued by a face amount certificate company or a redeemable security issued by an open end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, a new registration fee and examination fee shall be paid each year that the registration remains in effect, based upon the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year; and the registration statement for such securities may be~~

~~amended to increase the amount of securities to be offered.] For a registration by notification for market-making purposes only the examination fee need be paid.~~

- (6) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration statement is effective for one (1) year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under KRS 292.390. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction:
- (a) So long as the registration statement is effective; and
 - (b) Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under KRS 292.390 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one (1) year from its effective date if any securities of the same class are outstanding.

A registration statement may be withdrawn otherwise only in the discretion of the director.

~~{(7) The commissioner may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. The commissioner shall impose a fee of ten dollars (\$10) for each such report filed with him.}~~

Section 10. KRS 292.390 is amended to read as follows:

- (1) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:
- (a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under KRS 292.380(5) as of its effective date, ~~or any report under KRS 292.380(7),~~ is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - (b) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering by:
 1. The person filing the registration statement;
 2. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or
 3. Any underwriter;
 - (c) The security registered or sought to be registered is the subject of an administrative stop order or a similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but:
 1. The commissioner may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year from the date of the order or injunction relied on; and
 2. He may not enter an order under this paragraph on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;
 - (d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;
 - (e) The offering has worked or tended to work a fraud upon purchasers or would so operate;

- (f) The offering has been, or would be, made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensations, or promoters' profits or participation, or unreasonable amounts or kinds of options;
 - (g) When a security is sought to be registered by notification it is not eligible for such registration;
 - (h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by KRS 292.360(2)(g);
 - (i) The applicant or registrant has failed to pay the proper registration fee; but the commissioner may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected;
 - (j) ***Commissions, compensation, and selling and other transaction expenses***~~[A commission or fee]~~ greater than ***twenty percent (20%) in the aggregate, or such other amount specified in the guidelines adopted by the North American Securities Administrators Association, [fifteen percent (15%)]*** would be paid directly or indirectly, in consideration for the sale of securities sought to be registered~~[and this fee shall exclude reasonable legal and accounting expenses]~~.
- (2) The commissioner may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.
- (3) The commissioner may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of a stop order under any part of this section, the commissioner shall promptly notify the issuer of the securities, the applicant or registrant, and the person on whose behalf the securities are to be or have been offered that the order has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner, the commissioner shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his written finding of fact and conclusions of law and may modify or vacate the order. The commissioner may modify or vacate a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

SECTION 11. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) ***The commissioner may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:***
- (a) ***Prior to the initial offer of such covered security in this state, all documents that are part of a current federal registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933 or a notice form adopted by the commissioner in lieu thereof, together with a consent to service of process signed by the issuer and with payment of a filing fee as follows:***
 - 1. ***Five hundred dollars (\$500) for an investment company, other than a unit investment trust, that is registered or that has filed a registration statement, under the Investment Company Act of 1940; or***
 - 2. ***Three hundred dollars (\$300) for a unit investment trust that is registered or that has filed a registration statement under the Investment Company Act of 1940; and***
 - (b) ***After the initial offer of such covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, or a notice form adopted by the commissioner in lieu thereof, which shall be filed concurrently with the commissioner;***
 - (c) ***Except for a notice filing by a unit investment trust, which shall be effective indefinitely, all notice filings for such covered securities are effective for a period of one (1) year upon receipt by the commissioner of a properly completed filing, including the correct fee, unless another date is requested by the issuer. An annual filing shall be required of an open-end investment company that continuously offers or sells its securities in this state, which filing shall consist of the documents specified in paragraph (a) of this subsection, exclusive of the consent to service of process, and a***

filing fee in the amount of five hundred dollars (\$500). The annual renewal filing shall be effective upon the expiration of the prior filing period if it is properly completed, including the correct fee, and is received by the commissioner on or before the expiration date;

- (d) Amendments to a notice filing are effective upon receipt by the commissioner. Termination of a notice filing is effective upon receipt by the commissioner of notice of the termination; and*
- (e) Notwithstanding the provisions of paragraphs (a) to (d) of this subsection, for the period ended October 10, 1999, the commissioner may require the registration of a covered security issued by any issuer for which a fee has not been properly paid and the improper payment has not been remedied within ten (10) business days following receipt of written notification from the commissioner to the issuer of the nonpayment or underpayment of the fee, as required by this chapter.*
- (2) The commissioner shall require the filing of, with respect to any security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, a notice on SEC Form D, a two hundred fifty dollar (\$250) filing fee, and a consent to service of process signed by the issuer no later than fifteen (15) days after the first sale of such covered security in this state.*
- (3) The commissioner may require the filing of any document filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933 with respect to a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee in the amount of two hundred fifty dollars (\$250).*
- (4) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, upon finding that:*
 - (a) The order is necessary or appropriate in the public interest or for the protection of investors; and*
 - (b) There is a failure to comply with any condition established under this section.*
- (5) The commissioner may waive any or all of the provisions of this section upon finding that they are not necessary or appropriate in the public interest or for the protection of investors.*

Section 12. KRS 292.400 is amended to read as follows:

KRS 292.340 to 292.390 shall not apply to any of the following:

- (1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institutions, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;
- (5) Securities issued by corporations formed under KRS Chapter 279;
- (6) Any security issued or guaranteed by any federal credit union or any credit union;
- (7) Any security issued or guaranteed by any ~~railroad, other~~ common carrier, public utility, or holding company which is:
 - ~~(a) Subject to the jurisdiction of the Interstate Commerce Commission;~~
 - ~~(b)~~ A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;
 - ~~(b)(c)~~ Regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

- (c)~~(d)~~ Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;
- (8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the *Chicago*~~Midwest~~ Stock Exchange, the Pacific Stock Exchange, *the Philadelphia Stock Exchange, the Chicago Board Options Exchange*, or any other stock exchange approved by the commissioner; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. ***This exemption is available only for securities listed on Tier I of those exchanges having more than one (1) tier;***
- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidence an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;
- (11) Any *security*~~investment contract~~ issued in connection with an *employee*~~employee's~~ stock purchase, *stock option*, savings, pension, profit-sharing, or similar benefit plan, ***including any underlying security. For those plans that do not qualify under Section 401 of the Internal Revenue Code and that provide for contribution by employees, the securities are exempt if a notice specifying the terms of the plan is filed with the commissioner before the securities are issued or before December 31, 1998, and the commissioner does not disallow the exemption within the next five (5) business days. The commissioner may, by rule, modify any requirement for a specific class of issuers or impose additional requirements for this exemption or waive any requirement***~~if the commissioner is notified in writing thirty (30) days before the inception of the plan or, with respect to plans which are in effect on January 1, 1961, within sixty (60) days thereafter (or within thirty (30) days before they are reopened if they are closed on January 1, 1961)~~;
- (12) Securities issued by corporations formed under or which have adopted the provisions of KRS 272.101 to 272.345 and patronage dividends or refunds be they in the form of stock, book equities, letters of credit, or letters of advice issued by any agricultural cooperative association which are the result of distributable earnings or savings;
- ~~(13) Any class of securities added by the commissioner, by rule and subject to the terms and conditions the commissioner prescribes, to the securities exempted by this section, if the commissioner finds that enforcement of this chapter with respect to the securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or limited character of the public offering. No issue of securities shall be exempted under this subsection if the aggregate amount at which the issue is offered to the public exceeds two hundred thousand dollars (\$200,000);~~
- ~~(14) Any security which meets all of the following conditions:~~
- ~~(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;~~
- ~~(b) A class of the issuer's securities is required to be and is registered under Section 12 of the Securities Exchange Act of 1934, and has been so registered for the three (3) years immediately preceding the offering date;~~
- ~~(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven (7) years (or the issuer's existence if less than seven (7) years) in the payment of:~~
- ~~1. Principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or~~
 - ~~2. Rentals under leases with terms of three (3) years or more;~~
- ~~(d) The issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least one million dollars (\$1,000,000) in four (4) of its last five (5) fiscal years including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal~~

~~year, such net income, but before deduction for income taxes and depreciation, of at least one and one-half (1 1/2) times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" means the most recent year for which audited financial statements are available, if the statements cover a fiscal period ended not more than fifteen (15) months from the commencement of the offering;~~

- ~~(e) If the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and the rights include:~~
- ~~1. The right to have at least as many votes per share; and~~
 - ~~2. The right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;~~
- ~~(f) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six (6) months prior to the commencement of the offering, by at least twelve hundred (1,200) persons, and on that date there are at least seven hundred fifty thousand (750,000) such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least three million seven hundred fifty thousand dollars (\$3,750,000). In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.~~

~~(15)}~~ Memberships and voting stock issued by cooperative corporations formed under or which have adopted the provisions of KRS 272.020 to 272.050, and patronage refunds issued by cooperative corporations which are the result of distributable earnings or savings;

(14) Any security for which the commissioner expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors; or

(15) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state.

Section 13. KRS 292.410 is amended to read as follows:

- (1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the following transactions:
- (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
 - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
 - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
 - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
 - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
 - (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
 - (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
 - (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial

institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

- (i) *The offer or sale of a security by the issuer of the security if all of the following conditions are met:*
1. *The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:*
 - a. *Solicitation of indications of interest in accordance with the terms and conditions as the commissioner may adopt by rule; or*
 - b. *Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;*
 2. *The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:*
 - a. *Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and*
 - b. *Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and*
 3. *The transaction satisfies one (1) of the following conditions:*
 - a. *Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;*
 - b. *There are not more than fifteen (15) purchasers in Kentucky and each Kentucky purchaser is an "accredited investor" as defined by Rule 501 of the Securities Act of 1933 or is a purchaser described in subdivision a. of this subparagraph; or*
 - c. *The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security or is an accredited investor or a purchaser described in subdivision a. of this subparagraph.*
 4. *Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this subsection are not relieved of compliance with subsection (6) of Section 5 of this Act;*
 5. *The commissioner may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;*
 6. *The commissioner may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon request if the commissioner determines that any such increase is necessary or appropriate in the public interest or for the protection of investors. Any request to increase either or both of the conditions shall be made in writing to the commissioner before any sale in reliance on the requested increase and shall be accompanied by the following:*
 - a. *A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;*

- b. A copy of the offering circular or other written materials being distributed to prospective purchasers;*
- c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and*
- d. A filing fee of two hundred fifty dollars (\$250).~~[Any transaction pursuant to an offer directed by the offeror to not more than twenty five (25) persons (other than those designated in paragraph (h)) in this state during any period of twelve (12) consecutive months, whether or not the offeror or any of the offerees is then present in this state, if~~*
 - ~~1. The seller reasonably believes that all the buyers are purchasing for investment, and~~
 - ~~2. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in paragraph (h)); but the commissioner may by rule or order, as to any security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subparagraphs 1. and 2. of this paragraph with or without the substitution of a limitation on remuneration;]~~
- (j) Any offer or sale of a preorganization certificate or subscription, if:
 - 1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;~~;~~
 - 2. The number of subscribers does not exceed twenty-five (25);~~;~~ and
 - 3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state;
- (l) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if:
 - 1. The transaction is at a price reasonably related to the current market price;~~;~~
 - 2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act;~~;~~ and
 - 3. Copies of such federal registration statements, reports, forms or exhibits as the commissioner may by rule or order require are filed with the commissioner;
- (p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if:
 - 1. The transaction is at a price reasonably related to the current market price;~~;~~
 - 2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act;~~;~~~~and]~~

3. Copies of such federal registration statements, forms, reports, or exhibits as the commissioner may by rule or order require are filed with the commissioner; ~~and~~
 4. Such sales by any such person comply with such rules as the commissioner may prescribe; *or*
- (q) Any transaction for which the commissioner by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.
- (2) The commissioner may by order deny or revoke the exemption specified in KRS 292.400(6), (9), ~~or (11),~~ (12) ~~or (13)~~ or in this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order to extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

Section 14. KRS 292.415 is amended to read as follows:

- (1) Before any security may be issued as an exempt security under subsections (9) ~~or (12)~~ *of Section 12 of this Act*, ~~(13), or (14) of KRS 292.400, or offered for sale or sold as an exempt transaction under KRS 292.410(1)(i) or (k)~~, a claim of exemption must first be filed with the commissioner and the commissioner by order shall not have determined that the exemption is unavailable within the next ten (10) full business days. A claim of exemption filed under this section shall be in such form and contain such information as the commissioner by rule or order requires and each offering shall be effective for a maximum of twelve (12) consecutive months unless the commissioner by rule or order extends such period of time, not to exceed five (5) years.
- (2) *The issuer may make offers, but not sales, before and during the ten (10) business day period required by subsection (1) of this section, if:*
 - (a) *Each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and*
 - (b) *No enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received, directly or indirectly, from a prospective purchaser, before the termination of the ten (10) business day period and any order disallowing the exemption has been vacated.*

The commissioner may, by rule or order, prohibit offers by a particular class of issuers before the expiration of the ten (10) business day period required by subsection (1) of this section, or may require issuers to comply with additional conditions and requirements prior to making offers before the expiration of the period, if appropriate in furtherance of the intent of this chapter. ~~For every claim of exemption filed with the commissioner there shall be paid to the commissioner a filing fee of one hundred dollars (\$100), except that for a claim of exemption filed under subsection (9) of KRS 292.400 the filing fee is one tenth of one percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than one hundred dollars (\$100) or more than five hundred dollars (\$500). The commissioner shall have authority to amend or rescind under this subsection such filing fees by rule or order if the commissioner determines that such fee is excessive under the circumstances.~~
- (3) ~~[Any person who fails to comply with this section shall be liable for a fee in the amount of five (5) times the initial filing fee and]~~The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of an exemption, if he finds that the order is in the public interest and that any security has been or is about to be offered or sold in violation of this section. If the commissioner finds it

appropriate in the public interest or necessary for the protection of investors, the commissioner may order any issuer in violation of this section to make an offer of rescission.

- (4) Failure by any person to file a claim of exemption under this section shall not give rise to a private right of action under KRS 292.330(1), 292.340, or 292.480 which would not otherwise be available under the provisions of this chapter.
- (5) Any person who fails to file a claim of exemption under this section, unless he does so intentionally, shall not be subject to KRS 292.991.

Section 15. KRS 292.420 is amended to read as follows:

- (1) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.
- (2) The commissioner may require any person, who is selling or offering for sale or who is about to sell or offer for sale or who has sold or offered for sale any security within this state, to file a statement of the claim of exemption, if any, upon which such person is relying, and if any time, in the opinion of the commissioner, the information contained in such statement filed is misleading, incorrect, inadequate, or fails to establish the right of exemption, he may require such person, agent, or investment adviser to file such information as may in his opinion be necessary to establish the claimed exemption. The refusal to furnish information as required by order of the commissioner pursuant to the provisions of this subsection, within a reasonable time to be fixed by the commissioner, shall be proper ground for the entry of an order by the commissioner suspending and/or canceling the registration of the broker-dealer, agent or investment adviser.
- (3) The commissioner shall have authority at all times to consider and determine whether any proposed sale, transaction, issue, or security is entitled to an exemption or an exception from the definition accorded by this chapter, provided, however, that the commissioner in his discretion may decline to exercise such authority as to any proposed sale, transaction, issue, or security. Any interested party desiring the commissioner to exercise such authority shall submit to the commissioner a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which verified statement shall be accompanied by a request for a ruling as to the particular exemption or exception from definition, together with a filing fee of **two hundred fifty dollars (\$250)**~~one hundred dollars (\$100)~~. After such notice to interested parties as the commissioner shall deem proper and after a hearing, if any, the commissioner may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption or the exception from definition as claimed. An order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter, shall be binding upon the commissioner, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement as submitted.

Section 16. KRS 292.430 is amended to read as follows:

- (1) Every applicant for registration as a broker-dealer,~~or~~ agent, **investment adviser, or investment adviser representative** under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the commissioner, in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:
 - (a) The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his last address on file with the commissioner; and
 - (b) The plaintiff's affidavit of compliance with this **subsection**~~section~~ is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
- (2) **Every issuer of a covered security and every covered adviser who makes a notice filing with Kentucky under this chapter shall file with the commissioner, in the form as prescribed by administrative regulation, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive**

service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator that arises under this chapter or under any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

- (a) *The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his last address on file with the commissioner; and*
 - (b) *The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within the time as the court allows.*
- (3) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under subsection (1) **or (2) of this section** and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless:
- (a) The plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice; and
 - (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Section 17. KRS 292.450 is amended to read as follows:

- (1) Neither the fact that an application for registration under KRS 292.330 or a registration statement under KRS 292.350, 292.360, or 292.370 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading.
- (2) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.
- (3) *Neither the fact that a notice filing for a covered security or for a covered adviser has been filed, nor the fact that the person, security, or transaction is registered or exempt from registration, constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading or that the person, security, or transaction is entitled to claim an exemption.*
- (4) *It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.*

Section 18. KRS 292.460 is amended to read as follows:

- (1) The commissioner in his discretion:
 - (a) May make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order **under this chapter**~~hereunder~~, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;
 - (b) May require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; ~~or~~~~and~~

- (c) May publish information concerning any violation of this chapter or any rule or order hereunder.
- (2) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
- (3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
- (4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Section 19. KRS 292.470 is amended to read as follows:

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order *under this chapter*~~hereunder~~, he may in his discretion bring *any or all of the following remedies*:

- (1) *Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public;*
- (2) An action in *the Franklin Circuit Court or any other* court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order *under this chapter*~~hereunder~~. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. *Upon a proper showing by the commissioner, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter.* The commissioner may not be required to post a bond; *or*
- (3) *Issue a final order, after notice and a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:*
- (a) *To cease and desist from the activity;*
- (b) *To perform any other reasonable mandates directed by the commissioner pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or*
- (c) *To pay fines assessed under subsection (14) of Section 22 of this Act and costs assessed under subsection (15) of Section 22 of this Act.*

Section 20. KRS 292.480 is amended to read as follows:

- (1) Any person, who offers or sells a security in violation of this chapter or of any rules *or orders*~~and regulations~~ promulgated hereunder or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at *the legal*

~~rate~~~~[six percent (6%) per annum]~~ from the date of payment costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer is disposed of it and (b) interest at *the legal rate*~~[six percent (6%)]~~ per annum from the date of disposition.

- (2) *Any person who purchases a security in violation of this chapter or of any administrative regulations or orders promulgated under this chapter or who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made not misleading, the seller not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person selling the security to him, who may sue either at law or in equity for:*
- (a) *A return of the security, together with any income received by the purchaser on the security, costs, and reasonable attorney's fees, upon a tender of the full amount of the consideration received for the security; or*
- (b) *If the purchaser no longer owns the security, the difference between the fair value of the security at the date of the transaction and the consideration received for the security, together with interest on the difference at the legal rate compounded annually from the date of the transaction, and costs and reasonable attorney's fees.*
- (3) *For purposes of paragraph (b) of subsection (2) of this section, when the purchaser no longer owns the security, if a seller seeking relief under paragraph (b) of subsection (2) of this section offers and presents admissible evidence of the highest intermediate value of the subject security as of some specific date occurring within a reasonable period of time after the date of the sale of the security but no later than the date an action under paragraph (b) of subsection (2) of this section is filed, or of the total consideration received by the purchaser in a subsequent sale of that security, it shall be presumed until rebutted by a preponderance of evidence to the contrary that the value or sale price, as applicable, is the fair value of the security at the date of the transaction as those terms are used in paragraph (b) of subsection (2) of this section to measure damages. For purposes of subsections (1) and (2) of this section and all other provisions of this chapter, statements and omissions may be either oral or written.*
- (4) Every person who directly or indirectly controls a seller *or purchaser* liable under subsection (1) *or (2) of this section*, every partner, officer or director (or person occupying a similar status or performing similar functions) or employee of ~~such~~ a seller *or purchaser* who materially aids in the sale *or purchase*, and every broker-dealer or agent who materially aids in the sale *or purchase* is also liable jointly and severally with and to the same extent as the seller *or purchaser*, unless the nonseller *or nonpurchaser* who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.
- ~~(5)(3)~~ Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three (3) years after the *occurrence of the act, omission, or transaction constituting a violation of this chapter*~~[contract of sale]~~. No person may sue under this section:
- (a) If the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at *the legal rate*~~[six percent (6%) per annum]~~ from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt.~~[or]~~
- (b) If the buyer received~~such~~ an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty (30) days of its receipt; *or*
- (c) *If paragraph (b) of subsection (2) of this section applies, and if the seller received a written offer before suit equal to the difference between the greater of the highest intermediate value of the security or the consideration received by the purchaser upon disposal of the security and the consideration received by the seller for the security, together with interest on the difference at the legal rate from the date of the transaction; or if paragraph (a) of subsection (2) of this section applies, and if the seller received a written offer to return the security together with any income*

received by the purchaser on the security; and in either case he failed to accept the offer within thirty (30) days of its receipt.

- (6)~~(4)~~ No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any ~~such~~ contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.
- (7) *The rights and remedies provided by this section are in addition to any other rights or remedies that may exist at law or in equity.*

Section 21. KRS 292.490 is amended to read as follows:

Any person aggrieved by a final order of the commissioner may obtain a review of the order by filing in *accordance with KRS Chapter 13B in* the Franklin Circuit Court, within *thirty (30)*~~sixty (60)~~ days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the commissioner or there were reasonable grounds for failure to do so. The findings of the commissioner as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The commissioner may modify his findings as to the facts, by reason of the additional evidence so taken; and he shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order. An appeal may be taken from the judgment of the Franklin Circuit Court on any such appeal to the Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.

Section 22. KRS 292.500 is amended to read as follows:

- (1) The administration of the provisions of this chapter shall be under the Department of Financial Institutions.
- (2) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. *Except as provided in subsection (18) of this section*, no provision of this chapter authorizes the commissioner or any of his officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his officers or employees.
- (3) The commissioner may from time to time promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, *notice filings*, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the commissioner may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.
- (4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, *notice filings*, and reports whenever practicable.
- (5) The commissioner may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements

shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally-accepted accounting standards.

- (6) All administrative regulations and forms of the commissioner shall be published.
- (7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the commissioner, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.
- (8) A document is filed when it is received by the commissioner or when the commissioner receives confirmation that a document has been filed pursuant to **Sections 5, 7, 8, and 11 of this Act**~~[KRS 292.330]~~.
- (9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (10) The commissioner shall keep a register of all applications for registration and registration statements **and notice filings** which are or have ever been effective under this chapter and all denial, suspension, or revocation final orders which have ever been entered under this chapter. The register shall be open for public inspection.
- (11) The information contained in or filed with any registration statement, application, **notice filings**, or report may be made available to the public under administrative regulations as the commissioner may promulgate.
- (12) Upon request and at reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (13) The commissioner in his discretion may honor requests from interested persons for interpretative opinions.
- (14) ***The commissioner may assess civil fines against any person who violates any provision of this chapter or any rule or order under this chapter.***
- (15) ***In addition to any fines levied under subsection (14) of this section, the commissioner may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be assessed if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only.***
- (16) ***If fines or costs assessed under this section are not paid, the commissioner may notify the Attorney General who shall promptly institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court for the recovery of the fines or costs.***
- (17) ***The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the commissioner from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Accordingly, the commissioner may, at any time and in his sole discretion, share or cause to be shared by any employee of the department any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or governmental or self-regulating organizations or entities, to the extent the commissioner, in his sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the department or other agency in carrying out its regulatory responsibilities.***
- (18) ***The following materials, documentation, and other information are deemed to have been confidentially disclosed to the department and to be confidential information under the Kentucky Open Records Act and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:***

- (a) *Any materials, documentation, or other information provided to or otherwise obtained by the department during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative; and*
- (b) *Any materials, documentation, or other information provided to or otherwise obtained by the department from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.*

Section 23. KRS 292.530 is amended to read as follows:

- (1) *The purpose of this chapter is to:*
 - (a) *Protect Kentucky investors by preventing investment fraud and related illegal conduct or, if this fraud or illegal conduct has already occurred, remedying, where possible, the harm done to Kentucky investors through active implementation and application of this chapter's enforcement powers;*
 - (b) *Educate the investing public as to the best methods for making informed investment choices; and*
 - (c) *Assist companies in their legitimate attempts to raise capital and transact in securities in Kentucky.*
- (2) *In addition, this chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.*

Section 24. KRS 292.540 is amended to read as follows:

All effective registrations under prior law and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if they had become effective under this chapter. They are considered to have been filed, entered or imposed under this chapter, *except to the extent the conditions apply to securities that are now covered securities.*

Approved February 27, 1998

CHAPTER 21

(HB 106)

AN ACT relating to the operation of motorcycles.

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

Section 1. KRS 189.285 is amended to read as follows:

- (1) ~~A~~~~No~~ person shall **not** operate a motorcycle on a highway:
 - (a) Except when that person is in possession of a valid motorcycle operator's license; and
 - (b) Unless that person uses an approved eye-protective device, in the manner prescribed by the secretary of the Transportation Cabinet, at all times such vehicle is in motion; and
 - (c) Unless the motorcycle is equipped with a rear-view mirror.
- (2) ~~A~~~~No~~ person shall **not** operate or ride as a passenger on a motorcycle:
 - (a) Except on a seat permanently attached to that vehicle and specifically designed to carry the operator or passenger in a safe manner; and
 - (b) Except when using a footrest permanently attached to that vehicle and specifically designed to carry that person in a safe manner; ~~and~~
 - ~~(c) Unless that person wears approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion].~~

- (3) *The following persons shall be required to wear protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times the motorcycles they are riding are in motion on a public highway:*
- (a) *A person under the age of twenty-one (21) years who is operating a motorcycle or who is a passenger on a motorcycle or in a sidecar attachment;*
 - (b) *A person who possesses a motorcycle instruction permit and who is operating a motorcycle;*
 - (c) *A person who has held a valid motorcycle operator's license, or combination motor vehicle-motorcycle operator's license, for less than one (1) year and who is operating a motorcycle; and*
 - (d) *Any person who does not provide proof of health insurance to the county clerk when registering a motorcycle in accordance with Section 2 of this Act.*
- (4) *A motorcycle operator authorized to drive a motorcycle on an instruction permit shall not be authorized to carry passengers.*
- (5) The secretary of the Transportation Cabinet shall by regulation fix minimum standards for approved protective headgear and for approved eye-protective devices, and prescribe the manner in which they shall be used. The secretary shall maintain and cause to be published a list of approved protective headgear and of approved eye-protective devices. The secretary may prescribe by regulation minimum standards for other protective devices and require the use of those devices.
- ~~(6)~~(4) As used in this chapter and KRS Chapter 186, "motorcycle" means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride in an enclosed cab and excluding a moped as defined in this section.
- ~~(7)~~(5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

SECTION 2. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *A person over the age of twenty-one (21) years who wishes to operate a motorcycle without wearing protective headgear shall provide proof of health insurance coverage to the county clerk when obtaining or renewing the registration on any motorcycle registered in the person's name. The Transportation Cabinet shall develop, and the county clerk shall provide to the applicant, a decal to affix to the applicant's license plate signifying that the applicant has health insurance and may operate a motorcycle without wearing protective headgear. The applicant shall pay a fee of three dollars (\$3) to the county clerk for the decal.*
- (2) *The county clerk shall notify the insurer that upon nonrenewal or cancellation of a health insurance policy for a person under subsection (1) of this section, the insurer shall immediately notify the Department of Vehicle Regulation.*
- (3) *Upon notification to the Department of Vehicle Regulation from an insurance company of the cancellation or nonrenewal of a policy under subsection (2) of this section, the department shall immediately notify the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of health insurance to the department or the county clerk. The department shall further inform the insured that if evidence of health insurance coverage is not received within thirty (30) days the department shall suspend the operator's license of the insured for ninety (90) days, or until the person presents proof of health insurance to the department or the county clerk and pays the reinstatement fee required by KRS 186.440 and the relicensing fee required by KRS 186.450.*

Section 3. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and

189.960, shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

- (2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars (\$60) nor more than five hundred dollars (\$500).
- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100), and upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
 - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
 - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars (\$35) nor more than five hundred dollars (\$500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars (\$60) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

- (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (28) *Any person who violates the provisions of Section 1 of this Act shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).*

Approved March 3, 1998

CHAPTER 22

(HB 1)

AN ACT relating to water safety and declaring an emergency.

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

Section 1. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
 - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters; and
 - (b) Boats propelled by human power employing the use of hand or foot operation;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) *"Personal watercraft" means a vessel which uses an internal combustion engine to power a jet pump for its primary source of propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than to be operated by a person sitting or standing inside the vessel.*
- (5) *"Safe boating certificate" means a document attesting the successful completion of instruction, approved by the department or given by the United States Coast Guard or Coast Guard Auxiliary or the U.S. Power Squadron, to prepare an individual to safely operate a motorboat or personal watercraft on the waters of the Commonwealth.*
- (6) "Waters of this state" means any waters within the territorial limits of this state;
- (7)~~(5)~~ "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (8)~~(6)~~ "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (9)~~(7)~~ "Cabinet" means the Tourism Cabinet;
- (10)~~(8)~~ "Department" means the Department of Fish and Wildlife Resources;
- (11)~~(9)~~ "License" and "certificate of number" as used herein are synonymous;
- (12)~~(10)~~ "Clerk" means county clerk;
- (13)~~(11)~~ "Division of Water Patrol" means the Division of Water Patrol, Department of Fish and Wildlife Resources within the Tourism Cabinet;
- (14)~~(12)~~ "Title" means the certificate of title; and

(15)~~(13)~~ "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources.

SECTION 2. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

- (1) *A personal watercraft may be used to tow individuals engaged in water-skiing or similar activities if it has adequate seating capacity and an observer on board to monitor the progress of the person being towed, or if it is equipped with a rearview mirror with a minimum field of vision of one hundred sixty degrees (160 °) mounted so that the operator can observe the activities of the person being towed.*
- (2) *A person shall not operate a personal watercraft on public waters unless every individual operating or riding on the personal watercraft is wearing a personal flotation device that is approved by the United States Coast Guard under 46 C.F.R. sec. 160.*
- (3) *A personal watercraft that does not have self-circling capability shall not be operated on public waters unless:*
 - (a) *The personal watercraft is equipped with a lanyard-type engine cutoff switch; and*
 - (b) *The lanyard is attached to the person, clothing, or personal flotation device of the operator.*
- (4) *A personal watercraft or motorboat operated on public waters shall at all times be operated according to the "Rules of the Road" and in a reasonable and prudent manner so as not to endanger human life, human physical safety, or property. A person shall not do any of the following while operating a personal watercraft or motorboat on public waters:*
 - (a) *Weave through congested watercraft traffic in a way that endangers human life, human physical safety, or property;*
 - (b) *Follow a watercraft that is towing an individual on water skis, a surfboard, or a water sport device in a way that endangers human life, human physical safety, or property;*
 - (c) *Jump the wake of another watercraft in a way that endangers human life, human physical safety, or property;*
 - (d) *Cut between a boat and the individual or individuals being towed by the boat;*
 - (e) *Cross paths with another watercraft when visibility around the other watercraft is so obstructed as to endanger human life, human physical safety, or property; or*
 - (f) *Steer a personal watercraft or motorboat toward an object or individual in the water and turn sharply at close range in a way that endangers human life, human physical safety, or property.*
- (5) *A person shall not operate a personal watercraft on public waters at any time between sunset and the following sunrise.*
- (6) *A person shall not operate a motorboat or personal watercraft within fifty (50) feet of a commercial motor vessel and its tow which is in operation on a waterway, except if the operator of the commercial motor vessel has given his or her consent.*
- (7)
 - (a) *A person under twelve (12) years of age shall not operate a personal watercraft or motorboat over ten (10) horsepower on the public waters of the Commonwealth.*
 - (b) *Effective January 1, 1999, a person twelve (12) years of age through seventeen (17) years of age shall not operate a personal watercraft or motorboat over ten (10) horsepower on the public waters of the Commonwealth unless the person is in possession of a safe boating certificate or is accompanied, on board, by a person eighteen (18) years of age or older or in possession of a safe boating certificate.*
 - (c) *While operating a motorboat or a personal watercraft over ten (10) horsepower on the public waters of the Commonwealth, nonresidents twelve (12) years of age through seventeen (17) years of age shall have in their possession a Kentucky safe boating certificate or a recognized and equivalent boat operator licensing or safe boating certificate from another state or country.*
- (8) *Subsections (1) to (6) of this section shall not apply to:*
 - (a) *A performer engaged in a professional exhibition; or*
 - (b) *A person participating in a regatta, a race, a marine parade, a tournament, or an exhibit that is held in compliance with administrative regulations adopted by the department.*

- (9) *The parent, legal guardian, or other adult who has direct supervision over a minor under the age of eighteen (18) shall not knowingly authorize or permit the minor to operate a motorboat or personal watercraft in violation of this section.*

Section 3. KRS 235.240 is amended to read as follows:

- (1) A ~~No~~ person shall *not* operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life or property of any person.
- (2) A ~~No~~ person shall *not* operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any *other substance which impairs one's driving ability* ~~[narcotic drug, barbiturate or marijuana]~~.
- (3) *Any person who operates a vessel upon the waters of the Commonwealth shall be deemed to have given consent to a test or tests as accepted by the state's evidentiary mandate for the purpose of determining the operator's alcohol concentration or the presence of other drugs. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe that the operator may have been violating this section.*
- (4) *For the purposes of enforcing this section, the elements of the offense are those established in KRS 189A.010(1) to (3), except that the penalties for this offense are set forth in Section 4 of this Act.*

Section 4. KRS 235.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter *or administrative regulations adopted under this chapter* shall be fined not less than *fifty* ~~fifteen~~ dollars ~~(\$50)~~ ~~(\$15)~~ nor more than *two* ~~one~~ hundred dollars ~~(\$200)~~ ~~(\$100)~~.
- (2) Any person failing to obey a citation issued in accordance with KRS 235.315 shall be guilty of a separate offense and shall be fined not less than *fifty* ~~fifteen~~ dollars ~~(\$50)~~ ~~(\$15)~~ nor more than *two* ~~one~~ hundred dollars ~~(\$200)~~ ~~(\$100)~~.
- (3) *Any person who violates Section 3 of this Act shall not be subject to the penalties of KRS Chapter 189A, but shall be guilty of a separate offense and subject to a fine of one hundred dollars (\$100) to two hundred fifty dollars (\$250) for the first offense, a fine of two hundred fifty dollars (\$250) to five hundred dollars (\$500) for the second offense, and a fine of five hundred dollars (\$500) to one thousand dollars (\$1,000), or imprisonment in the county jail for not less than thirty (30) days, or both, for the third or subsequent offense. Refusal to submit to a breath alcohol analysis or similar test in violation of subsection (3) of Section 3 of this Act shall be deemed an offense.*
- (4) *A person may, in addition or in lieu of the penalties specified in subsection (1) or (2) of this section, and in addition to the penalties of subsection (3) of this section, be required to take a safe boating course approved by the department or offered by the United States Coast Guard, Coast Guard Auxiliary, or U.S. Power Squadron, and to present the court a certificate documenting successful completion of the course.*

Section 5. Whereas it is imperative that the carnage caused by personal watercraft on the waters of the Commonwealth be curbed as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 3, 1998

CHAPTER 23

(SB 172)

AN ACT relating to reorganization.

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

Section 1. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;

- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
 - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters; and
 - (b) Boats propelled by human power employing the use of hand or foot operation;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) "Waters of this state" means any waters within the territorial limits of this state;
- (5) "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (6) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (7) "Cabinet" means the Tourism *Development* Cabinet;
- (8) "Department" means the Department of Fish and Wildlife Resources;
- (9) "License" and "certificate of number" as used herein are synonymous;
- (10) "Clerk" means county clerk;
- (11) "Division of *Law Enforcement*~~[Water Patrol]~~" means the Division of *Law Enforcement*~~[Water Patrol]~~, Department of Fish and Wildlife Resources within the Tourism Cabinet;
- (12) "Title" means the certificate of title; and
- (13) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources.

Section 2. KRS 235.030 is amended to read as follows:

This chapter shall be known as the State Boating Act and shall be administered by the ~~{Division of Water Patrol within the }department[of Fish and Wildlife Resources in the Tourism Cabinet]~~ except the Transportation Cabinet shall be responsible for administering the boat numbering, registration, and titling requirements.

Section 3. KRS 235.190 is amended to read as follows:

- (1) Any holder of a certificate of registration shall notify the county clerk within fifteen (15) days if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the county clerk with his new address. The *department*~~[Division of Water Patrol]~~ may provide in its administrative regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.
- (2) Any holder of a certificate shall give notice to the *department*~~[Division of Water Patrol]~~ within fifteen (15) days of the theft or recovery of a vessel to which he is the holder of the certificate of number.

Section 4. KRS 235.200 is amended to read as follows:

- (1) Every vessel shall have aboard:
 - (a) Personal floatation devices of the type and quantity as prescribed by the U.S. Coast Guard;
 - (b) When in operation during hours of darkness, or during times of poor visibility, such lights as prescribed by *administrative* regulations of the *department*~~[Division of Water Patrol]~~;
 - (c) If carrying or using any inflammable or toxic fluid in any inclosure for any purpose, and if not an entirely open motorboat, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during, the time such motorboat is occupied by any person;
 - (d) Such additional equipment designed to promote the safety of navigation and of persons as the *department*~~[Division of Water Patrol]~~ may find to be appropriate and for which it has provided in its *administrative*~~[rules and]~~ regulations;

- (e) If such motorboat is equipped with toilet facilities, a storage container or a treatment or disposal system of size and construction sufficient to protect and preserve the waters of this state from pollution. The storage container or treatment or disposal system shall conform to the construction, performance and utilization criteria as may be established by regulations promulgated pursuant to this chapter;
 - (f) The certificate number.
- (2) Except during an authorized race or regatta, which shall include trial runs in preparation for such race or regatta to be conducted at a time and place designated by the *department*~~{Division of Water Patrol}~~, it shall be illegal to operate any motorboat without an effective exhaust muffling system, or in any manner which renders the exhaust muffling system ineffective in muffling the sound of engine exhaust.
 - (3) No person shall operate or give permission for the operation of a motorboat which is not equipped as required by this section or modification thereof, or which is not safe for operation as a motorboat.

Section 5. KRS 235.205 is amended to read as follows:

No vessel equipped with a siren or a flashing, rotating or oscillating blue light may be operated upon waterways of this state except~~{patrol}~~ boats operated by the *department*~~{Division of Water Patrol}~~ or law-enforcement vessels of any law-enforcement agency of the Commonwealth having jurisdiction upon the waters of this state or law-enforcement vessels of the United States authorized by federal law or regulations.

Section 6. KRS 235.250 is amended to read as follows:

- (1) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.
- (2) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident or other casualty results in death or injury to a person or damage to property in excess of one hundred dollars (\$100), shall file with the *department*~~{division}~~ a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. When the operator of a vessel, who is not the owner of it, cannot submit the casualty or accident report required by subsection (1) of this section, the owner shall submit the casualty or accident report.

Section 7. KRS 235.260 is amended to read as follows:

All required accident reports and supplemental reports shall be without prejudice to the individual making them, and shall be for the confidential use of the *department*~~{Division of Water Patrol}~~, except that the *department*~~{division}~~ may disclose the identity of a person involved in an accident when his identity is not otherwise known or when he denies his presence at an accident. No such report shall be used in evidence in any trial arising out of an accident, but the *department*~~{division}~~ shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the *department*~~{division}~~, solely in order to prove compliance or noncompliance with the requirements of KRS 235.250 that such a report be made.

Section 8. KRS 235.270 is amended to read as follows:

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the *department*~~{Division of Water Patrol}~~ pursuant to KRS 235.250 shall be transmitted to said official or agency of the United States.

Section 9. KRS 235.280 is amended to read as follows:

The~~{Division of Water Patrol with the approval of the}~~ commissioner of the department, *with approval of the Department* of Fish and Wildlife Resources *Commission* shall promulgate administrative regulations in accordance with KRS Chapter 13A to govern the fair, reasonable, equitable, and safe use of all waters of this state *and otherwise to carry out the purposes of this chapter*.

Section 10. KRS 235.290 is amended to read as follows:

- (1) The ~~department~~~~[Division of Water Patrol]~~ may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions involving more than one hundred (100) boats on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. When a regatta, motorboat or other boat race, marine parade, tournament, or exhibition involving more than one hundred (100) boats is proposed to be held, the person in charge thereof shall, at least fifteen (15) days prior thereto, file an application with the ~~department~~~~[division]~~ for permission to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time, and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the ~~department~~~~[division]~~ in writing.
- (2) The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

Section 11. KRS 235.310 is amended to read as follows:

- (1) The commissioner of the Department of Fish and Wildlife Resources shall designate~~the~~ officers and employees of the ~~department~~~~[division]~~ to enforce the provisions of this chapter and these officers when duly authorized by the commissioner shall have the general powers of a peace officer for the enforcement of other offenses against the Commonwealth. In enforcing the provisions of this chapter these officers and all other peace officers of the Commonwealth and its subdivisions shall have the right to enter upon all waters of this state, either private or public, for the purpose of inspecting certificate of registration and boat numbering, and shall have the right to enter upon all boats on such waters for the purpose of examining their registration documents. They may arrest on sight, without warrant, any person detected by them in the act of violating any of the provisions of this chapter. They shall have the same rights as sheriffs to require aid in arresting, with or without process, any person found by them violating any of the provisions of this chapter or other offenses against the Commonwealth.
- (2) The~~water patrol~~ officers *designated in subsection (1) of this section* shall be authorized to possess and use radio communication equipment capable of receiving and transmitting on state police radio frequency. The Department of State Police shall cooperate with the ~~department~~~~[Division of Water Patrol]~~ for the purpose of radio communication of ~~these~~~~water patrol~~ officers when any assistance is necessary.

Section 12. KRS 235.330 is amended to read as follows:

- (1) All moneys collected under the provisions of this chapter, except that specified for distribution to the county clerks or Transportation Cabinet, shall be paid into the State Treasury in the manner prescribed by law, and credited to a *special fund known as the Fish and Game Fund*~~[trust and agency account to be used by the Division of Water Patrol]~~.
- (2) Appropriations for the operation of the Division of *Law Enforcement*~~[Water Patrol]~~ may also be made from the general expenditure fund.

Section 13. KRS 61.900 is amended to read as follows:

As used in KRS 61.902 to 61.930:

- (1) "Commission" means a commission issued to an individual by the secretary of justice, entitling the individual to perform special law enforcement duties on public property;
- (2) "Council" means the Kentucky Law Enforcement Council;
- (3) "Cabinet" means the Justice Cabinet;
- (4) "Public property" means property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public airport authorities;
- (5) "Secretary" means the secretary of the Justice Cabinet;
- (6) "Special law enforcement officer":
 - (a) Means one (1) whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass;

- (b) Means one (1) whose duties include the prevention, observation, or detection of, or apprehension for, any unlawful activity on specific public property;
- (c) Means one (1) whose special duties include the control of the operation, speed, and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific public property;
- (d) Means one (1) whose duties include the answering of any intrusion alarm on specific public property;
- (e) Shall include the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and
- (f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:
 1. Sheriffs, sworn deputy sheriffs, city marshals, constables, sworn deputy constables, and coroners;
 2. Auxiliary and reserve police appointed under KRS 95.160 or 95.445, or citation and safety officers authorized by KRS 83A.087 and 83A.088;
 3. State park rangers and ~~conservation~~ officers *of the Division of Law Enforcement within the Department of Fish and Wildlife Resources*;
 4. Officers of the Transportation Cabinet ~~and Division of Water Patrol~~ responsible for law enforcement;
 5. Officers of the Department of Corrections responsible for law enforcement;
 6. Fire marshals and deputy fire marshals;
 7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;
 8. Federal peace officers;
 9. Those campus security officers who are commissioned under KRS 164.950;
 10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; and
 11. Railroad policemen covered by KRS 277.270 and 277.280; and
- (7) "Sworn public peace officer" means one (1) who derives plenary or special law enforcement powers from, and is a full-time employee of, the federal government, the Commonwealth, or any political subdivision, agency, department, branch, or service of either, or of any municipality.

Section 14. KRS 150.021 is amended to read as follows:

- (1) The Department of Fish and Wildlife Resources shall constitute a department of state government within the meaning of KRS Chapter 12. The department shall consist of a commissioner, a Fish and Wildlife Resources Commission, the Division of *Law Enforcement*, ~~[Water Patrol, and the conservation officers]~~ and other agents and employees provided for in this chapter. The department shall enforce the laws and regulations adopted under this chapter relating to wildlife and shall exercise all powers necessarily incident thereto.
- (2) Any powers conferred by this chapter upon the Department of Fish and Wildlife Resources, the Fish and Wildlife Resources Commission, or the commissioner of the Department of Fish and Wildlife Resources, and any powers conferred by KRS Chapter 235 shall be exercised subject to the provisions of KRS Chapters 42, 45, 45A, 56, and 64, which chapters in all respects are controlling.

Section 15. KRS 247.232 is amended to read as follows:

As used in KRS 247.234 and 247.236:

- (1) "Amusement ride" means any mechanized device or combination of devices which carry passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" does not include coin-operated amusement devices that carry no more than two (2) persons and devices regulated by the Federal Aviation Administration, the state and federal railroad commission, and vessels under the jurisdiction of the United States Coast Guard or the ***Kentucky Department of Fish and Wildlife Resources***~~[State Division of Water Patrol]~~;
- (2) "Amusement attraction" means any building or structure around, over, or through which people may walk, climb, slide, jump, or move that provides amusement, pleasure, thrills, or excitement. "Amusement attraction" does not include tractor pulls, auto or motorcycle events, horse shows, rodeos and other animal shows, games and concessions, nonmechanical playground equipment, such as swings, slides, seesaws, climbers, trampolines, rider propelled merry-go-rounds, stationary spring-mounted animal devices, and physical fitness equipment, unless designated by regulation of the Commissioner;
- (3) "Carnival" means an enterprise offering amusement or entertainment to the public by means of one (1) or more amusement rides and attractions;
- (4) "Fair" means an enterprise principally devoted to the exhibition of products of agriculture, science, or industry in conjunction with the operation of one (1) or more amusement rides or attractions;
- (5) "Owner" means any person who owns an amusement ride or attraction or, in the event that the amusement ride or attraction is leased, the lessee; and
- (6) "Commissioner" means the Commissioner of Kentucky Department of Agriculture or his authorized representative.

Section 16. KRS 431.005 is amended to read as follows:

- (1) A peace officer may make an arrest:
 - (a) In obedience to a warrant; or
 - (b) Without a warrant when a felony is committed in his presence; or
 - (c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or
 - (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or
 - (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.
- (2)
 - (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.
 - (b) For the purposes of this subsection, the term "family member" means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree.
 - (c) For the purpose of this subsection, the term "member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.
- (3) For purposes of subsection (2) of this section, a "peace officer" is:
 - (a) A full-time sworn officer of the Kentucky State Police, a full-time sworn officer of the Kentucky Horse Park, a commissioned full-time state park ranger, a full-time~~[state water patrol]~~ officer ***of the Division of Law Enforcement within the Department of Fish and Wildlife Resources who is exercising authority under KRS Chapter 235***, a full-time city policeman, a full-time county policeman, a full-time university safety and security officer appointed pursuant to KRS 164.950 to 164.970, a full-time city-county policeman, a duly elected sheriff, or a full-time paid deputy sheriff; or

- (b) A part-time paid law enforcement officer, or a special paid deputy, who has completed a Kentucky law enforcement council approved education and training program referred to in KRS 403.784.
 - (c) The provisions of this section relating to training shall not apply to a deputy sheriff who is subject to the training requirements specified in KRS 70.263(3).
- (4) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
 - (5) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.

Section 17. KRS 433.757 is amended to read as follows:

- (1) When any litter, as defined in KRS 512.010 is thrown or dropped from a motorboat or vessel as defined in KRS 235.010, the operator thereof shall be deemed prima facie to have violated KRS 512.070.
- (2) It shall be the duty of ~~law enforcement~~ officers of the **Department of Fish and Wildlife Resources** ~~Division of Water Patrol~~ as provided in KRS 235.010 and ~~fish and wildlife conservation officers as provided in~~ KRS Chapter 150 and all other law enforcement and peace officers of the Commonwealth and its political subdivisions to enforce the provisions of KRS 512.070.
- (3) Any city or county may offer and pay rewards for the giving of information leading to the arrest and conviction of any person, firm or corporation for a violation of KRS 512.070.

Section 18. The following KRS sections are repealed:

235.020 Division of Water Patrol.

235.320 Director's power to make regulations.

Section 19. Executive Order 96-726, dated June 7, 1996, relating to the abolishment of the Division of Water Patrol, is confirmed to the extent that it is not otherwise confirmed by this Act.

Approved March 3, 1998

CHAPTER 24

(SB 187)

AN ACT relating to elk restoration and protection and declaring an emergency.

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

Section 1. KRS 150.390 is amended to read as follows:

- (1) No person shall possess, take, pursue, or attempt to take or pursue or otherwise molest any **wild elk**, deer, wild turkey or bear in any manner contrary to any provisions of this chapter or its regulations.
- (2) No person shall use a dog to chase or molest **wild elk or** deer in any manner, at any time, or at any place. Any conservation officer, peace officer, sheriff or constable may take necessary steps to stop, prevent, or bring under control any dog, or dogs, found chasing or molesting **wild elk or** deer at any time.
- (3) ***The department shall establish by administrative regulation the conditions under which depredation permits may be issued without cost to persons suffering damage from wild elk to allow the taking of wild elk.***
- (4) ***If Kentucky's wild elk population reaches a level that will sustain limited hunting, the department may establish by administrative regulations the conditions and permits that would allow the controlled taking of wild elk.***

Section 2. KRS 150.990 is amended to read as follows:

- (1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any regulation adopted by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.
- (2) Any person who violates any of the provisions of this chapter or any regulations adopted by the commission thereunder may, in addition to the penalties provided in subsection (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license, and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any regulation which has been or may be adopted by the commission under any provisions of this chapter or which is adopted to supplement, explain, carry out, or limit any provision of this chapter, shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the regulation is adopted or which the regulation supplements, explains, carries out, or limits.
- (3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.603, subsection (1) of KRS 150.235, subsection (2) of KRS 150.330 or 150.470, or any of the provisions of this chapter or any regulation adopted by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).
- (4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.445, 150.485, 150.600, 150.630, 150.660, subsection (1) of KRS 150.450, 150.470, the provisions of KRS 150.195(5) to (8), or subsection (3) of KRS 150.660 shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700.
- (5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, subsection (1) of KRS 150.330, or subsections (2), (3), or (4) of KRS 150.235 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months or both.
- (7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed.
- (8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall, for the first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000); and shall for a second offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1500); and for any subsequent offense, be fined two thousand dollars (\$2000).
- (9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of subsection (9) shall be in addition to the penalties for violation of subsection (8).
- (10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates any of the provisions of KRS 150.390, or subsection (4) of KRS 150.092 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (4) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages. ***Any person who possesses, takes, or molests a wild elk in violation of Section 1 of this Act or administrative regulations adopted under authority of that section shall be fined not less than one thousand dollars***

(\$1000) nor more than five thousand dollars (\$5000), or imprisoned for up to six (6) months, or both. In addition to these penalties, the person shall pay to the department an amount not to exceed the greater of the replacement cost of the wild elk or double any monetary gain realized from the illegal activity, and shall forfeit his or her license, or if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years.

- (12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.
- (13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be subject to the penalties specified for such offense under KRS Chapter 507 or 508, as appropriate.
- (14) A person shall be guilty of a Class B misdemeanor upon the first violation of KRS 150.710. A subsequent violation shall be a Class A misdemeanor.
- (15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); for the second offense, be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and for subsequent offenses, shall forfeit the license, or if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars (\$1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions.

Section 3. Whereas the program to restore elk to Kentucky has begun, and whereas laws and penalties are not sufficient to deter poaching and protect these elk, which represent an important historic biological and potentially economic resource to Kentucky and particularly to eastern Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 4, 1998

CHAPTER 25

(HB 56)

AN ACT relating to local air boards.

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

Section 1. KRS 183.132 is amended to read as follows:

- (1) Any city or county, or city and county acting jointly, or any combination of two (2) or more cities, ~~and/or~~ counties, **or both**, may establish a nonpartisan air board composed of six (6) members, or any city other than the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A may establish a nonpartisan board composed of ten (10) members, or any existing six (6) member board, except a board established in an urban-county government, may be expanded to ten (10) members by joint action of the county and city.
- (2) Any city of the first class, jointly with the county containing ~~that such~~ city may establish a nonpartisan air board ~~composed of ten (10) members~~. If a joint air board has been established prior to July 15, 1986, by a city of the first class and the county, the terms of the members on ~~the such~~ board shall terminate as of July 15, 1986, and the membership of the board shall be appointed in accordance with subsection (6) of this section.
- (3) The board shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the duties prescribed by statute. The board shall constitute a legislative body for the purposes of KRS 183.630 to 183.740.
- (4) The members of an air board composed of six (6) members shall be appointed as follows:

- (a) If the air board is established by a city, ~~the~~~~such~~ members shall be appointed by the mayor of the city;
 - (b) If the air board is established by a county, ~~the~~~~such~~ members shall be appointed by the county judge/executive except that in the event that an airport is located outside the boundary of the county establishing the airport board, the county judge/executive shall appoint an additional member to the air board from the jurisdiction where the airport is physically located. The additional member shall serve a four (4) year term in accordance with the provisions of subsection (7) of this section and receive full voting privileges on matters brought before the airport board;
 - (c) If the air board is established as a joint city-county air board ~~the~~~~such~~ members shall be appointed jointly by the mayor of the city and the county judge/executive;
 - (d) If a combination of cities, ~~and/or~~ counties, **or both**, establishes a joint air board, the mayors and ~~or~~ county judges/executive involved shall jointly choose six (6) members, and shall jointly choose successors.
- (5) The members of an air board composed of ten (10) members in a city other than a city of the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A shall be appointed as follows:
- (a) Five (5) members shall be appointed by the mayor of the city, without approval of the legislative body;
 - (b) Five (5) members shall be appointed by the county judge/executive without approval of the other members of the fiscal court.
- (6) The members of an air board ~~composed of ten (10) members~~ established jointly by a city of the first class and the county containing **the first class**~~such~~ city shall be composed of the mayor of the city of the first class and the county judge/executive of the county and ~~eight (8)~~ other members appointed as follows:
- (a) Three (3) members shall be appointed by the mayor of the city of the first class;
 - (b) Three (3) members shall be appointed by the county judge/executive of the county, with the approval of the fiscal court; and
 - (c) Two (2) members, who shall be residents of ~~the~~~~such~~ county containing a city of the first class or of counties contiguous thereto, shall be appointed by the Governor of the Commonwealth.
 - (d) ***If there is an incorporated alliance of incorporated neighborhood associations and fifth or sixth class cities, which represents citizens living within a five (5) mile radius of airport operations, the governor shall appoint one (1) member of the executive board of an alliance as an additional member to the air board. If more than one (1) incorporated alliance exists, the governor shall select the appointee from the executive boards of all the incorporated alliances.***
- (7) Members of the board composed of six (6) members, shall serve for a term of four (4) years each, and until their successors are appointed and qualified, provided, however, that initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years and two (2) members for four (4) years. Upon expiration of these staggered terms, successors shall be appointed for a term of four (4) years.
- (8) Members of the board composed of ten (10) members in a city other than a city of the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A, shall serve for a term of four (4) years each, and until their successors are appointed and qualified, provided, however, that the mayor and the county judge/executive shall each make their initial appointments so that one (1) member is appointed for two (2) years, two (2) members are appointed for three (3) years, and two (2) members are appointed for four (4) years; except that if an existing six (6) member board is being increased to a ten (10) member board, initial appointments of the four (4) new members shall be made so that the mayor and the county judge/executive each appoint one (1) member for two (2) years and one (1) member for four (4) years. Upon expiration of these initial terms, successors shall be appointed for a term of four (4) years.
- (9) Members of the board composed of **eleven (11)**~~ten (10)~~ members and established jointly by a city of the first class and the county containing a city of the first class, shall serve for a term of three (3) years each, and until their successors are appointed and qualified, except that the terms of the mayor and the county judge/executive shall be coextensive with their terms of office. The mayor and the county judge/executive shall each make their initial appointments so that one (1) member is appointed for one (1) year, one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. The Governor shall make the initial

appointments so that one (1) member is appointed for two (2) years and one (1) member is appointed for three (3) years. Upon the expiration of these initial terms, successors shall be appointed for a term of four (4) years.

- (10) Members of the board shall serve without compensation but shall be allowed any reasonable expenses incurred by them in the conduct of the affairs of the board. The board shall, upon the appointment of its members, organize and elect officers. The board, except for a board composed of **eleven (11)**~~ten (10)~~ members and established jointly by a city of the first class and the county containing a city of the first class, shall choose a chairman and vice chairman who shall serve for terms of one (1) year. Where the board is composed of **eleven (11)**~~ten (10)~~ members, and established jointly by a city of the first class and the county containing a city of the first class, the mayor of the city of the first class and the county judge/executive shall jointly appoint the chairman from among the membership of the board. The board shall also choose a secretary-treasurer who may or may not be a member of the board. The board may fix a salary for the secretary-treasurer and the secretary-treasurer shall execute an official bond to be set and approved by the board, and the cost thereof shall be paid by the board.
- (11) The board may employ necessary counsel, agents and employees to carry out its work and functions, and prescribe~~such~~ rules and regulations as it deems necessary.
- (12) The secretary-treasurer shall keep the minutes of all meetings of the board and shall also keep a set of books showing the receipts and expenditures of the board. He shall preserve on file duplicate vouchers for all expenditures and shall present to the board, upon request, complete reports of all financial transactions and the financial condition of the board. ~~The~~~~Such~~ books and vouchers shall at all times be subject to examination by the legislative body or bodies by whom the board was created. He shall transmit at least once annually a detailed report of all acts and doings of the board to the legislative body or bodies by whom the board was created.
- (13) In the event that a joint air board is created by cities,~~and/or~~ counties, **or both**, and thereafter a city~~or cities~~ or county ~~desires~~~~for counties desire~~ to withdraw from participation, then the remaining participants may jointly choose a successor member or members of the board. No~~such~~ withdrawing city or~~cities,~~ county~~or counties~~ shall be entitled to return of any moneys or property advanced **to the**~~such~~ board.
- (14) A quorum for the transacting of the business of a six (6) member board shall consist of four (4) members,~~and of~~ a ten (10) member board shall consist of six (6) members, **and an eleven (11) member board shall consist of six (6) members**. Meetings of the board may be called by the chairman or by four (4) members. In case of tie voting by the board, the issue shall be deemed to have failed passage.
- (15) A board member may be replaced by the appointing authority upon a showing to ~~the~~~~such~~ authority of misconduct as a board member or upon conviction of a felony. No board member, except for the mayor of a city of the first class and the county judge/executive on a board made up of **eleven (11)**~~ten (10)~~ members and established jointly by a city of the first class and the county containing a city of the first class, shall hold any official office with the appointing authority.

Section 2. The Governor shall appoint the additional member to the Board as required under Section 1(6)(d) of this Act by September 1, 1998.

Approved March 4, 1998

CHAPTER 26

(HB 109)

AN ACT relating to parks funding.

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

Section 1. KRS 148.810 is amended to read as follows:

- (1) Funds in the park capital maintenance and renovation fund shall be used for the maintenance and renovation of park facilities. Maintenance shall include equipment purchases, used primarily in the maintenance of **infrastructure and** park facilities, and expenditures related to preventative maintenance of capital assets. Renovation includes the replacement of depreciable assets, including furnishings, and purchase of depreciable assets which enhance the quality of the parks.

- (2) In no case shall the *moneys from the* fund be expended on:
- (a) *New capital project construction;* ~~[a capital expansion item.]~~
 - (b) *Any new maintenance or renovation project estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration; or*
 - (c) *Any new item of equipment estimated to cost one hundred thousand dollars (\$100,000) or more in cash or other consideration.*
- (3) *Moneys in the park capital maintenance and renovation fund may be used to provide additional funding for any capital project, as defined in KRS 45.750, that received line item authorization from the General Assembly in any executive branch budget bill only if the state budget director or the director's designee submits the proposed allocation to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting, in accordance with the provisions of KRS 45.800.*
- (4) *Notwithstanding the provisions of KRS 45.760(13), moneys in the park capital maintenance and renovation fund shall not be used to provide additional funding for any capital project, as defined in KRS 45.750, that received line item authorization from the General Assembly in any executive branch budget bill, and that has already received maximum additional funding as permitted by KRS 45.760(13) unless the state budget director or the director's designee submits the proposed allocation to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting, in accordance with the provisions of KRS 45.800. In addition to the requirements of KRS 45.800, the submission shall include a written certification that:*
- (a) *Due to extraordinary circumstances, which shall be described, additional funds are necessary for the project to be completed in a manner that will allow it to serve its intended purpose; and*
 - (b) *The use of funds from the parks capital maintenance and renovation fund do not unduly compromise the routine maintenance and renovation needs that the fund was created to address.*
- (5)~~(2)~~ The commissioner shall, by September 1 of each year ~~[prior to the next regular session of the General Assembly]~~, report to the Legislative Research Commission the receipts, ~~[and]~~ expenditures, *and any amounts carried forward for the fiscal year ending on June 30 of that year* from the fund established in KRS 148.800.

Approved March 6, 1998

CHAPTER 27

(HB 110)

AN ACT relating to maintenance of state assets.

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

SECTION 1. A NEW SECTION OF KRS 45.750 TO 45.810 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created within the capital construction fund the "Statewide Deferred Maintenance Fund". The fund shall be used as a supplemental source for funding deferred maintenance and government mandate needs of state agencies. Maintenance includes equipment used primarily for maintenance purposes and expenditures related to deferred maintenance of infrastructure and capital assets. The balance of any moneys remaining in the fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (2) *Priority for the funding from the statewide deferred maintenance fund shall be determined by the secretary of the Finance and Administration Cabinet in consultation with the state budget director and the commissioner of the Department for Facilities Management. State agencies that do not have separate agency-specific maintenance funds or that have inadequate maintenance funds shall be given priority for access to moneys in the statewide deferred maintenance fund.*
- (3) *Moneys from the statewide deferred maintenance fund shall not be expended for:*
 - (a) *New capital projects; or*
 - (b) *Additional funding for any capital project that received line item authorization by the General Assembly in any branch budget bill.*

- (4) *The secretary shall, by September 1 of each year, report to the Legislative Research Commission all transfers from the fund, including the purpose and amount of each transfer and the amount of funds carried forward for the fiscal year ending on June 30 of that year.*

Section 2. KRS 45.780 is amended to read as follows:

- (1) There is created within the capital construction fund the emergency repair, maintenance, and replacement account. The account shall consist of moneys appropriated to the fund by the General Assembly.
- (2) The Finance and Administration Cabinet may transfer money from the emergency repair, maintenance, and replacement account to the allotment account of an emergency repair, replacement, or maintenance project, for expenditure thereon, even though the specific project is not included in any branch budget bill, statutory budget memorandum, and biennial budget report enacted for that biennium. ***Moneys may be transferred from the emergency repair, maintenance, and replacement account to the allotment account of an emergency repair, replacement, or maintenance project only if no other funding source is available.***
- (3) The Finance and Administration Cabinet shall report each transfer, including the necessity, purpose, and amount of the transfer, to the Capital Projects and Bond Oversight Committee not later than thirty (30) days after the transfer.

Approved March 6, 1998

CHAPTER 28

(HB 135)

AN ACT relating to court facilities and declaring an emergency.

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

Section 1. KRS 26A.090 is amended to read as follows:

As used in KRS 26A.090 to 26A.115, unless the context otherwise requires:

- (1) "Operating costs allowance" means compensation equivalent to the annual expenses borne by the unit of government for utilities, janitorial service, rent, insurance, and necessary maintenance, repair, and upkeep of the court facility which do not increase the permanent value or expected life of the court facility, but keeps it in efficient operating condition, and, at the election of the Administrative Office of the Courts, capital costs of interior or mechanical renovations for the benefit of the court.
- (2) "Use allowance" means compensation equal to four percent (4%) annually of the total original capital costs and the cost of capitalized renovation of the court facility, except that if indebtedness has been incurred in respect to such capital costs at ~~an~~ ~~a constant annual~~ interest rate equal to or greater than seven percent (7%), compensation shall be at a rate of eight percent (8%) annually of that portion of the capital costs for which the rate applies. ***For refinanced projects constructed or renovated prior to July 1, 1994, the use allowance payment shall not change for the term of the original bond issue, unless there is a change in the space occupied. For*** ~~Except that in the case of~~ court facilities renovated or constructed after July 1, 1994, "use allowance" means the court's proportional share of the annual principal and interest cost in connection with the renovation or construction, but not to exceed eight percent (8%) annually of capital costs, or, if there is no debt, four percent (4%) annually of capital costs.
- (3) "Capital costs" means the costs borne by the unit of government, excluding grants, conditioned by the grantor agency specifically for court facility construction or renovation, for acquisition of property and for construction and capitalized renovation including interest accruing during construction or renovation, but no other interest of each court facility. If capital costs are not documented, reasonable estimates provided by qualified appraisers will suffice.
- (4) "Capitalized renovation" means all remodeling involving the structural or mechanical systems, except for remodeling that involves substantial demolition of the original structure. Remodeling involving substantial demolition of the original structure shall constitute construction resulting in a new court facility.
- (5) "Unit of government" means a county, city, urban-county government, special district, or corporate entity created for the purpose of constructing or holding title to a court facility.

- (6) "Court facility" means the land and buildings owned or operated by a unit of government in which space for the court of justice is provided. Judges' benches, jury and witness boxes, and fixed seating shall be considered as permanent building fixtures.
- (7) "Court facilities standards committee" means a committee consisting of the Chief Justice or his designee; one (1) judge each of the Court of Appeals, the Circuit Court, and the District Court appointed by the Supreme Court; the president of the Circuit Clerks' Association; the chairman of the Judiciary-Civil Committees of the General Assembly; the secretary of the Finance and Administration Cabinet; and a county judge/executive appointed by the Governor. Each appointed member shall serve for a term of four (4) years from the date of his appointment or until he vacates the office in respect to which he was appointed, whichever is earlier.

Section 2. Whereas local governments planning to refinance court facilities need to act quickly in response to current favorable costs of financing, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

Approved March 6, 1998

CHAPTER 29

(SB 17)

AN ACT relating to sales and use tax exemptions.

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

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of

raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section, includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;

- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising **poultry**~~[chickens]~~ or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.
- (16) Gasoline, special fuels, and liquefied petroleum gas used **exclusively and directly** to operate~~[or propel stationary engines or tractors for agricultural purposes. As used in this subsection];~~
 - (a) **Farm machinery**~~["Gasoline" is defined as in KRS 138.210(4)];~~
 - (b) **On-farm grain and soybean facilities**~~["Special fuels" is defined as in KRS 138.560(3)];~~
 - (c) **On-farm poultry or livestock facilities**~~["Liquefied petroleum gas" is defined as in KRS 234.100(1)];~~
~~and]~~
 - (d) **On-farm ratite facilities**~~["Agricultural purposes" is defined as in KRS 138.343(4)];~~
 - (e) **On-farm llama and alpaca facilities; and**
 - (f) **On-farm dairy facilities;**
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;

- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming~~]. The exemption provided in this subsection shall be effective for sales made through July 31, 2000~~; and
- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

~~[The exemption provided in this subsection shall be effective for sales made through July 31, 2000.]~~

Section 2. This Act takes effect August 1, 1998.

Approved March 6, 1998

CHAPTER 30

(HB 172)

AN ACT relating to a groundwater monitoring network.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that groundwater makes up over ninety-five percent (95%) of the water resources in Kentucky. Groundwater accounts for over thirty percent (30%) of the public and domestic water supplies in the Commonwealth, and up to ninety percent (90%) of all rural domestic supplies, and is the major source of water to streams. It is imperative that a system for characterizing and monitoring groundwater be developed so that information acquired through various monitoring programs will allow Kentucky to identify and characterize the groundwater resource. The information from the monitoring network can be used to enhance the Kentucky Groundwater Data Repository; identify, characterize, and model groundwater systems; develop community and private water supplies; address resource allocation concerns; set boundaries on wellhead protection areas;

recognize groundwater degradation if it occurs; and evaluate and improve the quality and quantity of data collected through all programs.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context requires otherwise:

- (1) *"Committee" means the Interagency Technical Advisory Committee on Groundwater as created in Section 4 of this Act;*
- (2) *"Groundwater resource" means groundwater that is currently being used or is capable of being used;*
- (3) *"Groundwater system" means a body of groundwater that is separated from other bodies of groundwater either by flow characteristics including but not limited to flow direction, flow speed, permeability, or storativity, or by water chemistry or layers of rock;*
- (4) *"KGS" means the Kentucky Geological Survey; and*
- (5) *"Monitoring network" means a series of wells, springs, and associated surface water that will be tested on a periodic basis for water level, discharge, and water chemistry.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *The KGS shall, in cooperation with the Interagency Technical Advisory Committee on Groundwater, establish a long-term groundwater monitoring network for the purpose of characterizing the quality, quantity, and distribution of Kentucky's groundwater resources.*
- (2) *The monitoring network shall include:*
 - (a) *Representative sites sampled by various agencies;*
 - (b) *Water wells, springs, and surface water associated with wells and springs; and*
 - (c) *New monitoring wells installed in areas of demonstrated need.*

This network shall collect information on a statewide basis and provide long-term data collection to determine the quality, quantity, and occurrence of groundwater throughout the Commonwealth.

- (3) *The KGS shall utilize collected data to support research efforts that develop models for groundwater systems, and to determine and monitor trends of groundwater movement, water quality, and quantity.*
- (4) *The KGS shall provide data from the network to the Kentucky Groundwater Data Repository and make the data readily available to the public, government agencies, industry, and other entities that request access. Analyzed data may be made available in the form of maps, charts, bulletins, and reports.*
- (5) *The KGS shall solicit input from federal, state, and local agencies, and industry, agriculture, universities, and the public to determine priority monitoring locations based on water quality and quantity concerns as the network is developed.*
- (6) *Within ninety (90) days of the end of each state fiscal year, the KGS shall provide to the Governor and the Legislative Research Commission a summary of the groundwater monitoring network data collection and analysis activities.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established an Interagency Technical Advisory Committee on Groundwater to assist the KGS in the development, coordination, and implementation of a groundwater monitoring network for the Commonwealth. The committee shall consist of one (1) representative from each of the following agencies, to be appointed by that agency:*
 - (a) *Division of Conservation of the Department for Natural Resources;*
 - (b) *Division of Environmental Health and Community Safety of the Cabinet for Human Resources;*
 - (c) *Division of Forestry of the Department for Natural Resources;*
 - (d) *Division of Pesticides of the Department of Agriculture;*
 - (e) *Division of Waste Management of the Department for Environmental Protection;*

- (f) *Division of Water of the Department for Environmental Protection;*
 - (g) *Department for Environmental Protection;*
 - (h) *Department of Mines and Minerals of the Public Protection and Regulation Cabinet;*
 - (i) *Department for Natural Resources;*
 - (j) *Department for Surface Mining Reclamation and Enforcement;*
 - (k) *Kentucky Geological Survey;*
 - (l) *University of Kentucky College of Agriculture; and*
 - (m) *University of Kentucky Water Resources Research Institute.*
- (2) *The committee shall have one (1) nonvoting legislative liaison who shall be a member of the General Assembly and who shall be appointed by the Legislative Research Commission. The chair of the committee shall be the director of the University of Kentucky Water Resources Research Institute. The duties and responsibilities of the committee shall include:*
- (a) *Developing a plan to coordinate agencies for the overall characterization of the state's groundwater, including occurrence, flow systems, water quantity, and water quality;*
 - (b) *Reviewing the data entry process to ensure that all data collected is placed into the Kentucky Groundwater Data Repository;*
 - (c) *Establishing a long-term groundwater monitoring plan for the Commonwealth;*
 - (d) *Making recommendations for prioritization of the state's groundwater research needs; and*
 - (e) *Annually reviewing and evaluating groundwater data collection and analysis.*
- (3) *In addition to the members identified in subsection (1) or (2) of this section, the committee may have, as one (1) of its members, one (1) nonvoting representative from the U.S. Geological Survey, appointed by that agency.*

Approved March 6, 1998

CHAPTER 31

(HB 264)

AN ACT relating to motor carriers.

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

Section 1. KRS 138.665 is amended to read as follows:

- (1) (a) A license shall be required of each motor carrier or heavy equipment motor carrier subject to the provisions of KRS 138.660 before he uses or continues to use the public highways of this state.
 - (b) Notwithstanding the requirement in subsection (1)(a), the cabinet may issue a trip permit for each motor vehicle subject to KRS 138.660(1) for a fee of twenty dollars (\$20) for each permit. If the vehicle is subject to those taxes in KRS 138.660(1) to (3), the cabinet may issue a trip permit for each motor vehicle for a fee of forty dollars (\$40) for each permit.
- (2) Application for a license or trip permit shall be made to the cabinet and shall contain such information as the cabinet deems necessary.
- (3) ~~Concurrently with the filing of an application for a license, the motor carrier or heavy equipment motor carrier shall file with the cabinet a bond as required under KRS 138.670. No license shall be issued to any person unless such person has furnished a bond as provided in KRS 138.670 to secure payment of taxes, penalties and interest imposed by KRS 138.660 to 138.7291.~~
- (4) The application in proper form having been accepted for filing, the bond, *if required*, having been accepted and approved and the other conditions and requirements of this section having been complied with, the cabinet shall issue a license. However, if an application for a license is filed by any person whose license has at any time previously been revoked for cause by the cabinet, or if the cabinet is of the opinion that the person who

makes the application does so as a subterfuge for the real party in interest whose license, prior to the time of filing the application, has been revoked for cause, or that the application is not for any other reason filed in good faith or is not sufficient cause, the cabinet may, after a hearing of which the applicant shall be given ten (10) days' notice in writing and in which he shall have the right to appear in person or by counsel and present testimony, refuse to issue a license to that person.

- ~~(4)~~~~(5)~~ All licenses shall be valid and remain in full force and effect until suspended or revoked for cause or otherwise canceled.
- ~~(5)~~~~(6)~~ A license shall not be assignable or transferable and shall be valid only for the person in whose name it is issued.
- ~~(6)~~~~(7)~~ The cabinet shall keep and file all applications and bonds, with an alphabetical index thereof.
- ~~(7)~~~~(8)~~ Each holder of a license required by subsection (1) shall display his license number or other identification on or in each vehicle subject to the taxes imposed by KRS 138.655 to 138.7291 in the manner prescribed by the cabinet. The cabinet may require the license number or other identifier to be displayed so that it can be readily recorded either manually or electronically by cabinet representatives. In addition, the cabinet may require each individual unit in the license holder's fleet of vehicles subject to these taxes to be uniquely identified.
- ~~(8)~~~~(9)~~ The provisions of this section shall not apply to a nonresident motor carrier engaged in transporting passengers for hire in irregular route interstate charter or special operations, provided reciprocal privileges are granted to similar nonresident carriers by the laws and regulations of his state.

Section 2. KRS 138.670 is amended to read as follows:

- (1) ~~At Every~~ motor carrier ~~or and~~ heavy equipment motor carrier **determined by the Transportation Cabinet to be at risk for nonpayment of its highway use taxes** shall file with the cabinet a corporate bond, cash bond, or securities approved by the cabinet in the minimum amount of one thousand dollars (\$1,000) and in a maximum amount of four (4) months' liability for taxes imposed under KRS 138.655 to 138.725 but not to exceed fifty thousand dollars (\$50,000). The applicant for a license shall be the principal obligor and this state shall be the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the licensee to the cabinet of all taxes levied under KRS 138.655 to 138.725, together with all penalties and interest thereon and generally upon faithful compliance with the provisions of KRS 138.655 to 138.725.
- (2) If the liability upon the bond is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the cabinet any surety has become unsatisfactory or unacceptable, the cabinet may require the licensee to file a new bond with satisfactory surety in the same form and amount, failing which the cabinet shall forthwith cancel the license. If a new bond is furnished by the licensee as above provided, the cabinet shall cancel the bond for which the new bond is substituted.
- (3) If, upon hearing of which the licensee shall be given ten (10) days' notice in writing, the cabinet decides that the amount of the existing bond is insufficient to insure payment to this state of the amount of the tax, penalties and interest for which the licensee is or may become liable, the licensee shall forthwith, upon written demand of the cabinet, file an additional bond in the same manner and form with surety thereon approved by the cabinet, in any amount determined by the cabinet to be necessary, failing which the cabinet shall forthwith cancel the license.
- (4) Any surety on a bond furnished by a licensee shall be released from all liability to this state accruing on such bond after the expiration of sixty (60) days from the date upon which the surety has lodged with the cabinet, a written request to be released, but this request shall not operate to release the surety from any liability already accrued or which shall accrue before the expiration of the sixty (60) day period. The cabinet shall promptly, on receipt of the request, notify the licensee who furnished the bond, and unless the licensee shall, before the expiration of the sixty (60) day period, file with the cabinet a new bond with surety satisfactory to the cabinet in the amount and form hereinbefore provided, the cabinet shall forthwith cancel the license. If the new bond is furnished by the licensee as above provided, the cabinet shall cancel the bond for which the new bond is substituted.

Section 3. KRS 138.685 is amended to read as follows:

- (1) Every licensee shall file with the cabinet, *in the format*~~[on forms]~~ prescribed by the cabinet, a quarterly tax return. The return shall be made under penalty of perjury and shall show such information as the cabinet may require. The licensee shall file the return on or before the last day of the next succeeding calendar month following the quarterly period to which it relates.
- (2) The quarterly tax return shall be accompanied by a remittance covering the tax due.

Section 4. KRS 138.710 is amended to read as follows:

- (1) The reports required by KRS 138.685 shall be accompanied by a certified, *electronic*, or cashier's check payable to the State Treasurer for the amount of tax due for the preceding calendar quarter computed as provided in KRS 138.690, except that the cabinet may waive this requirement and accept the check of the licensee if he is of sound financial condition and has established a good record of compliance with the requirements of KRS 138.655 to 138.725, inclusive.
- (2) *The Transportation Cabinet may promulgate administrative regulations providing for the payment by credit card of any tax or fee that it collects. The administrative regulation may require the payee to add to his tax or fee, the administrative charge of the financial institution.*

Section 5. KRS 138.715 is amended to read as follows:

- (1) If any licensee neglects or refuses to make the return or pay the tax at the time provided in KRS 138.685, a penalty of twenty percent (20%) of the tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when due shall be paid on the tax.
- (2) If any licensee subject to the penalty provided in subsection (1) of this section submits to the cabinet in writing the reasons for failure to comply with KRS 138.660 to 138.7291 and if the cabinet finds the reasons sufficient evidence or justifiable cause for modifying the penalty provided in subsection (1) of this section, it may modify the penalty enacted therein to five percent (5%) of the amount of the tax due and delinquent, provided the five percent (5%) penalty may be reduced to one percent (1%) if the violation is the first violation by the taxpayer within the twelve (12) months.
- (3) If the penalties provided by this section are collected by proceedings in court, an additional penalty of twenty percent (20%) shall be collected and distributed as is authorized by KRS 134.400 and 135.060. Whenever any licensee neglects or refuses to make and file any report for any calendar quarter as required by KRS 138.685, or files an incorrect or fraudulent report, the cabinet shall determine after an investigation the amount of the liability which the licensee has incurred under KRS 138.660 to 138.7291 for any particular quarter and assess and collect the amount of tax and penalties due.
- (4) Any licensee who fails to make any report required under the provisions of KRS 138.660 to 138.7291 within the time allowed may be required to pay a penalty of fifty dollars (\$50) *for a first offense, two hundred fifty dollars (\$250) for a second offense, or five hundred dollars (\$500) for any subsequent offense within any four (4) year period. The penalty is* to be assessed and collected in the manner provided for the assessment and collection of taxes, or *the licensee* may be proceeded against in a civil action instigated by the cabinet. In addition, such licensee may be compelled to make the required return.
- (5) In any action for the collection of taxes due under KRS 138.660 to 138.7291 and any penalties or interest imposed in connection therewith, an assessment by the cabinet of the amount of tax due and the interest or penalties due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be on the licensee to show that the assessment was incorrect or contrary to law.

Approved March 6, 1998

CHAPTER 32

(SB 93)

AN ACT relating to the Commission on the Deaf and Hard of Hearing.

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

Section 1. KRS 163.506 is amended to read as follows:

- (1) The Commission on the Deaf and Hard of Hearing shall consist of:

- (a) Seven (7) members appointed by the Governor as follows:
1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;
 2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;
 3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;
 4. One (1) *hard of hearing or deaf* person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term;
 5. One (1) deaf, *late-deafened*, or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;
- (b) ***Two (2) employees***~~One (1) representative~~ of the Cabinet for Human Resources, ***one (1) representing families and children and one (1) representing health services***, appointed by the secretary ***of the cabinet***;
- (c) The secretary of the Education, Arts, and Humanities Cabinet or his designee;
- (d) The president of the Kentucky Association for the Deaf or his designee;
- (e) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and
- (f) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(e) of this section, appointed as follows:
1. One (1) parent of a hard of hearing or deaf child;
 2. One (1) representative of a ***public or*** private organization providing consistent services to the deaf and hard of hearing; and
 3. One (1) member at large.
- (2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsections (1)(a)2. through (1)(a)5. and subsection (1)(f) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.
- (3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

Approved March 9, 1998

CHAPTER 33

(HB 245)

AN ACT relating to state personnel.

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

Section 1. KRS 151B.195 is amended to read as follows:

- (1) The commissioner of the Department of Vocational Rehabilitation shall prescribe administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency; may enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned; may establish and supervise the operation of small businesses established pursuant to KRS

151B.180 to 151B.210 to be conducted by eligible individuals with severe disabilities; and may establish state funded special programs for vocational rehabilitation in the state vocational rehabilitation agency.

- (2) Except as provided in KRS 151B.190, the commissioner may prescribe administrative regulations to establish fees for services provided to individuals or entities, public or private.
- (3) The commissioner is authorized to provide liability insurance or an indemnity bond against the negligence of drivers of motor vehicles owned or operated by the department for the transportation of applicants or clients of the department. If the transportation is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence to such amounts as the commissioner designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any applicant or client or other person, or death or injury of any applicant or client or other person.
- (4) ***The provisions of any other statute notwithstanding, the commissioner is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.***

Section 2. KRS 163.470 is amended to read as follows:

- (1) There is created within the Cabinet for Workforce Development the Department for the Blind.
- (2) The commissioner shall be appointed by the Governor upon the recommendation of the secretary of the Cabinet for Workforce Development to whom he shall be directly responsible.
- (3) The department shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The department shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Cabinet for Workforce Development is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the commissioner.
- (4)
 - (a) The Kentucky Department for the Blind Advisory Council is hereby created and established to accomplish the purposes and functions enumerated in Title I, Subtitle B Section 126 of the Rehabilitation Act Amendments of 1992. Members of the advisory council shall be appointed by the Governor from recommendations submitted by the Department for the Blind consistent with the federal mandate to include a majority of individuals who are blind or visually impaired representing specified organizations, service providers, and advocacy groups. The composition, qualifications, and terms of service of the advisory council shall conform to those prescribed by the federal law. There shall be statewide representation on the council.
 - (b) Each member of the Department for the Blind Advisory Council may receive a per diem of one hundred dollars (\$100), not to exceed six hundred dollars (\$600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Kentucky Department for the Blind Advisory Council. The per diem and expenses shall be paid out of the federal funds appropriated under Title I part A of the Rehabilitation Act Amendments of 1992, Pub. L. 102-569.
- (5) The department shall establish and implement policies and procedures for the carrying out of the program of services for the blind.
- (6) At the close of each biennium, the department shall prepare a financial report and present it to the secretary of the Cabinet for Workforce Development and to the Governor. The biennial report shall be published. The biennial report shall also contain a precise review of the work of the department and contain necessary suggestions for improvement.

- (7) The department shall coordinate its functions with other appropriate public and private agencies.
- (8) The department shall perform all other duties as required of it by law.
- (9) The commissioner shall hire personnel as necessary to carry out the work of the department and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons. Hiring and promotional personnel practices shall not be discriminatory because of age, sex, race, disability, or national origin. Department employees shall receive compensation and travel expenses as allowed other employees of the Commonwealth.
- (10) There shall be created under the authority of the department, to be directed by the commissioner, a Division of Client Services which shall provide intake and rehabilitation counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, independent living, and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.
- (11) There shall be established under the authority of the department to be directed by the commissioner, a Division of Business Enterprises. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the department shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The Department for the Blind shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.
- (12) There shall be established under authority of the department, to be directed by the commissioner, a Division of Industries for the Blind which shall provide industrial evaluation, training, and employment. Emphasis shall be on placement in public employment and long-term sheltered employment at industries for the blind. The Division of Industries for the Blind shall be abolished, effective July 1, 2000. The department, at all times, shall be authorized to provide industrial evaluation, training, and employment.
- (13) The department shall provide staff services which shall include fiscal management, staff development and training, program development and evaluation, public information office, and other staff services as may be deemed necessary.
- (14) ***The provisions of any other statute notwithstanding, the commissioner is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.***

Approved March 10, 1998

CHAPTER 34**(SCR 2)**

A CONCURRENT RESOLUTION requesting the Legislative Research Commission to reestablish the Subcommittee on Veterans' Affairs.

WHEREAS, Kentucky's veterans have many concerns meriting legislative attention; and

WHEREAS, the present committee structure of the Kentucky General Assembly does not allow proper attention to be paid to these concerns; and

WHEREAS, the Subcommittee to Study Problems of Vietnam Veterans in Kentucky requested the Legislative Research Commission to establish a permanent committee on veterans' affairs; and

WHEREAS, Kentucky owes its veterans a debt of gratitude for service in defense of their country;

NOW, THEREFORE,

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

Section 1. The Kentucky Legislative Research Commission is requested to establish a Subcommittee on Veterans' Affairs to operate during the 1998-99 interim and present recommendations to the Kentucky General Assembly.

Section 2. It is recommended that this subcommittee be appointed by the Legislative Research Commission.

Approved March 10, 1998

CHAPTER 35**(HB 58)**

AN ACT relating to sales tax.

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

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;

- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities; ~~;~~
- (16) Gasoline, special fuels, ~~and~~ liquefied petroleum gas, **and natural gas** used to ~~operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection~~:
 - (a) **Operate farm machinery as defined in subsection (11) of this section** ~~Gasoline" is defined as in KRS 138.210(4)~~;
 - (b) **Operate on-farm grain or soybean drying facilities as defined in subsection (14) of this section** ~~"Special fuels" is defined as in KRS 138.560(3)~~;
 - (c) **Operate on-farm chicken or livestock facilities defined in subsection (15) of this section** ~~"Liquefied petroleum gas" is defined as in KRS 234.100(1); and~~
 - (d) **Operate on-farm ratite facilities defined in subsection (24) of this section; or**
 - (e) **Operate on-farm llama or alpaca facilities as defined in subsection (26) of this section** ~~"Agricultural purposes" is defined as in KRS 138.343(4)~~;
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;

- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; *and*
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000; and
- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; *and*
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000.

Section 2. The amendment contained in Section 1 of this Act shall apply retroactively to sales made on or after January 1, 1997.

Approved March 11, 1998

CHAPTER 36

(HB 201)

AN ACT relating to joint sewer agencies.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 76 IS CREATED TO READ AS FOLLOWS:

- (1) *A city of the third to sixth class together with the county in which it is located or together with the sanitation district, or any city of the second class together with the county in which it is located or together with the sanitation district, as an alternative to establishing a metropolitan sewer district under KRS 76.010, may jointly establish a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county or within the city and the sanitation district.*
- (2) *In order to establish a joint sewer agency under this section, the legislative body of the city, the fiscal court of the county, or the governing body of the sanitation district may vote to merge any existing agency or sanitation district or any portion thereof into the jointly established sewer agency or into an existing city or county sewer agency. If the legislative body of the city, fiscal court of the county, or governing body of the sanitation district determines to merge an existing agency or sanitation district into the joint sewer agency, it shall determine a method to satisfy any legal obligations of the existing agency or sanitation district which might be affected.*
- (3) *A joint sewer agency shall be established upon the enactment of identical agreements establishing and setting out the powers of the sewer agency by all parties establishing the joint sewer agency. Any agreement enacted by a city or county shall be by ordinance. Any agreement enacted by a sanitation district shall be done in the same manner as any other official actions taken by the sanitation district.*
- (4) *All the powers granted a metropolitan sewer district and cities of the first class by KRS 76.010 to 76.279 may be granted by ordinance to the joint sewer agency except that such powers may be restricted or qualified in order to conform to the local needs of the county, city, and sanitation district.*
- (5) *The joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator, joint board, or one of the merging entities, as set out in the ordinance creating the joint sewer agency.*
- (6) *The joint sewer agency may be dissolved only by adoption of an ordinance of the legislative body of the city and the fiscal court of the county. The ordinance creating the joint sewer agency shall be amended in the same manner as originally enacted.*
- (7) *The legislative body of any city of the third to sixth class may by ordinance elect to be within the jurisdiction of a joint sewer agency established pursuant to this section.*

Section 2. KRS 76.233 is amended to read as follows:

Any city of the second *to sixth* class and the county in which it is located which have established a joint sewer agency pursuant to KRS 76.231 may authorize the issuance of revenue bonds pursuant to the procedure set out in KRS 76.150 and 76.160.

Approved March 11, 1998

CHAPTER 37

(HB 202)

AN ACT relating to sanitation districts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

- (1) *Following a public hearing as provided in subsection (2) of this section, the fiscal court may alter the boundaries of a sanitation district by reducing its area or may dissolve a sanitation district if that sanitation district has for a period of two (2) consecutive years failed to provide the services for which it was established, or if all or a portion of its services can be or have been provided by some other entity. If the sanitation district is located in more than one (1) county, the fiscal court of each county containing a portion of the sanitation district shall vote to dissolve the sanitation district before the dissolution may take effect.*
- (2) *The fiscal court shall schedule a public hearing on the issue of alteration or dissolution and advertise the hearing as provided in KRS 424.130.*

- (3) *At the hearing, the fiscal court shall consider testimony offered at the hearing and any other relevant information including, but not limited to, the following:*
- (a) *Present and projected need for the service by the sanitation district;*
 - (b) *Population density of the sanitation district;*
 - (c) *Existence of alternate providers of services;*
 - (d) *Revenue base of the sanitation district, including but not limited to, assessed valuation, bonding capacity, and user fees; and*
 - (e) *Consequences of alteration of the sanitation district's boundaries on the effectiveness and efficiency of the sanitation district.*
- (4) (a) *If the fiscal court determines to dissolve a sanitation district, it shall determine a method to satisfy any legal obligations of the sanitation district that might be affected. Upon satisfaction of its legal obligations, the sanitation district shall be legally dissolved. Any special ad valorem tax imposed by the sanitation district shall be removed from the tax rolls by the county clerk, and any assets of the sanitation district shall be assumed by the county or otherwise transferred by contract to another entity for the purpose of providing service within the area of the sanitation district before dissolution.*
- (b) *If the fiscal court determines to alter the boundaries of the sanitation district, it shall draw the new boundaries of the sanitation district and determine the proportional amount of existing legal obligations of the area that is to be excluded from the sanitation district. Upon satisfaction of the obligations, the new boundaries of the sanitation district shall be legally effective and the affected taxpayers shall be removed from the tax rolls of the sanitation district.*
- (5) *The dissolution procedure described in this section shall provide a means of dissolution of a sanitation district in addition to the dissolution procedure contained in KRS 65.166.*

Section 2. KRS 220.110 is amended to read as follows:

- (1) If no suit is filed against the commissioner under KRS 220.100, or if suit is filed and final judgment in the Circuit Court or an appeal is in favor of the commissioner, the commissioner shall forthwith declare the district organized into a sanitation district and give it a corporate name, as provided in KRS 220.050, by which in all proceedings it shall thereafter be known. The commissioner shall certify his act to the county clerk of each county in which any part of the district is located, and to the Secretary of State, each of whom shall record the certificate as articles of incorporation. The commissioner shall also certify his act to the county judge/executive of each county in which any part of the district is located. The district shall then be a political subdivision ~~and shall have perpetual existence~~, except as otherwise specifically provided in KRS 220.530, with power to sue and be sued, contract and be contracted with, incur liabilities and obligations, exercise the right of eminent domain, assess, tax, and contract for rentals as herein provided, issue bonds, and do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purpose for which the district was created, and for executing the powers with which it is invested.
- (2) The board of directors of the district may amend the corporate name of the district, but the amendment shall not be effective until certified by the board to the commissioner, the county clerk and county judge/executive of each county in which any part of the district is located, and to the Secretary of State.

Approved March 11, 1998

CHAPTER 38

(HB 287)

AN ACT relating to administrative regulations.

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

Section 1. KRS 13A.015 is amended to read as follows:

- (1) Except as provided by subsection (6)~~(5)~~ of this section, prior to the promulgation of an administrative regulation, an administrative body shall, *for each administrative regulation it intends to promulgate:*

- (a) *File with the regulations compiler the original and five (5) copies, and, if available, an electronic version of* ~~Publish~~ a notice of its intent to promulgate an administrative regulation *for publication* in the administrative register; and
 - (b) Hold a public hearing and receive oral or written comments on the proposed administrative regulation as provided by this section.
- (2) *Prior to filing a notice of intent to promulgate a new administrative regulation, an administrative body shall obtain from the regulations compiler a number for the new administrative regulation.*
- (3) The notice of intent ~~published in the Administrative Register~~ shall include:
- (a) A statement that the administrative body intends to promulgate an administrative regulation;
 - (b) The *number and the* specific subject matter of the proposed administrative regulation;
 - (c) A statement that the administrative body will hold a public hearing if a public hearing is requested at least ten (10) *calendar* days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members, provided that a minimum of five (5) persons, *or one (1) person representing an administrative body or association*, agree to be present at the public hearing:
 1. No sooner than the twenty-first day nor later than the last workday of the month in which the notice of intent to promulgate is published in the Administrative Register;
 2. At which it will accept oral and written comments from any interested person;
 - (d) The *name, address, telephone number, and facsimile number to whom* ~~which~~ the written request for a public hearing and written comments shall be sent;
 - (e) The date, time, and place of the public hearing;
 - (f) The following information relating to the proposed administrative regulation:
 1. The statutory authority for the administrative regulation;
 2. A summary of the administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;
 3. A statement *setting forth the necessity for promulgating the administrative regulation, and a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b)* ~~of the need for, and the function of, the administrative regulation~~;
 4. A statement of the benefits expected from the administrative regulation; and
 5. How the administrative regulation will be implemented.
- ~~(4)(3)~~ (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified of the intent of the administrative body to promulgate an administrative regulation.
- (b) A copy of the notice of intent shall be mailed:
1. To every person who has filed this form;
 2. On the date the notice is published in the Administrative Register.
- ~~(5)(4)~~ (a) An administrative body shall file the *original and five (5) copies of the* notice of its intent to promulgate an administrative regulation with the regulations compiler.
- (b) The date a notice of intent to promulgate an administrative regulation is published in the Administrative Register shall be governed by the provisions of KRS 13A.050(3) and 13A.150.
- (c) *A notice of intent shall be typewritten on white paper, size eight and one-half (8.5) by eleven (11) inches, and single-spaced. The first page shall have a two (2) inch top margin, and one (1) inch side and bottom margins. Subsequent pages shall have one (1) inch top, bottom, and side margins. The notice of intent shall be typed in a twelve (12) point font approved by the regulations compiler.* ~~The Commission may prescribe the format for the notice of intent.~~

- (6){(5)} (a) A notice of intent shall not be filed for an emergency administrative regulation that will not be replaced by an ordinary administrative regulation.
- (b) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the notice of intent for the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that will be replaced.

(7) ***If a notice of intent to promulgate an administrative regulation has been filed, a subsequent notice of intent on the same administrative regulation shall not be filed unless the first notice of intent has been withdrawn.***

Section 2. KRS 13A.017 is amended to read as follows:

(1) ***If an administrative body cancels a notice-of-intent public hearing because it has not received a request for a notice-of-intent public hearing pursuant to subsection (3) of Section 1 of this Act, the administrative body shall immediately notify the regulations compiler in writing and by telephone that it has canceled the notice-of-intent public hearing.***

(2) Following a public hearing on a proposed administrative regulation held pursuant to the provisions of KRS 13A.015, the administrative body shall give consideration to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing.

(3){(2)} The administrative body shall file with the Commission within forty-five (45) days following the date the public hearing was scheduled, a statement:

- (a) Identifying the persons who submitted written comments, or attended the public hearing; and
- (b) Containing a summary of the:
1. Comments received or made at the public hearing; and
 2. Its response to the comments.

(4){(3)} The administrative body shall provide a copy of the summary to any person who attended the public hearing and requested that a copy of the summary be provided.

(5){(4)} The regulations compiler shall transmit a copy of the summary to a legislator upon request.

(6){(5)} If the administrative body promulgates an administrative regulation that was the subject of a public hearing required under the provisions of this section and KRS 13A.015, the regulations compiler shall transmit a copy of the summary to a legislator upon request.

(7){(6)} The administrative body shall provide a copy of the summary to persons who attended the public hearing and requested that a copy of the summary be provided.

(8){(7)} If an administrative body determines that it will file an administrative regulation, it shall file the administrative regulation for which a notice of intent was filed within ***one hundred twenty (120) calendar***~~one hundred eighty (180)~~ days of the date on which the notice-of-intent public hearing was scheduled. ***Except as provided by subsection (10) of this section, if an administrative regulation is not filed within one hundred twenty (120) calendar days of the date on which the notice-of-intent public hearing was scheduled, the notice of intent shall expire.***

(9){(8)} If the administrative body determines that it will not file an ordinary administrative regulation for which a notice of intent was filed, it shall notify the regulations compiler of its determination, in writing, within ***one hundred twenty (120) calendar***~~one hundred eighty (180)~~ days of the date on which the notice-of-intent public hearing was scheduled.

(10) (a) ***A notice of intent filed prior to July 15, 1996, for which an administrative regulation has not been filed, shall expire on the effective date of this Act.***

(b) ***Except as provided by paragraph (a) of this subsection, a notice of intent filed prior to the effective date of this Act, for which an administrative regulation has not been filed, shall expire one hundred eighty (180) calendar days following the date on which the notice-of-intent public hearing was scheduled.***

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

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

- (1) Receive administrative regulations, and other documents required to be filed by the provisions of this chapter, tendered for filing;
- (2) Stamp administrative regulations tendered for filing with the time and date of receipt;
- (3) Provide administrative and support services to the subcommittee;
- (4) Maintain a file of administrative regulations and other documents required to be filed by this chapter, for public inspection, with suitable indexes;
- (5) Maintain a file of ineffective administrative regulations;
- (6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;
- (7) Prepare the Kentucky Administrative Regulations Service;
- (8) Upon request, certify copies of administrative regulations and other documents that have been filed with the regulations compiler;
- (9) Correct errors that do not change the substance of an administrative regulation, including, but not limited to, typographical errors, errors in format, and grammatical errors;
- (10) Refuse to accept for filing administrative regulations, and other documents required to be filed by this chapter, that do not conform to the *drafting, format, or filing requirements established by the* provisions of KRS *Chapter 13A* ~~[13A.222 and 13A.224]~~, and notify the administrative body in writing of the reasons for refusing to accept an administrative regulation for filing; and
- (11) Perform other duties required by the Commission or by a subcommittee.

Section 4. KRS 13A.220 is amended to read as follows:

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

- (1) An administrative body shall file *with the regulations compiler*:
 - (a) The original and five (5) copies of an administrative regulation; *and*
 - (b) *At the same time the original and five (5) copies are filed, an electronic version, if available, of the administrative regulation and required attachments on a diskette or by e-mail in an electronic format approved by* ~~with~~ the regulations compiler.
- (2) The original and each copy of each administrative regulation shall be stapled in the top left corner. The original and the five (5) copies of each administrative regulation shall be grouped together.
- ~~(3)(2)~~ An amendment to an administrative regulation shall not be made on a copy of the administrative regulation reproduced from the Kentucky Administrative Regulations Service or the Administrative Register. It shall be a typed original in the format specified in subsection ~~(4)(3)~~ of this section.
- ~~(4)(3)~~ The format of an administrative regulation shall be as follows:
 - (a) An administrative regulation shall be typewritten on white paper, size eight and one-half (8.5) by eleven (11) inches and shall be double-spaced. *The first page shall have a two (2) inch top margin, and one (1) inch side and bottom margins. Subsequent pages shall have one (1) inch top, bottom, and side margins.* The administrative regulation shall be typed in ~~a~~ ~~Times Roman~~ twelve (12) point ~~or an equivalent~~ font approved by the regulations compiler. The lines on each page shall be numbered, with twenty-three (23) lines to a page. Pages of an administrative regulation and documents attached to the administrative regulation shall be numbered sequentially. *Page numbers shall be centered in the bottom margin of each page.* Copies of the administrative regulation may be mechanically reproduced;
 - (b) ~~[A space no smaller than four (4) inches wide by two (2) inches long in the upper right hand corner shall be left blank for]~~The regulations *compiler shall place a* ~~compiler's~~ stamp indicating the date and time of receipt of the administrative regulation *in the two (2) inch margin on the first page*;
 - (c) The cabinet, department, and division of the administrative body shall be listed on separate ~~double-spaced~~ ~~single spaced~~ lines two (2) inches from the top in the upper left hand corner of the first page. This shall be followed *on the next double-spaced line* by "(Amendment)" or "(Amended After

Hearing)," whichever is applicable. If an administrative regulation is new, the notation shall read "(New Administrative Regulation)";

- (d) The notation shall be followed by the number and title of the administrative regulation *on the next double-spaced* line. ~~The line on which the number and title appear shall begin two (2) lines below the notation.~~ The promulgating administrative body shall contact the regulations compiler prior to filing to obtain an administrative regulation number for a new administrative regulation;
 - (e) *On the next double-spaced line* ~~Two (2) lines~~ following the number and title of an administrative regulation, after the words "RELATES TO:," the administrative body shall list all statutes and other enactments, including any branch budget bills or executive orders, to which the administrative regulation relates or which shall be affected by the administrative regulation. After the words "STATUTORY AUTHORITY:" the administrative body shall list the specific statutes and other enactments, where applicable, authorizing the promulgation of the administrative regulation. Federal statutes and regulations shall be cited in the "RELATES TO:" and "STATUTORY AUTHORITY:" sections as provided by KRS 13A.2261, 13A.2264, 13A.2267; and
 - (f) Following the citations provided for in paragraph (e) of this subsection, and following the words "NECESSITY, FUNCTION, AND CONFORMITY:" the administrative body shall include a brief statement setting forth the necessity for promulgating the administrative regulation, a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b).
- (5)~~(4)~~ The numbering within the body of an administrative regulation shall be the responsibility of the promulgating body, subject to the authority of the regulations compiler to divide or renumber an administrative regulation. The following format shall be used by the administrative body in the numbering of each administrative regulation. Each section shall begin with the word "Section" followed by an arabic number, and titles of sections shall be initially capitalized. Subsections shall be designated by an arabic number in parentheses. Paragraphs shall be designated by lower case letters of the alphabet in parentheses, (e.g., (a), (b), (c), etc.). Subparagraphs shall be designated by an arabic number followed by a period, (e.g., 1., 2., etc.). Sub-subparagraphs shall be designated by lower case letters of the alphabet followed by a period, (e.g., a., b., c., etc.).
- (6)~~(5)~~ After the complete text of an administrative regulation, the administrative body shall include the following information:
- (a) If the provisions of KRS 13A.120(3) are applicable, a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the signature of such official or head; and the date on which such review or approval occurred.
 - (b) The authorizing signature of the administrative body promulgating the administrative regulation, and the date on which the administrative body approved the promulgation;
 - (c) The signature of an attorney certifying that he has examined and approved the administrative regulation as to form;
 - (d) Information relating to public hearings as required by KRS 13A.160 and 13A.270.
 - (e) The name, position, address, telephone number, and facsimile number of the contact person of the administrative body. The contact person shall be the person authorized by the head of an administrative body to:
 1. Receive information relating to issues raised by the public or by a subcommittee prior to a public meeting of the subcommittee;
 2. Negotiate changes in language with a subcommittee in order to resolve such issues; and
 3. Answer questions relating to the administrative regulation.
- (7) *The format for signatures required by paragraphs (a) to (c) of subsection (6) of this section shall be as follows:*
- (a) *The signature shall be placed on a signature line; and*
 - (b) *The name and title of the person signing shall be typed immediately beneath the signature line.*

Section 5. KRS 13A.2251 is amended to read as follows:

- (1) An administrative *body shall incorporate material by reference in the last section of an administrative regulation. This section*~~[incorporating material by reference]~~ shall include:
 - (a) The title and edition of the material incorporated by reference placed in quotation marks;
 - (b) Information on how the material may be obtained; and
 - (c) A statement that the material is available for public inspection and copying, subject to copyright law, at the main, regional, or branch offices of the administrative body, and the address and office hours of each.

~~[The information required by this subsection shall appear in the section of an administrative regulation that incorporates the material by reference.]~~
- (2) *The section incorporating material by reference shall be titled "Incorporation by Reference".*
 - (a) *If only one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "(name and edition date of material incorporated) is incorporated by reference."*
 - (b) *If more than one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "The following material is incorporated by reference: (a) (name and edition date of first item incorporated); and (b) (name and edition date of second item incorporated)."*
 - (c) *The second subsection of the section incorporating material by reference shall include the following statement: "This material may be inspected, copied, or obtained at (name of agency, full address), Monday through Friday, 8:00 a.m. to 4:30 p.m."*
- (3) A summary of the incorporated material, in detail sufficient to identify the subject matter to which it pertains, shall be attached to an administrative regulation that incorporates material by reference. This summary shall include:
 - (a) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material and the manner in which they are affected;
 - (b) A citation of the specific state or federal statutes or regulations authorizing or requiring the procedure or policy found in the material incorporated by reference; and
 - (c) The total number of pages incorporated by reference.
- ~~(4)(3)~~
 - (a) One (1) copy of the material incorporated by reference shall be filed with the regulations compiler when the administrative regulation is filed.
 - (b) Material incorporated by reference shall be placed in a binder. The administrative body shall stamp or type, on the front binder cover and on the first page of the material incorporated by reference, the number of the administrative regulation to which material incorporated by reference pertains, the date on which it is filed, and the citation of each item that is included in the binder.
 - (c) If the same material is incorporated by reference in more than one (1) administrative regulation, an administrative body may file one (1) copy of the material in a binder. The numbers of the administrative regulations in which the material is incorporated by reference shall be stamped or typed on the:
 1. Front binder cover; and
 2. First page of the material incorporated by reference.

Section 6. KRS 13A.280 is amended to read as follows:

- (1) Following the scheduled hearing date, the administrative body shall give consideration to all written and oral comments received by adjournment of the scheduled public hearing, *or by the close of business on the scheduled public hearing date if the public hearing was not held*~~[whether received at the hearing or otherwise, regarding the administrative regulation]~~.

- (2) The administrative body shall then file with the commission on or before 12 noon, eastern time, on the fifteenth day following the scheduled hearing date the statement of consideration relating to the administrative regulation.
- (3)
 - (a) Except as provided by paragraph (b) of this subsection, if the administrative regulation is amended as a result of the hearing or written or oral comments received, the administrative body shall forward the items specified in paragraph (c) of this subsection to the regulations compiler by noon on the fifteenth day following the hearing.
 - (b) If an administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration for up to thirty (30) days by notifying the Commission in writing on or before 12 noon of the fifteenth day following the public hearing. The administrative body shall file with the Commission on or before 12 noon, eastern time, no later than the forty-fifth day following the public hearing date the items specified in paragraph (c) of this subsection.
 - (c)
 1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from the hearing, or resulting from written or oral comments received at the hearing or otherwise;
 2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and
 3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.
- (4) The format for the statement of consideration shall be as follows:
 - (a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;
 - (b) A space no smaller than two (2) by three (3) inches in the upper right hand corner shall be left blank for the regulations compiler's stamp indicating the date and time of receipt of the statement;
 - (c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and the name of the promulgating administrative body. The heading shall be centered three (3) inches from the top of the first page. This shall be followed by the words "Not Amended After Hearing" or "Amended After Hearing," whichever is applicable;
 - (d) If a hearing has been held the heading is to be followed by:
 1. A statement setting out the date, time and place of the hearing;
 2. A list of those attending the hearing and the organization, agency, or other entity represented, if applicable; and
 3. The name and title of the representative of the promulgating administrative body;
 - (e) If a hearing has not been held, but written or oral comments have been received:
 1. A list of those who have submitted written or oral comments and the organization, agency, or other entity represented, if applicable; and
 2. The name and title of the representative of the promulgating administrative body responding to the written or oral comments;
 - (f) Following the general information, the promulgating administrative body shall summarize the written and oral comments received and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
 1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and

2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;
- (g) Following the summary and comments, the promulgating administrative body shall summarize the statement and the action taken by the administrative body as a result of the public hearing;
- (h) If the promulgating administrative body amends the administrative regulation after a public hearing at which there were no participants other than administrative body personnel, this fact shall be noted in the statement; and
- (i) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.
- (5) (a) If the administrative regulation is not amended as a result of the public hearing, or written or oral comments received, the administrative body shall file the original and five (5) copies of the statement of consideration as required by subsection (2) of this section with the regulations compiler by noon on the fifteenth day following the hearing.
- (b) If the statement of consideration is not forwarded to the regulations compiler at least *ten (10)*~~five (5)~~ working days prior to a meeting of the Administrative Regulation Review Subcommittee, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
- (6) If the administrative regulation is amended pursuant to subsection (3) of this section the full text of the administrative regulation shall be published in the Administrative Register. The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
- (7) If requested, copies of the statement of consideration shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments.

Section 7. KRS 13A.310 is amended to read as follows:

- (1) An administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.
- (2) An administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.
- (3) (a) An administrative regulation shall be repealed only by the promulgation of an administrative regulation that:
 1. Is titled "Repeal of (state number of administrative regulation to be repealed)"; and
 2. Contains the reasons for repeal in the "NECESSITY AND FUNCTION" paragraph.
- (b) On the effective date of an administrative regulation that repeals an administrative regulation, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.
- (c) An administrative body may repeal more than one (1) administrative regulation in an administrative regulation promulgated pursuant to paragraph (a) of this subsection if the administrative regulations being repealed are contained in the same chapter of the Kentucky Administrative Regulations Service.
- (4) An ordinary administrative regulation may be withdrawn by the promulgating agency at any time prior to its adoption. *An ordinary administrative regulation that has been found deficient may be withdrawn by the promulgating agency at any time prior to receipt by the regulations compiler of the determination of the Governor made pursuant to Section 8 of this Act.* If an ordinary administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (5) Once an ordinary administrative regulation is withdrawn it shall not be reinstated, except by repromulgation as a totally new matter.

Section 8. KRS 13A.330 is amended to read as follows:

- (1) An administrative regulation that has not been found deficient by a legislative subcommittee shall be considered as adopted and shall become effective:
- (a) Upon adjournment on the day a subcommittee meets to consider the administrative regulation pursuant to KRS 13A.290(7) if:
 1. The administrative regulation is on the agenda of the subcommittee meeting;
 2. A quorum of the subcommittee is present; and
 3. The subcommittee:
 - a. Considers the administrative regulation; or
 - b. Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; or
 - (b) If a subcommittee fails to meet within thirty (30) days of assignment of an administrative regulation as provided in KRS 13A.290(7), or does not place the administrative regulation on the agenda of a meeting held within thirty (30) days of the referral of the administrative regulation to it by the Commission, at the expiration of the thirty (30) day period.
- (2) If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit to the Governor:
- (a) A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and
 - (b) A request that the Governor determine whether the administrative regulation shall:
 1. Be withdrawn;
 2. Be withdrawn and amended to conform to the finding of deficiency; or
 3. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.
- (3) *If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit copies of its transmittal to the Governor to the regulations compiler.*
- (4) The Governor shall transmit his determination to the Commission and the regulations compiler.
- (5)~~(4)~~ An administrative regulation that has been found deficient by a legislative subcommittee shall be considered as adopted and become effective after:
- (a) The subcommittee of appropriate jurisdiction to which an administrative regulation was assigned pursuant to KRS 13A.290(6) has:
 1. Reviewed the administrative regulation; or
 2. Failed to meet within thirty (30) days of such assignment; and
 - (b) The regulations compiler has received the Governor's determination pursuant to this section; *or*
 - (c) *The legislative subcommittee that found the administrative regulation deficient subsequently determines that the administrative regulation is not deficient, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.*

Section 9. KRS 13A.010 is amended to read as follows:

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

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

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

- (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public; or
 - (b) Declaratory rulings; or
 - (c) Intradepartmental memoranda not in conflict with KRS 13A.130; or
 - (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
 - (e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;
- (3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;
 - (4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;
 - (5) "Commission" means the Legislative Research Commission;
 - (6) "Economic impact" means a financial impact on:
 - (a) Commercial enterprises;
 - (b) Retail businesses;
 - (c) Service businesses;
 - (d) Industry;
 - (e) Consumers of a product or service; or
 - (f) Taxpayers;
 - (7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290 and 13A.330;
 - (8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
 - (9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
 - (10) "Filed" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;
 - (11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A;
 - (12) "Proposed administrative regulation," except as provided by KRS 13A.015(6)~~(5)~~, means an administrative regulation that an administrative body proposes to promulgate;
 - (13) "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
 - (14) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;
 - (15) "Subcommittee" includes the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, a standing committee of the General Assembly, or a House and Senate standing committee meeting jointly; and

- (16) "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

Section 10. KRS 13A.320 is amended to read as follows:

- (1) (a) An administrative body may amend an administrative regulation at a subcommittee meeting with the consent of the subcommittee. A subcommittee may amend an administrative regulation at a subcommittee meeting with the consent of the administrative body.
- (b) An administrative regulation shall not be amended at a public meeting of a subcommittee unless the amendment concerns an issue that was related to the administrative regulation filed with the Legislative Research Commission and was:
1. Considered at the public hearing; or
 2. Raised pursuant to a written comment received by the administrative body pursuant to KRS 13A.280(1); or
 3. Raised by the subcommittee.
- (c) Nothing in this chapter shall be construed to require its resubmission or refiling or other action. The administrative regulation may be adopted as amended.
- (d) Subsequent to its adoption, the administrative regulation shall be published in the Administrative Register, unless all amendments to the administrative regulation that were made at a meeting of a subcommittee:
1. Relate only to the format and drafting requirements of KRS 13A.220(5)~~{(4)}~~ and 13A.222(4)(b), (c), (i), (j), and (k); and
 2. Do not alter the intent, meaning, conditions, standards, or other requirements of the administrative regulation.
- (e) If the amendments to an administrative regulation made at a meeting of a subcommittee meet the requirements of paragraph (d) of this subsection, the regulations compiler shall publish a notice in the Administrative Register that the administrative regulation was amended at a subcommittee meeting only to comply with the format and drafting requirements of this chapter.
- (2) When an administrative body intends to amend an administrative regulation at a meeting of the subcommittee, the following requirements shall be met:
- (a) Amendments offered by the administrative body to resolve issues raised by a subcommittee prior to its meeting shall be approved by the head of the administrative body.
- (b) Amendments initiated by the administrative body shall be contained in a letter to the subcommittee. The letter shall:
1. Identify the administrative body;
 2. State the number and title of the administrative regulation;
 3. Be dated;
 4. Be filed with the regulations compiler at least five (5) workdays prior to the meeting of the subcommittee; and
 5. Comply with the format requirements in paragraphs (c) and (d) of this subsection.
- (c) On separate lines, the amendment shall be identified by the number of the:
1. Page;
 2. Section, subsection, paragraph, subparagraph, as appropriate; and
 3. Line.
- (d) 1. If a word or phrase, whether or not underlined, is to be deleted, the amendment shall identify the word or phrase to be deleted and state that it is to be deleted. If a word or phrase is to be replaced by another word or phrase, the amendment shall specify the word or phrase that is to be deleted and shall specify the word or phrase that is to be inserted in lieu thereof.

2. If new language is to be inserted, the amendment shall state that it is to be inserted, and the new language shall be underlined.
 3. If the amendment consists of no more than four (4) words, the words shall be placed between quotation marks. If the amendment consists of more than four (4) words, the amendment shall be indented and not placed between quotation marks.
 4. If a section, subsection, paragraph, subparagraph, clause, or subclause is to be deleted in its entirety, the amendment shall identify it and state that it is deleted in its entirety, whether or not it contains underlined or bracketed language.
- (3) An administrative body shall submit twenty (20) copies of an amendment to an administrative regulation to the regulations compiler prior to the subcommittee meeting at which the amendment will be considered.

Section 11. KRS 13A.2264 is amended to read as follows:

- (1) A federal regulation shall not be incorporated by reference or adopted without change if it:
 - (a) Requires an administrative body to establish specific or minimum procedures, standards, conditions, restrictions, forms or fees; or
 - (b) Permits the administrative body to impose procedures, standards, conditions, restrictions, forms or fees that are stricter than, in addition to, or alternatives to those required by the federal regulation.
- (2) The administrative body shall promulgate an administrative regulation complying with the federal requirements.
- (3) The federal regulation shall be cited in the "RELATES TO" and "STATUTORY AUTHORITY" sections of the administrative regulation promulgated by the administrative body.
- (4) The administrative body shall submit a copy of the federal regulation with the administrative regulation in a binder as provided in KRS 13A.2251(4)~~(3)~~.
- (5) If the administrative body imposes procedures, standards, conditions, restrictions, forms, or fees that are stricter than, in addition to, or alternatives to those required by the federal regulation, it shall attach a summary of its action.

Section 12. KRS 13A.2267 is amended to read as follows:

- (1) A federal regulation shall not be incorporated by reference if it:
 - (a) Imposes specific procedures, standards, conditions, restrictions, forms, or fees on regulated entities;
 - (b) Does not require or permit the administrative body to alter the specified procedures, standards, conditions, restrictions, forms, or fees, or to select among alternatives; and
 - (c) Requires the administrative body to implement or to enforce such procedures, standards, conditions, restrictions, forms, or fees.
- (2) The federal regulation shall be adopted without change and shall be cited in the "RELATES TO" and "STATUTORY AUTHORITY" sections of the administrative regulation.
- (3) In a separate section, an administrative regulation shall include a citation of the federal regulation, the effective date of the federal regulation and a statement that the subject matter of the administrative regulation is governed by that federal regulation.
- (4) The administrative body shall submit a copy of the federal regulation with the administrative regulation in a binder as provided in KRS 13A.2251(4)~~(3)~~.
- (5) The administrative body shall attach to the administrative regulation a summary of the federal regulation that is adopted without change.

- (6) If the federal regulation is amended, the citation of the effective date of the federal regulation shall be amended. The administrative body shall attach to the administrative regulation a summary of the federal regulation, as amended. The administrative body shall submit a copy of the federal regulation, as amended, with the administrative regulation in a binder as provided in KRS 13A.2251(4)~~(3)~~.

Approved March 11, 1998

CHAPTER 39

(HB 383)

AN ACT relating to the Auditor of Public Accounts.

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

Section 1. KRS 43.030 is amended to read as follows:

- (1) The Auditor shall appoint for the duration of his own term, subject to removal by him at any time, one (1) assistant auditor of public accounts, who shall be a certified public accountant and who has been a citizen and resident of the state for at least two (2) years. The assistant auditor shall have direct supervision over all technical work and technical assistants, and shall otherwise aid the Auditor in the performance of his duties. If the Auditor is absent or is rendered incapable of performing his duties, or if a vacancy in the office occurs, the assistant auditor shall perform the duties of Auditor until the necessity therefor ceases to exist. He shall take the constitutional oath.
- (2) The Auditor may employ other subordinate personnel subject to the provisions of KRS 12.060. All employees engaged in auditing or investigations shall possess a minimum of a four (4) year college degree. ~~No~~~~and no~~ less than ninety percent (90%) of *all employees engaged in financial auditing or financial investigations*~~the professional staff~~ shall have twenty (20) semester hours or thirty (30) quarter hours of accounting, or alternately, shall be a certified public accountant. Not more than two (2) persons charged with the conduct of audits and investigations may substitute year-for-year responsible experience acceptable to the Department of Personnel for the required college education and accounting hours.
- (3) The Auditor and his sureties are liable on his official bond for the acts of the assistant auditor and clerks.
- (4) Nothing in this section shall be deemed to affect the provisions of KRS 11.090 or other legislation authorizing audits.

Section 2. KRS 43.050 is amended to read as follows:

- (1) The Auditor constitutes an agency independent of the administrative departments enumerated in KRS 12.020, it being the policy of the General Assembly to provide for the independent auditing of the accounts,~~and~~ financial transactions, *and performance* of all spending agencies of the state through a disinterested auditor, who is entirely independent of the state administration whose affairs he is called upon to audit.
- (2) The Auditor shall:
 - (a) Audit annually, and at such other times as may be deemed expedient, the accounts of all state agencies, all private and semiprivate agencies receiving state aid or having responsibility for the handling of any state funds, the accounts, records, and transactions of the budget units, and the general accounts of the state.
 - (b) Make a complete audit and verification of all moneys handled for the account of the state government by local officials charged with the collection of fees or other money for or on behalf of the state, when an audit is demanded in writing by the Legislative Research Commission, the secretary of the Finance and Administration Cabinet or the Governor, and may make an audit when it is not so demanded.
 - (c) Examine ~~periodically~~~~annually~~ the *performance*, management, conduct, and condition of all asylums, prisons, institutions for the mentally retarded, and eleemosynary institutions;~~and~~ public works owned, operated, or partly owned by the state, or in the conduct or management of which the state has any financial interest or legal power; *and state agencies.*~~and~~ *The examinations shall give*~~giving~~ special attention to the faithful and economical application of any money appropriated by the state to the institution,~~or~~ public works, *or state agency* examined, or of any money in which the state has an interest.

- (d) Examine annually the management and condition of the offices of the Finance and Administration Cabinet, the State Treasurer, and the chief state school officer, to determine whether the laws regulating their duties are being fully complied with, and all money received by them for the state fully accounted for.
 - (e) Examine, at least biennially, the Finance and Administration Cabinet's compliance with KRS 56.800 to 56.823 and this section, KRS 48.111, and KRS 48.190. Within sixty (60) days of the completion of each examination, the Auditor shall report his findings and recommendations to the Capital Projects and Bond Oversight Committee.
 - (f) Audit periodically all state revenue collections, and, if he finds that collections are not being satisfactorily made, report that fact to the authority whose duty it is to make the collections.
 - (g) Make special audits and investigations when required by the Governor.
 - (h) Investigate the means of accounting for, controlling, and insuring the safe custody of all property of the state, and verify the existence and condition of such property charged to, or held in the custody of any state agency.
 - (i) Audit the statements of financial condition and operations of the state government, examine the estimates of resources available for appropriation and the estimates of receipts prepared for inclusion in each branch budget recommendation, and certify in writing the results of the audit and examination with the comments he deems necessary for the information of the General Assembly, his certificate and comments to be included with the statements and estimates as presented in the branch budget recommendation.
 - (j) Report immediately in writing to the Governor, each member of the Legislative Research Commission, and the secretary of the Finance and Administration Cabinet, any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or other improper practice of financial administration, or evidence that any such handling, expenditure, or practice is contemplated, and any obstruction of the Auditor or his agents during the conduct of any audit or investigation of a state agency.
 - (k) Assist the Legislative Research Commission at hearings and investigations conducted by it and cooperate with the Legislative Research Commission in the preparation of its reports to the General Assembly.
 - (l) Keep accounts showing the costs of his own operations and of each separate audit and investigation made by him, and the accounts he deems necessary to provide a record of warrants of the state outstanding as of the end of each calendar month.
- (3) The Auditor may investigate and examine into the conduct of all state and county officers who are authorized to receive, collect, or disburse any money for the state, or who manage or control any property belonging to the state or in which the state is interested, or who make estimates or records that are used as a basis by any state agency in the disbursement of public funds.
 - (4) The Auditor shall not be responsible for the keeping of any accounts of the state, except accounts relating to his own operations, and records of outstanding warrants. He shall not be responsible for the collection of any money due the state, or for the handling or custody of any state funds or property except in the process of counting and verifying the amounts of the funds or property in the course of the audits provided for in this section.

Section 3. The General Assembly hereby confirms Executive Order APA 97-01, effective May 16, 1997, relating to the reorganization of the Office of the Auditor of Public Accounts and providing that:

- (1) The Offices of Administrative Services and Program Services, and the Divisions of State Audit and County Audits are abolished.
- (2) The Office of the Auditor of Public Accounts shall consist of the following sub-units to which the responsibilities, records, equipment, personnel, and funds of the sub-units abolished in subsection (1) of this section are transferred:
 - (1) The Office of State Auditor, which is retained;

- (2) The Office of Planning and Management, which is created and shall be responsible for fiscal matters, personnel matters, and the production, retention, distribution, and disposition of records and reports of the Auditor of Public Accounts;
- (3) The Office of Quality Assurance and Consultation, which is created and shall be responsible for training and quality control;
- (4) The Division of Financial Audit, which is created and shall be responsible for financial audits and financial investigations;
- (5) The Division of Performance Audit, which is created and shall be responsible for performance audits and performance investigations; and
- (6) The Division of Examination and Information Technology, which is created and shall be responsible for internal technology systems, information system audits, responding to citizens' complaints, and analysis of investments.

Approved March 11, 1998

CHAPTER 40

(HCR 9)

A CONCURRENT RESOLUTION confirming the appointment of Linda Waggener to the Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six (6) at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, on October 16, 1996, the Governor reappointed Linda Waggener to the Board, and the Governor's office has submitted her appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Ms. Waggener meets the age and residency requirements of KRS 7B.030, and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and the Senate do hereby confirm the appointment of Linda Waggener to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2000.

Section 2. That the Clerk of the House of Representatives shall send a copy of this resolution, and notification of its adoption, to Linda Waggener, 122 E. Fortune St., Columbia, Kentucky 42728 and to Governor Paul E. Patton, The Capitol, 700 Capitol Avenue, Frankfort, Kentucky 40601.

Approved March 11, 1998

CHAPTER 41

(HCR 10)

A CONCURRENT RESOLUTION confirming the appointment of Dr. Penny M. Miller to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six (6) at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, On October 16, 1996, the Governor reappointed Dr. Penny M. Miller to the Board, and, the Governor's office has submitted her appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Dr. Miller meets the age and residency requirements of KRS 7B.030, and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and the Senate do hereby confirm the appointment of Dr. Penny M. Miller to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2000.

Section 2. That the Clerk of the House of Representatives shall send a copy of this resolution, and notification of its adoption, to Dr. Penny M. Miller, 1001 Maple Ridge, Lexington, Kentucky 40509 and to Governor Paul E. Patton, The Capitol, 700 Capitol Avenue, Frankfort, Kentucky 40601.

Approved March 11, 1998

CHAPTER 42

(HCR 32)

A CONCURRENT RESOLUTION confirming the appointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six (6) at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on September 11, 1997, the Governor appointed Daniel Hall to the Board, and the Governor's office has submitted his appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Daniel Hall meets the age and residency requirements of KRS 7B.030, and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1999.

Section 2. That the Clerk of the House of Representatives shall send a copy of this resolution, and notification of its adoption, to Mr. Daniel Hall, 2200 Wynnewood Circle, Louisville, Kentucky 40222 and to Governor Paul Patton, The Capitol, 700 Capitol Avenue, Frankfort, Kentucky 40601.

Approved March 11, 1998

CHAPTER 43

(HCR 45)

A CONCURRENT RESOLUTION confirming the appointment of Evelyn Boone to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five (5) at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on October 1, 1997, the Legislative Research Commission appointed Evelyn Boone to the Board, and the Legislative Research Commission has submitted her appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Evelyn Boone meets the age and residency requirements of KRS 7B.030, and has demonstrated an interest in the well-being and development of the Commonwealth, as required by KRS 7B.030;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Evelyn Boone to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2000.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Concurrent Resolution, and notification of its adoption, to the Legislative Research Commission, Capitol, 700 Capitol Avenue, Frankfort, Kentucky 40601, and to Mrs. Evelyn Boone, P.O. Box 308, Elkton, Kentucky 42220.

Approved March 11, 1998

CHAPTER 44

(HCR 46)

A CONCURRENT RESOLUTION confirming the appointment of June Lyne to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five (5) at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on November 6, 1996, the Legislative Research Commission appointed June Lyne to the Board, and the Legislative Research Commission has submitted her appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that June Lyne meets the age and residency requirements of KRS 7B.030, and has demonstrated an interest in the well-being and development of the Commonwealth, as required by KRS 7B.030;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of June Lyne to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 1998.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Concurrent Resolution, and notification of its adoption, to the Legislative Research Commission, Capitol, 700 Capitol Avenue, Frankfort, Kentucky 40601, and to Ms. June Lyne, 10904 Clarksville Road, Olmstead, Kentucky 42265.

Approved March 11, 1998

CHAPTER 45

(SB 155)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 96-1503, dated November 8, 1996, which creates certain organizational units within the Department of Juvenile Justice, Justice Cabinet. The created organizational units are: Office of General Counsel, Division of Administrative Services, Division of Western Region, Division of Central Region, Division of Eastern Region, and Division of Quality Assurance. The executive order also: transfers the Central Kentucky Treatment Center/Division of Youth Services from Justice Administration, Justice Cabinet, to the Division of Central Region, Department of Juvenile Justice; transfers the Breathitt County, Northern Kentucky, and Western Kentucky Secure Juvenile Detention Facilities from the Department of Corrections, Justice Cabinet, to the Department of Juvenile Justice; transfers funding for two (2) juvenile diversion projects from the Department of Corrections to the Department of Juvenile Justice; abolishes the Divisions of Residential Services, Community Services, and Program Support Services within the Department of Juvenile Justice; and abolishes the Division of Youth Services within Justice Administration.

Approved March 11, 1998

CHAPTER 46

(HB 171)

AN ACT relating to radioactive waste.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) *The General Assembly finds:*

(a) *That the Central Midwest Interstate Low-Level Radioactive Waste Compact was enacted by the State of Illinois and the Commonwealth of Kentucky to provide the instrument and framework for a cooperative effort, and to provide sufficient facilities for the proper management of low-level radioactive waste generated within the region, limiting the number of facilities, protecting the health and safety of citizens, and promoting the volume and source reduction of low-level radioactive waste generated in the region, and for other purposes.*

(b) *That it is the responsibility of each party state to the compact to prescribe and enforce penalties against any person who is not an officer of another state for violation of any provision of the compact.*

(2) *It is the purpose of Sections 1 to 6 of this Act to establish a program by which these sections and the provisions of the compact may be implemented and enforced.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the compact requires otherwise:

- (1) *"Commission" means the Central Midwest Interstate Low-Level Radioactive Waste Commission;*
- (2) *"Cabinet" means the Cabinet for Human Resources;*
- (3) *"Compact" means the Central Midwest Interstate Low-Level Radioactive Waste Compact;*
- (4) *"Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose;*
- (5) *"Facility" means a parcel of land or site, together with the structures, equipment, and improvements on, or appurtenant to, the land or site, that is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste;*
- (6) *"Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Federal Atomic Energy Act. This definition shall apply regardless of any declaration by the federal government or any state that any radioactive material is exempt from any regulatory control;*
- (7) *"Management plan" means the plan adopted by the commission for the storage, transportation, treatment, and disposal of waste within the region;*
- (8) *"Naturally-occurring radioactive material" (NORM) means naturally occurring materials not regulated under the Atomic Energy Act of 1954, as amended, whose radionuclide concentrations have been increased by or as a result of human practices. Naturally occurring radioactive material does not include the natural radioactivity of rocks or soils, or background radiation, but instead refers to materials whose radioactivity is technologically enhanced by controllable practices (or by past human practices).*
- (9) *"Person" means any individual, corporation, business enterprise, or other legal entity, public or private, and any legal successor, representative, agent or agency of that individual, corporation, business enterprise, or legal entity;*
- (10) *"Region" means the geographical area of the state of Illinois and the Commonwealth of Kentucky;*
- (11) *"Regional facility" means any facility as defined in this section that is located in Kentucky, and established by Kentucky pursuant to designation of Kentucky as a host state by the commission;*

- (12) *"Storage" means the temporary holding of radioactive material for treatment or disposal; and*
- (13) *"Treatment" means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics of the radioactive material in order to render the radioactive material safe for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless otherwise authorized by the commission:*
- (a) *After the effective date of this Act, no person shall deposit at a facility in Kentucky any low-level radioactive waste not generated within the region.*
 - (b) *After the effective date of this Act, no person shall accept at a facility in Kentucky low-level radioactive waste not generated within the region.*
 - (c) *No person shall deposit at any regional facility in Kentucky any low-level radioactive waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing, or production of any atomic weapon.*
 - (d) *No person shall accept at any regional facility in Kentucky any low-level radioactive waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing, or production of any atomic weapon.*
 - (e) *No person shall export from the region low-level radioactive waste that is generated in Kentucky, other than low-level radioactive waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing, or production of any atomic weapon.*
 - (f) *No person shall dispose of low-level radioactive waste in Kentucky except at a regional disposal facility.*
 - (g) *No person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste from outside the region shall dispose of any low-level radioactive waste, regardless of origin, at a facility in Kentucky without prior specific approval by the commission.*
- (2) *No person shall treat or store low-level radioactive waste at a facility other than a regional facility, if the treatment or storage is prohibited by the commission.*
- (3) *Naturally occurring radioactive material (NORM) as defined in Section 2, subsection (8), of this Act, shall be the exclusive regulatory responsibility of the states, except that no person shall import naturally occurring radioactive material (NORM) from outside the region for disposal in Kentucky, or dispose of such imported material in Kentucky, if the imports or disposal are inconsistent with policies of the commission.*
- (4) *Any low-level radioactive waste which is not the responsibility of the Commonwealth of Kentucky or the Central Midwest Interstate Low-Level Radioactive Waste Commission pursuant to 42 U.S.C. 2297h-11 shall be exempt from the provisions of this Act and from the provisions of KRS 211.859.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall promulgate administrative regulations to administer and enforce the provisions of Sections 1 to 6 of this Act. The administrative regulations shall be promulgated with the consultation and cooperation of the commission.*
- (2) *Administrative regulations promulgated by the cabinet shall prohibit the shipment into or acceptance of low-level radioactive waste in Kentucky if the shipment or acceptance would result in a violation of any provision of the compact or Sections 3, 4, and 5 of this Act.*
- (3) *The cabinet may, by administrative regulation, impose conditions on the shipment into or acceptance of low-level radioactive waste in Kentucky that the cabinet determines to be reasonable and necessary to enforce the provisions of Sections 3, 4, and 5 of this Act. The conditions may include, but are not limited to:*

- (a) *Requiring prior notification of any proposed shipment or receipt of low-level radioactive waste;*
 - (b) *Requiring the shipper or recipient to identify the location to which the low-level radioactive waste will be sent for disposal following treatment or storage in Kentucky;*
 - (c) *Limiting the time that low-level radioactive waste from outside of Kentucky may be held in Kentucky;*
 - (d) *Requiring the shipper or recipient to post bond, or by other mechanisms assure that radioactive material will not be treated, stored, or disposed of in Kentucky in violation of any provisions of Sections 3, 4, and 5 of this Act; and*
 - (e) *Requiring that the shipper consent to service of process before shipment of low-level radioactive waste into Kentucky.*
- (4) *The administrative regulations promulgated by the cabinet may provide for the granting of exemptions, but only upon a showing by the applicant that the granting of an exemption would be consistent with the compact.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who fails to comply with any provision of KRS 211.859 or Section 3 of this Act, or with any administrative regulations promulgated pursuant to KRS 211.859 or Section 4 of this Act, or fails to comply with any order of the cabinet issued pursuant to KRS 211.859 or Sections 3 and 4 of this Act shall be assessed a civil penalty not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000). Each day of the violation or noncompliance shall constitute a separate offense.*
- (2) *Any person who fails to pay a civil penalty imposed pursuant to subsection (1) of this section, or any portion of that penalty, shall be liable in a civil action in an amount not to exceed four (4) times the amount imposed and not paid. Any civil penalties recovered shall be deposited into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out the provisions of Sections 1 to 6 of this Act.*
- (3) *Any person who intentionally violates a provision of Section 3 of this Act shall be guilty of a Class D felony.*
- (4) *At the request of the cabinet, the Attorney General shall, on behalf of the Commonwealth of Kentucky, bring an action for the recovery of any civil penalty or the prosecution of any criminal offense in violation of Sections 3 and 4 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The cabinet may accept donations of money, equipment, supplies, materials, and services from any person for accomplishing the purposes of Sections 1 to 6 of this Act. Any donation of money shall be deposited into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out the provisions of Sections 1 to 6 of this Act and shall be expended by the cabinet only in accordance with the purposes of the donation.

Approved March 12, 1998

CHAPTER 47

(HB 195)

AN ACT relating to all-terrain vehicles.

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

Section 1. KRS 189.010 is amended to read as follows:

As used in this chapter:

- (1) "Department" means the Department of Highways.
- (2) "Crosswalk" means:

- (a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or
 - (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.
- (3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700.
- (4) "Intersection" means:
- (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or
 - (b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection.
- (5) "Manufactured home" has the same meaning as defined in KRS 186.650.
- (6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds.
- (7) "Operator" means the person in actual physical control of a vehicle.
- (8) "Pedestrian" means any person afoot.
- (9) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.
- (10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively.
- (11) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
- (12) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.
- (13) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit.
- (14) "Sharp curve" means a curve of not less than thirty (30) degrees.
- (15) "State Police" includes any agency for the enforcement of the highway laws established pursuant to law.
- (16) "Steep grade" means a grade exceeding seven percent (7%).
- (17) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand (1,000) pounds.
- (18) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards.
- (19) (a) "Vehicle" includes:

1. All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and
 2. All vehicles passing over or upon the highways.
- (b) "Motor vehicle" includes all vehicles, as defined in paragraph (a) of this subsection except:
1. Road rollers;
 2. Road graders;
 3. Farm tractors;
 4. Vehicles on which power shovels are mounted;
 5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways;
 6. Vehicles that travel exclusively upon rails;
 7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality; and
 8. Vehicles propelled by muscular power.
- (20) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.
- (21) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.
- (22) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.
- (23) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area.
- (24) "All-terrain vehicle" means any motor vehicle *used for recreational* off-road use~~, which is fifty (50) inches or less in width; has a dry weight of six hundred (600) pounds or less; travels on three (3) or more low pressure tires; is designed for operator use only with no passengers; and has a seat or saddle designed to be straddled by the operator, and handle bars for steering control.~~

Section 2. KRS 189.515 is amended to read as follows:

- (1) ***Except for vehicles authorized to operate on a public highway as of the effective date of this Act, and except as provided in subsection (6) of this section, a***~~No~~ person shall ***not*** operate an all-terrain vehicle upon any public highway or roadway or upon the right-of-way of any public highway or roadway.
- (2) A~~No~~ person shall ***not*** operate an all-terrain vehicle on~~any public or~~ private property without the consent of the landowner, tenant, or ***individual***~~governmental agency~~ responsible for the property.
- (3) ***A person shall not operate an all-terrain vehicle on public property***~~, and~~ unless the ***governmental agency responsible for the property has approved the use of all-terrain vehicles.***
- (4) ***Except for vehicles authorized to operate on a public highway as of the effective date of this Act, a person operating an all-terrain vehicle on public property shall wear***~~operator wears~~ approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion. The approved headgear requirement shall not apply when the operator of ***any***~~the~~ all-terrain vehicle is engaged in:
 - (a) Farm or agriculture related activities;
 - (b) ***Mining or mining exploration activities;***

- (c) *Logging activities;*
 - (d) *Any other business, commercial, or industrial activity; or*
 - (e) *Use of that vehicle on private property.*
- (5)~~(3)~~ ~~Any~~ person under the age of sixteen (16) years shall *not* operate an all-terrain vehicle with an engine size exceeding ninety (90) cubic centimeters displacement, *and a*~~nor shall any~~ person under the age of sixteen (16) years *shall not* operate an all-terrain vehicle except under direct parental supervision.
- ~~(4)~~ ~~Any~~ person under the age of twelve (12) years shall *not* operate an all-terrain vehicle with an engine size exceeding seventy (70) cubic centimeters displacement.
- (6) *The Transportation Cabinet may designate, and a city or county government may designate, those public highways, segments of public highways, and adjoining rights-of-way of public highways under its jurisdiction where all-terrain vehicles that were prohibited, as of the effective date of this Act, may be operated.*

Approved March 12, 1998

CHAPTER 48

(HB 341)

AN ACT relating to reorganization.

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

Section 1. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice Cabinet, the Education, Arts, and Humanities Cabinet, the Natural Resources and Environmental Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Public Protection and Regulation Cabinet, the Cabinet for Human Resources, the Finance and Administration Cabinet, the Revenue Cabinet, the Tourism *Development* Cabinet, the Labor Cabinet, the commissioner of the Department of Personnel, the secretary of the Governor's Executive Cabinet, the State Budget Director, the Governor's Chief of Staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 2. KRS 12.020 is amended to read as follows:

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

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

1. The Governor.
 2. Lieutenant Governor.
 3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
 4. Department of Law.
 - (a) Attorney General.
 5. Department of the Treasury.
 - (a) Treasurer.
 6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 7. Superintendent of Public Instruction.
 8. Auditor of Public Accounts.
 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.

- (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.

- (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.

- (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism *Development* Cabinet:
- (a) Department of Travel ~~Development~~.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) ~~Office of Film Promotion.~~

~~(h)~~ Office of General Counsel.

12. Cabinet for Workforce Development:

- (a) Department for Adult Education and Literacy.
- (b) Department for Technical Education.
- (c) Department of Vocational Rehabilitation.
- (d) Department for the Blind.
- (e) Department for Employment Services.
- (f) State Board for Adult and Technical Education.
- (g) Governor's Council on Vocational Education.
- (h) The State Board for Proprietary Education.
- (i) The Foundation for Adult Education.
- (j) The Kentucky Job Training Coordinating Council.
- (k) Office of General Counsel.
- (l) Office of Communication Services.
- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 3. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice Cabinet.
- (2) Education, Arts, and Humanities Cabinet.
- (3) Natural Resources and Environmental Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Public Protection and Regulation Cabinet.
- (7) Cabinet for Human Resources.

- (8) Finance and Administration Cabinet.
- (9) Tourism *Development* Cabinet.
- (10) Revenue Cabinet.
- (11) Labor Cabinet.
- (12) Cabinet for Workforce Development.

Section 4. KRS 61.958 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council, hereinafter called the "council," to the Kentucky Information Resources Management Commission to advise the Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Resources Management Commission on issues as they relate to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of twenty-five (25) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The council shall consist of:
 1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Human Resources or his designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Revenue Cabinet or his designee;
 5. The commissioner of the Department of Information Systems or his designee;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Department of Local Government or his designee;
 8. The secretary of the Justice Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;
 13. The commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Public Protection and Regulation Cabinet or his designee;
 15. The secretary of the Tourism *Development* Cabinet or his designee;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;

19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 5. KRS 139.536 is amended to read as follows:

- (1) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010 may be permitted a credit against the Kentucky sales tax imposed by KRS 139.200 on the sales by the approved company generated by or arising from the tourism attraction project as defined in KRS 154.29-010. The approved company shall have no obligation to refund or otherwise return any amount of this credit to the

persons from whom the sales tax was collected. The term of the agreement granting this credit shall be ten (10) years, and this time period shall commence on the later of:

- (a) The final approval for purposes of the inducements; or
 - (b) The completion date specified in the agreement. However, in no event shall credits accrue prior to July 1, 1997.
- (2) The total sales tax credit allowed to the approved company over the term of the agreement in subsection (1) of this section shall be equal to the lesser of the total amount of the sales tax liability or twenty-five percent (25%) of the approved costs. The credit shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost and shall be allowed for each fiscal year of the approved company during the term of the agreement for which a sales tax return of the approved company is filed. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, an approved company may carry forward an unused accrued credit from a previous year to any succeeding tax period during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through credits. By October 1 of each year the Revenue Cabinet shall certify to the authority and the secretary of the Tourism **Development** Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 154.29-010 to 154.29-060 and the amount of any sales tax credits taken pursuant to subsection (1) of this section.
 - (3) The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of this section and KRS 154.29-010 to 154.29-060 and the allowable sales tax credit which an approved company may retain under this section and KRS 154.29-010 to 154.29-060.

Section 6. KRS 148.022 is amended to read as follows:

- (1) The Department of Local Government shall administer and operate the outdoor recreation programs of the state and shall be responsible for developmental planning and the administration of United States Bureau of Outdoor Recreation funds.
- (2) All functions of the Commonwealth relating to the Breaks Interstate Park shall be attached to the Tourism **Development** Cabinet for administrative purposes.

Section 7. KRS 148.260 is amended to read as follows:

- (1) There is hereby created and established an agency of state government to be known as the Kentucky Horse Park Commission which shall constitute a separate administrative body of state government within the meaning of KRS 12.010(8) and under the provisions of KRS 12.015 shall be attached to the Tourism **Development** Cabinet for administrative purposes.
- (2) The commission shall be composed of thirteen (13) members who possess the ability to provide broad management expertise and direction in the operation of the Kentucky Horse Park and shall, to the extent possible, represent the diverse interest of the Kentucky horse industry. Of these, eleven (11) members shall be appointed by the Governor. Two (2) of these appointed members of the commission shall represent the equine industry; and two (2) members shall be active in industry and commerce. The secretary of the Cabinet for Economic Development and the secretary of the Tourism **Development** Cabinet shall serve as ex officio members with full voting rights. Any vacancy on the commission shall be filled by the Governor for the unexpired term.
- (3) The appointed members of the commission shall hold their offices for a term of four (4) years, except that for the initial appointment to the commission, two (2) members shall serve a term of two (2) years, two (2) members shall serve a term of three (3) years, and three (3) members shall serve a term of four (4) years.
- (4) The commission shall meet quarterly and shall be headed by a chairman appointed by the Governor. The chairman shall preside over the commission meetings. The chairman may call special meetings of the commission upon a request of the majority of the members of the commission.
- (5) Members shall be reimbursed only for expenses incurred in the discharge of official business, subject to regulations established by the Finance and Administration Cabinet. All expenses reimbursed to members shall be paid from operating funds of the Kentucky Horse Park.

- (6) The commission shall establish and maintain an office at the Kentucky State Horse Park for the transaction of its business and shall not establish any branch office. The commission may hold meetings at any other place when the convenience of the commission requires.
- (7) The commission shall be authorized to adopt bylaws providing for the call of its meetings, which shall be held at least quarterly, and for its operating procedures. A quorum of the commission shall consist of six (6) members, and a quorum of members present at any duly-called meeting may act upon any matter before it for consideration. Each member shall have one (1) vote.
- (8) The Governor may establish an advisory committee to advise in the administration, development and operation of the horse park or other functions, activities, and programs provided for or authorized by KRS 148.260 to 148.320.

Section 8. KRS 148.522 is amended to read as follows:

- (1) The Tourism *Development* Cabinet shall consist of the Office of the Secretary, ~~the Office of Film Promotion,~~ the Office of General Counsel, the Office of Administrative Services, the Department of Travel ~~Development~~, the Department of Parks, and such other divisions and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet subject to the provisions of KRS Chapter 12.
- (2) ~~The *Tourism Development Cabinet* Office of Film Promotion shall be attached to the Office of the Secretary and shall be headed by an executive director appointed under KRS 12.050. The offices~~ shall encourage the development of the film industry in Kentucky and shall perform all film promotional functions.
- (3) The Office of General Counsel shall be headed by a general counsel appointed by the secretary pursuant to KRS 12.210, shall provide legal services for the cabinet and shall be directly responsible to the secretary.
- (4) The Department of Travel ~~Development~~ shall be headed by a commissioner appointed by the Governor pursuant to the provisions of KRS 12.040. The commissioner shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth.
- (5) The Divisions of Tourism Services and Marketing and Advertising Services are created within the Department of Travel ~~Development~~. Each division shall be headed by a division director who shall be appointed by the commissioner of the department pursuant to the provisions of KRS 12.050.

Section 9. KRS 148.815 is amended to read as follows:

- (1) The State Parks Commission is hereby created in order to provide oversight and advice on the parks capital maintenance and renovation fund, capital construction, parks mission, and management. For administrative purposes, this commission is attached to the Department of Parks, which shall provide necessary support staff and services.
- (2) The State Parks Commission shall consist of the following members: the commissioner of the Department of Parks; the deputy commissioner of support services; the commissioner of the Department of Fish and Wildlife Resources; the secretary of the Tourism *Development* Cabinet; the director of the Kentucky Nature Preserves Commission; the executive director of the Kentucky Heritage Council; the commissioner of the Department of Personnel; and six (6) other members appointed by the Governor, including a resort park manager, and five (5) citizen members including a certified public accountant, a registered architect, an individual who is experienced in tourism promotion, an individual who is experienced in hotel or motel operations, and an individual who is experienced in restaurant operations. The citizen members and resort park manager shall serve four (4) year terms, unless sooner removed for cause; all other members shall serve during their terms of office. The commissioner of the Department of Parks shall act as chairman of the commission. Each citizen member shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties on the commission.

Section 10. KRS 154.10-010 is amended to read as follows:

- (1) (a) The Kentucky Economic Development Partnership, a board governing the Cabinet for Economic Development, is created and established, performing essential governmental and public functions and purposes essential to improving and promoting the health and general welfare of the people of the Commonwealth through sustainable economic development, as prescribed in KRS 154.01-020.

- (b) The board shall have reorganization powers and authority as prescribed in KRS 12.028 and shall constitute an administrative body as defined in KRS 12.010, but it and the cabinet shall not be subject to the reorganization by the Governor, KRS Chapter 12 notwithstanding.
- (c) The board shall serve as the governing body of the cabinet and shall exercise all powers and authorities conferred upon it by statute, including, but not limited to, the following functions:
 - 1. Strategic planning;
 - 2. Finance;
 - 3. Business assistance;
 - 4. Marketing and promotion;
 - 5. Community development;
 - 6. Workforce development;
 - 7. Innovation; and
 - 8. All economic development powers and authorities not specifically conferred by statute to another agency or authority of state government.
- (2) The board shall consist of eleven (11) voting members and two (2) nonvoting members. The eleven (11) voting members shall consist of the Governor, the secretary of the Finance and Administration Cabinet, the secretary of the Natural Resources and Environmental Protection Cabinet, and eight (8) private sector members who shall be appointed by the Governor. The secretary of the Governor's Executive Cabinet shall serve as a voting member upon the absence of the Governor. The secretary of the Cabinet for Economic Development and the secretary of the Tourism *Development* Cabinet shall serve as nonvoting members.
- (3) By no later than thirty (30) days after July 14, 1992, the governing bodies of each of the following organizations shall meet and nominate two (2) persons from each of the six (6) Congressional districts of the Commonwealth and two (2) persons from the state at large, as candidates for the initial appointment as private sector members to the board:
 - (a) The Kentucky Industrial Development Council;
 - (b) The Associated Industries of Kentucky;
 - (c) The Kentucky State AFL-CIO;
 - (d) The Kentucky Farm Bureau Federation;
 - (e) The Kentucky Chamber of Commerce; and
 - (f) The Kentucky Economic Development Corporation.
- (4) The Governor shall select the original eight (8) private sector members from the aggregation of the lists provided pursuant to subsection (3) with at least one (1) appointment being chosen from each organization's list and at least one (1) appointment being chosen from each Congressional district. After the initial appointments, appointments to vacancies shall be made in the same manner as prescribed in subsection (3) of this section, except that there is no requirement that the vacancy be filled from the same organization's list as the original appointment.
- (5) The terms of office of the initial appointments of the private sector members to the board shall be staggered so that one-fourth (1/4) of all appointments shall expire one (1), two (2), three (3), and four (4) years, respectively, from the date of their appointment. All succeeding appointments shall be for four (4) years.
- (6) In making appointments to the board, the Governor shall assure broad geographical representation, as well as representation from the major sectors of Kentucky's economy by leading executives with a knowledge of the problems of large and small businesses, local economic development, and the transfer of research and development from the laboratory to the marketplace. In filling vacancies, the Governor shall attempt to assure the continuing representation on the board of broad constituencies of Kentucky's economy, including manufacturing and agriculture.
- (7) Vacancies on the board which may occur from time to time shall be filled as follows:

- (a) Any vacancy which occurs shall be filled for the unexpired term in accordance with the procedures established for the original appointment.
 - (b) If any private sector member misses more than two (2) consecutive meetings of the board, then that position shall be declared vacant and filled in accordance with this section.
- (8) The board shall meet quarterly and at other times upon call of the chairman or a majority of the board.
 - (9) A quorum shall be a majority of the voting membership of the board.
 - (10) A quorum shall be required to organize and conduct the business of the board, except that an affirmative vote of seven (7) or more members of the entire board shall be required to fire the cabinet's secretary, and to adopt or amend the strategic plan.
 - (11) Private sector members shall serve without compensation but shall be reimbursed for all reasonable, necessary, and actual expenses.
 - (12) All existing duties, responsibilities, functions, personnel, programs, funds, obligations, records, and real and personal property of the Cabinet for Economic Development, as of July 14, 1992, shall be under the authority and control of the board.

Section 11. KRS 154.29-010 is amended to read as follows:

As used in KRS 139.536 and KRS 154.29-010 to 154.29-060, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 154.29-050, on behalf of the authority and an approved company on or before June 30, 2002, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the Tourism *Development* Cabinet and the authority pursuant to KRS 154.29-050 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
 - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (d) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
 - (g) All other costs comparable with those described in this subsection;
- (4) "Authority" means the Kentucky Economic Development Finance Authority as set forth in KRS 154.20-010;
- (5) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, or business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism *Development* Cabinet pursuant to KRS 154.29-030;
- (6) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 154.29-010 to 154.29-060;

- (7) "Inducements" means the Kentucky sales tax credit as prescribed in KRS 139.536;
- (8) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 154.29-010 to 154.29-060;
- (9) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
- (10) "Tourism attraction" means a cultural or historical site, recreation or entertainment facility, or area of natural phenomenon or scenic beauty. A tourism attraction shall not include any of the following:
 - (a) Lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project;
 - (b) Facilities that are primarily devoted to the retail sale of goods, unless the goods are created by individuals at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project; and
 - (c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and
- (11) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Section 12. KRS 154.29-030 is amended to read as follows:

- (1) The secretary of the Tourism *Development* Cabinet shall establish standards for the making of applications for inducements and the recommendation to the authority of eligible companies and their tourism attraction projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The secretary of the Tourism *Development* Cabinet shall consult with the authority when establishing standards to ensure that standards established pursuant to subsection (1) of this section and KRS 154.29-040(1) do not conflict.
- (3) With respect to each eligible company making an application to the secretary of the Tourism *Development* Cabinet for inducements, and with respect to the tourism attraction project described in the application, the secretary of the Tourism *Development* Cabinet shall make inquiries and request materials of the applicant that shall include, but not be limited to, marketing plans for the project that target individuals who are not residents of the Commonwealth; a description and location of the project; capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed one million dollars (\$1,000,000) and the anticipated sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans which indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project. Based upon a review of these materials, if the secretary of the Tourism *Development* Cabinet determines that the eligible company and the tourism attraction project may reasonably satisfy the criteria for final approval in subsection (4) of this section, then the secretary of the Tourism *Development* Cabinet may submit a written request to the authority requesting that the authority consider a preliminary approval of the eligible company and the tourism attraction project.
- (4) After receiving a preliminary approval by the authority, the secretary of the Tourism *Development* Cabinet shall engage the services of a competent consulting firm to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project:

- (a) Shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;
 - (b) Shall have costs in excess of one million dollars (\$1,000,000);
 - (c) Shall have a significant and positive economic impact on the Commonwealth considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in the Commonwealth and the amount by which increased tax revenues from the tourism attraction project will exceed the credit given to the approved company;
 - (d) Shall produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred (100) days per year; and
 - (e) Shall not adversely affect existing employment in the Commonwealth.
- (5) The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make its determination under subsection (4) of this section.
- (6) After a review of relevant materials, the consultant's report, and completion of other inquiries, the secretary of the Tourism *Development* Cabinet shall, by written notification to the authority, provide a recommendation to the authority regarding final approval of the tourism attraction project.

Section 13. KRS 154.29-040 is amended to read as follows:

- (1) The authority shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The authority shall consult with the secretary of the Tourism *Development* Cabinet when establishing standards to ensure that standards established pursuant to KRS 154.29-030(1) and subsection (1) of this section do not conflict.
- (3) At the written request of the secretary of the Tourism *Development* Cabinet, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.
- (4) The authority shall review the report of the consultant prepared pursuant to KRS 154.29-030(4), the recommendation of the secretary of the Tourism *Development* Cabinet, and other information that has been made available to the authority in order to assist the authority in determining whether the tourism attraction project will further the purposes of KRS 139.536 and KRS 154.29-010 to 154.29-060.
- (5) The criteria for final approval of eligible companies and tourism attraction projects shall include, but not be limited to, the criteria set forth in KRS 154.29-030(4).
- (6) After a review of the consultant's report, the recommendation of the secretary of the Tourism *Development* Cabinet and other information made available to the authority, the authority, by resolution, may give its final approval to the eligible company's application for a tourism attraction project and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.
- (7) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 14. KRS 154.47-050 is amended to read as follows:

The Kentucky Wood Products Competitiveness Corporation shall work in cooperation with the Department of Parks of the Tourism *Development* Cabinet to:

- (1) Develop and design Kentucky-made furniture for use in state parks;
- (2) Make state parks facilities living showrooms for Kentucky furniture and other wood products; and
- (3) Establish retail showrooms where Kentucky-made furniture and other wood products can be displayed for sale to, or order by, park visitors.

Section 15. KRS 176.500 is amended to read as follows:

- (1) The Mississippi River Parkway Commission of Kentucky is hereby established to serve as the local coordinating agency for the development of the Great River Road along the Mississippi River from Canada to the Gulf of Mexico. The commission shall be attached to the Office of the Secretary of the Tourism *Development* Cabinet for administrative purposes.
- (2) The commission shall consist of the following ten (10) members: Four (4) citizen members, appointed by the Governor, and consisting of one (1) member from each of the four (4) counties that border the Mississippi River, who shall serve a term of four (4) years and may serve until a successor is appointed. Four (4) members shall be the respective county judges/executive of Ballard, Carlisle, Fulton, and Hickman Counties in Kentucky. Other members shall be the secretary of the Tourism *Development* Cabinet or his designee; and the secretary of the Transportation Cabinet, or his designee. The commission shall annually elect a chairman and shall meet quarterly or upon call of the chairman with ten (10) days' written notice. Six (6) members present shall constitute a quorum for the official conduct of business. The commission may enter into contracts with the Purchase Area Development District to provide administrative services.
- (3) Members shall receive no compensation but shall be reimbursed according to state regulations for actual and necessary expenses incurred in conducting commission business.
- (4) The commission shall assure that the proper direction is taken in developing a corridor of scenic, historical, and archaeological significance through the Kentucky counties of Ballard, Carlisle, Hickman, and Fulton.

Section 16. KRS 186.1864 is amended to read as follows:

- (1) Any person who complies with the provisions of KRS 186.186 may apply for a special youth soccer license plate.
- (2) After the Transportation Cabinet offsets its administrative costs for computer programming of a special youth soccer license plate, all revenues generated by the initial state fee for youth soccer license plates pursuant to KRS 186.186 shall be forwarded by the Transportation Cabinet to the Tourism *Development* Cabinet on a quarterly basis. The Tourism *Development* Cabinet shall deposit all funds received pursuant to this subsection into a trust and agency account dedicated to promoting and furthering youth soccer programs in Kentucky. The Tourism *Development* Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish criteria for awarding grants to nonprofit organizations that promote youth soccer programs in Kentucky.
- (3) Youth soccer license plates shall contain the words "Support Youth Soccer" and shall boldly feature the 1995 World Cup soccer emblem. The name "Kentucky" and the expiration date shall appear on the youth soccer license plate. The cabinet may use any combination of letters or numerals as needed in the design. The application for a youth soccer license plate may be combined with a request that the plate be a personalized plate authorized pursuant to KRS 186.174.

Section 17. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
 - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters; and
 - (b) Boats propelled by human power employing the use of hand or foot operation;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) "Waters of this state" means any waters within the territorial limits of this state;
- (5) "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (6) "Operate" means to navigate or otherwise use a motorboat or a vessel;

- (7) "Cabinet" means the Tourism *Development* Cabinet;
- (8) "Department" means the Department of Fish and Wildlife Resources;
- (9) "License" and "certificate of number" as used herein are synonymous;
- (10) "Clerk" means county clerk;
- (11) "Division of Water Patrol" means the Division of Water Patrol, Department of Fish and Wildlife Resources within the Tourism *Development* Cabinet;
- (12) "Title" means the certificate of title; and
- (13) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources.

Section 18. KRS 235.020 is amended to read as follows:

- (1) The Division of Water Patrol shall be established in the Department of Fish and Wildlife Resources within the Tourism *Development* Cabinet. The Division of Water Patrol shall be headed by a director appointed by the Commissioner of the Department of Fish and Wildlife Resources, subject to the approval of the Governor.
- (2) The Division of Water Patrol shall be authorized to employ necessary personnel to carry out the functions assigned to the division in this chapter.
- (3) The Division of Water Patrol shall be composed of organizational entities deemed appropriate by the secretary of the Tourism *Development* Cabinet.

Section 19. KRS 235.030 is amended to read as follows:

This chapter shall be known as the State Boating Act and shall be administered by the Division of Water Patrol within the Department of Fish and Wildlife Resources in the Tourism *Development* Cabinet except the Transportation Cabinet shall be responsible for administering the boat numbering, registration, and titling requirements.

Section 20. KRS 235.130 is amended to read as follows:

- (1) No person acting for himself or another shall buy or trade for any motorboat without receiving the certificate of title issued for that boat with a certificate of transfer indorsed thereon. If the motorboat has not been issued a certificate of title as noted on the certificate of registration, the person shall receive a completed assignment of title on a boat transaction record and the certificate of registration.
- (2) It shall be the duty of the purchaser to promptly submit the indorsed certificate of title or boat transaction record and certificate of registration to the county clerk of the county of the purchaser's residence or in which the motorboat is to be principally operated. The purchaser shall apply for a new certificate of title and registration pursuant to KRS 235.050. The county clerk shall thereupon issue to the purchaser a transfer of registration bearing the same data and information. The clerk shall forward the indorsed certificate of title or boat transaction record and certificate of registration and new application for title and registration to the Transportation Cabinet. Except when registration is prohibited by law, any unexpired registration shall remain valid after transfer until expiration occurs according to law.
- (3) For transferring the registration, the clerk shall collect a fee of five dollars (\$5). The clerk shall retain two dollars (\$2), the Transportation Cabinet shall receive two dollars (\$2) and the Department of Fish and Wildlife Resources within the Tourism *Development* Cabinet shall receive one dollar (\$1). The fee received by the Transportation Cabinet shall be deposited in a trust and agency account for use by the Transportation Cabinet in defraying the cost of implementing and operating the boat titling and registration program. The fee for transferring the title shall be as required by KRS 235.085.
- (4) If a transferee does not promptly submit the necessary documents to the county clerk as required by law in order to complete the transfer transaction, a transferor may submit to the county clerk, after the passage of fifteen (15) calendar days, in his county of residence, an affidavit that he has transferred his interest in a specific motorboat and the clerk may enter appropriate data into the AVIS system which would restrict any registration transaction from occurring on that vehicle until the transfer was processed.
- (5) If the owner junks or otherwise renders a motorboat unfit for future use, he shall deliver the title to the county clerk of the county in which the motorboat is junked. The county clerk shall immediately return the title to the Transportation Cabinet. The owner shall pay to the county clerk fifty cents (\$0.50) for his services.

Section 21. KRS 260.165 is amended to read as follows:

- (1) The Grape Industry Advisory Committee is hereby created within the Department of Agriculture. The purpose of the committee shall be to promote and facilitate the development of a grape industry in the Commonwealth of Kentucky.
- (2) The committee shall be composed of the Commissioner of Agriculture, or his designee, and six (6) members appointed by the Governor. Of the six (6) gubernatorial appointments, the Governor is encouraged to appoint one (1) from list of three (3) candidates submitted by the director of the University of Kentucky Agriculture Experiment Station, one (1) from a list of three (3) candidates submitted by the secretary of the Tourism *Development* Cabinet, and two (2) from a list of three (3) candidates submitted by the Kentucky Vineyard Society.
- (3) The appointed members shall serve for terms of four (4) years and until their successors are appointed and qualify. The committee shall select a chairman and shall meet at the times and places that he designates. Four (4) members present at any meeting shall constitute a quorum. Upon the written request of any three (3) members, the chairman shall call a meeting of the committee at the time and place requested.
- (4) Members shall receive no compensation but shall be reimbursed, payable from the Division of Markets, for any actual expense incurred in performing their duties.

Section 22. The following KRS section is repealed:

153.530 Citizens Advisory Commission on Kentucky Films -- Powers and duties.

Section 23. The General Assembly confirms Executive Order 96-1332, dated October 1, 1996, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 12, 1998

CHAPTER 49

(HB 345)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1625, dated December 16, 1997, which creates and establishes the Division of Technology and Communications within the Department of Parks in the Tourism Development Cabinet. The Division of Technology and Communications shall be headed by a director appointed by the secretary of the Tourism Development Cabinet pursuant to KRS 12.050 and shall report directly to the commissioner of Parks. Nothing in this Act shall be construed as confirming the reorganization of the Tourism Cabinet as the Tourism Development Cabinet, which is the subject of a separate reorganization order confirmation. In the event that the creation of the Tourism Development Cabinet is not confirmed during this 1998 Regular Session, functions in this Act assigned to that cabinet shall be assigned instead to the Tourism Cabinet.

Approved March 12, 1998

CHAPTER 50

(HB 364)

AN ACT relating to reorganization.

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

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

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

officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.

- (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.

- (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.

- (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.

- (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy ~~and~~ Budget ~~and Personnel~~.
 - (q) Office of Personnel Services.**
 - ~~(r)(q)~~ Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 2. KRS 151B.020 is amended to read as follows:

- (1) The Cabinet for Workforce Development is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.

- (2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:
- (a) The Department for Adult Education and Literacy, which is created by KRS 151B.023;
 - (b) The Department for Technical Education, which is created by KRS 151B.025;
 - (c) The Department of Vocational Rehabilitation, which is created by KRS 151B.185;
 - (d) The Department for the Blind, established by KRS 163.470;
 - (e) The Department for Employment Services, which is created by KRS 151B.280;
 - (f) The State Board for Adult and Technical Education, which is created by KRS 151B.095;
 - (g) The Governor's Council on Vocational Education, established by KRS 163.086;
 - (h) The State Board for Proprietary Education, established by KRS 165A.340;
 - (i) The Foundation for Adult Education, established by KRS 151B.130;
 - (j) The Kentucky Job Training Coordinating Council, established by KRS 151B.220;
 - (k) The Unemployment Insurance Commission established by KRS 341.110;
 - (l) The Office of Training and Reemployment created in KRS 151B.260; and
 - (m) The Office of School-to-Work, established by KRS 151B.250.
- (3) The executive officer of the cabinet shall be the secretary of the Cabinet for Workforce Development. The secretary shall be appointed by the Governor pursuant to KRS 12.040 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. The Office of the Secretary of the Cabinet for Workforce Development shall consist of the Offices of General Counsel, Communication Services, Development and Industry Relations, Workforce Analysis and Research, the Office for Policy ~~and~~ Budget, ~~and Personnel~~ **the Office of Personnel Services**, and the Office for Administrative Services. ~~The Office for Policy, Budget, and Personnel shall contain the Division of Personnel Services, which shall be headed by a director appointed by the secretary of the Cabinet for Workforce Development pursuant to KRS 12.050.~~ The Office for Administrative Services shall contain the Divisions of Fiscal Services, Computer Services, and Facilities Management. Each division shall be headed by a director appointed by the secretary of the Cabinet for Workforce Development pursuant to KRS 12.050.
- (4) The secretary of the Cabinet for Workforce Development and his designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.
- (5) The secretary of the Cabinet for Workforce Development may delegate any duties of his office to employees of the cabinet as he deems necessary and appropriate, unless otherwise prohibited by statute.
- (6) The secretary of the Cabinet for Workforce Development shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

Section 3. KRS 161.220 is amended to read as follows:

As used in KRS 161.230 to 161.716 and KRS 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;

- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the chief state school officer, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any regular or special teacher, or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
- (a) Local boards of education;
 - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities, and the Kentucky Community and Technical College System and any community colleges or technical institutions established under its control;
 - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
 - (d) The State Department of Education, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
 - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
 - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
 - (g) The Department for Adult Education and Literacy;
 - (h) The Department for Technical Education;
 - (i) The Office of General Counsel within the Office of the Secretary of the Cabinet for Workforce Development;
 - (j) The Office for Policy~~(,)~~ and Budget~~(, and Personnel)~~ within the Office of the Secretary of the Cabinet for Workforce Development;
 - (k) ***The Office of Personnel Services within the Office of the Secretary of the Cabinet for Workforce Development;***
 - ~~(l)(k)~~ The Office for Administrative Services within the Office of the Secretary of the Cabinet for Workforce Development;
 - ~~(m)(l)~~ The Department of Vocational Rehabilitation;
 - ~~(n)(m)~~ The Kentucky Educational Collaborative for State Agency Children;
 - ~~(o)(n)~~ The Governor's Scholars Program; and
 - ~~(p)(o)~~ Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member.

- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
- (6) "New teacher" means any member not a present teacher;
- (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
- (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
- (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up employee contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up employee contributions. However, if any of the five (5) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:
 - (a) The member's actual salary; or
 - (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for employees of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

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

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Age of entrance" means the age attained at the last birthday of any member at the time of the establishment of the retirement system, if the member was a member subject to membership in the system at that time. Otherwise it means the age attained as of July 1 of the fiscal year in which he first becomes a member of the retirement system. Any birthday occurring on February 29 shall be considered as occurring on February 28;
- (13) "Regular interest" means interest at three percent (3%) per annum;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up employee contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up employee contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year; and
- (21) "Regular teacher, supervisor, or administrator," when used to determine eligibility for membership in the retirement system, means a professional employee holding a position which requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a daily or weekly basis.

Section 4. The General Assembly confirms Executive Order 97-1117, dated August 28, 1997, relating to the reorganization of the Cabinet for Workforce Development, to the extent it is not otherwise confirmed by this Act. All personnel, records, files, equipment, and funds assigned to or appropriated to the Division of Personnel Services within the Office for Policy, Budget and Personnel are hereby assigned and appropriated to the newly created Office of Personnel Services and shall be assigned to such organizational entities as deemed appropriate by the Secretary of the Cabinet and set forth by Administrative Order.

Approved March 12, 1998

CHAPTER 51

(HJR 58)

A JOINT RESOLUTION naming the bridge on KY 40 between Paintsville and Salyersville over State Road Fork, one mile southwest of KY 580, the "Marshall Ealey Bridge".

WHEREAS, Marshall Ealey was born in 1902, and lived all his life in Johnson County; and

WHEREAS, Marshall Ealey was a farmer, grocery store clerk, and member of the Barnettts Creek Baptist Church; and

WHEREAS, Marshall Ealey raised five children with his wife Gladys, and was well regarded as a good man who didn't drink; and

WHEREAS, For seventy-four years Marshall Ealey lived about 100 feet from the old bridge over Barnettts Creek and it became known as the Marshall Ealey Bridge;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name the bridge on KY 40 between Paintsville and Salyersville over State Road Fork, one mile southwest of KY 580, the "Marshall Ealey Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Marshall Ealey Bridge" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be transmitted to Herbert Ealey, 4640 Ky. Highway 40 West, Staffordsville, Kentucky 42156.

Approved March 16, 1998

CHAPTER 52

(SB 20)

AN ACT relating to instruction permits and declaring an emergency.

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

Section 1. KRS 186.412 is amended to read as follows:

- (1) A person *under the age of twenty-one (21) at the time of application for an instruction permit* may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed ~~the~~^a valid instruction permit for at least one hundred eighty (180) days. *A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.* The person shall apply for an operator's license in the office of the circuit clerk of the county where he lives. The application form shall require the applicant's full legal name and signature, date of birth, Social Security number, sex, present resident address, other information necessary to permit the application to also serve as an application for voter registration, and brief physical description of the applicant. *If the person is not a United States citizen, the application form shall be accompanied by a photographic copy of the person's employment authorization card, visa card to enter the United States, or permanent residency card issued by the United States Department of Immigration Services and, if applicable, a photographic copy of the person's international driving permit. All applications*~~[-The application]~~ shall state:
- (a) If the applicant has previously been licensed as an operator and by what *nation or* state; *and*
 - (b)~~[-If a license is canceled, suspended, revoked, or refused; and~~
 - (~~e~~) Other information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.
- (2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing a color photograph of the applicant. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The plastic laminated operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).
- (3) After January 1, 1996, a person may, before the renewal date for his operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's Social Security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.
- (4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (5) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.
- (6) The circuit clerk shall issue a color photo nondriver's identification card to any person who resides in the county who applies in person in the office of the circuit clerk. A nondriver's identification card shall be subject to the provisions of ~~subsection (2) of~~ this section. An application for a nondriver's identification card shall be accompanied by a signed Social Security card and a birth certificate, or other proof of the applicant's date of birth *provided under subsection (1) of this section. If the person is not a United States citizen, an application for a nondriver's identification card shall be accompanied by a photographic copy of the person's employment authorization card, visa card to enter the United States, or permanent residency card issued by the United States Department of Immigration Services*~~[-that is satisfactory to the clerk]~~. The application shall require the applicant to provide his most current resident address that may include, but is not limited to, a mailing address, post office box, or an address provided on a voter registration card. If an applicant for a nondriver's identification card is under the age of twenty-one (21), the applicant's most current resident address shall be required unless a current resident address is not available, in which case a mailing address, post office box, or an address provided on a voter registration card may be used. Every applicant for a nondriver's

identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal possessor of the address provided on the application form, the applicant shall swear that he has permission from the legal possessor to use the address for purposes of obtaining the nondriver's identification card. The nondriver's identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

- (7) Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature." If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired. ***If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.***
- (8) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
 - (a) Blood type;
 - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
 - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.
- (9) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (10) An operator's license pursuant to this section shall be designated a Class D license.
- (11) A person shall not have more than one (1) license.

Section 2. KRS 186.450 is amended to read as follows:

- (1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle, motorcycle, or moped in the office of the circuit clerk in the county where the person lives. A person applying for an instruction permit shall be required to comply with the following:
 - (a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590; and
 - (b) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.
- (2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of a six dollar (\$6) fee pursuant to KRS 186.531.
- (3) An instruction permit shall be valid for one (1) year and may be renewed. A person ***under the age of twenty-one (21) at the time of application for an instruction permit*** shall have ~~the~~ instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license. ***A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.***
- (4) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway. When operating a motor vehicle, an instruction permit holder shall be accompanied by a person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.
- (5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good

cause for driving including, but not limited to, emergencies, involvement in school related activities, or involvement in work related activities.

- (6) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.
- (7) An applicant for relicensing after revocation shall pay the clerk a fee of twenty-five dollars (\$25). The twenty-five dollar (\$25) fee shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated and persons reinstated pursuant to KRS 159.051.

Section 3. Whereas, the six month waiting period required for an instruction permit poses an undue hardship on individuals over the age of 21, especially when attempting to obtain employment, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved March 16, 1998

CHAPTER 53

(SB 169)

AN ACT relating to souvenir retail liquor sales.

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

Section 1. KRS 243.0305 is amended to read as follows:

- (1) A souvenir retail liquor license may be issued to any licensed Kentucky distiller that has a gift shop or other retail outlet on its premises, if the distillery is located in wet territory. The application shall be made on forms provided by the board.
- (2) A wholesaler registered to distribute the brands of any distiller holding a souvenir retail license may permit the distiller to deliver a souvenir package directly from the distillery proper to the portion of the distillery premises operated by the licensee for the sale of souvenir packages. However, all direct shipments shall be invoiced from the distiller to the wholesaler and from the wholesaler to the souvenir package licensee, and all products directly shipped shall be included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.895 and 243.990.
- (3) A distiller who has obtained a souvenir retail license may sell souvenir packages at retail to distillery visitors of legal drinking age, in quantities not to exceed an aggregate of **three (3) liters** ~~one (1) liter~~ per visitor per day. These sales shall be permitted only through the gift shop or other retail outlet on the distiller's premises.
- (4) Hours of sale for a souvenir retail liquor licensee shall be 9 a.m. until ~~9~~ p.m. prevailing time Monday through Saturday. The licensed premises may remain open if they have a separate department pursuant to KRS 244.290(1).
- (5) Except as provided in this section, souvenir retail liquor licenses shall be governed by all the statutes and administrative regulations governing the retail sale of distilled spirits by the package.
- (6) No wholesaler may restrict the sale of souvenir packages to the souvenir retail liquor licensee exclusively, but shall make souvenir packages available to any Kentucky retail licensee licensed for the sale of distilled spirits by the package.

Approved March 16, 1998

CHAPTER 54

(HB 99)

AN ACT relating to the lease of motor vehicles.

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

Section 1. KRS 367.840 is amended to read as follows:

KRS 367.841 to 367.844 shall be liberally construed and applied to promote the underlying purposes of KRS 367.841 to 367.844, which purposes are:

- (1) To protect consumers *who buy or lease new motor vehicles that* ~~whose new motor vehicles~~ do not conform to applicable warranties by holding manufacturers accountable for certain nonconformities;
- (2) To limit the number of attempts and the amount of times that a manufacturer or its agents shall have to cure such nonconformities; and
- (3) To require manufacturers to provide, in as expeditious a manner as possible, a refund, not to exceed the amount in KRS 367.842, or replacement vehicle that is acceptable to the aggrieved consumer when the manufacturer or its agents fail to cure any nonconformity within the specified limits.

Section 2. KRS 367.841 is amended to read as follows:

- (1) "Buyer" means any resident person who buys, ~~or~~ contracts to buy, *or lease* a new motor vehicle in the Commonwealth of Kentucky. *In the case of the lease of a new motor vehicle, "buyer" shall mean the lessor, lessee, or both.*
- (2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles new motor vehicles which are sold in the Commonwealth of Kentucky.
- (3) "Motor vehicle" means every vehicle which is self propelled, and which is intended primarily for use and operation on the public highways and required to be registered or licensed in the Commonwealth prior to such use or operation; however, "motor vehicle" shall not include conversion vans, motor homes, motorcycles, mopeds, farm tractors and other machines used in the production, harvesting and care of farm products, or vehicles which have more than two (2) axles.
- (4) "New motor vehicle" means a motor vehicle which has been finally and completely assembled and is in the possession of a manufacturer, factory branch, distributor, wholesaler, or an authorized motor vehicle dealer operating under a valid sales and service agreement, franchise, or contract for the sale of such vehicle granted by the manufacturer, factory branch, distributor, or wholesaler which is, in fact, new and on which the original title has never been issued.
- (5) "Express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under the warranty.
- (6) "Nonconformity" means a failure to conform with an express warranty in a manner which substantially impairs the use, value, or safety of the motor vehicle.
- (7) "Reasonable allowance for use" means the amount directly attributable to a consumer's use of the vehicle other than those time periods when the vehicle is out of service due to the nonconformity.

Section 3. KRS 367.846 is amended to read as follows:

KRS 367.840 to 367.845 shall apply to new motor vehicles purchased after July 15, 1986, *and to motor vehicles leased after July 15, 1998.*

Approved March 16, 1998

CHAPTER 55

(HB 199)

AN ACT relating to property taxes.

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

Section 1. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation,

except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$.25) upon each one hundred dollars (\$100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents (\$.15) upon machinery ~~of individuals or corporations~~ actually engaged in manufacturing, fifteen cents (\$.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

- (2) (a) An annual ad valorem tax for state purposes of one and one-half cents (\$.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
 1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
 2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
 3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
 4. Tobacco base allotments.
- (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.
- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$.30) of the thirty-one and one-half cents (\$.315) state tax rate on real property and thirty cents (\$.30) of the forty-five cents (\$.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the

extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570 except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.
- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

Section 2. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery **actually engaged in manufacturing**, ~~and~~ products in **the** course of manufacture, ~~of individuals or corporations actually engaged in manufacturing,~~ and ~~their~~ raw material actually on hand at ~~the~~ **their** plant for the purpose of manufacture. ~~Individuals or corporations actually engaged in~~ The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be ~~actually engaged in~~ manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash

value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

- (7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
- (8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;
- (13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460 based on the vehicle's fair market value at the time of sale;
- (14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;
- (16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; ~~and~~
- (17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800; *and*
- (18) *New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220.*

Approved March 16, 1998

CHAPTER 56

(HB 422)

AN ACT relating to retirement.

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

Section 1. KRS 61.552 is amended to read as follows:

- (1) Any employee participating in one (1) of the state-administered retirement systems or an employee of a parted employer who has been refunded his accumulated contributions under the provisions of KRS 16.645(22), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. If the participating employee dies before regaining lost service credit, the employee's beneficiary, as designated according to the requirements of the employee's retirement system, may regain the credit by paying the amount refunded with interest at a rate determined by the board of the respective retirement system. Thereafter the beneficiary shall be entitled to the benefits that are payable based upon the deceased employee's total service credit. The provisions of KRS 161.470 shall be met in order to regain the credit in the Teachers' Retirement System. KRS 21.460 shall govern with respect to regaining credit in the Judicial Retirement Plan or Legislators' Retirement Plan. The beneficiary shall make the payment

- within one (1) year of the date of the employee's death. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.
- (2) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
 - (3) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
 - (4) An employee may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments. Effective August 1, 1988, each employee of the Kentucky Racing Commission who was employed by the racing commission on the date that agency first participated in the Kentucky Employees Retirement System, whether or not the employee was eligible to participate in the retirement system on that date, shall receive current service credit for all employment with the racing commission from July 1, 1956, to the date the employee first began participating in the retirement system. The cost of the service credit shall be paid at the time of each member's retirement by the racing commission and shall be credited to the retirement allowance account.
 - (5) An employee who is or was an employee of a county participating in the County Employees Retirement System which did not participate in the system effective July 1, 1958, may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. An employee participating in the Kentucky Employees Retirement System or the County Employees Retirement System, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates the full cost of the service credit purchased, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.
 - (6) Effective August 1, 1988, service credit obtained under subsections (1) to (5), (8) to (12), (14), (15), and (17) to (19) of this section shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member, upon request, if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems or as an employee of a parted employer. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 61.600.
 - (7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.
 - (8) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for

a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not have the option to be covered at the university by a defined benefit retirement program, or did not participate in a retirement system which can be consolidated with other accounts pursuant to KRS 61.680(2), may obtain credit in the County Employees Retirement System, the Kentucky Employees Retirement System or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the county employees, Kentucky Employees Retirement System or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.

- (9)
 - (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);
 - (b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);
 - (c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;
 - (d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;
 - (e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.
- (10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.
- (11) Members who served as assistants to officers and employees of the General Assembly who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960, if the service purchased when added to other accumulated service will total at least forty-eight (48) months. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).
- (12) Effective August 1, 1988, any employee participating in one (1) of the state-administered retirement systems may purchase service credit for seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4). Any noncertified employee of a school board may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of

hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 78.610(4).

- (13) A retired member, who is contributing to one (1) of the state-administered retirement programs and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:
 - (a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or
 - (b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.
- (14) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (15) Any employee participating in one (1) of the state-administered retirement systems may obtain credit for prior or current service for any period of approved maternity leave granted prior to January 1, 1972, or for any period of approved sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by making installment payments in lieu of a lump-sum payment.
 - (a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal.
 - (b) Twelve (12) consecutive monthly installment payments shall be made for each one thousand dollars (\$1,000) or any part thereof of the total cost, except that the total number of installments shall not be less than twelve (12) and shall not exceed sixty (60).
 - (c) The employee shall pay the installments by payroll deduction each pay period. Upon notification by the retirement system, the employer shall report the installment payments separate from regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.
 - (d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the

service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

- (e) If the employee dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal of the purchase by lump sum. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.
 - (f) If the employer does not report installment payments on an employee for sixty (60) days, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased.
 - (g) If payments have ceased under subsection (16)(e) or (f) of this section and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.
 - (h) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by transferring funds directly from a retirement plan maintained by his employer which is a qualified plan pursuant to Section 401(a) of the Internal Revenue Code or by a rollover of funds from the plan pursuant to the rules specified in Section 402(c) of the Internal Revenue Code and the Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in Section 402 (c) and Section 401(a)(31) of the Internal Revenue Code. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.
- (17) Any employee participating in one (1) of the state-administered retirement systems who is age sixty-five (65) or older and has forty-eight (48) months service or, if younger, who has sixty (60) months service may purchase credit in the Kentucky Employees Retirement System for up to ten (10) years service in a regular full-time position that was credited to a state or local government administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay the full cost of the service as determined by the system. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.
- (18) Any employee participating in the County Employees Retirement System, who has sixty (60) or more months of service, may purchase credit in the County Employees Retirement System for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay the full cost of the service credit as determined by the system. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.
- (19) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.
- (20) (a) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65), or at least sixty (60) months' service if under age sixty-five (65), and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement

- system in which he participates the full cost of the service credit purchased, as determined by the system.
- (b) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65), or at least sixty (60) months' service if under age sixty-five (65), who has served or is currently serving in an office established pursuant to KRS 160.160, and who has at least fifteen (15) years of service, may obtain credit not to exceed two (2) years for the period of his service in the office established pursuant to KRS 160.160, if the service to be purchased does not overlap with service in a position covered by another state administered retirement system, by paying to the state retirement system in which he participates the full cost of the service credit purchased, as determined by the system. The purchase of this service shall be made prior to December 31, 1996.
 - (c) Payment for purchase of service pursuant to paragraphs (a) and (b) of this subsection may be made in installments in lieu of lump-sum payment. The payment shall not be picked up, as described in KRS 61.560(4), and shall be deposited to the individual member's account.
- (21) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65), who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4).
 - (22) Any employee participating in one (1) of the state-administered retirement systems on June 30, 2000, may obtain credit for subsequent service with a parted employer from the Commonwealth operating for the purposes of KRS 163.475, by paying to the respective retirement system a delayed contribution payment if the respective retirement system receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall be deposited to the individual member's account. The delayed contribution payment shall not be picked up by the employer as described in KRS 61.560(4).
 - (23) Any employee participating in the County Employees Retirement System who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may purchase service credit for service with a city, county, or joint city-county planning commission, if that service was not covered by a state-administered retirement system. Notwithstanding any statute to the contrary, the employee shall be entitled to a full month of service for each month or portion of month that the employee occupied the position whether or not the employee would have qualified, at the time of planning commission service, for the service under KRS 6.525. The employee shall pay to the retirement system the full cost of the service credit purchased, as determined by the board's actuary. The payment shall not be picked up, as described in KRS 78.610(4), by the employer and shall be deposited to the member's account. Payment may be by lump sum or in increments. The employee may obtain credit for service with a city, county, or joint city-county planning commission only if the Kentucky Retirement Systems receives a favorable letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor.
 - (24) *Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems on or after August 1, 1998, who has at least two hundred forty (240) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.510 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for based on the full actuarial cost as determined by the system. The payment shall not be picked up, as described in KRS 16.545(4), KRS 61.560(4), KRS 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments.*

Approved March 16, 1998

CHAPTER 57

(HB 142)

AN ACT relating to child protection and declaring an emergency.

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

Section 1. KRS 600.010 is amended to read as follows:

- (1) KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code.
- (2) KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes:
 - (a) The Commonwealth shall direct its efforts to ***promoting protection of children; to*** the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them;
 - (b) It also shall be declared to be the policy of this Commonwealth that all efforts shall be directed toward providing each child a safe and nurturing home;
 - (c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;
 - (d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his condition; and
 - (e) It shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

Section 2. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
 - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury ***as defined in this section*** by other than accidental means;
 - (b) Creates or allows to be created a risk of physical or emotional injury ***as defined in this section*** to the child by other than accidental means;
 - (c) ***Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);***
 - (d) ***Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;***
 - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
 - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
 - (g) Abandons or exploits ~~the~~^{such} child; ***or***
 - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing ***the person's***~~his~~ religious beliefs shall not be considered a negligent parent solely because ***of failure***~~he fails~~ to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

- (2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (3) "Cabinet" means the Cabinet for Human Resources;
- (4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;
- (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;
- (10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (15) "Department" means the Department for Social Services;
- (16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;
- (18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

- (20) ~~"Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;~~
- (21) ~~"Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in *the child's*~~[his]~~ ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment *as testified to by a qualified mental health professional*;~~
- (21)~~(22)~~ "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (22)~~(23)~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (23)~~(24)~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (24)~~(25)~~ "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (25)~~(26)~~ "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- (26)~~(27)~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (27)~~(28)~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (28)~~(29)~~ "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (29)~~(30)~~ "Intentionally" means, with respect to a result or to conduct described by a statute *to* which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (30)~~(31)~~ "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (31)~~(32)~~ "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;
- (32)~~(33)~~ "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- (33)~~(34)~~ "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (34) "***Needs of the child***" means ***necessary food, clothing, health, shelter, and education.***
- (35) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (36) "Parent" means the biological or adoptive mother or father of a child;

- (37) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (38) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (39) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (40) "Public offense action" means an action brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (41) "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- (42) "Residential treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (43) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (44) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (45) "Secretary" means the secretary of the Cabinet for Human Resources;
- (46) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- (47) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (48) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily *member or* organ;

- (49) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions ~~between a child and an adult~~ in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (50) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (51) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (52) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (53) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (54) "Youth alternative center" means a nonsecure facility, approved by the Department of Corrections, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- (55) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 3. KRS 605.090 is amended to read as follows:

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:
- (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
 - (b) Placed in the home of *the child's*~~his~~ parents, *in the home of a relative*, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;
 - (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(1)(b), (c), or (d) or any child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;
 - (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
 - (e) Treated as provided in KRS Chapter 645;
 - (f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of *the child's*~~his~~ parents, the child shall not be removed except in accordance with the following standards and procedures:
- (a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine

whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

- (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;
 - (c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or
 - (d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.
- (3) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.
 - (4) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.
 - (5) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 4. KRS 620.060 is amended to read as follows:

- (1) The court for the county where the child is present may issue an ex parte emergency custody order when it appears to the court **that removal is in the best interest of the child and** that there are reasonable grounds to believe, as supported by affidavit or by recorded sworn testimony, that **one (1) or more of the following conditions exist**~~the child is in danger of imminent death or serious physical injury or is being sexually abused~~ and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child;

- (a) *The child is in danger of imminent death or serious physical injury or is being sexually abused;*
 - (b) *The parent has repeatedly inflicted or allowed to be inflicted by other than accidental means physical injury or emotional injury. This condition shall not include reasonable and ordinary discipline recognized in the community where the child lives, as long as reasonable and ordinary discipline does not result in abuse or neglect as defined in KRS 600.020(1); or*
 - (c) *The child is in immediate danger due to the parent's failure or refusal to provide for the safety or needs of the child.*
- (2) Custody may be placed with a relative taking into account the wishes of the custodial parent **and child** or any other appropriate person or agency including the cabinet.
- ~~(3)~~~~(2)~~ An emergency custody order shall be effective no longer than seventy-two (72) hours, exclusive of weekends and holidays, unless there is a temporary removal hearing with oral or other notice to the county attorney and the parent or other person exercising custodial control or supervision of the child, to determine if the child should be held for a longer period. The seventy-two (72) hour period also may be extended or delayed upon the waiver or request of the child's parent or other person exercising custodial control or supervision.
- ~~(4)~~~~(3)~~ Any person authorized to serve process shall serve the parent or other person exercising custodial control or supervision with a copy of the emergency custody order. If such person cannot be found, the sheriff shall make a good faith effort to notify the nearest known relative, neighbor, or other person familiar with the child.
- ~~(5)~~~~(4)~~ Within seventy-two (72) hours of the taking of a child into custody without the consent of his parent or other person exercising custodial control or supervision, a petition shall be filed pursuant to this chapter.
- ~~(6)~~~~(5)~~ Nothing herein shall preclude the issuance of arrest warrants pursuant to the Rules of Criminal Procedure.

Section 5. KRS 620.130 is amended to read as follows:

- (1) In any proceeding under this chapter, when the court is petitioned to remove or continue the removal of a child from the custody of his parent or other person exercising custodial control or supervision, the court shall first consider whether the child may be reasonably protected against the alleged dependency, neglect or abuse, by alternatives less restrictive than removal. Such alternatives may include, but shall not be limited to, the provision of medical, educational, psychiatric, psychological, social work, counseling, day care, or homemaking services with monitoring wherever necessary by the cabinet or other appropriate agency. Where the court specifically finds that such alternatives are adequate to reasonably protect the child against the alleged dependency, neglect or abuse, the court shall not order the removal or continued removal of the child.
- (2) If the court orders the removal or continues the removal of the child, services provided to the parent and the child shall be designed to promote the **protection of the child and the** return of the child **safely to the child's**~~his~~ home as soon as possible. The cabinet shall develop a treatment plan for each child designed to meet the needs of the child. The cabinet may change the child's placement or treatment plan as the cabinet may require. The cabinet shall notify the committing court of the change, in writing, within fourteen (14) days after the change has been implemented.

Section 6. KRS 620.155 is amended to read as follows:

Any *interested* party aggrieved by a proceeding under KRS 610.010(1)(e) **including the parent, child, guardian ad litem, the cabinet, and the county attorney** may appeal from the juvenile court to the Circuit Court as a matter of right in the manner provided in the Kentucky Rules of Civil Procedure. The Circuit Court may order that the child may be removed to a suitable place, pending the appeal, if it appears by affidavit or sworn testimony that the child would be in imminent danger if left with or returned to his parents, guardian, or other person party to the appeal.

SECTION 7. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

- (1) **Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:**

- (a) *Mental illness as defined in KRS 202A.011(9) or mental retardation as defined in KRS 202B.010(9) of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;*
 - (b) *Acts of abuse or neglect as defined in KRS 600.020(1) toward any child;*
 - (c) *Alcohol and other drug abuse, as defined in KRS 222.005(12), that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;*
 - (d) *A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;*
 - (e) *Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and*
 - (f) *The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.*
- (2) *In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.*

Section 8. KRS 610.125 is amended to read as follows:

- (1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a dispositional review hearing no later than *twelve (12)*~~eighteen (18)~~ months after *the date the child is considered to have entered foster care*~~custody is given to the cabinet~~, and annually thereafter if custody and out-of-home placement continues, to determine the future status of the child. *For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty (60) days after the date on which the child is removed from the home.*

The court shall address the following areas:

- (a) If parental rights have not been terminated, whether the child should be returned to the parent;
 - (b) Whether the child should continue in out-of-home care for a specified period of time;
 - (c) Whether the child should be placed for adoption; and
 - (d) Whether special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis.
- (2) *If the cabinet or the Department of Juvenile Justice determines that reasonable efforts to reunify the child with the child's family will not be made, the cabinet or Department of Juvenile Justice shall file a case permanency plan as defined by KRS 620.230 or case progress report with the court that documents the reasons for not making reasonable efforts. The court shall hold a dispositional review hearing within thirty (30) days of the filing of the cabinet's or Department of Juvenile Justice's plan or report with the Court.*
- (3) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section, *and shall further inform the court of the name and address of the child's foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case. For the hearing to be held pursuant to subsection (2) of this section, the names and addresses of the persons identified in this subsection shall be provided in the case permanency plan or case progress report to be filed with the court.* The court shall set a time for the hearing and notify the child's parent, *foster parents, preadoptive parents or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case,* and the Department of Juvenile Justice or the cabinet.
- ~~(4)~~~~(3)~~ The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last dispositional hearing, including the following:
- (a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;
 - (b) The number, location, and date for each placement during the total period of the child's commitment;

- (c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;
 - (d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;
 - (e) The familial and institutional barriers to:
 - 1. Returning the child to the home;
 - 2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and
 - 3. Delivery of appropriate services needed by the child;
 - (f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;
 - (g) An evaluation of the child's current placement and services provided to the child;
 - (h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and
 - (i) Recommendations as to the permanency goal for the child.
- (5){(4)} The child's parent, *foster parent, preadoptive parent, or relative providing care to the child*, may present any evidence relevant to the determination of a permanency goal for the child.
- (6){(5)} Upon conclusion of the hearing the court shall make a written *finding* ~~{determination}~~ regarding *the adequacy of the permanency plan, the extent to which the permanency plan complies with KRS 620.230(2), and the services intended to achieve permanency for the child* ~~{a plan of transitional independent living services if the child has reached the age of sixteen (16) years, and the most appropriate permanency goal if the child has not reached the age of sixteen (16) years}~~.
- (7) *If the court finds that the permanency plan is not adequate, it shall redocket the case within sixty (60) days for further review.*

Section 9. KRS 625.0405 is amended to read as follows:

- (1) A parent desiring the termination of his or her parental rights and a transfer of the parental rights to a person, persons, *the cabinet*, or *a child-placing agency licensed by the cabinet* for the purpose of adoption may prior to or upon the filing of the petition request the Circuit Court to appoint an attorney to represent the parent and provide legal representation in the termination action. If the court determines pursuant to KRS Chapter 31 that the requesting parent is indigent, the court shall appoint an attorney (within forty-eight (48) hours) to represent the indigent parent. The attorney for the indigent parent shall receive a fee to be fixed by the court, not to exceed five hundred dollars (\$500) and assessed as costs, and *the court* may order the costs to be paid by the proposed adoptive parent, parents, or agency before the entry of a judgment of termination, except the attorney's fee shall be paid by the Finance and Administration Cabinet if termination is not granted, *or if custody of the child is placed with the cabinet.*
- (2)
 - (a) In every voluntary termination proceeding, the expenses paid, including but not limited to any fees for legal services, placement services, and expenses of the biological parent or parents, by the prospective adoptive parent for any purpose related to a termination of parental rights shall be submitted to the court, supported by an affidavit, setting forth in detail a listing of the expenses for the court's approval or modification.
 - (b) In the event the court modifies the expense request as it relates to legal fees and legal expenses only, the attorney for the prospective adoptive parents shall not have any claim against the prospective adoptive parents for the amount not approved.
- (3) Any person who violates subsection (2) of this section shall be guilty of a Class A misdemeanor.

Section 10. KRS 625.042 is amended to read as follows:

- (1) Within three (3) days after a petition for the voluntary termination of parental rights is filed, the Circuit Court shall set a date for a hearing *which shall not be more than thirty (30) calendar days after the petition is filed.*

In any case in which the child's permanent custody is proposed to be transferred to an individual not excepted by KRS 199.470(4) or (5), a final order of termination shall be entered only if the proposed custodian has received the written approval of the secretary or the secretary's designee for the child's placement as required by KRS 199.473.

- (2) The Circuit Court shall require notice to be served upon the local representative of the cabinet in any case in which a statement from the cabinet of willingness to accept custody of the child has not been filed with the petition, or custody of the child is to be placed with an individual unless the placement has been approved by the cabinet. It shall not be necessary to serve notice upon the cabinet if custody of the child is to be placed with the cabinet or with a child-placing agency.
- (3) Proceedings under this chapter shall be completed as soon as practicable. All hearings shall be held before the Circuit Court privately for the purpose of determining the facts.
- (4) An official stenographic or mechanical record shall be made of the proceedings and retained for a period of five (5) years.
- (5) The best interests of the child shall be considered paramount, *including but not limited to matters relating to child support.*
- (6) At the time of the hearing, the Circuit Court, after full and complete inquiry, shall determine whether each petitioner is fully aware of the purpose of the proceedings and the consequences of the provisions of this chapter.

Section 11. KRS 625.040 is amended to read as follows:

- (1) A petition for the voluntary termination of parental rights shall be entitled "In the interest of ..., a child." The petition may be filed by a parent *or counsel when the Appearance Waiver and Consent to Adopt forms are signed by the parent, counsel, and cabinet representative under the conditions described in subsections (3) and (4) of Section 12 of this Act.*
- (2) The petition for the voluntary termination of parental rights shall be filed in the Circuit Court of the *Judicial Circuit*~~county~~ where the petitioner *or child* resides *or in the Circuit Court in the county in which juvenile court actions, if any, concerning the child have commenced,*~~for is found~~ and shall be verified and contain the following:
 - (a) Name and place of residence of each petitioner;
 - (b) Name, sex, date of birth, and place of residence of the child;
 - (c) Name and relationship of each petitioner to the child;
 - (d) A concise statement of the factual basis for the termination of parental rights;
 - (e) Name and address of the person or of the cabinet or authorized agency to which parental rights are sought to be transferred; and
 - (f) A statement that the person, cabinet, or authorized agency to whom custody is to be given has facilities available, is willing to receive the custody of the child, and the person, if not excepted by KRS 199.470(4) or (5), has applied for the written permission of the secretary or the secretary's designee for the child's placement. This provision shall not affect the right of a court to grant temporary custody under KRS 199.473.
- (3) No petition may be filed under this chapter prior to three (3) days after the birth of the child.

Section 12. KRS 625.041 is amended to read as follows:

- (1) The ~~parties~~~~only party~~ to an action for voluntary termination of parental rights shall be the parent seeking termination, *whose presence is not required if represented by counsel for the parent when an Appearance Waiver and Consent to Adopt form is filed with the court,* but the court shall appoint a guardian ad litem to represent the best interest of the child.
- (2) The guardian ad litem shall be paid a fee to be fixed by the court, not to exceed five hundred dollars (\$500), to be paid by the petitioner, except if the Cabinet for Human Resources receives custody of the child, the guardian ad litem shall be paid by the Finance and Administration Cabinet.

- (3) *The parent may sign an Appearance Waiver and Consent to Adopt form when the parent chooses not to attend a voluntary termination of parental rights proceedings. This form, prescribed by the Administrative Office of the Courts, shall:*
- (a) *Contain a statement of acknowledgment and agreement, regarding the appearance at the proceeding, signed by the parent, counsel for the parent, and the cabinet. If the parent is a minor, the form shall also be signed by the guardian of the minor parent;*
 - (b) *Contain the parent's notarized signature;*
 - (c) *Contain any address to which the parent requests the final judgment be served.*
- (4) *If a joint petition is filed, counsel shall be designated as attorney for both parties.*

Section 13. KRS 625.060 is amended to read as follows:

- (1) In addition to the child, the following shall be the parties in an action for involuntary termination of parental rights:
- (a) The petitioner;
 - (b) The cabinet, if not the petitioner; and
 - (c) The biological parents, if known and if their rights have not been previously terminated. It shall not be necessary to make the putative father a party if he is exempted by KRS 625.065.
- (2) Any party *other than the child* who is not the petitioner shall be a respondent.

Section 14. KRS 625.070 is amended to read as follows:

- (1) In any action for involuntary termination of parental rights, service upon the parties shall be accomplished by personal service where possible or constructive service where personal service is not possible, pursuant to the Kentucky Rules of Civil Procedure.
- (2) No service shall be necessary if a disclaimer of paternity or a petition for voluntary termination of parental rights has been executed by a parent or alleged parent and filed in the record, or an order terminating parental rights has been entered by a Circuit Court of competent jurisdiction.
- (3) Notwithstanding the provisions of the Kentucky Rules of Civil Procedure, *appointment of a guardian ad litem for a child in an action for termination of parental rights, and service of the petition upon the guardian ad litem shall be sufficient for personal jurisdiction over the child in the action* ~~[Service upon a child committed to the cabinet shall be made upon the cabinet].~~

Section 15. KRS 625.080 is amended to read as follows:

In any involuntary action for termination of parental rights:

- (1) The Circuit Court shall conduct a private hearing. An official stenographic or mechanical record shall be made of the proceedings and retained for a period of five (5) years. The court shall make findings of fact and conclusions of law, *which may be made on the record*, to support its judgment;
- (2) Any child to whom an involuntary action directly relates shall be made a party to the action and a guardian ad litem shall be appointed to represent the best interests of the child. The person appointed as a guardian ad litem shall be paid a fee not to exceed five hundred dollars (\$500), to be paid by the Finance and Administration Cabinet *when the cabinet is the proposed custodian. When the cabinet is not the proposed custodian, the court may order the cost to be paid by the proposed adoptive parent, parents, agency, or the petitioner*. Upon motion of any party, the child may be permitted to be present during the proceedings and to testify if the court finds such to be in the best interests of the child. In its discretion, the Circuit Court may interview the child in private, but a record of the interview shall be made, which, in the discretion of the court, may be sealed to be used only by an appellate court;
- (3) The parents have the right to legal representation in involuntary termination actions. ~~[If the court finds that a parent who is a party in an action for involuntary termination of parental rights does not have legal representation,]~~ The Circuit Court shall determine if *the* ~~said~~ parent is indigent and, therefore, entitled to counsel pursuant to KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an

attorney to represent the parent pursuant to KRS Chapter 31 to be provided or paid for by the Finance and Administration Cabinet a fee to be set by the court and not to exceed five hundred dollars (\$500);

- (4) *If the parent is currently authorized to visit with the child, the court may continue to permit the parent to visit the child pending the final hearing unless it finds that visitation would not be in the best interest of the child.*
- (5) *The hearing*~~[Proceedings]~~ under this chapter shall be *held within sixty (60) days of the motion by a party or the guardian ad litem for a trial date*~~[, expedited, and completed as soon as practicable].~~

Section 16. KRS 625.090 is amended to read as follows:

- (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:
- (a) *1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;*
 - 2. The child*~~[or]~~ *is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or*
 - 3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and*
- (b) ~~[that]~~ Termination would be in the best interest of the child.
- (2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
 - (d) *That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;*
 - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
 - ~~(f)~~~~(e)~~ That the parent has caused or allowed the child to be sexually abused or exploited;~~[or]~~
 - ~~(g)~~~~(f)~~ That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
 - (h) *That:*
 - 1. The parent's parental rights to another child have been involuntarily terminated;*
 - 2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and*
 - 3. The conditions or factors which were the basis for the previous termination finding have not been corrected;*
 - (i) *That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or*

- (j) *That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.*
- (3){(2)} In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) ~~Emotional illness,~~ Mental illness *as defined by KRS 202A.011(9)*, or mental *retardation as defined by KRS 202B.010(9)* ~~[deficiency]~~ of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
 - (b) Acts of abuse or neglect *as defined in KRS 600.020(1)* toward any child in the family;
 - (c) If the child has been placed with the cabinet, *whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents* ~~[or a child-placing agency or child caring facility, whether the cabinet has rendered or attempted to render all reasonable services to the parent which reasonably might be expected to bring about a reunion of the family, including the parent's testimony concerning the services and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within a reasonable period of time, considering the age of the child];~~
 - (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;
 - (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
 - (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.
- (4) *If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.*
- (5){(3)} If the parent proves *by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent* ~~[the following to the satisfaction of the court,]~~ the court in its discretion may determine not to terminate parental rights: ~~the following to the satisfaction of the court,]~~
- (a) ~~That serious physical injury to the child will not occur in the future;~~
 - (b) ~~That continuous or repeated physical injury or emotional harm to the child will not occur in the future;~~
or
 - (c) ~~That sexual abuse or exploitation will not occur in the future.]~~
- (6){(4)} Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent *within thirty (30) days* either:
- (a) Terminating the right of the parent; or
 - (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

SECTION 17. A NEW SECTION OF KRS CHAPTER 625 IS CREATED TO READ AS FOLLOWS:

In the case of a child who has become a ward of the Cabinet for Human Resources as a result of a termination of parental rights judgment entered against the child's parents, and who remains a ward of the cabinet upon attainment of his or her eighteenth birthday, the cabinet, in its discretion, upon request of the ward, may extend its wardship to age twenty-one (21) for the purpose of the child's participating in state or federal educational programs or to assist the child in establishing independent living arrangements.

Section 18. KRS 199.502 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:

- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
 - (d) ***That the parent has been convicted of a felony that involved the infliction of serious physical injury to a child named in the present adoption proceeding;***
 - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
 - ~~(f)(e)~~ That the parent has caused or allowed the child to be sexually abused or exploited;~~(e)~~
 - ~~(g)(f)~~ That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
 - (h) ***That:***
 - 1. ***The parent's parental rights to another child have been involuntarily terminated;***
 - 2. ***The child named in the present adoption proceeding was born subsequent to or during the pendency of the previous termination; and***
 - 3. ***The condition or factor which was the basis for the previous termination finding has not been corrected; or***
 - (i) ***That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect.***
- (2) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision either:
- (a) Granting the adoption without the biological parent's consent; or
 - (b) Dismissing the adoption petition, and stating whether the child shall be returned to the biological parent or the child's custody granted to the state, another agency, or the petitioner.

Section 19. KRS 620.050 is amended to read as follows:

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. ***However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.***
- (2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- (3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

- (4) All information obtained by the cabinet or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:
- (a) Persons suspected of causing dependency, neglect, or abuse, provided that in such cases names of informants shall be withheld unless ordered by the court;
 - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
 - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;
 - (d) Other medical, psychological, educational, or social service agencies, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
 - (e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
 - (f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600; or
 - (g) Those persons so authorized by court order.
- (5) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of such reports. Such photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking such photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

Section 20. Whereas it is critical to provide needed protective services to children of the Commonwealth as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 17, 1998

CHAPTER 58

(SB 149)

AN ACT relating to reorganization.

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

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

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

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

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.

4. Department of Law.
 - (a) Attorney General.
 5. Department of the Treasury.
 - (a) Treasurer.
 6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 7. Superintendent of Public Instruction.
 8. Auditor of Public Accounts.
 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.

- (m) Kentucky Heritage Council.
- (n) Kentucky African-American Heritage Commission.
- 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of *Information Services* [~~Communications and Community Affairs~~].
- 4. Transportation Cabinet:
 - (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
- 5. Cabinet for Economic Development:
 - (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.

- (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.

- (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.

- (e) Department for Employment Services.
- (f) State Board for Adult and Technical Education.
- (g) Governor's Council on Vocational Education.
- (h) The State Board for Proprietary Education.
- (i) The Foundation for Adult Education.
- (j) The Kentucky Job Training Coordinating Council.
- (k) Office of General Counsel.
- (l) Office of Communication Services.
- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 2. The General Assembly confirms Executive Order 96-944, dated July 16, 1996, which relates to the reorganization of the Natural Resources and Environmental Protection Cabinet, to the extent it is not otherwise confirmed by this Act. That executive order creates the Office of Information Services and the Public Information and Education Branch within the Office of the Secretary and abolishes the Data Processing Branch and the Office of Communications and Community Affairs within the cabinet.

Approved March 17, 1998

CHAPTER 59

(SB 150)

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 96-931, dated July 16, 1996, which creates the Division of Insurance Fraud Investigation in the Department of Insurance.

Approved March 17, 1998

CHAPTER 60

(SB 152)

AN ACT relating to reorganization.

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

Section 1. KRS 304.17A-020 is amended to read as follows:

- (1) There is hereby created the Kentucky Health Purchasing Alliance consisting of the entire Commonwealth. The alliance shall operate independently from the department but shall be attached to the department for administrative purposes. ***The alliance shall be composed of organizational entities deemed appropriate by the alliance board of directors.*** The alliance shall be operational by July 15, 1995.
- (2) The alliance designated in subsection (1) of this section shall be the only entity permitted to operate as a statewide health purchasing alliance in the Commonwealth and shall operate for the benefit of the members of the alliance. The alliance is the exclusive entity for the oversight and coordination of alliance member purchases. Any health benefit plan offered through the alliance shall be offered by an accountable health plan, and the alliance shall not:
 - (a) Directly provide insurance;
 - (b) Directly contract, for purposes of providing insurance, with a health care provider or provider network, unless the provider or network constitutes an accountable health plan; or
 - (c) Bear any risk, or form self-insurance plans among its members.

Nothing in KRS 304.17A-010 to 304.17A-070 shall limit the formation of business health coalitions; however, a person or entity that pools together or assists in purchasing health coverage shall not discriminate in its activities based on the health status or historical or projected claims experience of such employers or recipients.

- (3) Participation in the alliance shall be limited to mandatory alliance members and voluntary alliance members. The alliance shall be open to voluntary membership by those persons set forth in KRS 304.17A-010(23).
- (4) The alliance shall be governed by a board of directors consisting of five (5) members to be appointed by the Governor and confirmed by the Kentucky Senate. Members shall have expertise in business, finance, economics, or health benefits management and shall represent the interests of employers and health care consumers. No member shall be, nor have been:
 - (a) A health care provider or health insurer;
 - (b) An employee of a health care provider, health insurer, or health plan; or
 - (c) A person having a fiduciary relationship to a health care provider, health insurer, or health plan.
- (5) The Governor may at any time remove any member of the alliance board of directors for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested.
- (6) The alliance may have regional advisory boards with the number of members, terms of office, and conditions of participation to be determined by the alliance and with the members to be appointed by the Governor from a list of three (3) candidates for each open position on each regional advisory board submitted by the President of the Senate and the Speaker of the House; however, the terms of office of any member of a regional advisory board shall not exceed four (4) years. The qualifications for regional advisory board members shall be the same as for alliance board members as set forth in subsection (4) of this section.
- (7) The members of the alliance board of directors and regional advisory boards shall be reimbursed for actual expenses incurred in the discharge of the member's duties.
- (8) The alliance board of directors shall employ ~~an~~~~a chief~~ executive **director**~~officer~~ and comptroller for the alliance. The ~~chief~~ executive **director**~~officer~~ shall employ any professional staff necessary to carry out the duties of the alliance and any regional advisory board subject to the approval of the department.

- (9) No member of the alliance board of directors or any regional advisory board shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of the alliance.
- (10) Nothing in KRS 304.17A-010 to 304.17A-070 shall be construed to prohibit or compel the health purchasing alliance or an accountable health plan from using the services of a licensed insurance agent or broker in order to assist in marketing, consumer education, claims assistance, grievance resolution, and servicing of health benefit coverage offered by the accountable health plan or through the health purchasing alliance. Any commissions or compensation paid by an accountable health plan to a licensed insurance agent or broker shall be determined between the accountable health plan and the agent or broker. An accountable health plan shall not vary compensation or commissions to such agents, brokers, contractors, or producers based directly or indirectly, on the anticipated or actual claims experience or health status associated with particular employers to which each plan is sold.
- (11) Notwithstanding any other provisions to the contrary, in order to support the teaching programs at the two (2) Health Science Centers, selective contracting for inpatient and outpatient services will include all university-affiliated teaching facilities in order to maintain a broad base of patients essential for the support of accredited teaching programs.

Section 2. The General Assembly confirms Executive Order 96-884, dated July 9, 1996, to the extent it is not otherwise confirmed by this Act.

Approved March 17, 1998

CHAPTER 61

(SB 153)

AN ACT relating to government reorganization.

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Kentucky Recycling and Marketing Assistance program, referred to in this section as the "program," is created to develop a recycling infrastructure within the Commonwealth. The program shall:***
 - (a) *Encourage the collection, processing, and marketing of recovered materials;*
 - (b) *Provide assistance for the development of community and regional recycling;*
 - (c) *Identify resources to help market recyclables; and*
 - (d) *Promote the development of the market for recyclables.*
- (2) ***The Natural Resources and Environmental Protection Cabinet shall administer the program and assist local governments and commercial businesses seeking to recycle materials.***
- (3) ***The Secretary of the Natural Resources and Environmental Protection Cabinet shall create a Kentucky Recycling and Marketing Assistance Advisory Committee to act in an advisory capacity to the cabinet. In addition to its other duties, this committee shall develop and submit an annual report by October 1 to the Interim Committee on Agriculture and Natural Resources.***

Section 2. KRS 224.43-080 is amended to read as follows:

- (1) On July 15, 1994, and annually thereafter, each publisher shall submit a report to the cabinet. The report shall indicate the amount of newsprint used in the preceding year, its recycled content, along with any other information required by the cabinet.
- (2) The Governor shall appoint a Newsprint Recycling Task Force consisting of the secretary of the Natural Resources and Environmental Protection Cabinet or a designee; the chairman of the ***Kentucky Recycling and Marketing Assistance Advisory Committee*** [~~Kentucky Recycling Brokerage Authority~~] or a designee; the executive director of the Kentucky Press Association or a designee; three (3) members from environmental organizations; and five (5) members representing the Kentucky newsprint publishing industry and newsprint

manufacturers doing business in Kentucky. A list of names of potential task force members shall be provided by the president of the Kentucky Press Association.

- (3) The task force members shall each serve a two (2) year term. The initial five (5) industry representatives appointments shall consist of two (2) two (2) year terms and three (3) one (1) year terms.
- (4) The Newsprint Recycling Task Force shall meet as necessary to monitor the use of newsprint in the state for the following goals:
 - (a) To increase the demand for recycled newsprint in Kentucky;
 - (b) To increase the availability for the product;
 - (c) To establish Kentucky as a reliable source of old newsprint for recycling; and
 - (d) To identify, develop, and advance initiatives to recycle and reuse discarded newspapers and paper products with an emphasis on recycling these materials instead of diverting them for disposal.
- (5) The Newsprint Recycling Task Force and the Kentucky Press Association shall encourage all Kentucky industries and businesses, their trade or professional organizations, and all public agencies at the state and local level to increase their use of recycled newsprint.
- (6) The Newsprint Recycling Task Force shall take steps to attract a recycled newsprint mill or related facility to Kentucky by identifying potential sites and potential manufacturers. The task force shall also work with the *Kentucky Recycling and Marketing Assistance Advisory Committee* ~~{Kentucky Recycling Brokerage Authority}~~ in recommending appropriate economic and tax incentives to encourage such a project.
- (7) The Newsprint Recycling Task Force shall promote the increased recovery of old newspapers and, with the Commonwealth of Kentucky representatives, work with communities to develop processing and collection programs to provide quality material to the marketplace.
- (8) The Newsprint Recycling Task Force shall report to the Interim Joint Committee on Agriculture and Natural Resources by October 1, 1995, on the availability and cost of adequate supplies of newsprint which contain a recycled content of fifty percent (50%) or more, or any other information or recommendations deemed appropriate.

Section 3. The following KRS section is repealed:

224.01-500 Kentucky Recycling Brokerage Authority -- Powers -- Duties -- Brokerage fee -- Reports.

Section 4. Executive Order 96-946 is confirmed to the extent that it is not otherwise confirmed or superseded by this Act.

Approved March 17, 1998

CHAPTER 62

(SB 156)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 96-930, dated July 16, 1996, which changes the name of the Division of Sales and Marketing within the Department of the Kentucky State Fair Board within the Tourism Cabinet to the Division of Public Relations and Media, and establishes the Division of Security and Traffic Control and the Division of Sales within the Department of the Kentucky State Fair Board within the Tourism Cabinet.

Approved March 17, 1998

CHAPTER 63**(SB 158)**

AN ACT relating to reorganization.

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

Section 1. KRS 151B.023 is amended to read as follows:

- (1) The Department for Adult Education and Literacy is hereby created and is attached to the Cabinet for Workforce Development. The Department for Adult Education and Literacy shall be composed of the Division of Program Services, ***the Division of Workforce Investment***, and the Division of Management ~~and Support~~ Services. Each division shall be headed by a director appointed by the commissioner of the Department for Adult Education and Literacy, and shall be composed of organizational entities as deemed appropriate by the commissioner of the Department for Adult Education and Literacy as set forth by administrative order.
- (2) The Department for Adult Education and Literacy shall be headed by a commissioner. The appointment of the commissioner shall be made from a list of three (3) names submitted by the State Board for Adult and Technical Education to the secretary of the Cabinet for Workforce Development and the Governor. The commissioner shall be appointed by the secretary of the Cabinet for Workforce Development from the list with the approval of the Governor. The commissioner shall have general supervision and direction over all functions of the department and its employees and shall be responsible for carrying out the programs and policies of the department. The commissioner shall be responsible for implementing policies adopted by the State Board for Adult and Technical Education. The commissioner may delegate authority to deputies who may then act on his behalf in performing the duties assigned to the department.
- (3) The department shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy. When appropriate, the department shall provide education training programs through contracts with private business and industries. These programs may be on a shared-cost basis or on a total cost recovery basis. The department shall have the authority to enter into agreements or contracts with other government or education agencies, including local school districts, in order to carry out services under its jurisdiction.
- (4) The Department for Adult Education and Literacy shall be the education agency solely designated for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for adult education and literacy. The department shall be under the jurisdiction of the State Board for Adult and Technical Education for all appropriate purposes under this chapter. All appropriate rights, responsibilities, and benefits under this chapter governing adult education and literacy personnel and programs shall apply to the Department for Adult Education and Literacy.
- (5) The commissioner shall, from time to time, prepare or cause to be prepared, and submit for approval and publication by the State Board for Adult and Technical Education, any bulletins, programs, outlines of courses, placards, and courses of study he deems useful in the promotion of the interests of adult education and literacy.
- (6) The department shall prepare a biennial budget request and submit it for review by the State Board for Adult and Technical Education. The budget shall be forwarded to the secretary of the Cabinet for Workforce Development for review and modification.

Section 2. KRS 151B.125 is amended to read as follows:

- (1) For purposes of any public employment, a high school equivalency diploma or a regular high school diploma obtained through participation in the external diploma program shall be considered equal to a high school diploma issued under the provisions of KRS 158.140.
 - (a) A high school equivalency diploma shall be issued without charge upon successfully passing a test or tests given by the General Educational Development Testing Service of the American Council on Education or successor organization. A five dollar (\$5) fee may be assessed by the State Board for Adult and Technical Education for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate score report. All fees collected for duplicate diplomas and score reports shall be used to support the adult education program.

- (b) As an alternative to receiving a high school equivalency diploma, persons who are twenty-five (25) years or older may obtain a high school diploma through participation in the external diploma program. The diploma shall be issued upon achieving one hundred percent (100%) mastery on the competencies established by the American Council on Education. The Department for Adult Education and Literacy may enter into agreements with local school districts to confer the high school diploma on successful participants in the external diploma program.
- (2) Sufficient funding shall be provided to comply with the American Council on Education's Commission on Educational Credit and Credentials requirement of an essay as an additional requirement on the GED examination. Funds shall be used for the following purposes:
- (a) GED teachers in local districts shall receive training to teach writing skills to adults;
 - (b) The Department for Adult Education and Literacy is authorized to contract annually with an institution of higher education or other appropriate agency or entity for scoring the GED examination essay;
 - (c) Staff shall be employed and trained by the Department of Adult Education and Literacy to score approximately seventeen thousand (17,000) essays annually as a part of the requirement for the GED high school equivalency examination; and
 - (d) Essay readers will be assigned to the Division of Management ~~and Support~~ Services to score essays daily.

Section 3. The General Assembly confirms Executive Order 97-1508, dated November 17, 1997, relating to reorganization of the Cabinet for Workforce Development, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 17, 1998

CHAPTER 64

(SB 162)

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 96-697, dated May 31, 1996, which establishes within the Office of Legal Services of the Natural Resources and Environmental Protection Cabinet the Central Investigation Section, to the extent it is not otherwise confirmed by this Act.

Approved March 17, 1998

CHAPTER 65

(SB 173)

AN ACT relating to reorganization.

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

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

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

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

1. The Governor.
 2. Lieutenant Governor.
 3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
 4. Department of Law.
 - (a) Attorney General.
 5. Department of the Treasury.
 - (a) Treasurer.
 6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 7. Superintendent of Public Instruction.
 8. Auditor of Public Accounts.
 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) ***Division of Kentucky State Medical Examiners Office*** ~~[Medical Examiner Program]~~.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.

- (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.

- (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.

- (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.

- (h) Office of General Counsel.
- 12. Cabinet for Workforce Development:
 - (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 2. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

- (1) Office of secretary of justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the Kentucky Crime Commission. The Parole Board shall be attached to the Office of the Secretary for administrative purposes only.
- (2) Offices of deputy secretaries of justice.
- (3) Office of the general counsel.
- (4) ***Division of Kentucky State Medical Examiners Office*** [~~Medical examiner service program~~].

Section 3. KRS 64.185 is amended to read as follows:

- (1) Coroners shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$ 200
(b)	10,001 to 20,000	300
(c)	20,001 to 40,000	350
(d)	40,001 to 60,000	400
(e)	60,001 to 100,000	450
(f)	100,001 to 150,000	800
(g)	150,001 or more	1,000

Coroners who hold a current certificate of continuing education, issued jointly by the Department of Criminal Justice Training, Justice Cabinet, and the *Division of Kentucky State Medical Examiners Office* ~~Medical Examiner Program~~, Justice Cabinet, shall be paid the following minimum monthly compensation set forth in this subsection in recognition of the training:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$ 300
(b)	10,001 to 20,000	400
(c)	20,001 to 40,000	550
(d)	40,001 to 60,000	650
(e)	60,001 to 100,000	750
(f)	100,001 to 150,000	1,000
(g)	150,001 or more	1,200

- (2) Deputy coroners, who hold a current certificate of continuing education, as described in subsection (1) of this section, shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$100
(b)	10,001 to 20,000	150
(c)	20,001 to 40,000	175
(d)	40,001 to 60,000	200
(e)	60,001 to 100,000	300
(f)	100,001 to 150,000	800
(g)	150,001 or more	1,000

- (3) The initial course of continuing education required under subsection (1) of this section shall consist of a basic training course prescribed by the Justice Cabinet. Annually thereafter the coroner shall attend and successfully complete at least eighteen (18) hours of approved training in order to be compensated in accordance with subsection (1) of this section.

- (4) If a deputy coroner assumes the office of coroner after receiving the training stipulated in this section, the deputy coroner shall be compensated in accordance with the compensation schedule set forth in subsection (1) of this section.
- (5) The number of deputy coroners in a county shall not exceed one (1) for each twenty-five thousand (25,000) inhabitants, or fraction thereof, according to the most recent federal census, but every coroner may, subject to fiscal court approval, appoint two (2) deputy coroners, regardless of population.

Section 4. KRS 72.210 is amended to read as follows:

In enacting legislation establishing a *Division of Kentucky State Medical Examiners Office*~~medical examiner service program~~ for the Commonwealth of Kentucky, it is not the intention of the General Assembly to abolish or interfere with the coroner in his role as a constitutionally elected peace officer. It is the intention of the General Assembly for the *office*~~medical examiner service program~~ to aid, assist, and complement the coroner in the performance of his duties by providing medical assistance to him in determining causes of death.

Section 5. KRS 72.240 is amended to read as follows:

- (1) The Justice Cabinet may employ a board certified forensic pathologist as the chief medical examiner who shall administer the *Division of Kentucky State Medical Examiners Office*~~medical examiner program~~ and one (1) associate chief medical examiner for the Commonwealth. The chief medical examiner and the associate chief medical examiner shall be affiliated with the state medical schools.
- (2) The Justice Cabinet may employ physicians licensed to practice medicine in Kentucky as county or district medical examiners to carry out the provisions of KRS 72.210 to 72.275 within the counties or district to which they are assigned by the medical examiner section. The cabinet may designate county or district health officers as county or district medical examiners and may authorize additional compensation therefor.

Section 6. KRS 72.400 is amended to read as follows:

In enacting legislation relating to coroners, the General Assembly recognizes that the coroner is an elected constitutional peace officer. The General Assembly also recognizes that the ascertainment of the cause and manner of death in cases in which the coroner has jurisdiction is an essential governmental service. It is the intent of KRS 72.410 to 72.470 to encourage the coroner to participate in approved training sessions to improve his skills for the Commonwealth and to cooperate with the *Division of Kentucky State Medical Examiners Office*~~state medical examiner program~~ administered by the Justice Cabinet.

Section 7. KRS 72.410 is amended to read as follows:

- (1) The coroner of each county shall investigate the cause and manner of all deaths that are defined by KRS 72.405 as a coroner's case.
- (2) The coroner may, in his sound discretion, when investigating a coroner's case, request the assistance of the district medical examiner and the *Division of Kentucky State Medical Examiners Office*~~State Medical Examiner Program~~, order an autopsy, and hold an inquest.
- (3)
 - (a) Upon notification of the death of a child under the age of eighteen (18) years which meets the criteria for a coroner's case as defined in KRS 72.405 and 72.025, the coroner shall as soon as practicable contact the local office of the Department for Social Services, law enforcement agencies with local jurisdiction, and the local health department to determine the existence of relevant information concerning the case.
 - (b) Any agency of the state or any other agency, institution, or facility providing services to the child or the child's family, shall provide to the coroner upon his request the cooperation, assistance, and information to enable the coroner to comply with the provisions of this chapter. This section shall not be deemed to abrogate the attorney-client nor the clergy-penitent privilege or the confidentiality of records provided by KRS 311.377(2). If other privileged or confidential records are disclosed to the coroner pursuant to this section, the records shall remain confidential or privileged and shall not be disclosed except as authorized by this section, to the state or local child fatality response team, or as otherwise required by law.

Section 8. KRS 72.460 is amended to read as follows:

The cost of autopsies shall be paid for by the fiscal court; provided, however, that the Justice Cabinet, *Division of Kentucky State Medical Examiners Office* [~~Medical Examiner Program~~], may contract with pathologists and toxicologists and chemists and pay for such autopsies within the budgetary limitations of funds appropriated by the General Assembly for this purpose.

Section 9. The General Assembly hereby confirms Executive Order 96-941, dated July 15, 1996, which abolishes the Medical Examiner Program and creates in its place the Division of Kentucky State Medical Examiners Office, which will be headed by an executive director appointed by the Secretary of the Justice Cabinet with prior written approval of the Governor pursuant to KRS 12.050, to the extent that the Executive Order is not otherwise confirmed by this Act.

Approved March 17, 1998

CHAPTER 66

(SB 174)

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:

- (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) ***Operations and***~~Office of~~ ***Development Office***.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.

- (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.

- (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.

- (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.

(q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. The General Assembly confirms Executive Order 96-940 of the Education, Arts and Humanities Cabinet, relating to the renaming of the Office of Development to the Operations and Development Office, to the extent it is not otherwise confirmed by this Act.

Approved March 17, 1998

CHAPTER 67

(SB 175)

AN ACT relating to reorganization.

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

Section 1. KRS 146.560 is amended to read as follows:

- (1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation Fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the following members:
 - (a) The commissioner of the Department of Parks or a designee;
 - (b) The director of the Kentucky Nature Preserves Commission or a designee;
 - (c) The commissioner of the Department for Natural Resources or a designee;
 - (d) The commissioner of the Department of Fish and Wildlife Resources or a designee;
 - (e) The chairperson of the *Kentucky* Environmental *Education* Council or a designee;
 - (f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;
 - (g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;
 - (h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;
 - (i) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Farm Bureau, one (1) by the Commissioner of the Department of Agriculture, and one (1) by the Kentucky Association of Conservation Districts;
 - (j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee; and

- (k) One (1) person appointed by the Governor with at least five (5) years of experience in natural resources land acquisition.

The board shall receive staff support from the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources. Of the seven (7) members identified in paragraphs (f) to (k) of this subsection and first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, and three (3) for terms of three (3) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for a term of three (3) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. The Governor shall appoint a chairperson for the board.

- (2) The board shall promulgate in accordance with the provisions of KRS Chapter 13A administrative regulations as are deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. Grants shall be made in amounts, for purposes, and to the agencies identified in KRS 146.570 as meet the priorities for acquisition which are:
- (a) Natural areas that possess unique features such as habitat for rare and endangered species;
 - (b) Areas important to migratory birds;
 - (c) Areas that perform important natural functions that are subject to alteration or loss; or
 - (d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on acquisition based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. The board shall expend the whole or any part of the principal and interest as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

Section 2. KRS 157.910 is amended to read as follows:

- (1) There is hereby established ~~the Kentucky~~ Environmental **Education** Council, referred to hereafter as the council, to provide leadership and planning for environmental education for the population of Kentucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.
- (2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.
- (3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.
- (4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.
- (5) The council membership shall elect a chairperson to serve a one (1) year term.

Section 3. KRS 224.01-500 is amended to read as follows:

- (1) The Kentucky Recycling Brokerage Authority, referred to in this section as the "authority," is created by this section to further local governments' efforts to develop reliable markets for their recyclables. The authority shall be composed of sixteen (16) members as follows:
 - (a) The secretaries of the Cabinets for Finance and Administration and Natural Resources and Environmental Protection, and the commissioner of the Department of Local Government; and
 - (c) Thirteen (13) members appointed by the Governor including representatives of municipal and county governments; legislators; citizens representing environmental interests; and industry representatives.
- (2) These sixteen (16) persons and their successors in office shall constitute the Kentucky Recycling Brokerage Authority, a public corporation, with perpetual succession and with power in that name to contract and be contracted with, to convey property, to sue and be sued, and to exercise, in addition to the powers and

functions conferred by this section, all of the usual powers of corporations not inconsistent with specifically enumerated powers. The Governor shall appoint from the membership a chairperson who shall serve at the pleasure of the Governor. The authority may at its discretion elect from its membership other officers of the board.

- (3) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and function as members.
- (4) Nine (9) members of the authority shall constitute a quorum for the transaction of business. The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection shall provide staff services to the authority. The authority shall establish and maintain complete records of the authority's action and proceedings, which shall be public records open to inspection.
- (5) On or before July 1, 1991, the Governor shall appoint thirteen (13) members of the authority as follows: five (5) shall serve terms ending July 1, 1995; four (4) shall serve terms ending July 1, 1994; and four (4) shall serve terms ending July 1, 1993. As the terms of each group of members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed.
- (6) The Department for Environmental Protection shall assist the authority and act as the state broker for local governments and commercial recycling businesses seeking to sell recyclable materials. The department shall:
 - (a) Identify local, state, and interstate markets for recyclables;
 - (b) Issue requests for proposals as well as directly contact potential buyers;
 - (c) Negotiate contracts with potential buyers on behalf of participating local governments, commercial recycling businesses, or local groups;
 - (d) Arrange details of contracts including price collection schedules, reimbursements, and quality assurance provisions;
 - (e) Conduct workshops and seminars throughout the state to train recycling center and solid waste facility operators on how to prepare and process materials that will be marketed through the brokerage office;
 - (f) Issue routine market bulletins containing pricing information and other program details to all local governments and commercial recycling businesses, both those participating as well as nonparticipants; and
 - (g) Handle all paperwork for the brokering service including contracts, invoices, weigh slips, and records of collections and issue revenue checks to participants.
- (7) Local governments and commercial recycling businesses participating in the Kentucky Recycling Brokerage Program shall be assessed a brokerage fee of fifteen percent (15%) of the sale revenue or two dollars (\$2) per ton of recyclables sold, whichever is greater.
- (8) In addition to any brokerage fees received, the Department for Environmental Protection may receive and accept from any governmental agency, nonprofit organization, or from private enterprise appropriations, grants, or contributions of money, property, labor, or other things of value, to be used to carry out the functions of the department or the authority.
- (9) The authority shall annually issue financial and informational reports to the General Assembly which shall contain full descriptions of tonnage volumes handled, revenues generated, contracts entered into, market summaries and reviews, and other information under which a full review of the brokerage program is possible. The report shall be due on July 1 of each year.
- (10) The authority shall also include in its July 1, 1993 annual report to the General Assembly the following:
 - (a) A description and analysis of the Commonwealth's existing recycling industry, the types, and estimated amounts of recovered material being separated or reprocessed;
 - (b) An analysis of the projected long-term capacity of existing markets to absorb materials generated by materials recovery or recycling programs;
 - (c) An analysis of potential markets in the Commonwealth, in other states, or in foreign countries for recovered material or products manufactured using recovered material from this Commonwealth;

- (d) An analysis of institutional, economic, and technical barriers to the use of recovered material or products manufactured using recovered materials;
 - (e) Recommendations for actions which may be taken to increase demand for recovered materials or products;
 - (f) Recommendations for actions which may be taken to increase the incentives for private individuals and for business and industry to recover materials;
 - (g) Recommendations on categories of materials which should be recovered in this Commonwealth, given existing and potential markets for those materials;
 - (h) Recommendations for a public education program to be implemented by the Natural Resources and Environmental Protection Cabinet and the *Kentucky* Environmental *Education* Council to provide information to the public and to business and industry on the benefits of materials recovery and recycling and on the availability of those materials or products; and
 - (i) A review of state and local government procurement policies and recommendations for actions which might be taken to encourage waste reduction and recycling.
- (11) In subsequent years the authority shall include in its annual report the following:
- (a) Any revisions which the authority determines are necessary to its initial report;
 - (b) An analysis of changes that have occurred with markets for recovered material and products manufactured using recovered material since the last report; and
 - (c) Any other recommendations to facilitate the development of markets for recovered material and products manufactured using recovered material in this Commonwealth.

Section 4. KRS 224.10-250 is amended to read as follows:

The first one hundred fifty thousand dollars (\$150,000) of civil penalties collected per fiscal year by the cabinet or the Attorney General on its behalf under the provisions of KRS 224.99-010 shall be paid to the State Treasury and credited to the *Kentucky* Environmental *Education* Council for the purposes set out in KRS 157.915. All additional civil penalties collected by the cabinet, or the Attorney General on its behalf, under the provisions of KRS 224.99-010 shall be paid into the State Treasury and credited to the Kentucky Heritage Land Conservation Fund established by KRS 146.570.

Section 5. KRS 224.10-620 is amended to read as follows:

The *Kentucky* Environmental *Education* Council, the Natural Resources and Environmental Protection Cabinet, and the Department of Education shall establish a program to educate the citizens of the Commonwealth of the importance of reducing and managing waste effectively, the need for individual action to reduce the amount and toxicity of solid waste being disposed, the need for alternative disposal methods to landfilling for toxic materials commonly used in or around households such as cleaners, solvents, pesticides, and automotive and paint products, and the necessity of implementing environmentally protective management and disposal mechanisms for the solid waste that is generated. In helping develop the educational programs, the Department of Education shall identify and adopt mechanisms to inform students throughout the Commonwealth of the importance of reducing and managing solid waste effectively.

Section 6. The General Assembly confirms Executive Order 96-918 dated July 15, 1996, to the extent it is not otherwise confirmed by the Act.

Approved March 17, 1998

CHAPTER 68

(SB 176)

AN ACT relating to reorganization.

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

Section 1. KRS 42.013 is amended to read as follows:

- (1) The office of the secretary of the Finance and Administration Cabinet shall include a deputy secretary who shall be appointed by the secretary with the approval of the Governor. The deputy secretary shall be responsible to and have such authority to sign for the secretary as the secretary designates in writing.
- (2) The secretary may organize the office into such additional administrative units as he deems necessary to perform the functions and fulfill the duties of the cabinet, subject to the provisions of KRS Chapter 12. ***The Office of the Secretary shall include the Division of Information Resources and the Division of Internal Audit.***
- (3) All appointments under this chapter to positions not in the classified service shall be made pursuant to KRS 12.050 and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

Section 2. KRS 42.014 is amended to read as follows:

- (1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management and Economic Analysis, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration ~~which shall be headed by a commissioner,~~ ~~and~~ the Department for Facilities Management, ***and the Department of Information Systems each of*** which shall be headed by a commissioner ~~each of whom shall be responsible to the secretary and~~ appointed by the secretary, upon the approval of the Governor, ***and responsible to the secretary.*** Each of these departments may have at least one (1) major assistant not in the classified service.
- (2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 3. KRS 42.027 is amended to read as follows:

- (1) The Department for Facilities Management established in the Finance and Administration Cabinet by KRS 42.014 shall be generally responsible for performance of the cabinet's functions and duties as outlined in KRS Chapters 45, 45A, and 56 with relation to the management and administration of the State Capital Construction Program, including without limitation to the generality thereof, the procurement of necessary consulting services related to capital construction and building renovation projects, construction services, and supervision of building construction projects, and for the maintenance and operation of the state government's ~~telecommunications systems,~~ real property management functions ~~,~~ and physical plant management functions. The department shall be divided for administrative and operational purposes into a Division of Engineering, a Division of Contracting and Administration, ~~a Division of Telecommunications,~~ a Division of Physical Plant, a Division of Real Property, and a Division of Historic Properties, each of which shall be headed by a director appointed by the secretary, subject to the approval of the Governor, and responsible to the commissioner. The commissioner shall provide for the distribution of the department's work among the divisions within the department.
- (2) In conjunction with the responsibilities listed in subsection (1) of this section, the Department for Facilities Management shall have the following duties:
 - (a) Establish policies to ensure efficient utilization of state property by:
 1. Requiring the development of guidelines which set forth space standards and criteria for determining the space needs of state agencies, and maintaining an inventory which tracks the agencies' compliance with those standards and criteria; and
 2. Requiring certification of compliance, or justification for exceptions, as a criterion for approval of additional space.
 - (b) Establish policies to ensure effective planning for state facilities by:
 1. Developing a long-range plan for the Frankfort area, with priority on reducing dependency on leased space and encouraging the consolidation of agencies' central offices into single locations, and shared offices for agencies with similar functions; and
 2. Developing long-range plans for housing state agencies in metropolitan areas, with priority on centralization of services and coordination of service delivery systems; and

3. Encouraging executive branch agencies to expand long-range planning efforts, consistent with the policies of the Capital Planning Advisory Board; and
 4. Supporting long-range planning for a statewide information technology infrastructure to more efficiently deliver state government services.
- (c) Establish priorities to allow least-cost financing of state facilities by:
1. Initiating policies which authorize the state to use innovative methods to lease, purchase, or construct necessary facilities; and
 2. Requiring cost analysis to determine the most effective method of meeting space needs, with consideration for ongoing operations and initial acquisition.
- (3) The Department for Facilities Management shall develop plans for the placement of computing and communications equipment in all facilities owned or leased by state government. As part of this planning process, the department shall:
- (a) Provide adequate site preparation in all state-owned facilities, and require the same of those from whom the state leases space, as part of the lease agreement;
 - (b) Fund a minimum level of site preparation for computing and communications in each new state-owned facility; and
 - (c) As new office sites are developed, or existing ones undergo renovation, consider the placement of shareable high-cost, high-value facilities at strategic locations throughout the state. These facilities may include video teleconference centers, optical scanning and storage services, and gateways to high-speed communication networks.

Section 4. KRS 42.029 is amended to read as follows:

- (1) There is established a department of state government to be known as the Department of Information Systems. The department shall be a part of the Finance and Administration Cabinet. The Department of Information Systems shall be headed by a commissioner, appointed by the secretary of the Finance and Administration Cabinet, with the approval of the Governor. The commissioner shall be responsible to the secretary.
- (2) The secretary of the Finance and Administration Cabinet shall appoint, with the approval of the Governor, a deputy commissioner of the Department of Information Systems, pursuant to KRS 12.050. The commissioner of information systems, with the approval of the secretary of the Finance and Administration Cabinet, may appoint such principal assistants, pursuant to KRS 12.050, as may be necessary for the development and implementation of policy. The commissioner may employ, pursuant to the provisions of KRS Chapter 18A, such personnel as may be necessary to execute the functions and duties of the department.
- (3) The Department of Information Systems shall provide leadership, policy direction, and technical support to all executive agencies of state government in the application of information technology. The department shall:
 - (a) Assure compatibility, portability, and connectivity of Kentucky's information systems; and
 - (b) Implement necessary management processes to assure full compliance with the Kentucky information resources architecture as adopted by the Kentucky Information Resources Management Commission.
- (4) The Department of Information Systems shall include the following divisions, each of which shall be headed by a director appointed by the secretary with the approval of the Governor, pursuant to KRS 12.050:
 - (a) The Division of Network Services, which shall be responsible for network planning, network design, network management, systems administration, research and evaluation of desktop and departmental computer technologies, support for end user computing, and information dissemination;
 - (b) The Division of Computer Services, which shall be responsible for all computer operations, systems programming, technical support services, data storage, and database management services;
 - (c) The Division of Systems Development, which shall be responsible for providing comprehensive systems analysis, design, and development services, and applications consulting services to designated state agencies with primary responsibility for supporting economic development, education, human services, and public protection systems;

- (d) The Division of Systems Engineering, which shall be responsible for providing comprehensive systems analysis, design, and development services and applications consulting services to designated state agencies with primary responsibility for supporting environmental, financial, labor, personnel, revenue, safety, justice, tourism, and transportation systems;~~and~~
 - (e) The Division of Support Services, which shall be responsible for planning and procurement assistance, fiscal administration, service coordination, application development standards, data security, disaster recovery planning, technical training, technical publications, and facilities support; ~~and~~
 - (f) ***The Division of Telecommunications, which shall be responsible for the maintenance and operation of the state government's telecommunications systems.***
 - (g) The secretary of the Finance and Administration Cabinet, in consultation with the commissioner of the Department of Information Systems, shall designate the state agencies to be provided services by the Division of Systems Development and the Division of Systems Engineering based on the complexity of the services to be provided and each division's work load.
- (5) The Department of Information Systems may delegate authority to individual state agencies for the performance of departmental and desktop level functions if the commissioner finds the delegation to be in the best interest of the Commonwealth. All delegations of authority shall:
- (a) Be in written form;
 - (b) Specify the level and scope of functions to be performed; and
 - (c) Provide notice to the agency receiving delegation of authority, that the delegated authority will be revoked if the commissioner finds that the functions being performed fail to adhere to prescribed criteria or if the commissioner finds that it is no longer in the best interest of the Commonwealth to continue the agency's delegation of authority. Nothing in this subsection shall apply to the data processing operations or personnel of the Kentucky Retirement Systems or the Kentucky Teachers' Retirement System.
- (6) The Department of Information Systems may provide general consulting services, technical training, and support for generic software applications, upon request from a local government, if the commissioner finds that the requested services can be rendered within the established terms of the federally approved cost allocation plan.
- (7) Nothing in this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.
- (8) The department may promulgate necessary administrative regulations for the furtherance of this section.

Section 5. KRS 42.065 is amended to read as follows:

- (1) A Division of Internal Audit is established in the Office of ***the Secretary***~~[Management and Budget]~~ within the Finance and Administration Cabinet.
- (2) The Division of Internal Audit shall be headed by a director, appointed by the secretary of finance pursuant to KRS 12.050, and shall include other personnel employed pursuant to KRS Chapter 18A, as determined by the director of the division, with the approval of the secretary, to be necessary and desirable to carry out the division's functions.
- (3) The division may, with the approval of the secretary of finance, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.
- (4) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Governor's Executive Cabinet, the division shall have access, during business hours, to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

Section 6. The General Assembly hereby confirms Executive Order 96-886, dated July 9, 1996, relating to the reorganization of the Finance and Administration Cabinet, to the extent it is not otherwise confirmed by this Act.

Approved March 17, 1998

CHAPTER 69

(SB 178)

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.

- (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.

- (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.

- (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.

- (n) Workers' Compensation Funding Commission.
- (o) Employers Mutual Insurance Authority.
- 10. Revenue Cabinet:
 - (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
- 11. Tourism Cabinet:
 - (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
- 12. Cabinet for Workforce Development:
 - (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.
- III. Other departments headed by appointed officers:
 - 1. Department of Military Affairs.
 - 2. Department of Personnel.
 - 3. Council on Postsecondary Education.

- (a) Kentucky Community Service Commission.
- 4. Department ~~for~~ Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

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

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

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department ~~for~~ Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs; and
- (7) Coal Marketing and Export Council.

Section 3. KRS 15.755 is amended to read as follows:

- (1) The compensation of each Commonwealth's attorney shall be paid out of the State Treasury.
- (2) The compensation of the staff of each Commonwealth's attorney shall be paid out of the State Treasury.
- (3) In each judicial circuit containing a city of the first or second class or an urban-county government, or a city of the third class and a population of sixty-eight thousand (68,000) or more, or which has a full-time Commonwealth attorney, the Commonwealth's attorney shall not engage in the private practice of law. The population of a judicial circuit shall, for the purpose of this statute, be determined by the most recent federal decennial census enumeration. All other Commonwealth's attorneys shall not be prohibited from engaging in the private practice of law.
- (4) Each Commonwealth's attorney who is prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of twenty-six thousand dollars (\$26,000) per annum.
- (5) Each Commonwealth's attorney who is not prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of fourteen thousand three hundred dollars (\$14,300) per annum.
- (6) Each Commonwealth's attorney of the state shall be paid each month the sum of five hundred dollars (\$500), which sum is declared to be the equivalent of the minimum sum that each Commonwealth's attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.
- (7) In order to equate the compensation of Commonwealth's attorneys with the purchasing power of the dollar, the Department ~~for~~ Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum. The Department ~~for~~ Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled *in accordance with* ~~(pursuant to)~~ the increase or decrease in the consumer price index. Upon notification from the Department ~~for~~ Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department ~~for~~ Local Government.

Section 4. KRS 15.765 is amended to read as follows:

- (1) Each county attorney shall receive, for prosecutorial duties, an annual salary to be paid out of the State Treasury which shall be the total compensation as county attorney which he received during the calendar year 1976, but which in no event shall be less than twenty thousand dollars (\$20,000). Except, however, the annual salary of each county attorney shall be equal to that of each Commonwealth's attorney who is not prohibited from the private practice of law as provided in KRS 15.755(5), effective January 1, 1990.
- (2) Each county attorney shall be paid each month the sum of two hundred fifty dollars (\$250), which sum is declared to be the equivalent of the minimum sum that each county attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.
- (3) In order to equate the compensation of county attorneys with the purchasing power of the dollar, the Department ~~for~~ Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum. The Department ~~for~~ Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the Department ~~for~~ Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department ~~for~~ Local Government.
- (4) The county attorney shall not be prohibited from engaging in the private practice of law.

Section 5. KRS 39.407 is amended to read as follows:

In performing his duties under this chapter, the adjutant general, with approval of the Governor, is authorized and empowered:

- (1) To prepare a comprehensive plan and program for the disaster and emergency response of this state, ~~this~~ plan and program to be integrated into and coordinated with the disaster and emergency response plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs by areawide organizations, metropolitan governments, counties, and cities of this state for disaster and emergency response, ~~these~~ plans to be integrated into and coordinated with the disaster and emergency response plan and program of this state to the fullest possible extent;
- (2) In accordance with ~~the~~ plan and program for the disaster and emergency response of this state, to ascertain the requirements of the state and of the counties and cities thereof for food or clothing or other necessities of life in the event of disaster or attack and to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state, for the purposes set forth in this chapter; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of disaster and emergency response organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of disaster and emergency response personnel in time of need;
- (3) To cooperate with the President of the United States, the chiefs of the Armed Forces, and the civil preparedness agency of the United States, and officers and agencies of other states in matters pertaining to the disaster and emergency response of the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies, for any action looking to civil preparedness, including the direction or control of blackouts and practice blackouts, mobilization of disaster and emergency response forces, and other tests and exercises, warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, the effective screening or extinguishing of all lights and lighting devices and appliances, the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services, the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack, public meetings or gatherings and the evacuation and reception of the civilian population;
- (4) To take ~~such~~ action and give ~~such~~ directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter, and with the orders, rules, and regulations made *in accordance with the plan* ~~pursuant thereto~~;

- (5) To employ ~~these~~^{such} measures and give ~~such~~ directions to the secretary for human resources or the local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter, or with the findings or recommendations of ~~the~~^{such} secretary or boards of health by reason of conditions arising from disasters, emergency situations, enemy attack, or the threat thereof or otherwise;
- (6) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof; and all ~~these~~^{such} officers and agencies shall cooperate with and extend their services and facilities to the director as he may request;
- (7) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this chapter;
- (8) To delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority;
- (9) On behalf of this state, *in accordance with*~~in accordance with~~^{pursuant to} executive order of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local county or city basis or with a neighboring state or province of a foreign country. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies, engineering services, emergency housing, police services, national or state guards while under the control of the state, health, medical, and related services, firefighting, rescue, transportation, and construction services and equipment, personnel necessary to provide or conduct these services, and ~~such~~ other supplies, equipment, facilities, personnel, and services as may be needed, the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, and police units and health units, and on ~~such~~ terms and conditions as are deemed necessary;
- (10) To sponsor and develop mutual aid plans and agreements among the areawide organizations, metropolitan governments, counties, and cities of the state, similar to the mutual aid arrangements with other states referred to above;
- (11) To recommend to the state planning committee the allocation of ~~such~~ funds as may be necessary to the Department ~~for~~^{of} Local Government to be distributed to the area development districts for the development of emergency response plans and programs for the local governments and the area served by the area development districts, or a functional committee thereof.

Section 6. KRS 42.200 is amended to read as follows:

- (1) The "Water Project Interest Rate Buy Down Fund" is hereby created as a special fund in the State Treasury. The fund may receive state appropriations, gifts, grants, and federal funds and shall include earnings from investments of moneys in the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.
- (2) The fund shall be used to provide financial assistance to government agencies for the construction of publicly-owned water supply projects located in rural areas of the Commonwealth. In order to qualify for the financial assistance, the governmental agency shall obtain a loan from a bank or combined bank and trust company organized under the laws of this Commonwealth and at an interest rate no greater than two (2) percentage points higher than the current prime rate. The financial assistance provided shall consist of an annual grant to the governmental agency to be made over the life of the loan obtained by the governmental agency for the construction of the publicly-owned water supply project. The amount of the annual grant shall be calculated over the life of the loan to provide to the governmental agency each year the portion of the interest on the loan calculated at a four percent (4%) interest rate. The governmental agency shall be responsible for the payment of the interest on the loan in excess of the four percent (4%) interest rate and for the payment of the principal on the loan.
- (3) The Finance and Administration Cabinet shall administer the fund and may promulgate administrative regulations as necessary to implement the provisions of this section. The Department ~~for~~^{of} Local Government shall advise government agencies of the fund and how to apply for moneys from the fund.
- (4) The provisions of this section shall be known and may be cited as the Kentucky Rural Water Act.

Section 7. KRS 42.350 is amended to read as follows:

- (1) The area development fund in the State Treasury shall be administered by the Department ~~for~~ Local Government. The fund may receive state appropriations, gifts, grants and federal funds and shall be disbursed by the State Treasurer upon the warrant of the commissioner of the Department ~~for~~ Local Government. Any unallotted or unencumbered balances in the fund shall be invested in United States government securities maturing not later than one (1) year from the date of investment and the income from ~~the~~ investments shall be prorated for expenditure for capital projects in area development districts according to the formula provided in KRS 42.370.
- (2) Money in the fund shall be used only for capital projects which contribute to community or industrial development in the Commonwealth, KRS 48.300 and 48.500 notwithstanding. Capital projects eligible for financing out of the fund include and shall be limited to:
 - (a) The construction, reconstruction, renovation and maintenance of buildings and other improvements to real estate;
 - (b) The acquisition of real property and interests in real property;
 - (c) The purchase of major items of equipment;
 - (d) Industrial site development projects, including land reclamation, clearing, grading, draining, landscaping, and the construction of walkways and fences;
 - (e) The extension and installation of water, gas, sewer, and electrical utilities lines to public facilities and industrial sites;
 - (f) The provision of solid waste management or disposal systems bringing counties into compliance with state or federal law. All expenses incurred in connection with or incidental to the construction or acquisition of a capital project under this section, including architectural, engineering, legal, and other expenses required for ~~the~~ projects may be paid out of the fund. Money in the fund may be used to retire a mortgage or other indebtedness encumbering an eligible capital project made within the preceding five (5) calendar years to secure the repayment of moneys loaned or advanced to finance the construction or acquisition of ~~the~~ project, and may be used in match or in combination with funds obtained from other sources for an eligible capital project. No money shall be expended out of the fund, directly or indirectly, to pay or reimburse the cost of any feasibility study, master plan for any capital improvement development or redevelopment project, the purchase of consumable supplies or any administrative salary, or other operating or capital expense of any area development district, or for the acquisition, construction, reconstruction, renovation or maintenance of any building or property of schools, state institutions of higher learning, or any road, street, bridge or highway.
- (3) The board of directors of each area development district shall determine from among the capital project proposals submitted by eligible beneficiary agencies, the capital projects to be proposed to be constructed or acquired out of the fund. The area development districts shall submit to the commissioner of the Department of Local Government the capital projects selected for construction or acquisition within the districts. Each project proposal shall include: a detailed description of the project; a statement of the public benefit to be derived from the project; if available, design plans and specifications for the project; an itemized estimate of the cost of the project; a statement of the sources and amounts of funds available from any other source for the construction or acquisition of the project; and ~~such~~ other information relating to the proposed capital project as the Department of Local Government may require.

Section 8. KRS 42.355 is amended to read as follows:

- (1) The Department ~~for~~ Local Government shall examine each capital project selected by the area development districts, and when it finds that a proposed project conforms to the requirements of KRS 42.350 to 42.370; that the estimated costs of the project are reasonable; that the costs proposed to be paid from the fund are within the amount available; and that the proposed beneficiary agency will be reasonably able to finance the operation and maintain the capital project during its estimated useful life, the commissioner of the Department ~~for~~ Local Government shall approve it. If the Department ~~for~~ Local Government determines that a capital project proposal does not conform to the requirements of KRS 42.350 to 42.370, that the estimated costs of the project are excessive or unreasonable in light of the public benefit to be derived from the project, or the unencumbered balance in the fund available for expenditure in the area development district is insufficient to pay the costs of the project, or the part thereof proposed to be paid out of the fund, or the beneficiary agency cannot reasonably finance the operation of or maintain the capital project during its estimated useful life, the project proposal shall be disapproved by the Department ~~for~~ Local Government. The final decision to

either approve or disapprove any project proposal shall be made no later than forty-five (45) days following official submittal of a complete proposal by the area development district, and the area development district shall be accordingly notified at that time.

- (2) The commissioner of the Department ~~for~~ Local Government may make direct grants in aid of money out of the fund to any beneficiary agency for the construction or acquisition of any approved capital project. When a direct grant in aid has been made to a beneficiary agency, all contracts awarded for the purchase of materials, supplies, equipment, or services, except professional and technical services, required for the construction or acquisition of the project shall be awarded to the lowest and best bidder in the discretion of the beneficiary agency after public advertisement as required by KRS Chapter 424 or other applicable law. All contracts awarded under this section for the construction, reconstruction, or renovation of a building or other improvement to real estate shall be deemed contracts for public works within the meaning of KRS 341.317 and KRS Chapter 376 and other applicable statutes. All beneficiary agencies receiving a direct grant in aid under this subsection shall keep and maintain complete and accurate records of accounts of all expenditures of the grant moneys which shall be subject to audit by the Commonwealth for a period of five (5) years after completion of the capital project. Beneficiary agencies shall complete approved capital projects within a reasonable period of time as determined by the Department ~~for~~ Local Government. Upon completion of capital projects, beneficiary agencies shall submit project completion reports to the Department ~~for~~ Local Government as prescribed by the Department ~~for~~ Local Government and containing ~~such~~ documents and information as may be necessary to determine compliance with KRS 42.350 to 42.360 and other applicable statutes and administrative regulations. Beneficiary agencies shall be liable to repay to the fund any granted funds for failure to submit full project completion reports within a reasonable period of time or for expenditure of granted funds in violation of statutes and regulations. No additional area development funds may be approved until compliance, except at the discretion of the commissioner of the department. Any grant moneys not required after all of the costs of the capital project have been paid by the beneficiary agency shall be promptly returned to the Commonwealth for reallocation for expenditure for other capital projects in the area development district to which ~~the~~ funds had been originally allocated.
- (3) No capital project shall be constructed under KRS 42.350 to 42.370 except upon land to which (a) the Commonwealth, a political subdivision of the Commonwealth, or the beneficiary agency of the capital project has a good and marketable title, free of encumbrances, or (b) the beneficiary agency of the project has the right to the uninterrupted use, occupancy, and possession for a period longer than the estimated useful life of the capital project; provided nothing herein shall prohibit the construction or renovation of public buildings on land with an existing encumbrance to secure payment of funds obtained for the acquisition or improvement of said land. Each beneficiary agency shall execute and deliver to the Commonwealth its written assurances, which shall be binding on ~~the~~ agencies' successors and assigns, guaranteeing that during its estimated useful life, the capital project shall be operated and maintained for public purposes and pledging that no mortgage or other encumbrances shall be placed against any capital project wholly financed out of the fund, except industrial development projects, for the breach of which assurances the Commonwealth shall have right of entry to the capital project and the beneficiary agency, or its successors and assigns, shall forthwith convey the title to the capital project to the Commonwealth. Similar assurances shall be executed and delivered to the Commonwealth by the beneficiary agencies of capital projects financed in part out of the fund and in part from other sources, except that when ~~such~~ additional funding is derived from the issuance and sale of revenue bonds or under other statutorily authorized financing methods, to secure the repayment of which funds a statutory mortgage lien is granted in favor of any person or group of persons, the capital project may be encumbered to the extent authorized or required by the law under which ~~the~~ financing method was undertaken; nor shall anything in this section prohibit the encumbrance of any real property located within an industrial park or constituting an industrial site, developed or improved as a capital project under KRS 42.350 and this section, by any person, firm, company, partnership, or corporation to which ~~the~~ property has been conveyed, to obtain financing for the construction upon ~~the~~ property of industrial and commercial buildings. The written assurances provided by beneficiary agencies under this section shall be lodged for recording and recorded in the office of the county clerk of the county in which the proposed project shall be located.

Section 9. KRS 42.360 is amended to read as follows:

The commissioner of the Department ~~for~~ Local Government shall promulgate ~~such~~ rules and regulations governing submission and approval of proposed capital projects, the expenditure of moneys from the fund, and the

designation of beneficiary agencies involved in capital projects as shall be appropriate to the implementation of KRS 42.350 and 42.355.

Section 10. KRS 42.455 is amended to read as follows:

- (1) There is established within the Department ~~for~~ Local Government a Local Government Economic Assistance Program to consist of a system of grants to local governments to improve the environment for new industry and to improve the quality of life for the residents.
- (2) Grants obtained under this program shall be used for priority expenditures. Thirty percent (30%) of all moneys in the fund shall be spent on the coal haul road system as described in subsection (7) of this section. The remaining seventy percent (70%) of the fund shall be spent on priority categories limited to the following, but in no event shall grants obtained under this program be used for expenses related to administration of government:
 - (a) Public safety, including law enforcement, fire protection, ambulance service and other related services;
 - (b) Environmental protection, including sewage disposal, sanitation, solid waste, and other related programs;
 - (c) Public transportation, including mass transit systems, streets, and roads;
 - (d) Health;
 - (e) Recreation;
 - (f) Libraries and educational facilities;
 - (g) Social services for the poor, the elderly, and individuals with disabilities;
 - (h) Industrial and economic development;
 - (i) Vocational education;
 - (j) Workforce training; and
 - (k) Secondary wood industry development.
- (3) The use of entitlement funds for repayment of debt as related to long-term bond issues is permissible as long as the revenue from the bond issues is expended on priority categories.
- (4) Grants obtained under this program may be used as local portion to secure federal programs as long as program expenditures are in the priority category area. Interest earned on funds received by local units of government shall be considered available for use by the local unit of government in the priority expenditure categories.
- (5) The Department ~~for~~ Local Government shall be responsible for the promulgation of rules and regulations necessary to implement the grants programs authorized by this section.
- (6) The Department ~~for~~ Local Government shall assure that a public hearing is held on the expenditure of funds received under KRS 42.450 to 42.495. Advertisement of the public hearing shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing. The department shall submit an annual report to the Governor indicating how the grants were used and an evaluation of the program's effectiveness in improving the economy of the units of government receiving assistance.
- (7) On or before August 15, 1980, and each year thereafter, the Transportation Cabinet shall publish and furnish to the Department ~~for~~ Local Government a directory, including supporting maps and other documents, designating the official state coal road system in coal impact and coal producing counties which shall include all public highways, roads, and streets over which quantities of coal, sufficient to significantly affect the condition and state of repair of ~~such~~ highways, roads, and streets, have been transported in the immediately preceding fiscal year. The cabinet shall further publish the total county mileage of the official state coal road system and the total ton/miles within each coal impact and coal producing county for said preceding fiscal year.
- (8) Every person shipping or transporting coal, and every carrier for hire or common carrier hauling coal over the public highways, roads, and streets shall file with the Transportation Cabinet such information and at ~~such~~ intervals as the department shall designate by regulation duly adopted for the purpose of identifying those highways, roads, and streets comprising the coal haul road system and the quantities of coal transported

thereon, in order that the cabinet can accurately calculate total ton/miles within each coal impact and coal producing county.

- (9) The Revenue Cabinet shall make available to the Transportation Cabinet coal severance and processing tax data for use in verifying and supplementing the information furnished under the provisions of subsection (8) of this section. The information shall be furnished in such a manner as to conceal the identity of individual taxpayers; if the data cannot be furnished without revealing the identity of individual taxpayers, it shall be withheld.

Section 11. KRS 42.4592 is amended to read as follows:

- (1) Moneys remaining in the local government economic development fund following the transfer of moneys to the local government economic assistance fund provided for in KRS 42.4585 and following the transfer of moneys to the secondary wood products development fund provided for in KRS 42.4586 shall be allocated as follows:
- (a) Thirty-three and one-third percent (33-1/3%) shall be allocated to each coal producing county on the basis of the ratio of total tax collected in the current and preceding four years on coal severed in each respective county to the total tax collected statewide in the current and four (4) preceding years.
 - (b) Thirty-three and one-third percent (33-1/3%) shall be allocated quarterly to each coal producing county on the basis of the following factors, which shall be computed for the current and four (4) preceding years, and which shall be equally weighted:
 1. Percentage of employment in mining in relation to total employment in the respective county;
 2. Percentage of earnings from mining in relation to total earnings in the respective county; and
 3. Surplus labor rate.
 - (c) Thirty-three and one-third percent (33-1/3%) shall be reserved for expenditure for industrial development projects benefiting two or more coal producing counties. For purposes of this paragraph, "coal producing county" shall mean a county which has produced coal in the current or any one of the four (4) preceding years.
- (2) (a) For purposes of paragraph (b) of subsection (1) of this section, "percentage of employment in mining" and "percentage of earnings from mining" shall be the percentages published for the latest available five (5) year period by the Bureau of Economic Analysis in the United States Department of Commerce; "surplus labor rate" shall be the rate published for the latest available five (5) year period by the Department of Employment Services in the Cabinet for Workforce Development, as provided in paragraph (b) of this subsection.
- (b) 1. Each year the Department for Employment Services shall estimate surplus labor for each county and for the Commonwealth, and shall annually publish an estimate of the surplus labor rate for each county and the Commonwealth.
 2. The estimate of surplus labor for each county and for the Commonwealth shall be made using the best practical method available at the time the estimates are made. In determining the method to be adopted, the Department of Employment Services may consult with knowledgeable individuals including, but not limited to, the Office of the United States Bureau of Labor Statistics, state and national researchers, state and local officials, and staff of the Legislative Research Commission. The description of the method used to estimate surplus labor shall be reported in each annual publication provided for in subparagraph 1. of this paragraph.
 3. For purposes of this section, "surplus labor" means the total number of residents who can be classified as unemployed or as discouraged workers, and "surplus labor rate" means the percentage of the potential civilian labor force which is surplus labor.
- (3) The funds allocated under the provisions of paragraphs (a) and (b) of subsection (1) of this section shall retain their identity with respect to the county to which they are attributable, and a separate accounting of available moneys within the fund shall be maintained for the respective counties. Accounting for funds allocated under the provisions of this section shall be by the Department ~~for~~ Local Government.

Section 12. KRS 42.4595 is amended to read as follows:

The Department ~~for~~ Local Government may promulgate administrative regulations to implement the provisions of KRS 42.4582, 42.4585, or 42.4592. The Cabinet for Economic Development or the Kentucky Economic Development Finance Authority may promulgate administrative regulations to implement the provisions of KRS 42.4588.

Section 13. KRS 42.460 is amended to read as follows:

Except as provided in subsection (4)(b) of KRS 91A.040, any assistance granted under KRS 42.450 to 42.495 shall include an agreement that an independent annual audit shall be conducted and that the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to the Department ~~for~~ Local Government, in the case of assistance granted from the local government economic assistance fund, or to the Cabinet for Economic Development and the Kentucky Economic Development Finance Authority, in the case of assistance granted from the local government economic development fund, within eighteen (18) months after the end of the fiscal year.

Section 14. KRS 42.480 is amended to read as follows:

- (1) On or before July 1, 1992, and each year thereafter, the commissioner of the Department ~~for~~ Local Government~~;~~ shall provide the Cabinet for Economic Development, the Kentucky Economic Development Finance Authority, and the legislative body of each local government eligible for funds under the provisions of KRS 42.450 to 42.495, an estimate of the funds that will be allocated to the local government for fiscal year 1992-93, and each year thereafter.
- (2) On or before the fifteenth of the first month of a quarter, the commissioner of the Department ~~for~~ Local Government~~;~~ shall cause to be remitted to the legislative bodies of the local governments eligible for funds from the local government economic assistance fund, the funds allocated to the respective local governments for the prior quarter; except that the remittance for the last quarter of a fiscal year shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual allocation due the local government.

Section 15. KRS 44.020 is amended to read as follows:

- (1) Within three (3) working days after the first and fifteenth of each month, the sheriff, or any other public official with a claim payable from the State Treasury for duties performed in any court of the Court of Justice shall make out the claim and have it certified by the judge of the court as allowable for payment, and transmit the list to the Department ~~for~~ Local Government. The claim approved by the judge of the court shall serve as an order of allowance notwithstanding any statutory provision to the contrary. The Department of Local Government shall keep a separate record of all claims allowed in each county, noting the number and amount of each warrant issued for the payment of ~~the~~ ~~such~~ claims.
- (2) The order of any court authorized by law to approve and allow fee-bills, settlements, credits, charges, and other claims against the State Treasury shall not be treated as a judgment, or made conclusive against the state, but shall only be regarded as prima facie evidence of the correctness and legality of the fee-bill, settlement, credit, charge, or claim. The Department ~~for~~ Local Government, if it believes ~~the~~ ~~such~~ fee-bill, settlement, credit, charge, or claim to be fraudulent, erroneous, or illegal, may, upon the advice of the Attorney General, refuse to pay and may contest the claim in the Franklin Circuit Court, which shall have exclusive jurisdiction of all actions against the Department ~~for~~ Local Government to compel the payment of claims against the State Treasury.

Section 16. KRS 45.031 is amended to read as follows:

- (1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the Department ~~for~~ Local Government in accordance with the existing A-95 procedures.
- (2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:
 - (a) The amount and source of state funds needed for matching purposes;
 - (b) The length of time the matching funds shall be required;
 - (c) The growth of the program;

- (d) How the program will be evaluated;
 - (e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and
 - (f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.
- (3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by subsection (4) of KRS 48.500.
- (4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.
- (5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved *as provided by* ~~pursuant to~~ this section, or in regard to which the statement or reports required by this section were not filed.
- (6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

Section 17. KRS 45A.050 is amended to read as follows:

- (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.
- (2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:
- (a) Works of art for museum and public display;
 - (b) Published books, maps, periodicals, and technical pamphlets; and
 - (c) Services of visiting speakers, professors, and performing artists.
- (3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any political subdivision, including cities of all classes, counties, school districts, or special districts, may participate in ~~these~~ ~~such~~ contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies *in accordance with* ~~pursuant to~~ a contract for ~~such~~ supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a General Services Administration price agreement as provided in subsection (8) of KRS 45A.045. Political subdivisions of the Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in subsection (8) of KRS 45A.045.
- (4) The Finance and Administration Cabinet shall inform the Department ~~for~~ ~~of~~ Local Government, which shall then inform the appropriate purchasing agent of each political subdivision interested in participating under this section, of all state agency contracts in effect between the Commonwealth and vendors.

- (5) The secretary of the Finance and Administration Cabinet shall promulgate administrative regulations necessary for the implementation of this section and necessary to provide that the Commonwealth be reimbursed for any additional expenses incurred by the Commonwealth in allowing political subdivisions to participate in contracts with vendors.
- (6) The Finance and Administration Cabinet shall comply with all provisions relating to the methods of purchasing in the Kentucky Revised Statutes. This section is not intended to repeal or otherwise affect any provision of the Kentucky Revised Statutes regarding purchasing methods of the Finance and Administration Cabinet.

Section 18. KRS 45A.310 is amended to read as follows:

- (1) All payments received by a supplying public purchasing unit from any other public purchasing unit or foreign purchasing activity shall be available or appropriated to the supplying public purchasing unit to defray the cost of the services provided.
- (2) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase complies with the requirements of this code, any public purchasing unit participating in such a purchase shall be deemed to have complied with this code.
- (3) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase does not follow this code, then the purchasing officer of a state public purchasing unit must determine, in writing, that he has examined the procurement system of the public purchasing unit or foreign purchasing activity administering the purchase, and has found that the proposed method of purchase substantially meets the requirements of this code.
- (4) The Department ~~for~~ Local Government shall collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public purchasing units. The Department ~~for~~ Local Government may also collect ~~this~~ information from local public purchasing units. The Department ~~for~~ Local Government may make available all such information to any public purchasing unit upon request.
- (5) Nothing in KRS 45A.295 to 45A.320 shall be deemed to require a local public purchasing unit to comply with any other provision of KRS Chapter 45A.

Section 19. KRS 46.010 is amended to read as follows:

- (1) The Department ~~for~~ Local Government shall prescribe and keep in operation a uniform system of accounting and reporting on the receipt, use and handling of all public funds, other than taxes, due and payable to the state from county, district and other local officers and agencies.
- (2) The system so adopted shall require each county treasurer, and each county officer who receives or disburses state funds, to keep an accurate account of receipts and disbursements, showing a daily balance of receipts and disbursements.
- (3) The system shall require all county officers handling state funds, other than taxes, to make an annual report to the Department ~~for~~ Local Government, showing receipts and disbursements, and to make ~~such~~ other financial statements as the Department ~~for~~ Local Government requires.
- (4) The Department ~~for~~ Local Government, subject to the approval of the Governor, may from time to time change the system, or any book, report, form or record provided for by the system, whenever in its opinion a change is necessary in order to conform to existing conditions.

Section 20. KRS 46.020 is amended to read as follows:

The Department ~~for~~ Local Government shall prepare, and shall cause to be printed and paid for in the same manner as other books, blanks, and records for counties and county officers, all books, blanks, and records necessary for the system of uniform accounting established under KRS 46.010. The department shall deliver to each county, district, or other local officer charged with the duty of collecting, disbursing or handling state funds ~~such of~~ the books, blanks, and records as are necessary for that officer. Each county, district, or other local officer receiving ~~the~~ books, blanks, or records shall use them in the performance of his duties with reference to the handling and disbursing of state funds. Any of ~~these~~ books, blanks, or records used by state officers or employees shall be printed and paid for in the same manner as other state printing.

Section 21. KRS 46.990 is amended to read as follows:

- (1) Any county or district officer authorized by law to make collections of funds for the state who fails or refuses to pay over to the state the funds so collected at the time he is required by law to report ~~the~~^{such} collections to any state department shall be required to pay a penalty of ten percent (10%) on all funds not so paid.
- (2) Any officer who fails or neglects to perform any duty required of him by subsection (1) of KRS 46.030 shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each offense.
- (3) Any officer who fails to use any book, blank or record required to be used under KRS 46.020, or who willfully refuses to make any report required by the Department ~~for~~^{of} Local Government under the provisions of KRS 46.010 or 46.020, shall be subject to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each offense.

Section 22. KRS 58.615 is amended to read as follows:

- (1) The Department of Education shall promulgate administrative regulations *in accordance with*~~in accordance with~~^{pursuant to} KRS Chapter 13A to establish procedures to be used by school districts for conducting and approving energy audits and cost-benefit analyses for energy conservation projects. To the extent practical, these procedures shall be compatible with those developed for local governments under subsection (2) of this section. The proposed regulations shall be filed with the Legislative Research Commission no later than September 1, 1996, and upon approval, the department shall distribute them to all school districts in the state.
- (2) The Department ~~for~~^{of} Local Government shall promulgate administrative regulations *in accordance with*~~in accordance with~~^{pursuant to} KRS Chapter 13A to establish procedures to be used by cities, counties, urban-county governments, charter county governments, and special districts for conducting and approving energy audits and cost-benefit analyses for energy conservation projects. To the extent practical, these procedures shall be compatible with those developed for school districts under subsection (1) of this section. The proposed regulations shall be filed with the Legislative Research Commission no later than September 1, 1996, and upon approval, the department shall distribute them to the governmental agencies to which they apply.

Section 23. KRS 61.958 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council, *referred to in this section and KRS 61.959 as*~~hereinafter called~~ the "council," to the Kentucky Information Resources Management Commission to advise the Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Resources Management Commission on issues as they relate to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of twenty-five (25) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The council shall consist of:
 1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Human Resources or his designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Revenue Cabinet or his designee;
 5. The commissioner of the Department of Information Systems or his designee;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Department ~~for~~^{of} Local Government or his designee;

8. The secretary of the Justice Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;
 13. The commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Public Protection and Regulation Cabinet or his designee;
 15. The secretary of the Tourism Cabinet or his designee;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.

- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 24. KRS 64.050 is amended to read as follows:

- (1) When the term of any county clerk in counties of seventy-five thousand (75,000) population or over expires, or he dies or resigns, or is removed from office, he or his personal representative, trustee or committee, as the case may be, shall at once deliver to his successor in office all accounts, claims and fees due him in his official capacity. The successor shall have ~~the~~^{such} fees, claims and accounts collected, or the Department ~~for~~^{of} Local Government may, in its discretion, when said accounts, fees and claims are so delivered to the successor, appoint a person to collect them. If a collector is appointed, the successor shall at once, or when demanded by the collector, deliver to him all accounts, fees and claims uncollected. The successor or collector, as the case may be, shall, every sixty (60) days after receiving ~~the~~^{such} accounts, fees and claims, report to the Department ~~for~~^{of} Local Government, under oath, the amount collected thereon, and at the same time pay to the Department ~~for~~^{of} Local Government the amount so collected, and shall continue to so report for three (3) years, unless the accounts, fees and claims are sooner collected.
- (2) The Department ~~for~~^{of} Local Government shall, upon each payment, draw a warrant on the State Treasurer in favor of the person collecting, for an amount equal to twenty percent (20%) of the amount so paid in, which shall be the full compensation allowed for ~~the~~^{such} collection.
- (3) If the amount paid to any ~~such~~ clerk during his term or incumbency was not sufficient to pay the salaries and office expenses of the clerk, the Department ~~for~~^{of} Local Government shall, out of the money collected and paid in as provided in subsection (1) of this section, pay to the clerk, or to the person entitled to receive the same, an amount sufficient to supply the deficit due for salaries and expenses, not exceeding seventy-five percent (75%) of the amount of fees accrued during his official term and which have been collected and paid to the Department ~~for~~^{of} Local Government.

Section 25. KRS 64.480 is amended to read as follows:

- (1) Effective, with respect to the offices of Governor on December 11, 1979, and Lieutenant Governor on the fifth Tuesday following the regular November election in 1975, and with respect to the other offices named in this section on the first Monday in January, 1976, the compensation of the following named officers, payable monthly out of the State Treasury, shall be the sum per annum designated for the respective offices, as follows: Governor, forty-five thousand dollars (\$45,000) until December 11, 1981, then fifty thousand dollars (\$50,000) until December 13, 1983, and then sixty thousand dollars (\$60,000) until January 1, 1985; Lieutenant Governor, twenty-seven thousand nine hundred dollars (\$27,900) per annum, plus any compensation received while acting in the place of the Governor; Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky elected in November, 1975, as clerk of the Court of Appeals, twenty-seven thousand nine hundred dollars (\$27,900).
- (2) In order to equate or adjust the compensation of the Lieutenant Governor, Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky with the purchasing power of the 1949 dollar, the Department ~~for~~^{of} Local Government of Kentucky shall compute by the second Friday in February of every year, beginning in 1977, the maximum permissible compensation of the officials mentioned in this subsection based precisely upon the consumer price index formula approved in *Matthews v. Allen*, Kentucky, 360 S.W.2d 139 (1962). Thus the maximum permissible compensation effective for the entire year of 1977 and subsequent years will be the actual

compensation to be paid said officials. The year of adjustment will be the particular full calendar year involved.

- (3) It is the intention of the Legislature that the constitutionally permissible adjustment of salaries of these officials be framed around equating current salaries with the purchasing power of the dollar in 1949 when Section 246 of the Constitution of Kentucky was amended. Section 246 of the Constitution of Kentucky, as amended, established a monetary level of twelve thousand dollars (\$12,000) per annum for said officials. The formula merely effects an adjustment of the constitutional monetary level in terms of the current consumer price index.
- (4) In order to adjust the compensation of the Governor to reflect changes in the purchasing power of the dollar, the Department ~~for~~ Local Government shall compute by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor by multiplying sixty thousand dollars (\$60,000) by the increase in the consumer price index during the period from January 1, 1984, to the beginning of the then-current calendar year. The actual compensation paid to the Governor for the entire calendar year of 1985 and subsequent years shall be the adjusted salary.

Section 26. KRS 64.527 is amended to read as follows:

In order to equate the compensation of county judges/executive, county clerks, sheriffs, jailers, justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the Department ~~for~~ Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The Department ~~for~~ Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled ~~in accordance with~~ ~~pursuant to~~ the increase or decrease in the consumer price index. Upon notification from the Department ~~for~~ Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department ~~for~~ Local Government.

Section 27. KRS 64.770 is amended to read as follows:

- (1) The County Officials' Compensation Board is hereby created and shall consist of the commissioner of the Department ~~for~~ Local Government, the state local finance officer, the president of each of the state associations of county clerks, county judges/executive, county attorneys, justices of the peace and commissioners, sheriffs, jailers, and coroners, three (3) members of the General Assembly appointed by the Governor from a list of possible appointees submitted to him by the Legislative Research Commission, and two (2) citizens of the Commonwealth appointed by the Governor. The legislative members shall be appointed for terms of two (2) years, unless their legislative term expires prior to the expiration of their term on the board, in which case a vacancy shall exist. Citizen members shall be appointed for terms of four (4) years. The terms of the members representing the state associations shall be identical to the term of their office as president of the state association. Vacancies shall be filled for the unexpired portion of any term in the same manner as an original appointment.
- (2) The commissioner of the Department ~~for~~ Local Government may, by written order filed with the chairman of the board, designate a deputy or other representative in his department to serve in his stead and to perform his duties as a member of the board in his absence. ~~The~~ ~~Such~~ designation shall be deemed temporary and shall not affect the merit system or retirement rights of any person so designated. Other members may designate by proxy another person to serve in his stead. ~~The~~ ~~Such~~ proxies shall clearly state the purpose and the length of time ~~the~~ ~~such~~ proxies shall be in effect, but any ~~such~~ proxy shall be subject to immediate termination by the person initially authorizing the proxy. All proxies shall be filed with the chairman or secretary of the board.
- (3) No salary or other compensation shall be allowed any member of the board, but each member or person serving as a proxy may be reimbursed for actual and necessary expenses incurred in the performance of his official duties.
- (4) The board shall select one (1) of its members as chairman and another member as vice chairman at its first regular meeting in each calendar year. The commissioner of the Department ~~for~~ Local Government or his designee shall be secretary of the board and the commissioner of the Department of Local Government shall be responsible for administering the clerical functions of the board.
- (5) The board may hold meetings once every three (3) months. Special meetings may be called by the chairman or by five (5) members of the board by delivery of a written notice to the office or residence of each member of

the board at least ten (10) days in advance of the date of any special meeting. Five (5) members of the board shall constitute a quorum at any meeting. The board shall establish bylaws for the conduct of its meetings and shall keep an accurate record of all its proceedings.

- (6) The board may employ and compensate ~~such~~ personnel and consultants as may be necessary to effectuate the provisions of KRS 64.780.

Section 28. KRS 64.990 is amended to read as follows:

- (1) If any officer to whom KRS 64.050 applies, or his personal representative, trustee, or committee, as the case may be, collects any fees, accounts, or demands due him in his official capacity after the expiration of his term, or after he has resigned or died or vacated the office, or fails to deliver to his successor all the fees, claims, and accounts due to him in his official capacity, he, or his personal representative, committee, or trustee, as the case may be, shall be guilty of a Class B misdemeanor.
- (2) If any successor or collector mentioned in subsection (1) of KRS 64.050 fails to make any report or pay the money collected to the Department ~~for~~ Local Government, as required by subsection (1) of KRS 64.050, he shall be guilty of a Class B misdemeanor. If he knowingly omits or fails to report a correct statement of all money received or collected, or knowingly makes or subscribes any false statement concerning the same, he shall be guilty of a Class D felony.
- (3) If any deputy or personal representative issuing a fee bill *in accordance with* ~~pursuant to~~ KRS 64.420 knowingly makes a wrong charge, or in any respect issues an illegal fee bill, he shall be subject to the same penalties as an officer issuing such a fee bill.
- (4) Every fee bill containing one (1) illegal charge, or which, in any respect, is not according to what is required by law, shall be void for the whole amount.
- (5) Any officer who splits up and divides his services so as to make two (2) charges, when the law intends but one (1) charge or fee for the whole service, or who knowingly makes an illegal charge, or issues an illegal fee bill, or collects or attempts to collect his fees twice for the same services, or by any indirection collects or attempts to collect more for his services than is allowed by law, shall be guilty of a Class B misdemeanor and his conviction shall be prima facie evidence of his guilt in a proceeding to remove him from office.
- (6) Any official who violates the provisions of KRS 64.820 to 64.850 shall be guilty of a Class B misdemeanor.

Section 29. KRS 65.003 is amended to read as follows:

- (1) The governing body of each city and county, including urban-counties and charter counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county, and to appointed officials and employees of the city or county government as specified in the code of ethics. The elected officials of a city or county to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor, and constable but do not include members of any school board. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.
- (2) Any city or county may enter into an agreement with one (1) or more other cities or counties, *in accordance with* ~~pursuant to~~ the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, for joint adoption of a code of ethics which shall apply to all elected officials of the cities or counties, and to appointed officials and employees as specified by each of the cities or counties which enters into the agreement. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.
- (3) Each code of ethics adopted *as provided by* ~~pursuant to~~ subsection (1) or (2) of this section, or amended *as provided by* ~~pursuant to~~ subsection (4) of this section, shall include, but not be limited to, provisions which set forth:
 - (a) Standards of conduct for elected and appointed officials and employees;
 - (b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for the city and county elective offices specified in subsection (1) of this section, elected officials of each city and county government, and other officials or employees of the city or county

- government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics;
- (c) A policy on the employment of members of the families of officials or employees of the city or county government, as specified in the code of ethics;
 - (d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.
- (4) The code of ethics ordinance adopted by a city or county may be amended but shall not be repealed.
- (5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city and county shall deliver a copy of the ordinance by which the code was adopted and proof of publication *in accordance with* ~~pursuant to~~ KRS Chapter 424 to the Department ~~for~~ Local Government. The department shall maintain the ordinances as public records and shall maintain a list of city and county governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.
- (b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city or county shall deliver a copy of the ordinance by which the code was amended and proof of publication *in accordance with* ~~pursuant to~~ KRS Chapter 424 to the Department ~~for~~ Local Government, which shall maintain the amendment with the ordinance by which the code was adopted.
- (c) For ordinances adopting or amending a code of ethics under this section, cities of the first class shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.
- (6) If a city or county government fails to comply with the requirements of this section, the Department ~~for~~ Local Government shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city or county government. Those agencies shall suspend delivery of all services or payments to the city or county government which fails to comply with the requirements of this section. The Department ~~for~~ Local Government shall immediately notify those same agencies when the city or county government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city or county government.

Section 30. KRS 65.005 is amended to read as follows:

- (1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.
 - (b) "Governing body" means the body possessing legislative authority in a city, county, or special district.
- (2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes ~~under~~ ~~pursuant to~~ which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer, Department ~~for~~ Local Government, and the state local debt officer, Office of the Controller, Finance and Administration Cabinet. The clerk shall be paid a fee of two dollars (\$2) by the district for recording and mailing the notification.
- (3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly-created special district shall submit the required notification at or before its first meeting.

Section 31. KRS 65.070 is amended to read as follows:

- (1) By the first day of May of each year, when the uniform financial information report is required by KRS 65.900 to 65.920 to be submitted to the Department ~~for~~ Local Government, a district shall:

- (a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:
 - 1. The name of the district;
 - 2. A map or general description of its service area;
 - 3. The statutory authority under which it was created; and
 - 4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;
 - (b) File a copy of the district budget, financial statement if prepared, and audit when performed, with the county judge/executive of each county with territory in the district; and
 - (c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement which includes the location of supporting documents, or the location of district financial records which may be examined by the public.
- (2) The Department ~~for~~ Local Government shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.
 - (3) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 32. KRS 65.320 is amended to read as follows:

There shall be created a Local Government Training Advisory Council in Kentucky, to be composed of the presidents or their designees of the Kentucky Association of Counties, the County Judge/Executives Association, the Kentucky League of Cities, the chairperson of the Kentucky Urban Affairs Council, and the commissioner of the Department ~~for~~ Local Government.

Section 33. KRS 65.323 is amended to read as follows:

- (1) The Local Government Training Advisory Council shall:
 - (a) Develop and update on a biennial basis a local government training plan that:
 - 1. Quantifies the training needs of local governments;
 - 2. Evaluates the abilities of existing training programs to meet the needs;
 - 3. Identifies areas of unmet need that justify expanding existing programs or the creation of new programs; and
 - 4. Formulates a strategy, giving consideration to the use of state-of-the-art communication techniques to enhance training efforts, that meets the needs of local governments;
 - (b) Submit a copy of the local government training plan to the Legislative Research Commission by November 1 of odd-numbered years;
 - (c) Ensure the proper coordination of training programs for city and county governments; and
 - (d) Elect a chairperson annually from its membership.
- (2) The council shall adopt the plan provided for in subsection (1)(a) of this section by majority vote, at which time it shall become the policy document used by the Department ~~for~~ Local Government to determine priorities for the expenditure of training funds.

Section 34. KRS 65.327 is amended to read as follows:

- (1) The Local Government Training Advisory Council shall use the expertise of existing training providers in developing new or expanded programs. This includes, but is not limited to:

- (a) All institutions of higher education and affiliate organizations that provide training and technical assistance to local governments;
 - (b) State agencies that provide training related to statutory or regulatory oversight responsibilities;
 - (c) Area development districts;
 - (d) Public official professional associations;
 - (e) Private providers associated with established certification programs;
 - (f) Any other provider suitable for developing effective training programs.
- (2) The council shall be attached to the Department ~~for~~ Local Government for administrative purposes.

Section 35. KRS 65.905 is amended to read as follows:

- (1) Each local government shall annually, after the close of the fiscal year, complete a uniform financial information report. The report shall be submitted to the Department ~~for~~ Local Government by May 1 immediately following the close of the fiscal year. The Department ~~for~~ Local Government shall immediately send one (1) copy of the uniform financial information report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) Each city may have the uniform financial information report completed by its selected auditor as part of the terms and conditions of the written agreement between the city and the auditor *in accordance with* ~~pursuant to~~ KRS 91A.040. Each county may have the uniform financial information report completed by its auditor selected *in accordance with* ~~pursuant to~~ KRS 43.070 or 64.810. Each special district may have the uniform financial information report completed by its auditor selected *in accordance with* ~~pursuant to~~ KRS 65.065. If a city does not use the auditor to complete the uniform financial information report, it shall by order designate an elected or nonelected official to be responsible for annually completing the report and submitting it to the Department ~~for~~ Local Government. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government shall note on the uniform financial information report the name of the agency, board, or commission; the mailing address of the agency, board, or commission; and the dollar amount annually appropriated by the local government to the agency, board, or commission.
- (3) The Department ~~for~~ Local Government shall by administrative regulation prescribe the format of the uniform financial information report. The department shall attempt to coordinate and combine efforts with the United States Bureau of the Census in the development of the format of the uniform financial information report so that a single report will meet the needs of both agencies and fulfill the requirements of KRS 65.900 to 65.925. Regardless of any agreement between the Department ~~for~~ Local Government and the United States Bureau of the Census, the department shall maintain responsibility for assuring that a uniform financial information report is distributed to each local government as soon as practicable after the close of each fiscal year, but in no event later than one hundred twenty (120) days prior to the required submission date of May 1.
- (4) The Department ~~for~~ Local Government shall use the uniform financial information report to replace as many financial information forms as possible that local governments are currently required to complete and submit to the department for use by either the state or federal governments, by consolidating the required information into the uniform report.

Section 36. KRS 65.910 is amended to read as follows:

- (1) The uniform financial information report shall include, but not be limited to, information relating to demographics, bonded indebtedness, debt service requirements, lease-purchase agreements, tax rates and revenues, licenses, permits, fees, utilities, intergovernmental revenues, miscellaneous revenues, charges for services, and all expenditures as set forth in this section.
- (2) Demographic information shall include:
 - (a) The name of the unit of local government;
 - (b) The county in which the city or special district is located;
 - (c) The classification of the city;
 - (d) The population of the unit of local government;

- (e) The form of government of the city; and
 - (f) The area development district in which the unit of local government is located.
- (3) Bonded indebtedness and debt service information shall include:
- (a) The name of each project listed individually;
 - (b) The type of bond issue used for each project;
 - (c) The bonded indebtedness of each project;
 - (d) The debt service requirements of each project; and
 - (e) The specific source of debt service funds, whether local government appropriations or use of nongovernment funds.
- (4) Lease-purchase agreement information shall include:
- (a) Purpose of the agreement;
 - (b) Identity of the lessor;
 - (c) Principal amount of the agreement;
 - (d) Interest rate or rates for the agreement;
 - (e) Date the local government entered into agreement;
 - (f) Length of term of agreement;
 - (g) Current annual debt service requirements for agreement; and
 - (h) A list of and the purpose of any short-term renewal bank notes.
- (5) Tax rate and revenue information shall include:
- (a) The compensating tax rate and the maximum tax rate for the current fiscal year and the preceding fiscal year;
 - (b) The current fiscal year ad valorem tax rate levied by the local government, the preceding fiscal year revenues collected by the local government, and the assessed property valuation for real property, personal property, and motor vehicles and watercraft; and
 - (c) The current fiscal year tax rate levied by the local government and the preceding fiscal year revenues collected by the local government for the following types of taxes:
 - 1. Occupational license tax on persons;
 - 2. Occupational license tax on business net profits, gross receipts, or a flat rate;
 - 3. Insurance premium tax on fire and allied perils, casualty liability only, vehicle, inland marine, health, life, all other risks taxed, minimum tax and company taxable reserves;
 - 4. Transient room tax;
 - 5. Restaurant tax;
 - 6. Bank franchise tax;
 - 7. Delinquent collections; and
 - 8. Special purpose and other taxes.
- (6) Information on licenses, permits, and fees shall include the amount charged and the preceding fiscal year revenues collected by the local government for the following types of licenses, permits, and fees:
- (a) Alcoholic beverage licenses for the manufacture and sale, distilled spirits and wine, malt beverages, Sunday sales, and regulatory license fee on gross receipts;
 - (b) Required sticker fees on automobiles and trucks;

- (c) Motor vehicles fees on taxicabs, truck-tractors, semitrailers and trailers;
- (d) Coin-operated machines;
- (e) Cable television;
- (f) Building, electrical, and plumbing permits;
- (g) Zoning permits and development impact fees;
- (h) Building, elevator, electrical, plumbing, food, rehabilitation, and any other inspection fees;
- (i) Licensing of electricians and electrical contractors;
- (j) Unloading fees;
- (k) Public service fees for fire protection, police protection;
- (l) Ambulance service franchise fees and ambulance run fees;
- (m) Animal license fees; and
- (n) Any other source of license, permit, or fee.

If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.

- (7) Information on utilities shall include the franchise tax or fee, charge for service, user fee or "tap on" fee, and preceding fiscal year revenues collected by the local government on the following utilities:
 - (a) Waterworks;
 - (b) Sewage treatment;
 - (c) Electric light, heat, and power;
 - (d) Gas;
 - (e) Garbage collection for residential, commercial, and industrial customers, and landfill fees;
 - (f) Transit authority; and
 - (g) Any other type of utility.

If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.

- (8) Information on intergovernmental revenues shall include the types of intergovernmental revenues received by the local government, preceding fiscal year revenues collected by the local government, and rate and interest requirements for loan repayments that shall include:
 - (a) Kentucky Law Enforcement Foundation Program fund;
 - (b) Professional Firefighters Foundation Program fund;
 - (c) Community development block grant funds;
 - (d) County or municipal road aid;
 - (e) Local government economic assistance funds;
 - (f) Net court revenues;
 - (g) Kentucky Infrastructure Authority funds;
 - (h) Economic development bonds;
 - (i) Kentucky Economic Development Finance Authority funds;
 - (j) Environmental Protection Agency funds;
 - (k) County or city transfers; and
 - (l) Any other source of state or federal funds.

- (9) Information on miscellaneous revenues and charges for services shall include the source of revenue, charge, or fee levied by the local government and preceding fiscal year revenues collected for the following:
- (a) Parking meter receipts;
 - (b) Parking facility receipts;
 - (c) Parking violation fines;
 - (d) Charges for impounded vehicles;
 - (e) Sale of abandoned vehicles;
 - (f) Delinquent tax bills;
 - (g) Fines and forfeitures;
 - (h) Penalties and interest;
 - (i) Franchise payments for governmental services bid out to the private sector;
 - (j) Golf course receipts;
 - (k) Parks and recreation;
 - (l) Proceeds from sale of seized and forfeited property;
 - (m) Rent;
 - (n) Interest from investments and dividends; and
 - (o) Any other source of revenue or charge for service.
- (10) Information on expenditures shall be listed by total only and indicate the fund from which an appropriation was made. The Department ~~for~~ Local Government shall consult with the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Municipal Finance Officers' Association, the Kentucky Society of Certified Public Accountants, and other affected interest groups, as well as local officials in the development of information to be included in the expenditure section of the uniform financial information report.

Section 37. KRS 65.915 is amended to read as follows:

The first uniform financial information report local governments shall be required to complete *in accordance with* ~~pursuant to~~ KRS 65.900 to 65.925 shall be submitted to the Department ~~for~~ Local Government on or before February 1, 1992, for the July 1, 1990, to June 30, 1991, fiscal year.

Section 38. KRS 65.920 is amended to read as follows:

Any local government that fails to submit annually a uniform financial information report to the Department ~~for~~ Local Government shall be ineligible to receive county or municipal road aid moneys *in accordance with* ~~pursuant to~~ KRS 177.360 or 177.366. Any local government receiving road aid moneys *in accordance with* ~~pursuant to~~ KRS 177.365 to 177.369 or KRS 177.320 and 177.360 that fails to comply with the provisions of KRS 65.900 to 65.915 shall immediately have all road aid payments suspended until the local government submits the uniform financial information report to the Department ~~for~~ Local Government.

Section 39. KRS 65.925 is amended to read as follows:

The Department ~~for~~ Local Government shall consult with the Legislative Research Commission to determine a format for electronic data which is acceptable to both. At the earliest date possible, but no later than September 30, 1992, and each year thereafter, the Department ~~for~~ Local Government shall provide a copy of all reliable data from the uniform financial information reports of all reporting governments to the Legislative Research Commission in the agreed upon electronic format. The Department ~~for~~ Local Government shall, upon receipt, file a copy of each completed uniform financial information report with the county clerk of the county in which the reporting unit of local government is located.

Section 40. KRS 68.001 is amended to read as follows:

As used in this chapter and other provisions of law, "state local finance officer" shall mean the commissioner of the Department ~~for~~ Local Government, or his agent designated in writing with the approval of the Governor.

Section 41. KRS 81A.470 is amended to read as follows:

- (1) If the limits of a city are enlarged or reduced, the city shall, within sixty (60) days of the enlargement or reduction, cause an accurate map of the annexed, transferred, or severed area with a metes and bounds description, together with a copy of the ordinance duly certified, to be recorded in the office of the county clerk of the county or counties in which the city is located, in the office of the Secretary of State, and in the Department ~~for~~ Local Government.
- (2) No city which has annexed unincorporated or accepted transfer of incorporated territory may levy any tax upon the residents or property within the annexed or transferred area until the city has complied with the provisions of subsection (1) of this section, and of KRS 81A.475.

Section 42. KRS 82.025 is amended to read as follows:

- (1) There shall be created a Kentucky Urban Affairs Council that shall consist of the mayors of all cities of the first and second classes and urban-county governments and the designated chief executives of charter county governments that prior to the merger of city and county governments contained a city of the second class. The mayor of Louisville shall serve as the first chairman and subsequent chairmen shall be elected annually by the council members. The council shall study all matters pertaining to urban problems, including but not limited to human resources, environmental conditions, property values, law and order, and race relations. The council shall meet at least four (4) times per year to formulate a plan to improve urban conditions for presentation to the Governor annually and the General Assembly.
- (2) The council shall be attached to the Department ~~for~~ Local Government for administrative purposes. The department shall be the administrative agent for the council providing staff and other services, as needed, by the council. The department shall provide adequate funding for staff services and the reasonable and necessary expenses of the council and its members for the effective performance of the council's work.

Section 43. KRS 83.580 is amended to read as follows:

- (1) The mayor shall:
 - (a) Cause the ordinances of the city and the laws of the state to be executed and enforced;
 - (b) Communicate to the board of aldermen at least once a year a statement of the finances and general condition of the affairs of the city, and ~~such~~ information in relation thereto as the board of aldermen requires;
 - (c) Recommend, by written message to the board of aldermen, the measures he deems expedient;
 - (d) Fill, with the consent of the board of aldermen, all vacancies in executive and ministerial offices and the filling of which is not otherwise provided for;
 - (e) Exercise a general supervision over all the executive and ministerial officers of the city, and see that their official duties are honestly performed; and
 - (f) No later than January 31 of each year, mail to the Department ~~for~~ Local Government a list containing current city information including, but not limited to the following:
 1. The correct name of the mayor, members of the board of aldermen, and the following appointed officials who are serving as of January 1 of each year:
 - a. Clerk of the board of aldermen;
 - b. City treasurer;
 - c. City attorney;
 - d. Finance director;
 - e. Police chief;
 - f. Fire chief; and
 - g. Public works director;

2. The correct name of the city, mailing address for city hall, and the telephone number of city hall; and
 3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8:00 a.m. to 4:30 p.m.
- (2) The mayor shall appoint to those seats which are not subject to prior qualification on a board or commission an equal number of members from each county commissioner's district, as created *in accordance with* ~~the~~ ~~provisions of~~ ~~KRS 67.045~~, into which the authority of the board or commission extends. If there are more districts than members of a particular board or commission, the mayor shall not appoint more than one (1) member from any district. If there are more members of a particular board or commission than there are districts, the mayor shall equalize appointments from among districts to the extent possible. The mayor shall not be required, but shall use his best efforts, to balance appointments from among districts on a board or commission if the appointments are to be made from nominees submitted by other groups or individuals, or if nominees shall have a professional or technical background, expertise, or membership. The mayor shall attempt to balance appointments from among districts on all boards and commissions to equalize representation of all districts over the entire range of boards and commissions.
- (3) The mayor may:
- (a) Remove from office, by a written order, any officer appointed by him, unless otherwise provided by law;
 - (b) Appoint his own staff, and remove them at pleasure;
 - (c) Require from any executive or ministerial officer of the city or joint agency of the city a statement in writing concerning the discharge of his duties; and
 - (d) Exercise the same power to administer oaths that justices of the peace and other judicial officers of the state have.
- (4) The Department ~~for~~ ~~of~~ Local Government shall immediately forward one (1) copy of the information received from the mayor to the Legislative Research Commission.

Section 44. KRS 83A.075 is amended to read as follows:

- (1) In order to equate the compensation of mayors and members of city legislative bodies with the purchasing power of the dollar, the Department ~~for~~ ~~of~~ Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the mayor in cities of the first class shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum and mayors in cities other than the first class and legislative body members shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum.
- (2) The legislative body of the city shall set the compensation of the officer in accordance with KRS 83A.070 at a rate no greater than that stipulated by the Department ~~for~~ ~~of~~ Local Government.

Section 45. KRS 83A.085 is amended to read as follows:

- (1) Each city, except a city of the first class, shall establish the office of city clerk.
- (2) The office of city clerk may be combined with any other nonelected city office by inclusion of the title and duties of ~~the~~ ~~such~~ office in the ordinance establishing the office of city clerk.
- (3) The duties and responsibilities of the clerk shall include, but not be limited to, the following:
 - (a) Maintenance and safekeeping of the permanent records of the city;
 - (b) Performance of the duties required of the "official custodian" or "custodian" *in accordance with* ~~the~~ ~~provisions of~~ ~~KRS 61.870 to 61.882~~;
 - (c) Possession of the seal of the city if used;
 - (d) No later than January 31 of each year, mail to the Department ~~for~~ ~~of~~ Local Government, a list containing current city information including, but not limited to, the following:

1. The correct name of the mayor, legislative body members, and the following appointed officials who are serving as of January 1 of each year:
 - a. City clerk;
 - b. City treasurer;
 - c. City manager;
 - d. City attorney;
 - e. Finance director;
 - f. Police chief;
 - g. Fire chief; and
 - h. Public works director;
 2. The correct name of the city, mailing address for city hall, and telephone number of city hall; and
 3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8 a.m. to 4:30 p.m.;
- (e) Performance of all other duties and responsibilities required of the city clerk by statute or ordinance; and
- (f) The Department ~~for~~ Local Government shall immediately forward one (1) copy of the information received from each city clerk to the Legislative Research Commission.

Section 46. KRS 91A.040 is amended to read as follows:

- (1) Each city of the first through fifth class shall, after the close of each fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year being audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, *in accordance with* ~~pursuant to~~ subsection (4)(f) of this section, each city shall forward three (3) copies of the audit report to the Kentucky Department ~~for~~ Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) Except as provided in subsection (3) of this section, each city of the sixth class shall, after the close of each odd-numbered fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year to be audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, *in accordance with* ~~pursuant to~~ subsection (4)(f) of this section, each sixth class city shall forward three (3) copies of the audit report to the Kentucky Department ~~for~~ Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975. After the close of each even-numbered fiscal year, each sixth class city shall prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department ~~for~~ Local Government. The department shall forward one (1) copy of the financial statement to the Legislative Research Commission.
- (3) Any city of the sixth class, which for any fiscal year receives and expends, from all sources and for all purposes, less than twenty-five thousand dollars (\$25,000), and which has no long-term debt, whether general obligation or revenue debt, shall not be required to audit each fund of the city for that particular fiscal year. Each city shall annually prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department ~~for~~ Local Government for information purposes. The department shall be responsible for forwarding one (1) copy of the financial statement to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (4) Each city required by this section to conduct an annual or biannual audit shall enter into a written contract with the selected auditor. The contract shall set forth all terms and conditions of the agreement which shall include, but not be limited to, requirements that:
 - (a) The auditor be employed to examine the general purpose financial statements of all governmental, proprietary, and fiduciary funds of the city;

- (b) The auditor shall include in the annual city audit report an examination of local government economic assistance funds granted to the city under KRS 42.450 to 42.495. The auditor shall include a certification with the annual audit report that the funds were expended for the purpose intended;
 - (c) All audit information be prepared in accordance with generally accepted governmental auditing standards which include tests of the accounting records and auditing procedures considered necessary in the circumstances. Where the audit is to cover the use of state or federal funds, appropriate state or federal guidelines shall be utilized;
 - (d) The auditor prepare a typewritten or printed report embodying the general purpose financial statements and his opinion and statements relating to those statements;
 - (e) The auditor express an overall opinion as to whether the general purpose financial statements present fairly the financial condition of the city or state the reasons why an overall opinion cannot be expressed;
 - (f) The completed audit and all accompanying documentation shall be presented to the city legislative body at a regular or special meeting; and
 - (g) Any contract with a certified public accountant for an audit shall require the accountant to forward a copy of the audit report and management letters to the Auditor of Public Accounts upon request of the city or the Auditor of Public Accounts, and the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers upon request.
- (5) A copy of an audit report which meets the requirements of this section shall be considered satisfactory and final in meeting any official request to a city for financial data, except for statutory or judicial requirements, or requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.955 to 6.975.
- (6) Upon completion of an audit, each city may elect to publish the auditor's report in accordance with subsection (7) of this section, or publish a financial statement in accordance with subsection (8) of this section. Notwithstanding the election of subsection (7) or (8) of this section, the city shall, within ninety (90) days after the close of the fiscal year, cause to be published in a newspaper qualified under KRS 424.120 a legal display advertisement of not less than eight (8) column inches that the statement required by KRS 424.220 has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio or television station which has on file with the city a written request to be provided a statement.
- (7) If the city elects to publish the auditor's report prepared in accordance with this section in lieu of the financial statement required by KRS 424.220, it shall publish the auditor's cover letter to the city council, the combined balance sheet showing all fund types and account groups, the combined statement of revenues, expenditures, and changes in fund balance for all governmental fund types, the combined statement of revenues, expenses, and changes in retained earnings/fund balances for all proprietary fund types and similar trust funds, and the combined statement of changes in financial position for all proprietary fund types and similar trust funds in accordance with KRS Chapter 424. The advertisement shall contain a statement that a copy of the complete auditor's report, including financial statements and supplemental information, are on file at city hall and are available for public inspection during normal business hours. The advertisement shall also contain a statement that any citizen may obtain from city hall a copy of the complete auditor's report, including financial statements and supplemental information, for his personal use. The statement shall notify citizens requesting a personal copy of the city audit report that they will be charged for duplication costs at a rate that shall not exceed twenty five cents (\$0.25) per page. In addition, the advertisement shall contain a statement that copies of the financial statement prepared in accordance with KRS 424.220 are available to the public at no cost at the business address of the officer responsible for preparation of the statement.
- (8) If the city, other than a city of the first or second class or urban-county government, elects to publish the financial statement prepared in accordance with KRS 424.220 in lieu of publishing the auditor's report, it shall, within sixty (60) days after the completion of the audit, publish the statement in accordance with KRS Chapter 424.
- (9) Any city of the fifth or sixth class may utilize the alternative publication methods authorized by KRS 424.190(2) to comply with the provisions of this section.

- (10) Any person who violates any provision of this section shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). In addition, any officer who fails to comply with any of the provisions of this section shall, for each failure, be subject to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), in the discretion of the court, which may be recovered only once in a civil action brought by any resident of the city. The costs of all proceedings, including a reasonable fee for the attorney of the resident bringing the action, shall be assessed against the unsuccessful party.

Section 47. KRS 91A.050 is amended to read as follows:

The Department ~~for~~ Local Government shall make available to all cities assistance in meeting the requirements of KRS 91A.010 to 91A.060, including the preparation and dissemination of model systems for accounting and budgeting, and other technical materials.

Section 48. KRS 147A.002 is amended to read as follows:

- (1) The Department ~~for~~ Local Government shall be headed by a commissioner, and shall be divided for administrative purposes into the Division of Community Programs and such other divisions as the commissioner, with the approval of the Governor, determines. The Division of Community Programs shall be responsible for the administration of Title I of the Housing and Community Development Act of 1974 as amended through 1981, which includes the community block grant program and the 107 technical assistance program.
- (2) The commissioner, with the approval of the Governor, shall appoint necessary deputies, assistants, attorneys and other employees and shall fix their compensation and authorize payment of their expenses according to law.

Section 49. KRS 147A.003 is amended to read as follows:

The following administrative bodies shall be attached to the Department ~~for~~ Local Government for administrative purposes:

- (1) Local Government Advisory Commission;
- (2) Appalachian Development Council; and
- (3) The State-Federal Council for Balanced Economic Growth.

Section 50. KRS 147A.004 is amended to read as follows:

- (1) The Department ~~for~~ Local Government shall administer distribution of state and federal planning funds to area development districts and shall require by *administrative* regulation~~—such~~ financial and operational reports, audits, and other controls as are necessary to assure compliance with state and federal laws relating to funds received by the area development districts.
- (2) The Department ~~for~~ Local Government shall *promulgate administrative*~~issue—such~~ regulations as will assure statewide coordination of the planning and assistance operations of the area development districts.

Section 51. KRS 147A.006 is amended to read as follows:

- (1) The Local Government Advisory Commission is hereby established and shall advise the Department ~~for~~ Local Government on issues relating to the needs of the area development districts and local governments in Kentucky.
- (2) The Local Government Advisory Commission shall have fifteen (15) members, consisting of the chairman of the board of directors of each of the fifteen (15) area development districts. The Governor shall select one (1) of this number to serve as chairman of the commission at the pleasure of the Governor.
- (3) The members of the Local Government Advisory Commission shall serve without compensation, but shall be reimbursed the reasonable and necessary expenses incurred by the members in performing the work of the commission.

Section 52. KRS 147A.009 is amended to read as follows:

- (1) The Division of Flood Control is created within the Department ~~for~~ Local Government.
- (2) The division shall be headed by a division director appointed by the commissioner of the Department ~~for~~ Local Government, with the approval of the Governor.

- (3) The division shall be responsible for providing staff services to the Flood Control Advisory Commission established under KRS 151.560, assisting the commission in its duties established under KRS 151.570, and other duties as prescribed to the division by the commissioner.

Section 53. KRS 147A.020 is amended to read as follows:

- (1) The state local debt officer within the Office of the Controller, Finance and Administration Cabinet and the state local finance officer within the Department ~~for~~ Local Government shall exercise the following administrative functions of the state:
- (a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and
 - (b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.
- (2) The state local debt officer shall have the following powers and duties:
- (a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the Office of the Controller;
 - (b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and
 - (d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.
- (3) The state local finance officer shall have the following powers and duties:
- (a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;
 - (b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and
 - (c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

Section 54. KRS 147A.021 is amended to read as follows:

- (1) The Department ~~for~~ Local Government shall have the following powers and duties:
- (a) To require any reports from local governments that will enable it adequately to provide the technical and advisory assistance authorized by this section.
 - (b) To encourage, conduct, or participate in training courses in procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government to enable the department to carry out its duties under this section.
 - (d) At its discretion, to compile and publish annually a report on local government.

- (2) The Department ~~for~~ Local Government shall coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, the following programs:
- (a) Demonstration cities and metropolitan development act as amended with the exception of Title I of the Housing and Community Development Act of 1974 as amended through 1981;
 - (b) Farmers Home Administration;
 - (c) Veterans Administration Act as amended, as it pertains to housing.
- (3) The Department ~~for~~ Local Government shall provide technical assistance and information to units of local government, including but not limited to:
- (a) Personnel administration;
 - (b) Ordinances and codes;
 - (c) Community development;
 - (d) Appalachian Regional Development Program;
 - (e) Economic Development Administration Program;
 - (f) Intergovernmental Personnel Act Program;
 - (g) Land and Water Conservation Fund Program;
 - (h) Area Development Fund Program;
 - (i) Gas System Restoration Project;
 - (j) Joint Funding Administration Program;
 - (k) State clearinghouse for A-95 review;
 - (l) The memorandums of agreement with the area development districts to provide management assistance to local governments; and
 - (m) The urban development office.
- (4) The Department ~~for~~ Local Government shall exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.

Section 55. KRS 147A.025 is amended to read as follows:

- (1) Except as provided in subsection (7) of this section, the Department ~~for~~ Local Government with the advice and approval of the state local finance officer annually shall conduct a program to instruct county clerks, sheriffs, jailers, and county treasurers respecting their duties and responsibilities in the collection and expenditure of public moneys, subject to their control and jurisdiction.
- (2) The department with the advice and approval of the state local finance officer shall establish the content and publish instructional materials essential to implementing this program. Subsequent to every regular and extraordinary session of the General Assembly, the department with the state local finance officer shall review and revise, if necessary, the program when it is found not to be consistent with state law.
- (3) The department may assess a charge to any person requesting copies of instructional materials published **as provided by** ~~pursuant to~~ this section to cover actual costs of printing and handling these materials, except that no county official shall be charged for instructional materials provided for his use. Funds accruing from the sale of instructional materials shall be paid into the State Treasury, and the State Treasurer shall pay these funds into an account of the department to defray the costs of printing and handling these materials.
- (4) The commissioner of the department with the advice and approval of the state local finance officer may prescribe completion standards for this program, and may, subject to subsection (6) of this section, establish the number, type and sequence of instructional sessions to be conducted by the department; but the commissioner of the department shall not require the attendance of any county official, nor shall he prescribe any requirement or standard that restricts or impairs a county official or elected candidate in the lawful pursuit or conduct of the office to which he is elected.

- (5) The department shall notify in advance each county clerk, sheriff, jailer, and county treasurer respecting instructional session pertinent to his office. Notification shall be by mail, and it shall be posted no later than twenty-one (21) days prior to the instructional session. At a minimum, the notice shall give the date, time, place and title of the instruction session.
- (6) The department shall conduct this program by providing a one (1) day session at various locations throughout this state in order to minimize the travel expenses of those officials attending, provided that the aggregate number of all sessions shall not exceed five (5) during any calendar year. Except as provided in subsection (7) of this section, the department may commence instruction anytime during a calendar year.
- (7) The department shall not conduct a program *as provided by* ~~pursuant to~~ this section during any calendar year when a general election is held for every constitutional county office. The department, however, shall commence instruction for the succeeding year within eighty (80) days following said general election.
- (8) Every county official who attends an instructional session shall be paid his actual and necessary expenses in attending from the operating funds of his office.
- (9) In fulfilling the requirements of this section, the department shall confer with and coordinate its duties and responsibilities with the Finance and Administration Cabinet, the Revenue Cabinet and the Auditor of Public Accounts. The department shall also confer with those state universities whose mission statements mandate their participation in the training of public officials, the state associations for those officials listed in subsection (1) of this section, and the Kentucky Association of Counties, respecting the implementation of this section.

Section 56. KRS 147A.028 is amended to read as follows:

- (1) In enacting a parks establishment aid law, it is the intention of the General Assembly to supplement local efforts to establish park and recreational facilities. The inadequacy of present facilities and the high cost of acquisition and establishment of park recreational facilities are hereby declared to be matters of public interest and concern and vital to the promotion of the health, welfare and industrial development of the inhabitants of the Commonwealth.
- (2) The commissioner of the Department ~~for~~ Local Government shall cause to be established in the Treasury a special fund to be known as the local government parks and recreational facilities fund, to be administered by the commissioner. The fund shall be comprised of grants, contributions, appropriations and intergovernmental transfers. Moneys in the fund shall not lapse at the end of the fiscal year.
- (3) The commissioner may, when he determines that a proposed local government plan for a park or other recreational facility would serve the public interest, use moneys from the local government parks and recreational facilities fund to aid local governmental units in their acquisition and establishment of local parks and recreational facilities, provided that local governmental units must provide matching funds for the project. The Department ~~for~~ Local Government may grant an amount up to one hundred thousand dollars (\$100,000) for any one (1) project, which amount shall not exceed fifty percent (50%) of the cost of the entire project. For the purposes of this section, local governmental units shall mean county governments, urban-county government, and governments of cities of any class. Title to parks and recreational facilities acquired by the use of funds authorized by this section shall vest in the local governmental unit which proposed the project and provided the matching funds.
- (4) In September of each year the commissioner shall determine the amount of funds available for distribution by December 31 of that same year. The commissioner may prescribe standards for determining the amounts to be granted for local projects and *any administrative* ~~such~~ regulations as may be necessary to implement the provisions of this section. Funds granted by the department shall be spent by the local governing authorities only for the acquisition and establishment of parks and recreational facilities or major improvements or additions to existing parks and shall not be used for operating or maintenance expenses.

Section 57. KRS 147A.031 is amended to read as follows:

- (1) The Department ~~for~~ Local Government, in cooperation with cities, counties, waste management districts, waste industries, the Natural Resources and Environmental Protection Cabinet, and the Environmental Quality Commission shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:

- (a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues including, but not limited to, host community compensation and collection and disposal fees; and
- (b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include, but are not limited to, the following:
 - 1. Operational issues, such as hours of operation;
 - 2. Recycling and composting efforts that may be implemented;
 - 3. Protection of property values;
 - 4. Traffic routing and road maintenance; and
 - 5. Establishment of local advisory committees.
- (2) The Department ~~for~~ Local Government shall adopt administrative regulations to implement the provisions of subsection (1) of this section.
- (3) By January 1, 1992, the Department ~~for~~ Local Government shall report to the Governor and to the General Assembly the recommendations developed under subsection (1) of this section.
- (4) Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

Section 58. KRS 147A.060 is amended to read as follows:

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation *promulgated*~~issued~~ by the Department ~~for~~ Local Government *in accordance with*~~pursuant to~~ KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or their staff may be designated as a representative with the consent of that body. The Department ~~for~~ Local Government in specifying the composition of the board shall conform to applicable federal requirements.

Section 59. KRS 147A.200 is amended to read as follows:

- (1) The Department ~~for~~ Local Government is authorized and directed to apply for and receive federal funds to be placed in a state account called the Gas System Restoration Project Account, and to provide staff to administer said funds.
- (2) A Gas System Restoration Project Account Review Board is established, and shall consist of seven (7) members appointed by the Governor, and including representatives of the Public Service Commission, state fire marshal's office, Department ~~for~~ Local Government, banking and finance industry, commercial or industrial consumers, Kentucky Gas Association, and low income or minority group consumers. Members shall be reimbursed for necessary expenses in attending meetings.
- (3) The review board shall meet monthly, and shall establish rules for conducting its business. The review board shall consider applications for loans from the account, and approve or disapprove loan applications. No loan shall be considered unless the applicant has complied with all construction and securities requirements of the Public Service Commission. In reviewing loan applications, the review board may request the testimony of the county judge/executive of an affected county, and any other witnesses deemed appropriate.

Section 60. KRS 148.022 is amended to read as follows:

- (1) The Department ~~for~~ Local Government shall administer and operate the outdoor recreation programs of the state and shall be responsible for developmental planning and the administration of United States Bureau of Outdoor Recreation funds.
- (2) All functions of the Commonwealth relating to the Breaks Interstate Park shall be attached to the Tourism Cabinet for administrative purposes.

Section 61. KRS 151.560 is amended to read as follows:

- (1) There is hereby created the Flood Control Advisory Commission, which shall be composed of sixteen (16) members appointed by the Governor as follows:
 - (a) Two (2) state legislators, one (1) from the Senate and one (1) from the House of Representatives; two (2) mayors; and two (2) county judges/executive; and
 - (b) One (1) member from each of the following river basins: Big Sandy; Licking; Kentucky; Salt; Green; Ohio River Main Stem; Tennessee; Mississippi; and Upper Cumberland; and
 - (c) The commissioner of the Department ~~for~~ Local Government or commissioner's designee.
- (2) Except for the commissioner of the Department ~~for~~ Local Government, each member shall serve a four (4) year term, except the first commission members were appointed by the Legislative Research Commission to serve terms as follows:
 - (a) Three (3) members to serve for terms of two (2) years from the date of appointment;
 - (b) Three (3) members to serve for terms of three (3) years from the date of appointment; and
 - (c) Three (3) members to serve for terms of four (4) years from the date of appointment.
- (3) Commission members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (4) Any member who misses three (3) consecutive meetings of the commission shall be deemed to have vacated the office. The commission shall declare the office vacant, and the office shall be filled as provided by subsection (3) of this section.
- (5) Two (2) of the commission members shall be elected by the commission to serve on the Water Resources Authority of Kentucky, which service shall cease with the expiration of the term of appointment on the commission, if not sooner.
- (6) The commission shall annually elect one (1) of its members as chairperson. The commission shall meet quarterly or more often if necessary. A quorum for the transaction of business shall be nine (9) members, and a majority of the members present at a meeting may take action on any matter legally before it.
- (7) Members shall be paid their necessary expenses incurred in attending meetings and in the performance of their official duties.
- (8) The commission shall be attached for administrative purposes to the Department ~~for~~ Local Government which shall provide the staff services and resources necessary to support the commission in the performance of its statutory duties through the Division of Flood Control established by KRS 147A.009.
- (9) The commission shall promulgate administrative regulations as necessary to control internal procedures. The commission shall promulgate by administrative regulation the boundary for each river basin referred to in subsection (1)(b) of this section.

Section 62. KRS 152.055 is amended to read as follows:

The Department ~~for~~ Local Government shall have responsibility for the administration and coordination of Appalachian regional development programs and economic development administration programs.

Section 63. KRS 154.33-020 is amended to read as follows:

- (1) There is created an Appalachian Development Council. The council shall be attached to the Department ~~for~~ Local Government for administrative purposes. The Department ~~for~~ Local Government shall provide staff assistance to the council.
- (2) The council shall serve as an advisory body to the department and to the General Assembly on all phases of economic development in that part of Kentucky contained within the Appalachian region as defined by the federal Appalachian Regional Development Act of 1965, as amended.
- (3) The council shall consist of the Lieutenant Governor and twenty-two (22) members appointed by the Governor. The Governor shall appoint three (3) members from the Appalachian region at-large. The remaining nineteen (19) members shall be appointed from the forty-nine (49) Appalachian counties of Kentucky, within area development districts, as follows:

- (a) Two (2) members from Appalachian counties within the Fivco Area Development District;
 - (b) Two (2) members from Appalachian counties within the Gateway Area Development District;
 - (c) Two (2) members from Appalachian counties within the Big Sandy Area Development District;
 - (d) Two (2) members from Appalachian counties within the Bluegrass Area Development District;
 - (e) Three (3) members from Appalachian counties within the Kentucky River Area Development District;
 - (f) Three (3) members from Appalachian counties within the Cumberland Valley Area Development District;
 - (g) Three (3) members from Appalachian counties within the Lake Cumberland Area Development District;
 - (h) One (1) member from Appalachian counties within the Barren River Area Development District; and
 - (i) One (1) member from Appalachian counties within the Buffalo Trace Area Development District.
- (4) The three (3) at-large members of the council shall serve for terms of one (1) year. The remaining nineteen (19) appointed members shall be appointed for terms of four (4) years, except that of the members initially appointed by the Governor five (5) shall be appointed for a term of one (1) year, five (5) shall be appointed for a term of two (2) years, five (5) shall be appointed for a term of three (3) years, and four (4) shall be appointed for a term of four (4) years. The Governor shall fill vacancies by appointment for the remainder of the unexpired term.
- (5) The chairman of the council shall be selected annually by the council members.
- (6) The members of the council shall serve without compensation but shall be reimbursed for reasonable and necessary expenses incurred in performing the work of the council.

Section 64. KRS 164.3571 is amended to read as follows:

- (1) The Governmental Services Center may, upon request, of the Department ~~for~~ Local Government, and as financial and staff resources permit, develop, coordinate, implement, assist, and conduct employee and management training programs, seminars, and conferences, for agencies, departments, divisions, boards, and commissions of county and city government, and any other political subdivisions of the state.
- (2) The Governmental Services Center may enter into contractual agreements with county and city governments and other political subdivisions as necessary to allow the Governmental Services Center to properly perform its duties and responsibilities as established by KRS 164.3571 to 164.3573.
- (3) Any agency of a county, city, or other political subdivision whose employees receive the benefit of the Governmental Services Center's services, shall reimburse the Governmental Services Center for those costs and expenses which it incurs as a result of providing these services.

Section 65. KRS 177.360 is amended to read as follows:

- (1) Except as provided in subsection (5) of this section, the Department of Rural and Municipal Aid shall allocate the funds set apart under KRS 177.320(1) for construction, reconstruction, and maintenance of state-maintained secondary and rural highways as follows:
 - (a) One-fifth (1/5) shall be apportioned equally among the one hundred twenty (120) counties.
 - (b) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the rural population of each county bears to the total rural population of the state. "Rural population" as used here means the population in a county outside cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more as shown by the most recent decennial census of the United States Bureau of the Census, and county population shall be determined by the most recent decennial census of the United States Bureau of the Census.
 - (c) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio that the public road mileage outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more bears to the total mileage of such roads for the entire state.
 - (d) Two-fifths (2/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the square-mile rural area of the county bears to the total square-mile rural area of the state. "Rural area" as used here means that area of the county outside of cities, towns, and urban areas having

a population of twenty-five hundred (2,500) or more and shown by the most recent decennial census of the United States Bureau of the Census.

- (2) A sum not exceeding six percent (6%) of the allocation provided by KRS 177.320(1) to each county shall be deducted at the beginning of each fiscal year and adjusted quarterly to cover the maintenance, administrative, engineering, and other costs of the program.
- (3) Of the total amount apportioned by the provisions of this section, a sum not exceeding six percent (6%) may be deducted and placed by the Department of Rural and Municipal Aid in a special emergency account to be expended at the direction of the commissioner to meet unforeseen emergencies on rural and secondary roads and bridges.
- (4) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.
- (5) Any county eligible to receive county road aid moneys *in accordance with* ~~in accordance with~~ ~~pursuant to~~ KRS 177.320 and this section shall be required to submit a uniform financial information report to the Department ~~for~~ Local Government *in accordance with* ~~in accordance with~~ ~~pursuant to~~ KRS 65.905 before any payment of county road aid funds shall be made. The Department ~~for~~ Local Government shall notify the Department of Rural and Municipal Aid no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of Rural and Municipal Aid shall upon notification by the department immediately suspend all county road aid moneys to the county until the county complies with the provisions of KRS 65.900 to 65.915 and submits the uniform financial information report to the Department ~~for~~ Local Government. The department shall immediately notify the Department of Rural and Municipal Aid to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

Section 66. KRS 177.366 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.
- (2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.
- (3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.
- (4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.
- (5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.
- (6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.

- (7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.
- (8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the Department ~~for~~ Local Government pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The Department ~~for~~ Local Government shall notify the Finance and Administration Cabinet no later than March 1 annually of any local government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall upon notification by the department, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to 65.915 and submits the uniform financial information report to the Department ~~for~~ Local Government. The department shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

Section 67. KRS 179.410 is amended to read as follows:

The Department ~~for~~ Local Government shall allocate the sum appropriated by the General Assembly from the funds arising under the provisions of KRS 177.320(2), for the construction, reconstruction, improvement, and maintenance of county roads and bridges in accordance with the provisions of KRS 177.360(1).

Section 68. KRS 179.415 is amended to read as follows:

- (1) On and after the fiscal year beginning July 1, 1980 and each fiscal year thereafter, the Department ~~for~~ Local Government shall pay to each county its pro rata share of any funds appropriated and any unexpended balance of funds appropriated for construction, reconstruction, improvement, and maintenance of county roads and bridges. During each fiscal year, the department shall make quarterly payments to each such county of the funds allocated *in accordance with* ~~pursuant to~~ KRS 177.369.
- (2) The expenditure of any money received by the county *in accordance with* ~~pursuant to~~ the provisions of subsection (1) of this section shall be made solely for the purpose of construction, reconstruction, improvement, and maintenance of county roads and bridges.
- (3) Any county which has received any money *in accordance with* ~~pursuant to~~ the provisions of subsection (1) of this section shall retain all records of the expenditure of ~~the~~ ~~such~~ money for a period of five (5) years and said records shall be subject to audit by the Department ~~for~~ Local Government for said period of time in order to determine the proper expenditure of said money for the purpose required by KRS 179.410.

Section 69. KRS 198A.030 is amended to read as follows:

- (1) There is hereby created and established an independent, de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to be known as the Kentucky Housing Corporation.
- (2) The Kentucky Housing Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people by the production of residential housing in Kentucky.
- (3) The corporation shall be governed by a board of directors, consisting of fourteen (14) members, six (6) of whom shall be the Lieutenant Governor, the secretary of the Finance and Administration Cabinet, the commissioner of the Department ~~for~~ Local Government, the secretary of the Revenue Cabinet, the Attorney General, and the secretary of the Cabinet for Economic Development, or their duly appointed designees, as public directors, and eight (8) private directors who shall be appointed by the Governor, subject to confirmation by the Senate as provided by KRS 11.160, as follows:
 - (a) One (1) private director representing the interests of financial lending institutions located within the Commonwealth;
 - (b) One (1) private director representing the interests of the manufactured housing industry within the Commonwealth;
 - (c) One (1) private director representing the interests of real estate practitioners licensed by the Kentucky Real Estate Commission;

- (d) One (1) private director representing the interests of the homeless population within the Commonwealth;
 - (e) One (1) private director representing the interests of local government;
 - (f) One (1) private director representing the interests of the home construction industry in the Commonwealth;
 - (g) One (1) private director representing the interests of consumers in the Commonwealth; and
 - (h) One (1) private director representing the interests of the Kentucky State Building Trades Council.
- (4) Private directors appointed by the Governor may include previous members of the board, and members may be reappointed for successive terms. All appointments shall be for four (4) years, and the appointees shall serve until a qualified successor is appointed.
 - (5) In case of a vacancy, the Governor may appoint a person for the vacancy to hold office during the remainder of the term. A vacancy shall be filled *in accordance with* ~~in accordance with~~ the requirement and procedures for appointments.
 - (6) The Governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant and may appoint a person for the vacancy as provided in this section.
 - (7) The Governor shall designate a director of the corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a director of the corporation or a date six (6) months after the expiration of the then current term of the Governor designating the chairman.
 - (8) The board of directors shall annually elect one (1) of its members as vice chairman. The board of directors shall also elect or appoint, and prescribe the duties of, other officers the board of directors deems necessary or advisable, including an executive director and a secretary, and the board of directors shall fix the compensation of the officers.
 - (9) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that copies are true copies, and all persons dealing with the corporation may rely upon the certificates.
 - (10) A majority of the board of directors of the corporation shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. A majority shall be determined by excluding any existing vacancies from the total number of directors.
 - (11) Action shall be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum shall exist called upon three (3) days' written notice to each director or upon the concurrence of at least eight (8) directors.
 - (12) Each private director shall be entitled to a fee of one hundred dollars (\$100) for attendance at each meeting of the board of directors or duly called committee meeting of the board.

Section 70. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
 - (a) The following ten (10) state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department ~~for~~ Local Government; commissioner of the Department of Housing, Buildings and Construction; secretary of the Cabinet for Economic Development; secretary of the Cabinet for Human Resources; secretary of the Natural Resources and Environmental Protection Cabinet; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.

- (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:
1. Public housing authorities;
 2. Mortgage banking industry;
 3. Manufactured housing industry;
 4. Realtors;
 5. Homebuilders;
 6. Urban nonprofit housing organizations;
 7. Rural nonprofit housing organizations;
 8. Urban advocates for the homeless;
 9. Rural advocates for the homeless;
 10. Residents of economically-diverse urban neighborhoods;
 11. Residents of economically-diverse rural neighborhoods;
 12. Rental property providers;
 13. Advocates for persons with physical disabilities;
 14. Advocates for persons with mental disabilities;
 15. The Kentucky State Building Trades Council;
 16. The Kentucky League of Cities; and
 17. The Kentucky Association of Counties.
- (c) One (1) member of the Senate and one (1) member of the House of Representatives.
- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed *as provided by* ~~pursuant to~~ subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
 - (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
 - (4) Any vacancy shall be filled *as provided by* ~~pursuant to~~ the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
 - (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
 - (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.
 - (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
 - (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.
 - (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
 - (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other

administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 71. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

- (1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;
- (2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings, and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability and comfort;
- (3) To administer regulatory legislation relating to buildings and construction;
- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the Department ~~for~~ Local Government, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities and amenities of ~~this~~ housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
 - (f) Cooperating with various federal, state and local agencies in their programs as they relate to housing;
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky General Assembly;
- (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
- (8) To ***promulgate administrative***~~issue~~ regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the department to the Natural Resources and Environmental Protection Cabinet for that cabinet's comments. Any such regulations shall require the Natural Resources and Environmental Protection Cabinet's comments to be completed and submitted to the department within sixty (60) days;
- (9) To ***promulgate administrative***~~issue~~ regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the department to the Natural Resources and Environmental Protection Cabinet for that cabinet's comments. Any such regulations shall require the Natural Resources and Environmental Protection Cabinet's comments to be completed and submitted to the department within sixty (60) days; and

- (10) To *promulgate administrative*~~issue~~ regulations for the safe installation and operation of plumbing and plumbing fixtures.

Section 72. KRS 224.01-500 is amended to read as follows:

- (1) The Kentucky Recycling Brokerage Authority, referred to in this section as the "authority," is created by this section to further local governments' efforts to develop reliable markets for their recyclables. The authority shall be composed of sixteen (16) members as follows:
 - (a) The secretaries of the Cabinets for Finance and Administration and Natural Resources and Environmental Protection, and the commissioner of the Department ~~for~~ Local Government; and
 - (c) Thirteen (13) members appointed by the Governor including representatives of municipal and county governments; legislators; citizens representing environmental interests; and industry representatives.
- (2) These sixteen (16) persons and their successors in office shall constitute the Kentucky Recycling Brokerage Authority, a public corporation, with perpetual succession and with power in that name to contract and be contracted with, to convey property, to sue and be sued, and to exercise, in addition to the powers and functions conferred by this section, all of the usual powers of corporations not inconsistent with specifically enumerated powers. The Governor shall appoint from the membership a chairperson who shall serve at the pleasure of the Governor. The authority may at its discretion elect from its membership other officers of the board.
- (3) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and function as members.
- (4) Nine (9) members of the authority shall constitute a quorum for the transaction of business. The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection shall provide staff services to the authority. The authority shall establish and maintain complete records of the authority's action and proceedings, which shall be public records open to inspection.
- (5) On or before July 1, 1991, the Governor shall appoint thirteen (13) members of the authority as follows: five (5) shall serve terms ending July 1, 1995; four (4) shall serve terms ending July 1, 1994; and four (4) shall serve terms ending July 1, 1993. As the terms of each group of members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed.
- (6) The Department for Environmental Protection shall assist the authority and act as the state broker for local governments and commercial recycling businesses seeking to sell recyclable materials. The department shall:
 - (a) Identify local, state, and interstate markets for recyclables;
 - (b) Issue requests for proposals as well as directly contact potential buyers;
 - (c) Negotiate contracts with potential buyers on behalf of participating local governments, commercial recycling businesses, or local groups;
 - (d) Arrange details of contracts including price collection schedules, reimbursements, and quality assurance provisions;
 - (e) Conduct workshops and seminars throughout the state to train recycling center and solid waste facility operators on how to prepare and process materials that will be marketed through the brokerage office;
 - (f) Issue routine market bulletins containing pricing information and other program details to all local governments and commercial recycling businesses, both those participating as well as nonparticipants; and
 - (g) Handle all paperwork for the brokering service including contracts, invoices, weigh slips, and records of collections and issue revenue checks to participants.
- (7) Local governments and commercial recycling businesses participating in the Kentucky Recycling Brokerage Program shall be assessed a brokerage fee of fifteen percent (15%) of the sale revenue or two dollars (\$2) per ton of recyclables sold, whichever is greater.
- (8) In addition to any brokerage fees received, the Department for Environmental Protection may receive and accept from any governmental agency, nonprofit organization, or from private enterprise appropriations,

grants, or contributions of money, property, labor, or other things of value, to be used to carry out the functions of the department or the authority.

- (9) The authority shall annually issue financial and informational reports to the General Assembly which shall contain full descriptions of tonnage volumes handled, revenues generated, contracts entered into, market summaries and reviews, and other information under which a full review of the brokerage program is possible. The report shall be due on July 1 of each year.
- (10) The authority shall also include in its July 1, 1993 annual report to the General Assembly the following:
 - (a) A description and analysis of the Commonwealth's existing recycling industry, the types, and estimated amounts of recovered material being separated or reprocessed;
 - (b) An analysis of the projected long-term capacity of existing markets to absorb materials generated by materials recovery or recycling programs;
 - (c) An analysis of potential markets in the Commonwealth, in other states, or in foreign countries for recovered material or products manufactured using recovered material from this Commonwealth;
 - (d) An analysis of institutional, economic, and technical barriers to the use of recovered material or products manufactured using recovered materials;
 - (e) Recommendations for actions which may be taken to increase demand for recovered materials or products;
 - (f) Recommendations for actions which may be taken to increase the incentives for private individuals and for business and industry to recover materials;
 - (g) Recommendations on categories of materials which should be recovered in this Commonwealth, given existing and potential markets for those materials;
 - (h) Recommendations for a public education program to be implemented by the Natural Resources and Environmental Protection Cabinet and the Environmental Council to provide information to the public and to business and industry on the benefits of materials recovery and recycling and on the availability of those materials or products; and
 - (i) A review of state and local government procurement policies and recommendations for actions which might be taken to encourage waste reduction and recycling.
- (11) In subsequent years the authority shall include in its annual report the following:
 - (a) Any revisions which the authority determines are necessary to its initial report;
 - (b) An analysis of changes that have occurred with markets for recovered material and products manufactured using recovered material since the last report; and
 - (c) Any other recommendations to facilitate the development of markets for recovered material and products manufactured using recovered material in this Commonwealth.

Section 73. KRS 224A.011 is amended to read as follows:

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

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.

- (5) "Authority revenues" means the totality of all:
- (a) Service charges;
 - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.112, 224A.270, and KRS 224A.1115, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
 - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
 - (g) Payments under agreements with any agencies of the state and federal government.
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.
- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.
- (8) "Construction" means and includes, but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the natural resources cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.
- (11) "Federal act" means the Federal Clean Water Act (33 U.S.C. sec. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.
- (12) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

- (13) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply, but not by way of limitation, to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another *in accordance with* ~~pursuant to~~ any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established *in accordance with* ~~pursuant to~~ the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.
- (14) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.
- (15) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency which is approved by the authority and, if required, by the natural resources cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; or any other public utility or public service project which the authority finds would enhance economic development opportunities in a governmental agency.
- (16) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.
- (17) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.
- (18) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.
- (19) "Natural resources cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial, or agricultural purposes, or recreational purposes.
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the natural resources cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund, or the list of infrastructure projects which the Department ~~for~~ Local Government has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund.
- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.

- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed *in accordance with* ~~(pursuant to)~~ KRS Chapter 224 and administrative regulations adopted by the cabinet.
- (27) "Revenue bonds" means special obligation bonds issued by the authority *as provided by* ~~(pursuant to)~~ the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.
- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.
- (33) "State" means the Commonwealth of Kentucky.
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed *as provided by* ~~(pursuant to)~~ the assistance agreement between the governmental agency and the authority.
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works *in accordance with* ~~(pursuant to)~~ the federal act.
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or *in accordance with* ~~(pursuant to)~~ the standards set forth in KRS 224A.120.
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.

- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky.

Section 74. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority. The affairs of the authority shall be managed and carried out by a board consisting of eight (8) members. The secretaries of the Economic Development, Finance and Administration, and Natural Resources and Environmental Protection Cabinets, the vice chairman of the Kentucky Economic Development Partnership or the vice chairman's designee selected from the membership of the Kentucky Economic Development Partnership or the Kentucky Economic Development Finance Authority, and the commissioner of the Department ~~for~~ Local Government shall serve as ex officio members of the authority. On or before August 1, 1992, the Governor shall additionally appoint three (3) at large members who shall serve as follows: one (1) shall serve a term ending June 30, 1996; one (1) shall serve a term ending June 30, 1995; and one (1) shall serve a term ending June 30, 1994. As the terms of the at large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in said capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.
- (3) Five (5) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The secretary of the Finance and Administration Cabinet shall serve as chairperson. The members of the authority shall choose from their ranks a vice chairman. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive ~~such~~ compensation as may be determined by the authority.
- (4) The authority shall, for administrative purposes, be attached to the Finance and Administration Cabinet, and shall establish and maintain offices in premises which shall be provided for that purpose by the Finance and Administration Cabinet; and the secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

Section 75. KRS 224A.112 is amended to read as follows:

- (1) The infrastructure revolving fund shall be established in the State Treasury and shall be administered by the authority.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to providing financial assistance to governmental agencies for the construction or acquisition of infrastructure projects when a governmental agency is unable to finance the entire infrastructure project for which it is seeking moneys from

its own resources, through commercial credit at reasonable rates and under reasonable terms or through other public grant or loan programs, including the federally assisted wastewater revolving fund.

- (3) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to:
 - (a) Making loans, on the condition that the loans are made at or below market interest rates, including interest free loans, at terms not to exceed thirty (30) years and that the fund will be credited with all payments of principal and interest on all loans;
 - (b) Purchasing or guaranteeing, or purchasing insurance for, local or state obligations when the action would improve credit market access or reduce interest rates;
 - (c) Providing a source of revenue or security for the payment of principal and interest on bonds or notes issued by the authority or other agencies of the state if the proceeds of the sale of the bonds will be deposited in the fund;
 - (d) Providing moneys with which to carry out the requirements of assistance agreements; and
 - (e) Making grants as funds specifically appropriated for grants or proceeds from the sale of the authority's revenue bonds are available when the authority finds that both a hardship and an extreme health hazard exist.
- (4) The revolving fund shall be established, maintained and credited with repayments and the fund balance shall be available in perpetuity for its stated purposes.
- (5) The authority may provide financial assistance from the fund to supplement assistance provided from the federally assisted wastewater revolving fund as created in KRS 224A.111 or for any infrastructure projects on the prioritization schedule prepared by the Department ~~for~~ Local Government.
- (6) The Department ~~for~~ Local Government shall advise governmental agencies of the availability of the infrastructure revolving fund and how moneys may be obtained from the fund. In establishing its prioritization schedule, the Department ~~for~~ Local Government shall consult the Cabinet for Economic Development regarding economic development project criteria, shall give funding consideration to economic development projects recommended by the Cabinet for Economic Development, and shall consider the following factors:
 - (a) Local employment;
 - (b) The relationship of the infrastructure project to the governmental agency's capital investment plan;
 - (c) The relationship of the infrastructure project to the governmental agency's economic development;
 - (d) The reasonableness of the proposed costs;
 - (e) The probable effectiveness of the infrastructure project as proposed; and
 - (f) Any other criteria that the Department ~~for~~ Local Government considers advisable.
- (7) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section.

Section 76. KRS 224A.113 is amended to read as follows:

The authority, the Natural Resources Cabinet or the Department ~~for~~ Local Government may promulgate administrative regulations to implement KRS 224A.111, 224A.112, and KRS 224A.1115.

Section 77. KRS 262.875 is amended to read as follows:

- (1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:
 - (a) Governor's Cabinet;
 - (b) Finance and Administration Cabinet;
 - (c) Revenue Cabinet;
 - (d) Transportation Cabinet;

- (e) Natural Resources and Environmental Protection Cabinet;
 - (f) Coal Marketing and Export Council;
 - (g) Department of Agriculture;
 - (h) Department ~~for~~ Local Government;
 - (i) Department of Fish and Wildlife Resources;
 - (j) Environmental Quality Commission;
 - (k) Soil and Water Conservation Commission;
 - (l) Dean, College of Agriculture, University of Kentucky;
 - (m) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization;
 - (n) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization; and
 - (o) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.
- (2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.
 - (3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.
 - (4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.
 - (5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit a report to the committee. The report shall explain the project, contain an agricultural impact assessment, highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.
 - (6) All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by KRS 246.065.
 - (7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.
 - (8) A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.
 - (9) Members shall receive no compensation but shall be reimbursed for expenses incurred.

Section 78. KRS 424.190 is amended to read as follows:

- (1) If a statute gives discretion to a public officer or agency or governmental body as to the method of making an advertisement required by the statute, and if a statute provides that an advertisement may be made either by

posting or by newspaper publication, the advertisement shall be made by newspaper publication in accordance with the provisions of this chapter, except as provided in subsection (2) of this section.

- (2) Any city may, when the cost of the newspaper publication exceeds the cost of postage, supplies, and reproduction for the alternative method of publication, in lieu of newspaper publication of advertisement, substitute delivery of a copy of the advertisement by first class mail to each residence within the publication area. Any city electing to use the alternative publication methods authorized by this section shall forward three (3) copies of its audit report or one (1) copy of its financial statement, whichever is applicable, to the Kentucky Department ~~for~~ Local Government *in accordance with* ~~[pursuant to]~~ KRS 91A.040 and 424.220.

Section 79. KRS 424.220 is amended to read as follows:

- (1) Excepting officers of a city of the first class, a county containing such a city, a public agency of such a city or county, or a joint agency of such a city and county, or of a school district of such a city or county, and excepting officers of a city of the second class or an urban-county government, every public officer of any school district, city, county, or subdivision, or district less than a county, whose duty it is to collect, receive, have the custody, control or disbursement of public funds, and every officer of any board or commission of a city, county or district whose duty it is to collect, receive, have the custody, control or disbursement of funds collected from the public in the form of rates, charges or assessments for services or benefits, shall at the expiration of each fiscal year prepare an itemized, sworn statement of the funds collected, received, held or disbursed by him during the fiscal year just closed, unless he has complied with KRS 424.230. Pursuant to subsections (2) and (3) of KRS 91A.040, each city of the sixth class shall prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by the city which complies with the provisions of this section.
- (2) The statement shall show:
 - (a) The total amount of funds collected and received during the fiscal year from each individual source; and
 - (b) The total amount of funds disbursed during the fiscal year to each individual payee and the purpose for which the funds were expended.
- (3) Only the totals of amounts paid to each individual as salary or commission and public utility bills shall be shown. The amount of salaries paid to all nonelected county employees shall be shown as lump-sum expenditures by category, including, but not limited to, road department, jails, solid waste, public safety, and administrative personnel.
- (4) The amount of salaries paid to all teachers shall be shown as a lump-sum instructional expenditure for the school district and not by amount paid to individual teachers. The amount of salaries paid to all other employees of the board shall be shown as lump-sum expenditures by category, including, but not limited to, administrative, maintenance, transportation and food service. The local board of education and the fiscal court shall have accessible a factual list of individual salaries for public scrutiny and the local board and the fiscal court shall furnish by mail a factual list of individual salaries of its employees to a newspaper qualified under KRS 424.120 to publish advertisements for the district, which newspaper may then publish as a news item the individual salaries of school or county employees.
- (5) The officer shall procure and include in or attach to the financial statement, as a part thereof, a certificate from the cashier or other proper officer of the banks in which the funds are or have been deposited during the past year, showing the balance, if any, of funds to the credit of the officer making the statement.
- (6) The officer shall, except in a city electing to publish its audit in lieu of the financial statement *in accordance with* ~~[pursuant to]~~ KRS 91A.040(6), within sixty (60) days after the close of the fiscal year cause the financial statement to be published in full in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county or district, as the case may be. Promptly after the publication is made, the officer shall file a written or printed copy of the advertisement with proof of publication, in the office of the county clerk of the county and with the Auditor of Public Accounts. Promptly after the publication is made, the officer shall also file one (1) copy of the financial statement with the Kentucky Department ~~for~~ Local Government.
- (7) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of any municipally-owned electric, gas, or water system may elect to satisfy the requirements of subsection (6) of this section by:
 - (a) Preparation of a certified audit by a certified public accountant, performed in accordance with generally accepted principles of accounting, for the fiscal year;

- (b) Publishing in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county or district as the case may be, the statement of revenue and expenditures from such audit, together with the statement that the audit report is available for inspection at the offices of the utility; and
 - (c) Making such audit available for inspection on request of anyone during normal working hours of the utility.
- (8) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of a county may elect to satisfy the requirements of subsection (6) of this section by publishing an audit, prepared *in accordance with* ~~pursuant to~~ KRS 43.070 or 64.810, in the same manner that city audits are published *in accordance with* ~~pursuant to~~ KRS 91A.040(7).

Section 80. The General Assembly confirms Executive Order 96-737, dated June 11, 1996, which changes the name of the Department of Local Government to the Department for Local Government, to the extent it is not otherwise confirmed by this Act.

Approved March 17, 1998

CHAPTER 70

(SB 190)

AN ACT relating to expansion of the Kentucky Horse Park Commission.

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

Section 1. KRS 148.260 is amended to read as follows:

- (1) There is hereby created and established an agency of state government to be known as the Kentucky Horse Park Commission which shall constitute a separate administrative body of state government within the meaning of KRS 12.010(8) and under the provisions of KRS 12.015 shall be attached to the Tourism Cabinet for administrative purposes.
- (2) The commission shall be composed of *seventeen (17)* ~~thirteen (13)~~ members who possess the ability to provide broad management expertise and direction in the operation of the Kentucky Horse Park and shall, to the extent possible, represent the diverse interest of the Kentucky horse industry. Of these, *fifteen (15)* ~~eleven (11)~~ members shall be appointed by the Governor. Two (2) of these appointed members of the commission shall represent the equine industry; and two (2) members shall be active in industry and commerce. The secretary of the Cabinet for Economic Development and the secretary of the Tourism Cabinet shall serve as ex officio members with full voting rights. Any vacancy on the commission shall be filled by the Governor for the unexpired term.
- (3) The appointed members of the commission shall hold their offices for a term of four (4) years, except that for the initial appointment to the commission, two (2) members shall serve a term of two (2) years, two (2) members shall serve a term of three (3) years, and three (3) members shall serve a term of four (4) years.
- (4) The commission shall meet quarterly and shall be headed by a chairman appointed by the Governor. The chairman shall preside over the commission meetings. The chairman may call special meetings of the commission upon a request of the majority of the members of the commission.
- (5) Members shall be reimbursed only for expenses incurred in the discharge of official business, subject to regulations established by the Finance and Administration Cabinet. All expenses reimbursed to members shall be paid from operating funds of the Kentucky Horse Park.
- (6) The commission shall establish and maintain an office at the Kentucky State Horse Park for the transaction of its business and shall not establish any branch office. The commission may hold meetings at any other place when the convenience of the commission requires.
- (7) The commission shall be authorized to adopt bylaws providing for the call of its meetings, which shall be held at least quarterly, and for its operating procedures. A quorum of the commission shall consist of *eight (8)* ~~six (6)~~ members, and a quorum of members present at any duly-called meeting may act upon any matter before it for consideration. Each member shall have one (1) vote.

- (8) The Governor may establish an advisory committee to advise in the administration, development and operation of the horse park or other functions, activities, and programs provided for or authorized by KRS 148.260 to 148.320.

Section 2. Upon passage of this Act, the four (4) members added to the Kentucky Horse Park Commission in Section 1 of this Act shall each serve an initial three (3) year term. Thereafter, members shall serve four (4) year terms.

Section 3. The General Assembly confirms Executive Order 96-998, dated July 15, 1996, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 17, 1998

CHAPTER 71

(HB 4)

AN ACT relating to water pollution.

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

Section 1. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
 - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters;~~and~~
 - (b) Boats propelled by human power employing the use of hand or foot operation; **and**
 - (c) **Federally regulated commercial vessels;**
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) "Waters of this state" means any waters within the territorial limits of this state;
- (5) "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (6) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (7) "Cabinet" means the Tourism Cabinet;
- (8) "Department" means the Department of Fish and Wildlife Resources;
- (9) "License" and "certificate of number" as used herein are synonymous;
- (10) "Clerk" means county clerk;
- (11) "Division of Water Patrol" means the Division of Water Patrol, Department of Fish and Wildlife Resources within the Tourism Cabinet;
- (12) "Title" means the certificate of title;~~and~~
- (13) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;
- (14) **"Federally regulated commercial vessel" means any vessel holding a United States certificate of documentation with a coastwise trade endorsement;**
- (15) **"Marina" means a dock or basin providing moorings for motorboats and offering supply, repair, or other services for remuneration; and**

- (16) *"Marine sanitation device" means equipment that is identified by the U.S. Coast Guard as meeting the standards of the U.S. Environmental Protection Agency or that is approved by the Natural Resources and Environmental Protection Cabinet, to eliminate the discharge of untreated sewage from vessels into the waters of the Commonwealth and is a device that receives, treats, retains, or discharges sewage.*

Section 2. KRS 235.410 is amended to read as follows:

As used in KRS 235.410 to ~~235.470~~~~[235.480]~~, unless the context clearly indicates otherwise, the following words shall have the following meanings:

- (1) "Motorboat" means any vessel, *except for a federally regulated commercial vessel*, propelled by machinery, whether or not such machinery is the principal source of propulsion~~[-, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto];~~
- (2) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;
- (3) "Person" or "persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity whatsoever;
- (4) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, vessels, or other places, together with such industrial wastes, underground, surface, storm or other water, as may be present;
- (5) "Industrial wastes" means liquid, or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource;
- (6) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth~~[-];~~
- ~~(7) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.~~

Section 3. KRS 235.420 is amended to read as follows:

No person shall discharge or permit *from any vessel* the discharge of sewage, industrial wastes or other wastes to the waters of the Commonwealth~~[- from any vessel]~~ except *for state waters into which discharges are allowed under federal law*~~[as specifically authorized by the cabinet].~~

Section 4. KRS 235.430 is amended to read as follows:

No person shall dispose of sewage accumulated in a holding tank, *a marine sanitation device*, or other similar container on a vessel in a~~[such]~~ manner that the sewage reaches or may reach the waters of the Commonwealth except *for state waters into which discharges are allowed under federal law*~~[through a disposal system or treatment works approved by the cabinet].~~

Section 5. KRS 235.440 is amended to read as follows:

No motorboat equipped with marine toilet facilities shall be ~~operated~~ on the waters of the Commonwealth unless *the*~~[such]~~ motorboat is equipped with a *marine sanitation device*~~[water pollution control device of one (1) of the following types:~~

- ~~(1) Holding tanks. Holding tanks approved for use as water pollution control devices shall meet the following criteria:~~
 - ~~(a) Be so constructed and installed as to provide for discharge of its contents only by pumping and to eliminate discharges by gravity flow;~~
 - ~~(b) Be constructed of materials capable of withstanding the corrosive effects of sewage and odor inhibitors;~~
 - ~~(c) Be vented so as to prevent the escape of gases and odors to motorboat interiors.~~
- ~~(2) Incinerators. Incinerators approved for use as water pollution control devices shall meet the following criteria:~~
 - ~~(a) Be so designed and constructed as to reduce sewage completely to an inert ash and provide a satisfactory means of ash removal;~~

- (b) ~~Be vented so as to prevent the escape of gases and odors to motorboat interiors and otherwise minimize the presence of objectionable conditions. Forced air ventilation must be provided for use at all times during the incineration operating cycle;~~
- (c) ~~Provide safeguards to minimize the dangers of shock or explosion from operation of the unit.~~
- (3) ~~Devices with effluent discharges. Types of water pollution control devices providing for discharges of treated sewage to the waters of the Commonwealth shall be approved or disapproved on an individual basis by the cabinet. In approving or disapproving such types of devices, the cabinet shall consider whether the quality of performance of the type of device has been certified by the National Sanitation Foundation or a comparable national testing agency approved by the cabinet as meeting its criteria, and the cabinet shall consider such other factors as it deems appropriate to prevent and abate water pollution. All water pollution control devices approved for use on motorboats with marine toilet facilities shall be maintained in satisfactory working condition at all times that the motorboat is in operation}.~~

Section 6. KRS 235.070 is amended to read as follows:

- (1) Every person seeking a title and registration or renewal registration for operation of a motorboat shall apply to the county clerk of the county as provided in KRS 235.050 and make application on a form furnished by the Transportation Cabinet. The application shall contain the full name and signature, Social Security number or federal tax identification number, citizenship of applicant, date of birth, sex, present resident address, situs for ad valorem tax assessment, the make of the boat, hull identification number (HIN), if any, length, beam, model, and horsepower of motor, maximum capacity, type of hull material, intended use of the boat, and whether the fuel is gasoline, diesel, or other. The application shall state whether the motorboat is equipped with *marine* toilet facilities and shall *state if the marine sanitation device for the toilet is properly operating and properly used for the water body where the motorboat is kept or operated*~~{describe the number and type of the facilities and shall state whether the storage container or treatment or disposal system for those facilities is a type approved by regulations promulgated pursuant to this chapter}~~. It shall also state whether the applicant has been previously licensed or registered as an owner, and if so, when and by what state or county, whether any license registration or certificate number has been canceled, suspended, revoked, or refused, and if so, the date of and reason for cancellation, suspension, revocation, or refusal, and such other information as may be required.
- (2) Every applicant shall submit the motorboat title or registration with the application as required below:
 - (a) If the motorboat is titled in Kentucky, the applicant shall submit the title with the application for title and registration;
 - (b) If the motorboat is registered in Kentucky but has not been titled in Kentucky, the applicant shall submit the certificate of registration with the application for title and registration;
 - (c) If the applicant is applying for a registration renewal, he shall submit the certificate of registration;
 - (d) If the motorboat is titled in another jurisdiction, the applicant shall submit the title with the application for title and registration;
 - (e) If the motorboat is registered in another jurisdiction, but not titled in any jurisdiction, the applicant shall submit the certificate of registration with the application for title and registration; and
 - (f) *Vessels holding a United States certificate of documentation*~~{Motorboats or other vessels registered and licensed under the jurisdiction of the United States Coast Guard and holding a valid annual license}~~ shall be exempt from the provisions of this section.
- (3) Every applicant shall *certify that the statements made in the application are true*~~{make oath as to the truthfulness of the statements contained in the form}~~. *The clerk shall inform the applicant that making false statements on the application regarding a marine boat toilet may lead to being fined under Section 10 of this Act.*
- (4) The clerk shall, after determining that the applicant has complied with the law concerning applications, issue a current certificate of registration or renewal thereof.
- (5) No certificate of registration or renewal thereof for the operation of a motorboat shall be issued, if the motorboat is equipped with toilet facilities but is not equipped with a storage container or treatment or disposal system of a type approved under regulations promulgated pursuant to this chapter.

Section 7. KRS 235.230 is amended to read as follows:

- (1) The owner of a boat *marina*~~[livery]~~ shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a motorboat; the identification number thereof; and the departure time and date, and the expected time of return. The record shall be preserved for at least six (6) months.
- (2) Neither the owner of a boat *marina*~~[livery]~~, nor his agent or employee shall permit any motorboat or any vessel ***owned or leased***~~[designed or permitted]~~ by him to be operated as a motorboat ***to*** depart from his premises unless it shall have been provided, either by ***the*** owner or ***the*** renter, with the equipment required pursuant to KRS 235.200 and any rules and regulations made pursuant thereto, except that the operator need not have the certificate of registration in his possession.
- (3) The certificate of registration and number for vessels leased or rented by a *marina*~~[livery]~~ may be retained on shore by the owner of the *marina*~~[livery]~~ or his representative at the place from which the vessel departs or returns to the possession of the livery or his representative; provided, however, the operator shall have with him a copy of the lease or rental agreement signed by the *marina*~~[livery]~~ owner or an authorized representative of the *marina*~~[livery]~~ and by the person leasing or renting the vessel that contains the vessel's number which appears on the certificate of number and the period of time for which the vessel is leased or rented.
- (4) ***By July 15, 2000 the owner of a marina shall provide access to sewage pumpout facilities for the owners of motorboats with marine toilet facilities. For the purpose of this subsection a sewage pumpout facility means equipment designed to receive the discharge of sewage from a marine sanitation device and allow the disposal of the sewage in a manner that prevents the sewage from entering the waters of the state. To provide access to sewage pumpout facilities a marina owner may, by way of illustration and not to limit the options available to a marina owner:***
 - (a) ***Build and operate pumpout facilities;***
 - (b) ***Contract with another marina owner with pumpout facilities, if the contracting marinas are not more than eight (8) water miles apart and accessible in a way that does not require motorboats to be trailered; and***
 - (c) ***Contract with a person licensed under KRS 211.972 to provide pumpout facility service, if the service is available during normal business hours including holidays and if the service can be provided within a reasonable time upon request by a motorboat owner.***

Section 8. KRS 235.310 is amended to read as follows:

- (1) The commissioner of the Department of Fish and Wildlife Resources shall designate the officers and employees of the division to enforce the provisions of this chapter and these officers when duly authorized by the commissioner shall have the general powers of a peace officer for the enforcement of other offenses against the Commonwealth. In enforcing the provisions of this chapter these officers and all other peace officers of the Commonwealth and its subdivisions shall have the right to enter upon all waters of this state, either private or public, for the purpose of inspecting certificate of registration and boat numbering, and shall have the right to enter upon all boats on such waters for the purpose of examining their registration documents ***and inspect their marine sanitation device to determine if it is the proper kind for the water body where the boat is kept or operated and that the device is properly operating. To conduct the marine sanitation device inspection the department officers and employees may require a motorboat owner to flush a dye through the marine toilet in the presence of the department officers or employees or use other appropriate measures to inspect the device.*** They may arrest on sight, without warrant, any person detected by them in the act of violating any of the provisions of this chapter. They shall have the same rights as sheriffs to require aid in arresting, with or without process, any person found by them violating any of the provisions of this chapter or other offenses against the Commonwealth.
- (2) The water patrol officers shall be authorized to possess and use radio communication equipment capable of receiving and transmitting on state police radio frequency. The Department of State Police shall cooperate with the Division of Water Patrol for the purpose of radio communication of water patrol officers when any assistance is necessary.

Section 9. KRS 235.270 is amended to read as follows:

- (1) In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the Division of Water Patrol pursuant to KRS 235.250 shall be transmitted to said official or agency of the United States.
- (2) *The commissioner shall enter into an agreement with the United States Coast Guard to accept Coast Guard inspections of vessels for the purpose of determining if the vessel's marine sanitation device is the proper kind for the water body where the vessel is kept or operated and that it is properly operating. The commissioner may enter into agreements with any other professional or qualified group, organization, or individual to accept certified inspections of vessels for the purpose of determining if the vessel's marine sanitation device is the proper kind for the water body where the vessel is kept or operated and that it is properly operating.*

Section 10. KRS 235.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100). *After July 15, 2000, any person who violates Section 7 of this Act shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100) and each day the violation continues may constitute a separate offense.*
- (2) *After July 15, 2000, any person who violates Sections 3 or 4 of this Act shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100). A person who violates Sections 3 or 4 of this Act shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) for the second offense, and not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for the third or any subsequent offense.*
- (3) Any person failing to obey a citation issued in accordance with KRS 235.315 shall be guilty of a separate offense and shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100).
- (4) *Any person who makes a false statement regarding a marine boat toilet on the application for registration or renewal registration for a motorboat shall be fined one hundred dollars (\$100). This penalty shall be separate from any other penalty that may be applicable for violation of this chapter.*

Section 11. KRS 211.981 is amended to read as follows:

- (1) All sewage or sewage sludge hauled pursuant to the provisions of KRS 211.970 to 211.982 shall be disposed of *by landspreading at an approved site or* in a publicly-owned sewage treatment plant, unless it is demonstrated to the satisfaction of the cabinet that a publicly-owned sewage treatment plant does not exist within a reasonable hauling distance from the site at which the sewage or sewage sludge is received, or the publicly-owned sewage treatment plant refuses to accept the sewage or sewage sludge.
- (2) If the cabinet determines that no publicly-owned sewage treatment plant is available for use by a licensed hauler, the cabinet may approve an alternative mode of disposal including, but not limited to, landspreading. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A governing landspreading and other acceptable modes of disposal which insure:
 - (a) That no contamination threat is posed to surface waters from any run-off; and
 - (b) That all reasonable protection is afforded to prevent contamination of groundwater.
- (3) Trenching of sewage and sewage sludge shall be prohibited except where specifically authorized by the cabinet.

Section 12. The following KRS sections are repealed:

235.450 Motorboat not deemed equipped with marine toilet if toilet made inoperable in approved manner.

235.460 Cabinet to furnish list of approved water pollution control devices upon request.

235.470 Cabinet to issue regulations and standards -- Approval of equipment.

235.480 Appeals of cabinet orders.

Section 13. Sections 3, 4, and 5 of this Act and the amendment contained in Section 6 of this Act shall be enforced until July 15, 2000, only by the issuance of a warning and the distribution of information about Sections 1 to 8 and Section 10 of this Act.

CHAPTER 72**(HB 198)**

AN ACT relating to property taxes.

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

Section 1. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents (\$0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents (\$0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.
- (2)
 - (a) An annual ad valorem tax for state purposes of one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
 1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
 2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
 3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
 4. Tobacco base allotments.
 - (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.

- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$0.30) of the thirty-one and one-half cents (\$0.315) state tax rate on real property and thirty cents (\$0.30) of the forty-five cents (\$0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570 except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.
- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business, ***which, on or after January 1, 1999, includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement;*** and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

Approved March 17, 1998

CHAPTER 73

(HB 212)

AN ACT relating to small business.

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

Section 1. KRS 224.20-510 is amended to read as follows:

- (1) There is hereby established the Small Business Stationary Source Compliance Advisory Panel, referred to hereafter as "the panel," to determine the overall effectiveness of Kentucky's Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The panel shall be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes.
- (2) The **eleven (11)**~~nine (9)~~ member panel shall be appointed ~~to four (4) year terms~~ as follows:
 - (a) Two (2) members, who are not owners, or representatives of owners, of small business stationary sources, shall be selected by the Governor to represent the general public;
 - (b) **Two (2) members, who are owners, or representatives of owners, of small business stationary sources, shall be selected by the Governor to represent small business stationary sources;**
 - (c) Two (2) members shall be selected by the secretary of the Natural Resources and Environmental Protection Cabinet to represent that agency;
 - ~~(d)(e)~~ One (1) member shall be selected by the secretary of the Cabinet for Economic Development; and
 - ~~(e)(d)~~ Four (4) members who are owners, or representatives of owners of small business stationary sources, shall be selected by the Kentucky General Assembly as follows:
 1. One (1) member selected by the minority leadership and one (1) member selected by the majority leadership of the Senate, and
 2. One (1) member selected by the minority leadership and one (1) member selected by the majority leadership of the House of Representatives.
- (3) **Members who were appointed before the effective date of this Act shall continue in office until October 30, 1998. The Governor shall then designate the members who have been appointed in accordance with subsection (2) of this section to serve initial terms as follows:**
 - (a) **Three (3) members shall serve in office for four (4) years;**
 - (b) **Three (3) members shall serve in office for three (3) years;**
 - (c) **Three (3) members shall serve in office for two (2) years; and**
 - (d) **Two (2) members shall serve in office for one (1) year.**

When those initial terms expire, members shall serve in office for four (4) year terms.

- (4) Any vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- ~~(5)(4)~~ Members of the panel shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with Kentucky statutes and administrative regulations while performing official duties.
- ~~(6)(5)~~ The panel shall select one (1) of its members as chair and another as vice chair.
- ~~(7)(6)~~ Staff services for the panel shall be performed, insofar as practicable, by personnel of the cabinet.

Section 2. KRS 224.20-500 is amended to read as follows:

The General Assembly hereby declares that assisting small businesses in complying with the requirements of the 1990 Federal Clean Air Act amendments is a top priority due to the pervasive technical nature of these requirements. **The General Assembly also finds that assisting small businesses in complying with other environmental protection**

regulatory programs would complement this assistance. It is therefore in the best interest of Kentucky small businesses, as well as the citizens of Kentucky, to establish a program whose purpose is to advise small businesses *on all environmental protection regulatory programs as well as* ~~as~~ the requirements of the *1990 Federal Clean Air Act* permitting program and to assist these small businesses in complying with these requirements.

Section 3. KRS 224.20-505 is amended to read as follows:

The cabinet is hereby authorized to establish the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, referred to hereafter as "the program." The program shall perform the functions designated for it in the 1990 Federal Clean Air Act amendments and assist the small business stationary source compliance advisory panel in the development and dissemination of the panel's reports and advisory opinions. *The cabinet may also, as funding allows, offer assistance in complying with other environmental protection regulatory programs.* For the purposes of *providing the assistance to small business stationary sources* ~~[this section]~~, "small business" shall have the meaning given it in the 1990 Federal Clean Air Act amendments. *For the purposes of providing assistance with other environmental protection regulatory programs "small business" shall also include entities owned or operated by a person that employs one hundred (100) or fewer individuals, is a small business concern as defined in the Small Business Act (15 U.S.C.A. Sections 631 et seq.), but which need not have air emissions subject to regulatory control.*

Approved March 17, 1998

CHAPTER 74

(HJR 53)

A JOINT RESOLUTION directing the Transportation Cabinet to name a portion of KY 80 in Floyd County in honor of Charles H. Gearheart.

WHEREAS, Charles A. Gearheart was born and raised in Goose Creek Hollow in Floyd County; and

WHEREAS, Charles A. Gearheart was one of the founding members of the musical group Goose Creek Symphony; and

WHEREAS, in Charles A. Gearheart's own words: "A Goose Creek song is a musical journey, traversing passages and movements as an orchestra would ... thus the term Symphony"; and

WHEREAS, Charles A. Gearheart has created a distinctive musical style that reflects the influence of his Appalachian roots and his deep love of "mountain music"; and

WHEREAS, Goose Creek Symphony has been recognized as an innovative musical force, experimenting with a free-wheeling, free-spirited blend of folk and country sounds -- an acoustic feel with electronic special effects; and

WHEREAS, playing together for over for twenty-five years, Charles A. Gearheart and the other members of Goose Creek Symphony have developed a loyal national following self-styled as "Gooseheads"; and

WHEREAS, the band's trademark double fiddles, acoustic guitars, high-powered horns, drums, and Charles A. Gearheart's wry vocals led Goose Creek Symphony to appearances on the Ed Sullivan Show as well as sharing top billing at the 1970 Atlanta Pop Festival; and

WHEREAS, Charles A. Gearheart and Goose Creek Symphony helped start the careers of many of today's stars. Opening for Goose Creek were Willie Nelson, Charlie Daniels, and the Marshall Tucker Band; and

WHEREAS, in the 1970's Charles A. Gearheart traded his concert tour schedule and Martin acoustic guitar for a fly rod and fly shop, working as a fly-fishing guide to devote his spare-time energies to raising his children; and

WHEREAS, Charles A. Gearheart has reunited Goose Creek Symphony and has a new CD that is climbing the charts and entitled "The Goose is Loose"; and

WHEREAS, the national following that the group enjoyed twenty-five years ago has only grown in the ensuing years, and Gooseheads are more loyal than ever;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name that portion of KY 80 in Floyd County between the Knott/Floyd County line and KY 680 the "Charles A. Gearheart Highway".

Section 2. The Transportation Cabinet shall erect signs naming a portion of KY 80 in honor of Charles A. Gearheart. The signs shall be erected no later than ninety (90) days following the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to Mr. Charles A. Gearheart and Secretary James C. Codell, III, Kentucky Transportation Cabinet.

Approved March 17, 1998

CHAPTER 75

(HB 38)

AN ACT relating to the reemployment of retirees.

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

Section 1. KRS 61.637 is amended to read as follows:

- (1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.515 to 61.705 and 78.520 to 78.852 and who is reemployed as an employee by a participating agency shall have his retirement payments suspended for the duration of reemployment *except as provided in subsection (7) of this section*. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.
- (2) Employer and employee contributions shall be made as provided in KRS 61.515 to 61.705 and 78.520 to 78.852 on the compensation paid during reemployment except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar (\$1), and the member shall be credited with additional service credit.
- (3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.
- (4)
 - (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the federal Social Security Act in compensation from participating agencies during any calendar year of reemployment;
 - (b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment;
 - (c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:
 1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;
 2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);
 3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;
 4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under

subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691;

5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.
- (5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents (\$0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar (\$1) for every three dollars (\$3) earned if over age sixty-five (65).
- (6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095; and
 - (b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.
- (7) ***If a member is retired from a hazardous position, as defined by KRS 61.592, the member shall be permitted to seek and hold an elected city or county office under the provisions of this subsection:***
 - (a) ***The member may receive the pay for the elected city or county office, but shall not contribute to, receive benefits from, or otherwise participate in the office's retirement system; and***
 - (b) ***The member's pension and benefits received because of retirement from the hazardous position shall not be affected if he holds an elected city or county office.***

Approved March 18, 1998

CHAPTER 76

(HB 75)

AN ACT relating to water districts.

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

Section 1. KRS 74.020 is amended to read as follows:

- (1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:
 - (a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. If two (2) or more water districts within a single county merge as described in KRS 74.361, the county judge/executive may appoint up to two (2) additional commissioners with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.
 - (b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in an adjacent county, as provided by KRS 74.115, the board of commissioners shall be appointed by the county judges/executive with the approval of the fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the fiscal courts, shall appoint, in addition to

the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.

- (c) If a single-county district administered as provided in paragraph (a) *of this subsection* ~~hereof~~ shall acquire an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into another county, or if a district formed in a single county extends its area to include territory in an adjacent county as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, if the area served outside the county shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within the county outside of the boundaries of the district, it shall be conclusively presumed that the district comes within the terms of this subsection.
- (2) A commissioner may be removed from office as provided by KRS 65.007.
- (3) A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007.
- (4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.
- (5) The commission shall elect a chairman, secretary, and treasurer. Each commissioner shall execute a bond, approved by the county judge/executive, conditioned on the faithful performance of the duties of his position.
- (6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3600), which shall be paid out of the water district fund *except that beginning January 1, 1999, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31.* In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.
- (7) (a) *In order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.*
- (b) *The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.*
- (c) *The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities and duties. The commission shall, no later than January 1, 1999, establish standards and procedures to evaluate, accredit, and approve water district management training programs.*
- (d) *The Public Service Commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement this section.*

Section 2. KRS 74.363 is amended to read as follows:

- (1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).
- (2) Notwithstanding any provisions to the contrary in KRS 74.361(7), in case of a merger under this section, the members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:
 - (a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as the county judge/executive shall determine.
 - (b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as follows: four (4) members shall be appointed by the county judge/executive of the county in which the greatest portion of the population of the district resides; two (2) members shall be appointed by the county judge/executive of the county in which the next greatest portion of the population of the district resides; and one (1) member shall be appointed by the county judge/executive of each remaining county in which a portion of the population of the district resides.
- (3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years. The provisions of sections (2) to (7)~~((6))~~ of KRS 74.020 shall apply to all commissioners and vacancies on the board of commissioners.
- (4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

Approved March 18, 1998

CHAPTER 77

(HB 104)

AN ACT relating to school district superintendents.

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

Section 1. KRS 160.350 is amended to read as follows:

- (1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. ~~The person appointed to serve as acting superintendent shall not be~~

~~an applicant for, nor be appointed to, the position of superintendent.~~ If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.

- (2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. A superintendent candidate who is to begin his duties after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.
- (3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by a Kentucky distinguished educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

Approved March 18, 1998

CHAPTER 78

(HB 154)

AN ACT relating to the Kentucky Historical Society.

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

Section 1. KRS 171.313 is amended to read as follows:

In addition to the responsibilities set forth in KRS 171.311, the Kentucky Historical Society shall:

- (1) Collect, maintain, preserve, categorize, and cause to be published necessary information concerning Kentucky family cemeteries;
- (2) Undertake a systematic program which will restore and maintain the gravesites of *any of the following historically significant people who are buried within this Commonwealth:*
 - (a) Past Governors of the Commonwealth *and their spouses;*
 - (b) *The three (3) former Vice Presidents of the United States from the Commonwealth: Richard M. Johnson; John C. Breckinridge; and Alben W. Barkley; and*
 - (c) *The "First Pioneers," who were the original members in the first settlements at either Boonesboro, Harrodsburg, or Stanford in 1774-1775; and*
- (3) Promulgate administrative regulations necessary to carry out the purposes of this section.

Approved March 18, 1998

CHAPTER 79**(HB 156)**

AN ACT relating to testing of pregnant women for hepatitis B.

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

Section 1. KRS 214.160 is amended to read as follows:

- (1) Every physician and every other person legally permitted to engage in attendance upon a pregnant woman in this state shall take or cause to be taken from the woman a specimen of blood for serological test for syphilis as soon as he is engaged to attend the woman and has reasonable grounds for suspecting that pregnancy exists. If the woman is in labor at the time the diagnosis of pregnancy is made, which may make it inadvisable to obtain a blood specimen at that time, the specimen shall be obtained within ten (10) days after delivery. The specimen of blood shall be submitted to the laboratory of the Cabinet for Human Resources or a laboratory approved by the cabinet, for the purpose of having made a serological test for syphilis. The test shall be of a type approved by the Cabinet for Human Resources.
- (2) The Cabinet for Human Resources shall, as often as necessary, publish a list of the five (5) most frequently abused substances, including alcohol, by pregnant women in the Commonwealth. Any physician and any other person legally permitted to engage in attendance upon a pregnant woman in this state may perform a screening for alcohol or substance dependency or abuse, including a comprehensive history of such behavior. Any physician may administer a toxicology test to a pregnant woman under the physician's care within eight (8) hours after delivery to determine whether there is evidence that she has ingested alcohol, a controlled substance, or a substance identified on the list provided by the cabinet, or if the woman has obstetrical complications that are a medical indication of possible use of any such substance for a nonmedical purpose.
- (3) Any physician or person legally permitted to engage in attendance upon a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the Cabinet for Human Resources, if the attending person has reason to believe based on a medical assessment of the mother or the infant, that the mother used any such substance for a nonmedical purpose during the pregnancy.
- (4) The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under KRS 600.020(1), has occurred and whether investigation by the Cabinet for Human Resources is necessary.
- (5) No prenatal screening for alcohol or other substance abuse or positive toxicology finding shall be used as prosecutorial evidence.
- (6) No person shall conduct or cause to be conducted any toxicological test pursuant to this section on any pregnant woman without first informing the pregnant woman of the purpose of the test.
- (7) ***Every physician or other person legally permitted to engage in attendance upon a pregnant woman in the Commonwealth shall take or cause to be taken from the woman a specimen of blood, which shall be submitted for the purpose of serologic testing for the presence of hepatitis B surface antigen, to a laboratory certified by the United States Department for Health and Human Services pursuant to Section 333 of the Public Health Service Act (42 U.S.C. 263a) as revised by the Clinical Laboratory Improvement Amendments (CLIA), Public Law 100-578.***

Approved March 18, 1998

CHAPTER 80**(HB 175)**

AN ACT relating to revenue and taxation.

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

Section 1. KRS 139.497 is amended to read as follows:

Notwithstanding any other provisions of this chapter, the taxes imposed herein do not apply to:

- (1) Sales by elementary or secondary schools or nonprofit elementary or secondary school-sponsored clubs and organizations or any nonprofit, elementary, or secondary school affiliated groups such as parent-teacher organizations and booster clubs, whose membership may be composed of individuals other than students, provided the net proceeds from ~~the~~~~such~~ sales are used solely for the benefit of the elementary or secondary school or its students. ~~Such~~ Nontaxable sales shall include sales resulting from agreements or contracts entered into with resident or nonresident organizations to participate in fund-raising campaigns for a percentage of the gross receipts where students act as agents or salesmen for the organizations by selling or taking orders for the sale of tangible personal property, and no one shall be required to pay sales or use taxes on such sales; *and*
- (2) *Sales made by nonprofit educational youth programs affiliated with a land grant university cooperative extension service, if the net proceeds from the sales are used solely for the benefit of the affiliated programs.*

Section 2. The provisions of this Act are effective for sales made after July 31, 1998.

Approved March 18, 1998

CHAPTER 81

(HB 284)

AN ACT relating to reorganization of the Department of Law.

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

Section 1. KRS 15.010 is amended to read as follows:

- (1) The Attorney General is the head of the Department of Law.
- (2) *The Department of Law shall include the following major organizational units:*
 - (a) *Criminal Appellate Division;*
 - (b) *Consumer Protection Division;*
 - (c) *Special Investigations Division;*
 - (d) *Special Prosecutions Division;*
 - (e) *Prosecutors Advisory Council Services Division;*
 - (f) *Medicaid Fraud and Abuse Control Division;*
 - (g) *Civil and Environmental Law Division;*
 - (h) *Victims Advocacy Division;*
 - (i) *Child Support Enforcement Commission;*
 - (j) *Administrative Hearings Division;*
 - (k) *Office of Rate Intervention; and*
 - (l) *Administrative Services Division.*

Section 2. The General Assembly confirms Executive Order of the Attorney General 96-1, signed June 14, 1996 and effective August 16, 1996, to the extent it is not otherwise confirmed by Section 1 of this Act. The confirmation includes, without being limited to:

- (1) The confirmation and modification of the following prior reorganization orders relating to the organizational structure of the Department of Law: 79-1180, 80-415, 81-68, 81-674, 82-218, 84-01, 84-001, 84-492, 86-01, 86-001, 88-1, 88-2, 91-1, 91-2, and 94-1; and
- (2) Creation of the Office of Rate Intervention.

Approved March 18, 1998

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CHAPTER 82**(HB 340)**

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.

- (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.

- (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:

- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
 - (w) ***Kentucky Kare Health Insurance Authority.***
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.

- (o) Employers Mutual Insurance Authority.
- 10. Revenue Cabinet:
 - (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
- 11. Tourism Cabinet:
 - (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
- 12. Cabinet for Workforce Development:
 - (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.
- III. Other departments headed by appointed officers:
 - 1. Department of Military Affairs.
 - 2. Department of Personnel.
 - 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.

4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. KRS 18A.025 is amended to read as follows:

- (1) The Governor shall appoint the commissioner of personnel as provided in KRS 18A.015, who shall be considered an employee of the state. He shall be a graduate of an accredited college or university and have at least five (5) years' experience in personnel administration or in related fields, have known sympathies with the merit principle in government and shall be dedicated to the preservation of this principle. Additional education may be substituted for the required experience and additional experience may be substituted for the required education.
- (2) The Department of Personnel shall be attached to the Office of the Secretary of the Governor's Executive Cabinet, and the commissioner shall have the duties and responsibilities assigned by the secretary of the executive cabinet, and shall be responsible to and report to the secretary. In addition, the commissioner, or his designee, shall be responsible for the coordination of the state's affirmative action plan, established by KRS 18A.138.
- (3) There is established within the Department of Personnel the following divisions, each of which shall be headed by a director appointed by the commissioner, subject to the prior approval of the Governor, pursuant to KRS 12.050:
 - (a) The Division of Administration and Processing, which shall be responsible for:
 1. Maintaining the central personnel files mandated by KRS 18A.020;
 2. Processing personnel documents and position actions;
 3. Operating and maintaining a uniform payroll system;
 4. Implementing lay-off plans mandated by KRS 18A.113 to 18A.1132;
 5. Certifying payrolls as required by KRS 18A.125; and
 6. Monitoring and assisting state agency compliance with the provisions of the Federal Fair Labor Standards Act (FLSA) which sets minimum wage requirements, governs the payment of overtime compensation, regulates child labor laws, and requires equal pay for equal work.
 - (b) The Division of Applicant Counseling and Examinations, which shall be responsible for the:
 1. Operation of a centralized applicant and employee counseling program;
 2. Operation of an examination program for state employment;
 3. Preparation of registers of candidates for state employment; and
 4. Coordination of outreach programs, such as the administrative intern program.
 - (c) The Division of Benefits Administration, which shall be responsible for the administration of the state employee's benefit package established by:
 1. KRS 18A.205 to 18A.220 (Life insurance);
 2. KRS 18A.225 (Health insurance);
 3. KRS 18A.227 (Flexible benefit plan);
 4. ~~KRS 18A.2281 (Employee benefit plan);~~
 5. ~~KRS 18A.250 (Kentucky state employee's deferred compensation plan);~~ and
 5. ~~6.~~ KRS 18A.375 (State employee workers' compensation fund).

- (d) The Division of Classification and Compensation, which shall be responsible for the:
 1. Maintenance of plans of classification and compensation for the state service; and
 2. Review and evaluation of these plans.
- (e) The Division of Employee Services, which shall be responsible for designing and administering programs governed, authorized, or established by:
 1. KRS 18A.112 (Performance evaluations);
 2. KRS 18A.197 (Sick leave sharing program);
 3. KRS 18A.202 (Work-related employee incentive programs);
 4. Health and safety programs mandated by the Federal Occupational, Safety, and Health Act (OSHA); and
 5. Assessment and referral services provided to state employees in need.
- (4) The department shall include principal assistants appointed by the commissioner, pursuant to KRS 12.050, as necessary for the development and implementation of policy. The commissioner may employ, pursuant to the provisions of this chapter, personnel necessary to execute the functions and duties of the department.

Section 3. KRS 18A.220 is amended to read as follows:

The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance under the provisions of KRS 18A.205 to 18A.225~~[-]~~ and *Sections 6 to 11 of this Act*~~[18A.228]~~.

Section 4. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and
- (b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state and including any federally-funded time-limited employee. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287.
- (2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the insurance or health maintenance organization coverage is provided or made available shall annually be given an option to elect~~[- either]~~ standard insurance coverage, ~~[- or]~~ coverage by a health maintenance organization, **or health insurance described in Sections 6 to 11 of this Act**; if a qualified health maintenance organization is not engaged in

providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that ~~standard~~ ~~either~~ insurance, ~~or~~ health maintenance organization coverage, **or health insurance described in Sections 6 to 11 of this Act** may be made available for state employees, except that the procuring of each is permissive.

- (3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, **the health insurance agency described in Sections 6 to 11 of this Act**, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.
- (4) The premiums may be paid by the policyholder:
 - (a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or
 - (c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other insurance coverage shall be paid by the employee.
- (5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer **or coverage under Sections 6 to 11 of this Act**.
- (6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.
- (7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.
- (8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.

- (9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.
- (10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.
- (12) The commissioner of personnel shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the commissioner or his designee regarding the state health insurance program for state employees. The commissioner shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The commissioner shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.
- (13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.

Section 5. KRS 18A.229 is amended to read as follows:

- (1) State employees as defined in KRS 18A.228 participating in the ***health insurance fund authorized in Section 7 of this Act***~~[state employee benefit fund enumerated in KRS 18A.2281]~~ shall be given at least three (3) alternative plans from which participation may be chosen. One (1) plan shall require no fixed deductible expenses and reasonable co-payment ratios.
- (2) State employees whose income is at or below one hundred percent (100%) of the nonfarm income official poverty guidelines as determined by the United States Department of Health and Human Services, may choose health insurance benefits described in KRS 304.18-025(2)(c) and (d).

SECTION 6. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Kentucky Kare Health Insurance Authority is hereby created, and shall be attached to the Finance and Administration Cabinet for administrative purposes only.***
- (2) ***The Kentucky Kare Health Insurance Authority shall be governed by a board of directors consisting of eight (8) members. The eight (8) members shall include the secretary of the Finance and Administration Cabinet or designee, the commissioner of the Department of Personnel or designee, the secretary of the Cabinet for Human Resources or designee, the commissioner of the Department of Insurance or designee, who shall be a nonvoting member, and four (4) members appointed by the Governor.***
- (3) ***The four (4) members appointed by the Governor shall include:***
 - (a) ***One (1) at-large member, who shall serve an initial term of one (1) year;***
 - (b) ***One (1) member representing state government policyholders, who shall serve an initial term of two (2) years;***
 - (c) ***One (1) member representing individual policyholders, who shall serve an initial term of three (3) years; and***
 - (d) ***One (1) member representing group policyholders with fifty (50) employees or less, who shall serve an initial term of four (4) years.***

Thereafter, as each term expires, the vacancy created shall be filled by appointment of the Governor for a term of four (4) years. Appointments to fill an unexpired term of a member shall be for the remainder of the term.

- (4) *The Governor shall appoint a chairperson from the membership of the board of directors. The board of directors may elect by majority vote other officers it deems necessary from its members.*
- (5) *Each voting member of the board who is not an employee of state government shall be compensated five thousand dollars (\$5,000) annually, except the chair, who shall be paid seven thousand five hundred dollars (\$7,500) annually. The voting members of the board shall be reimbursed for necessary travel and lodging expenses in accordance with administrative regulations promulgated pursuant to KRS Chapter 13A by the Finance and Administration Cabinet for state employees.*
- (6) *The board of directors of the Kentucky Kare Health Insurance Authority shall have all of the duties, powers, and authority granted in Sections 6 to 11 of this Act and all other powers necessary or convenient to carry out and effectuate the purposes for which the authority is established.*
- (7) *The Kentucky Kare Health Insurance Authority, without limitation by the provisions of KRS Chapter 18A and KRS Chapter 64, shall employ and set the salary of an executive director, who shall be appointed by and shall serve at the pleasure of the board. The executive director shall have proven successful experience, for a period of at least five (5) years, as an executive at the general management level in public or private insurance operations, or in the management of a state fund for health insurance coverage. The executive director shall conduct the day-to-day operations of the authority for the purpose of carrying out the policies and procedures of the board.*
- (8) *The Auditor of Public Accounts shall be responsible for conducting an annual audit of the Kentucky Kare Health Insurance Authority. The costs of the annual audit shall be borne by the authority.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Kare Health Insurance Authority may establish a Kentucky Kare Health Insurance Fund to provide for self-insurance of all risk in the provision of benefits comparable to those that may be paid under a policy or contract procured by the secretary of the Finance and Administration Cabinet as provided in KRS 18A.225(2). All moneys remaining in this fund at the end of the fiscal year, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account, shall not lapse, and shall be continuously appropriated only for the purposes specified in this section.*
- (2)
 - (a) *Benefits provided under this section include, but are not limited to, hospitalization, surgical care, and major medical care for state employees and their dependents.*
 - (b) *For purposes of this section and Sections 8 to 11 of this Act, the term "state employee" shall be defined as provided in KRS 18A.228.*
- (3) *The contributions made to this fund may be paid:*
 - (a) *From funds contributed by the covered employee through payroll deduction or otherwise;*
 - (b) *From funds contributed by the state or any department, board, or agency, or branch of state, city, county, urban-county or charter county; or*
 - (c) *From a combination of paragraphs (a) and (b) of this subsection, except that any amount due over that contributed by the state or any department, board, agency, or branch of state, city, urban-county, charter county, or county government for coverage shall be paid by the employee.*
- (4) *No contribution by the state or any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for purposes of any statute fixing or limiting the compensation of the employee. Any expense incurred by the state or department, board, or agency shall be considered a proper cost of administration.*
- (5) *The self-funded plan may contain provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions as the Kentucky Kare Health Insurance Authority may approve.*

- (6) *Group rates for the health care coverage provided under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Kare Health Insurance Authority shall be responsible for all moneys coming into, and paid out of, the fund in accordance with this section, and shall ensure that the fund is actuarially sound.*
- (2) *In carrying out its duties and responsibilities, the Kentucky Kare Health Insurance Authority shall:*
- (a) *Promulgate administrative regulations with regard to the administration of the fund;*
 - (b) *Promulgate administrative regulations governing the conditions under which an employee may participate in or withdraw from the fund, and the procedure by which an employee is to contribute to the fund;*
 - (c) *Promulgate administrative regulations to ensure that the fund is actuarially sound;*
 - (d) *Promulgate administrative regulations to ensure the integrity of the fund, and to ensure that the fund be used solely for the purposes specified in this section;*
 - (e) *Purchase conversion insurance, reinsurance or excess insurance as deemed appropriate;*
 - (f) *Contract, when advisable, with health providers for services as may best serve the interest of the fund;*
 - (g) *Promulgate administrative regulations for the operation of the authority;*
 - (h) *Offer standard health benefit plans to all Kentucky Health Purchasing Alliance members;*
 - (i) *Recommend an annual operating budget for the authority; and*
 - (j) *Develop broad policies for the long-term operation of the authority consistent with its mission and fiduciary responsibility.*
- (3) *Amounts withheld from employees, amounts contributed by the state or from federal funds, and all amounts contributed by any state authority shall be credited to and constitute a part of the fund. All other income, including the income derived from any dividends and distributions and interest earned, shall also be credited to and constitute part of the fund. Any amounts remaining in the fund after all the premiums or subscription charges and other expenses have been paid shall be retained in the fund as a special reserve for adverse fluctuation.*
- (4) (a) *The State Treasurer, with approval of every investment by the Finance and Administration Cabinet, may invest the fund in:*
1. *Obligations of the United States government, its agencies, and Kentucky cities of the first, second, third, and fourth classes;*
 2. *Warrants issued on the State Treasurer;*
 3. *State bonds, including bridge revenue bonds issued under KRS 180.010 to 180.250;*
 4. *Bonds or other evidences of indebtedness of any domestic corporation that is an agent or instrumentality of the state or of any city, county, or school district of the state, secured by a mortgage on real estate in Kentucky that has been conveyed to the corporation by any city, county, school district, or state educational institution, and which the corporation has leased and given the option to lease to the city, county, school district, or state educational institution, with option in the lessee to purchase the property, or an interest therein, on the payment of the aggregate sum of the bond issue, plus the expenses incident to the issuance of the bonds and the formation and dissolution of the corporation, subject to credit of the amounts paid as rental for such property; and*
 5. *School bonds issued by cities under the provisions of KRS 162.120 to 162.290.*
- (b) *The Finance and Administration Cabinet shall not approve investments on which there has ever been a default in payment of principal or interest preceding the date of acceptance by the State Treasurer.*

- (c) *All income derived from the investments shall accrue to the fund.*
- (d) *Any necessary and reasonable cost incurred by the State Treasurer in administering this program shall be charged against the fund.*
- (5) (a) *The Kentucky Kare Health Insurance Authority shall file annually, by the first day of October, a complete report of its operations for the preceding calendar year, with the Governor, the General Assembly, and the Auditor of Public Accounts. The financial information required by this section shall be verified by the Auditor of Public Accounts as provided in KRS 43.050.*
- (b) *The report shall include a detailed financial statement of the fund and the expenses incurred pursuant to this section so that the cost of the fund established under this section can be determined and identified. The report shall include, but not be limited to, the following information concerning the fund:*
 - 1. *Assets and liabilities;*
 - 2. *Income and expenditures;*
 - 3. *Benefits paid and reserves for losses incurred but not yet paid, including potential losses and unreported losses;*
 - 4. *Cost of any excess insurance, conversion coverage, reinsurance, or of any other kind of insurance obtained to cover potential losses, or provide supplemental benefits; and*
 - 5. *Direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.*
- (c) *The report shall also contain the following information:*
 - 1. *The actuarial report for the preceding calendar year and any other studies or evaluations prepared in the preceding year pursuant to subsection (6) of this section;*
 - 2. *A description of the benefits provided by the fund and the number of state employees covered under the fund;*
 - 3. *The rights of state employees who terminate their employment and the extent of benefits or coverages thereafter available to those persons and their dependents; and*
 - 4. *Any other information which is relevant in order to make full, fair, and effective disclosure of the operations of the fund conducted pursuant to this section.*
- (6) *The Kentucky Kare Health Insurance Authority shall have prepared every year, by a competent actuary familiar with health insurance, a report showing a complete actuarial evaluation of the fund and the adequacy of the rates of contribution. The report shall contain such recommendations as the actuary considers advisable. The authority may at any time request the actuary to make any studies or evaluations to determine the adequacy of the rates of contribution. Contribution rates may be adjusted by the authority, as recommended by the actuary, and shall become effective the first day of the following fiscal year.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

The self-funded health insurance plan for state employees shall not be subject to taxation as provided in KRS 136.340(1) and shall not be required to pay taxes on premiums paid to unauthorized insurers in the purchase of insurance or reinsurance.

SECTION 10. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

The Kentucky Kare Health Insurance Authority shall determine the date on which the self-funded health plan option shall be made available to state employees.

SECTION 11. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

The self-funded plan may exclude coverage of services and supplies for conditions, diseases, ailments, or accidental injuries arising out of or in the course of employment only if those services and supplies are covered by workers' compensation under KRS Chapter 342.

Section 12. KRS 42.0245 is amended to read as follows:

- (1) There is established within the Department for Administration in the Finance and Administration Cabinet the Division of Risk Management. The division shall be headed by a director who shall be appointed by the secretary of the Finance and Administration Cabinet subject to the approval of the Governor.
- (2) The Division of Risk Management shall:
 - (a) Oversee and assist the management of the state fire and tornado insurance fund established in KRS Chapter 56;
 - (b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the state fire and tornado insurance fund;
 - (c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees, including, but not limited to, assisting and monitoring the development of a program of health care self-insurance for state employees as authorized *by Sections 6 to 11 of this Act*~~under KRS 18A.2281 and 18A.2282~~;
 - (d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;
 - (e) Develop financing techniques for risk protection; and
 - (f) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the office to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.
- (3) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Division of Benefits Administration within the Department of Personnel and of the State Risk and Insurance Services programs administered by the Department of Insurance. However, both of those departments shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the Division of Risk Management.
- (4) All cabinets, departments, boards, commissions, and other state agencies shall provide to the Division of Risk Management the technical advice and other assistance the Division of Risk Management or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the division as described in this section.
- (5) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management program for the executive branch of state government. Any administrative regulations promulgated by the secretary shall be administered by the Division of Risk Management.

Section 13. KRS 45A.022 is amended to read as follows:

- (1) This chapter shall apply to all insurance contracts purchased by the Commonwealth, except where the commissioner of insurance determines, with the concurrence of the secretary of Finance and Administration Cabinet, that:
 - (a) An emergency exists;
 - (b) Competition is not feasible; or
 - (c) The annual premium is less than ten thousand dollars (\$10,000).
- (2) Notwithstanding subsection (1) of this section, the health insurance contract or contracts for state employees as authorized by KRS 18A.225 and *Sections 6 to 11 of this Act*~~{18A.228}~~ shall be subject to the provisions of KRS 45A.080, 45A.085 and 45A.090.

Section 14. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each city, county, or urban-county government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and

shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose any such license fee or tax. No less than eighty-five (85) days prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those cities, county, or urban-county governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.

- (2) Any license fee or tax imposed by a city, county, or urban-county government upon an insurance company with respect to life insurance policies, may be based upon the first year's premiums, and if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the city, county, or urban-county government.
- (3) Any license fee or tax imposed by a city, county, or urban-county government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the company within each calendar quarter on risks located within the corporate limits of the city, county, or urban-county government on those classes of business which the company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the city, county, or urban-county government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the city, county, or urban-county government. Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or the death of their employees, caused thereby, under the provisions of the Workers' Compensation Act.
- (4) The Department of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the city, county or urban-county government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.
- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the Commissioner of Insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Department of Insurance.
- (7) Upon written request of the legislative body of any city, county, or urban-county government, at the expense of the requesting city, county, or urban-county government, which shall be paid in advance by the city, county, or urban-county government to the Department of Insurance, the Department of Insurance shall examine, or cause to be examined by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the examination shall be reported to the city, county, or urban-county government. Willful failure to properly collect and remit the fee or tax imposed by a city, county, or urban-county government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
- (8) The license fees or taxes provided for by subsections (2), and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurer shall furnish each city, county, or urban-county government, to which the tax or fee is remitted, with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
 - (a) Casualty;

- (b) Automobile;
 - (c) Inland marine;
 - (d) Fire and allied perils;
 - (e) Health; and
 - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the city, county, or urban-county government is separate of penalties provided for in subsection (6) of this section. No city, county, or urban-county government may impose any penalties other than those provided for in this subsection.
- (10) No license fee or tax imposed under this section shall apply to premiums received on policies of group health insurance provided for state employees under KRS 18A.225 *and Sections 6 to 11 of this Act*~~(2) and 18A.228~~.
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990.

Section 15. KRS 136.330 is amended to read as follows:

- (1) Every foreign life insurance company doing business in this state, other than fraternal assessment life insurance companies, shall, by March 1 of each year, return to the Revenue Cabinet a statement under oath of all premium receipts on business done in this state during the preceding calendar year or since the last return was made. "Premium receipts" includes single premiums, annuity premiums, premiums received for original insurance, premiums received for renewal, revival or reinstatement of the policies, annual and periodical premiums, dividends applied for premiums and additions, and all other premium payments received on policies that have been written in this state, or on the lives of residents of this state, or out of this state on business done in this state, less returned premiums. No deduction shall be made for dividends on life insurance or annuity policies, but dividends on accident and health insurance policies may be deducted.
- (2) Every company shall, at the time of making the return, pay a tax of two dollars (\$2) upon each one hundred dollars (\$100) of such premium receipts.
- (3) The 1962 amendment to this section shall be effective as of January 1, 1962, and shall apply to the premium taxes due and payable as shown on returns filed subsequent to that date.
- (4) The health insurance contract or contracts for state employees as authorized by KRS 18A.225 and *Sections 6 to 11 of this Act*~~[18A.228]~~ shall not be subject to taxation under this section.

Section 16. KRS 136.340 is amended to read as follows:

- (1) Every stock insurance company, other than life, doing business in this state shall, on or before the first day of March of each year, return to the Revenue Cabinet a statement under oath of all amounts paid to the company or its representative, whether designated as premiums or otherwise, for insurance or services incident thereto, on property or risks in this state during the preceding calendar year or since the last returns were made, including amounts received for reinsurance on Kentucky risks from unauthorized companies, and shall at the same time pay a tax of two dollars (\$2) upon each one hundred dollars (\$100) of such amounts paid to the company, less amounts returned on canceled policies and policies not taken.
- (2) The health insurance contract or contracts for state employees as authorized by KRS 18A.225 and *Sections 6 to 11 of this Act*~~[18A.228]~~ shall not be subject to taxation under this section.

Section 17. KRS 136.350 is amended to read as follows:

- (1) All mutual companies other than life doing business under this law shall pay to the Revenue Cabinet on or before the first day of March in each year, a tax of two percent (2%) of all amounts paid to the company or its representative, whether designated as premiums or otherwise, for insurance or services incident thereto, including amounts paid for membership or policy dues or fees, on property or risks in this state during the

preceding calendar year, including amounts received for reinsurance on Kentucky risks from unauthorized companies.

- (2) In addition to the foregoing tax, mutual insurance companies and Lloyd's insurers shall pay an annual tax as prescribed for stock insurance companies by KRS 136.360 and for like purposes.
- (3) In computing premiums upon which tax is to be paid there shall be deducted, in both direct and reinsurance business, return premiums on canceled policies and policies not taken, and dividends paid or credited to policyholders.
- (4) The provisions of this section shall not apply to domestic mutual companies, cooperative or assessment fire insurance companies.
- (5) The health insurance contract or contracts for state employees as authorized by KRS 18A.225, ~~and~~ 18A.228, **and Sections 6 to 11 of this Act** shall not be subject to taxation under this section.

Section 18. KRS 304.17A-010 is amended to read as follows:

As used in KRS 304.17A-010 to 304.17A-070:

- (1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and is certified by the alliance pursuant to KRS 304.17A-070. The term includes any self-insured plan provided by the **Kentucky Kare Health Insurance Fund as provided in Section 7 of this Act** ~~{state employee benefit fund established under KRS 18A.2281}~~.
- (2) "Alliance" means the Kentucky Health Purchasing Alliance created by KRS 304.17A-020.
- (3) "Alliance member" means both mandatory and voluntary alliance members.
- (4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.
- (5) "Commissioner" means the commissioner of the Kentucky Department of Insurance.
- (6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.
- (7) "Health purchasing alliance" means an agency attached for administrative purposes to the department but which operates independently of the department and that provides member purchasing services and detailed information to its members on comparative prices, usage, outcomes, quality, and enrollee satisfaction with accountable health plans and which was previously certified by the Kentucky Health Policy Board.
- (8) "Consumer" means an individual user of health care services.
- (9) "Department" means the Kentucky Department of Insurance.
- (10) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.
- (11) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
 - (a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;
 - (b) Chiropractors licensed pursuant to KRS Chapter 312;
 - (c) Dentists licensed pursuant to KRS Chapter 313;
 - (d) Optometrists licensed pursuant to KRS Chapter 320;
 - (e) Physician assistants regulated pursuant to KRS Chapter 311;
 - (f) Nurse practitioners licensed pursuant to KRS Chapter 314; and
 - (g) Other health care practitioners as determined by the department by administrative regulations promulgated pursuant to KRS Chapter 13A.

- (12) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; a provider-sponsored integrated health delivery network which complies with financial and other criteria established by the department to protect against financial insolvency and to assure capability of providing required services or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky.
- (13) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or standard and supplemental health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, or student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, and, upon approval by the department, individual limited guaranteed renewable hospital or medical expense policies whose provisions and terms may not be changed by the insurer, which were issued prior to January 1, 1994, and conversion policies for group health policies existing on January 1, 1994, if the department determines that the individual limited guaranteed renewable expense policies and conversion policies provide benefits that are less than the benefits provided by the basic health benefit plan as defined by the department.
- (14) "Health status" means an assessment of an individual's mental and physical condition.
- (15) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:
- (a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;
 - (b) Contracts with selected health care providers;
 - (c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;
 - (d) Controlled access to and coordination of services by a case manager; and
 - (e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high cost patient care.
- (16) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans.
- (17) (a) "Mandatory alliance member" means:
1. Any person for whom the Commonwealth provides health insurance pursuant to KRS 18A.225, ~~to~~ **18A.229, and Sections 6 to 11 of this Act;**
 2. Elected and salaried employees of local school districts;
 3. Employees of local and district health departments;
 4. Justices, judges, clerks, deputy clerks, and all other employees of the Judicial Department; and
 5. Recipients under the Kentucky Medical Assistance Program under KRS Chapter 205, to the extent the basic benefit package offered by the alliance covers those mandatory Medicaid services required to be offered by federal law if the following conditions are met:
 - a. The Cabinet for Human Resources determines enrolling Medicaid recipients in the alliance to be practicable; and
 - b. Necessary waivers are obtained by the Cabinet for Human Resources from the Federal Health Care Financing Administration to permit enrolling Medicaid recipients in the alliance.

- (b) With respect to subparagraphs 2. to 4. of paragraph (a) of this subsection, "mandatory alliance member" means only those positions or offices for which health care coverage is provided on July 15, 1994 or for which health care coverage is extended after July 15, 1994, and nothing in this subsection shall be construed to mandate provision of health care coverage for positions and offices within the scope of those subparagraphs if that coverage was not in effect on July 15, 1994.
 - (c) With respect to those persons listed in subparagraphs 2. to 4. of paragraph (a) of this subsection, alliance membership shall be mandatory effective January 1, 1996, except those persons covered under a health insurance contract in effect as of April 1, 1994, and which is still in effect as of January 1, 1996, shall not be required to be a member of the alliance until the termination date of the contract.
- (18) "Medical outcomes" means a change in an individual's health status after the provision of health services.
 - (19) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.
 - (20) "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals.
 - (21) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.
 - (22) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.
 - (23) "Voluntary alliance member" means:
 - (a) An employer with fifty (50) employees or less who voluntarily chooses to participate in a health purchasing alliance except that any employer who provides health plan benefits for one employee shall provide health plan benefits for all employees, including part-time employees; or
 - (b) An individual who voluntarily chooses to participate in a health purchasing alliance; or
 - (c) An affiliated group or association consisting of fifty (50) individuals or less who voluntarily choose to participate in the health purchasing alliance as a group; or
 - (d) Employees of state institutions of higher education; or
 - (e) Elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts excluding school districts.

Section 19. KRS 304.17A-070 is amended to read as follows:

- (1) An accountable health plan may be created by health care providers, or health maintenance organizations, or health insurers, or ***the Kentucky Kare Health Insurance Authority as provided in Section 6 of this Act*** ~~or a state employee benefit fund established under KRS 18A.2281~~, for the purpose of providing health care services to alliance members.
- (2) Each accountable health plan that seeks to offer services to members of the alliance shall first be certified by the alliance. The alliance shall adopt administrative regulations pursuant to KRS Chapter 13A, in consultation with the department, for certification of accountable health plans. To qualify as an accountable health plan, an applicant shall submit information acceptable to the alliance to satisfactorily demonstrate that the plan:
 - (a) Is licensed and in good standing with the licensure boards for participating providers;
 - (b) Has demonstrated the capacity to administer the health plans it is offering;
 - (c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;
 - (d) Has the ability, policies, and procedures to conduct utilization management activities;
 - (e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;
 - (f) Is financially solvent;

- (g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;
 - (h) Has the ability and procedures to monitor access to its provider network;
 - (i) Has a satisfactory grievance procedure and the ability to respond to enrollee's inquires and complaints;
 - (j) Has the ability to recruit and retain health care providers in medically-underserved areas;
 - (k) Does not limit the participation of any health care provider in its provider network in another accountable health plan;
 - (l) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;
 - (m) Does not discriminate in enrolling members;
 - (n) Participates in coordination of benefits;
 - (o) Uses standardized electronic claims and billing processes and formats;
 - (p) Discloses to the alliance reimbursement arrangements with providers; and
 - (q) Assures that all services covered by the accountable health plan are available to all persons enrolled in the plan within thirty (30) miles of each person's place of residence, to the extent those services are available within that area, and assures that all services not available therein shall be offered at sites as proximate to the enrollee as possible.
- (3) The alliance shall establish a certification fee to be paid by each accountable health plan to cover the cost in performing the certification review.
 - (4) An accountable health plan shall require all providers participating in the plan to report to the department specified data which can be used in determining medical outcomes in accordance with standards approved by the department and shall comply with all provisions of this subtitle.
 - (5) A provider may participate in more than one (1) accountable health plan except for providers who are employed by a health maintenance organization or are employed full-time by a provider network and receive a salary.
 - (6) Notwithstanding any provisions of this section to the contrary, any self-insured plan provided by the **Kentucky Kare Health Insurance Fund provided in Section 7 of this Act**~~[state employee benefit fund established under KRS 18A.2281]~~ shall be certified as an accountable health plan under this section as long as it operates in compliance with the provisions of **Sections 6 to 11 of this Act**~~[KRS 18A.2281 to 18A.2286]~~.

Section 20. KRS 18A.2288 is amended to read as follows:

- (1) If a member of one (1) of the state-administered retirement systems changes health insurance carriers from one (1) of the optional plans to the self-funded plan created pursuant to **Sections 6 to 11 of this Act**~~[KRS 18A.2281]~~ and the member has satisfied the pre-existing condition limitation in the optional plan, the member shall be covered in the self-funded plan without any limitation for pre-existing conditions.
- (2) A member of the County Employees Retirement System who is a member of a health insurance group plan sponsored by the member's employer and who has satisfied any pre-existing condition limitation required by the group, shall, upon retirement and upon the member's application, receive coverage in the self-funded plan created pursuant to **Sections 6 to 11 of this Act**~~[KRS 18A.2281]~~ without any limitation for pre-existing conditions. This subsection also applies to a member of the Kentucky Employees Retirement System who is a member of a health insurance group plan sponsored by the member's employer, but not provided for in this chapter, who has satisfied any pre-existing condition limitation required by the group.

Section 21. KRS 205.640 is amended to read as follows:

- (1) For purposes of this section, "hospital" includes all hospitals licensed in this state to provide acute care, psychiatric care, and rehabilitative services.
- (2) The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.

- (3) The "Medical Assistance Revolving Trust Fund (MART)" shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.359 shall be deposited in the State Treasury to the credit of the fund. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.359 shall be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (4) The "Medical Assistance Indigent Trust Fund (MAIT)" shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of Medicaid services in accordance with the provisions of subsection (2) of this section. All investment earnings of the fund shall be credited to the fund. Notwithstanding the provisions of KRS 48.500 and 48.600, the MAIT fund shall be exempt from any state budget reduction acts.
- (5) An amount, necessary to result in a total fund of eighty-one million dollars (\$81,000,000) for fiscal year 1995, and eighty-six million five hundred thousand dollars (\$86,500,000) for fiscal year 1996 including provider tax revenues and federal matching funds, to the extent possible, shall be transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding the disproportionate share program established by the commissioner of Medicaid services.
 - (a) The sum of one million dollars (\$1,000,000) in fiscal year 1995, and one and one-half million dollars (\$1,500,000) in fiscal year 1996, taken entirely from provider tax revenues, transferred to the MAIT fund, shall be used to compensate hospitals that do not qualify for the disproportionate share program for services provided by the hospitals to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty level except nonemergency care rendered through a hospital emergency room, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Human Resources.
 - (b) The amount remaining in the MAIT fund shall be used to compensate hospitals qualifying for the disproportionate share program for service provided by the hospitals to Medicaid recipients beyond the covered days and individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty level, except nonemergency care rendered through a hospital emergency room, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Human Resources in accordance with this section.
 - (c) No individual hospital shall receive distributions from the MAIT fund that exceed indigent inpatient care provided by the hospital that meet the guidelines established in paragraphs (a) and (b) of this subsection and documented to the Department for Medicaid Services, as reimbursed at the hospital's Medicaid rate.
 - (d) Distributions to hospitals from the MAIT fund shall be made on a quarterly basis. One fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:
 1. Hospitals shall report care provided to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital, and except nonemergency care rendered through a hospital emergency room, level to the Cabinet for Human Resources on a quarterly basis. The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20 and October 20 of each year thereafter.
 2. Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Human Resources, Department for Medicaid Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, with payment for documented qualifying services provided at the lesser of each hospital's individual per diem rate or the weighted median per diem for hospitals in each peer group, as established annually by the Department of Medicaid Services.

3. Within ninety (90) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Human Resources, Department for Medicaid Services shall remit to each hospital the amount determined to be due pursuant to the provisions of subparagraph 2. of this paragraph. If the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be carried forward to satisfy future claims.
- (6) Except for nonemergency care rendered through a hospital emergency room, hospitals receiving reimbursement from the MAIT fund shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level.
- (7) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations necessary, pursuant to KRS Chapter 13A, for the administration and implementation of this section.
- (8) All hospitals receiving reimbursement from the MAIT fund shall:
 - (a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay.";
 - (b) Accept benefits of state health insurance coverage described in KRS 18A.229 and *Sections 6 to 11 of this Act*~~[18A.2281]~~;
 - (c) Provide to Medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the Medicaid program; and
 - (d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for Medicaid recipients. The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.

Section 22. The following KRS sections are repealed:

- 18A.2281 State employee benefit fund for self-insurance.
- 18A.2282 Custody and supervision of state employee benefit fund -- Duties -- Moneys credited to fund -- Special reserve -- Investments -- Reports.
- 18A.2283 Tax exemption for self-funded health insurance plan.
- 18A.2284 Date option available -- Initial enrollment period.
- 18A.2285 Exclusions.

Section 23. If the reorganization of the cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (2) of Section 6 of this Act shall be codified as the Cabinet for Health Services.

If the reorganization of the Department of Personnel into the Personnel Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the commissioner of the Department of Personnel appearing in subsection (2) of Section 6 of this Act shall be codified as the secretary of the Personnel Cabinet.

Section 24. The General Assembly hereby confirms Executive Order 97-146, dated January 31, 1997, as amended by Executive Order 97-238, dated February 24, 1997, relating to the Kentucky Kare Health Insurance Authority and Fund, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 18, 1998

CHAPTER 83**(HB 343)**

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.

- (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.

- (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.

8. Finance and Administration Cabinet:
 - (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) *Office of Capital Plaza Operations* ~~Authority~~.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
 - (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.

- (o) Employers Mutual Insurance Authority.
- 10. Revenue Cabinet:
 - (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
- 11. Tourism Cabinet:
 - (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
- 12. Cabinet for Workforce Development:
 - (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.
- III. Other departments headed by appointed officers:
 - 1. Department of Military Affairs.
 - 2. Department of Personnel.
 - 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.

4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. KRS 42.014 is amended to read as follows:

- (1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management and Economic Analysis, *the Office of Capital Plaza Operations*, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration which shall be headed by a commissioner, and the Department for Facilities Management which shall be headed by a commissioner, each of whom shall be responsible to the secretary and appointed by the secretary upon the approval of the Governor. Each of these departments may have at least one (1) major assistant not in the classified service.
- (2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 3. KRS 42.016 is amended to read as follows:

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

- (1) State Property and Buildings Commission;
- (2) Kentucky Pollution Abatement Authority;
- (3) ~~Capital Plaza Authority;~~
- (4) ~~Kentucky Savings Bond Authority;~~
- (4) ~~(5)~~ County Officials Compensation Board;
- (5) ~~(6)~~ Kentucky Turnpike Authority;
- (6) ~~(7)~~ State Investment Commission;
- (7) ~~(8)~~ Kentucky Housing Corporation; and
- (8) ~~(9)~~ Governmental Services Center.

Section 4. KRS 42.018 is amended to read as follows:

- (1) The Office of Management and Budget established by KRS 42.014 shall be responsible for the fiscal, personnel, and payroll functions of the cabinet.
- (2) ***The Office of Capital Plaza Operations established by Section 2 of this Act shall:***
 - (a) ***Be responsible for the operation of the Capital Plaza Civic Center and related facilities in Frankfort, Kentucky; and***
 - (b) ***Provide administrative support to the Capital Development Committee created by Section 6 of this Act.***

Section 5. KRS 42.545 is amended to read as follows:

Each agency authorized to issue bonds listed in this section shall make a report according to generally accepted accounting principles of all money received and disbursed during each fiscal year, on or before the fifteenth of July, showing the receipts, expenditures, trustees, depositories, rates of interest paid by depositories, investments, and rates of return on investments by each agency to the Office of the Controller. The agencies required to report under this section are Eastern Kentucky University; Kentucky State University; Morehead State University; Murray State University; Northern Kentucky University; University of Kentucky; University of Louisville; Western Kentucky University; Kentucky Community and Technical College System; Kentucky Housing Corporation; Kentucky

Pollution Abatement Authority; Kentucky Higher Education Student Loan Corporation; Kentucky School Building Authority; the Turnpike Authority of Kentucky; the State Property and Buildings Commission; Churchill Downs Authority; Kentucky Health and Geriatric Authority; ~~Capital Plaza Authority;~~ State Fair Board; Department of Fish and Wildlife Resources; Water Resources Authority of Kentucky; and any other agency or instrumentality authorized to issue bonds.

Section 6. KRS 45.001 is amended to read as follows:

- (1) ***The Capital Development*** ~~[A Joint Frankfort, Franklin County, Commonwealth of Kentucky Planning and Coordinating]~~ Committee is created. The committee shall ***ensure the proper coordination*** ~~[jointly plan and coordinate all projects]~~ of state government ***initiatives*** which impact ***the city of Frankfort and Franklin*** county government and are unique to the seat of state government ~~[, such as but not limited to:~~
 - ~~(a) — Payments in lieu of taxes;~~
 - ~~(b) — Construction of buildings, roads and bridges;~~
 - ~~(c) — The destruction of buildings or disposal of real property; and~~
 - ~~(d) — Substantial employment increases or decreases].~~
- (2) The committee shall meet at least semiannually at a time and place announced by the chairperson.
- (3) The membership of the committee shall consist of the following ~~[ex-officio]~~ members ***or their designees***:
 - (a) The mayor of the city of Frankfort; ~~[;]~~
 - (b) The county judge/executive of Franklin County; ~~[;]~~
 - (c) The secretary of the Finance and Administration Cabinet; ~~[or designee, and the secretary of the Transportation Cabinet or designee]~~
 - (d) ***The secretary of the Tourism Cabinet;***
 - (e) ***The secretary of the Education, Arts, and Humanities Cabinet;***
 - (f) ***The commissioner of the Department of Travel Development;***
 - (g) ***The executive director of the Office of Capital Plaza Operations;***
 - (h) ***The chairman of the Frankfort/Franklin County Tourist and Convention Commission;***
 - (i) ***A citizen at large, who is a resident of Franklin County, appointed by the Franklin County judge/executive; and***
 - (j) ***A citizen at large, who is a resident of Frankfort, appointed by the mayor of the city of Frankfort.***

~~[The mayor and county judge/executive shall jointly appoint a citizen at large, who is a resident of Franklin County. The Kentucky Economic Development Partnership shall also appoint a citizen at large, who is also a resident of Franklin County.]~~ The citizen-at-large members of the committee shall be appointed to a term of four (4) years each.

- (4) The ***Governor shall appoint the*** ~~[mayor and county judge/executive shall serve as]~~ chairperson of the committee ~~[on alternating terms of one (1) year. The mayor shall serve the first term as chairperson beginning July 15, 1984].~~
- (5) Members of the committee shall serve without compensation.
- (6) ***The Office of Capital Plaza Operations in the Finance and Administration Cabinet shall provide administrative support to the committee.***

Section 7. The following KRS sections are repealed:

58.210 Definitions.

58.215 Capital Plaza Authority -- Powers -- Members -- Appointment -- Compensation -- Officers -- Records.

58.220 Powers of authority.

58.225 Agreements for financing or construction of projects.

- 58.230 Leases by authority -- Terms.
- 58.235 Revenue bonds, issuance -- Contents.
- 58.240 Bonds not obligations of state -- How paid.
- 58.245 Security for bonds, forms -- Terms of trust indenture.
- 58.250 Bondholders may enforce rights.
- 58.255 Bonds of authority, legal investments.
- 58.260 Refunding bonds.
- 58.265 Funds received as trust funds.
- 58.270 Authority tax-exempt.
- 58.275 Acquisition of property -- Condemnation.
- 58.280 Operation and maintenance of project by lessee.
- 58.285 Local governments may convey or lease to authority, procedure.
- 58.290 Conveyance to lessee, when.
- 58.295 Compensation for damage to private property.
- 58.300 Engineering and other studies authorized -- Expense, how paid.
- 58.305 Annual report of authority -- Audit.
- 58.310 Officer or employee not to purchase bonds, penalty.
- 58.315 Act supplemental to other powers.

Section 8. The General Assembly confirms Executive Order 97-1327, issued by the Governor October 13, 1997, to the extent that it is not otherwise confirmed by Sections 1 through 7 of this Act.

Approved March 18, 1998

CHAPTER 84

(HB 347)

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) ***There shall be a Water Resource Development Commission, with the authority and responsibility to:***
 - (a) ***Request and receive information from all branches of state and local government, including special districts and water districts, in order to prepare a complete inventory of all existing water plants and their financial condition; and***
 - (b) ***Prepare a statewide plan for the provision of potable water to all citizens of the Commonwealth by the year 2020 and assure that no state or federal funds shall be used for the development of a water system that is not in compliance with the statewide plan upon its adoption.***
- (2) (a) ***The commission shall be composed of the following thirteen (13) members:***
 - 1. ***Commissioner of the Department of Local Government, who shall serve as chairman of the commission;***
 - 2. ***Secretary of the Finance and Administration Cabinet;***
 - 3. ***Secretary of the Natural Resources and Environmental Protection Cabinet;***
 - 4. ***Secretary of the Transportation Cabinet;***
 - 5. ***Executive director of the Public Service Commission;***

6. *Executive director of the Kentucky League of Cities;*
 7. *Executive director of the Kentucky Rural Water Association;*
 8. *Information director of the Kentucky Council of Area Development Districts;*
 9. *Executive director of the Kentucky County Judge/Executive Association;*
 10. *Executive director of the Kentucky Magistrates and Commissioners Association;*
 11. *State director for Rural Development; and*
 12. *Two (2) additional members of the commission appointed by the Governor as at-large members.*
- (b) *The commission shall be headed by an executive director who shall be appointed by and serve at the pleasure of the Governor. The commission shall be attached for administrative purposes to the Department of Local Government. The commission may utilize staff from the agencies headed by commission members employed by state government and hire additional staff as needed.*
- (c) *The members of the commission shall serve a term of four (4) years. Any member who, through change of employment status or for other reasons, no longer meets the criteria for the position to which he or she was appointed shall no longer be eligible to serve on the commission and shall be removed by the Governor.*
- (d) *Members of the commission shall serve without compensation, except that members of the commission who are not salaried governmental employees shall be compensated for expenses incurred in the conduct of commission business.*
- (e) *Members may designate in writing an alternate who has full authority to attend and vote upon any business or transaction of the commission in the absence of the appointed member.*

Section 2. The General Assembly confirms Executive Order 96-1339, dated October 3, 1996, which creates the Water Resource Development Commission, to the extent it is not otherwise confirmed by this Act.

Approved March 18, 1998

CHAPTER 85

(HB 348)

AN ACT relating to reorganization.

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

Section 1. KRS 42.0201 is amended to read as follows:

- (1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration for administrative and reporting purposes.
- (2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.
- (3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.
- (4) The state controller; the executive director of the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.

- (5) There are established in the Office of the Controller the Division of Accounts and the Division of Social Security.
- (a) The Division of Accounts shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:
1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and
 2. The state government's duties and functions relating to the county fee system ~~and debt issuance~~ for local entities.
- (b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 2. KRS 42.535 is amended to read as follows:

Each agency holding funds listed in this section shall make a report according to generally accepted accounting principles of all money received and disbursed by the listed funds during each fiscal year, on or before the fifteenth of July, showing the receipts, expenditures, depositories, rates of interest paid by depositories, investments, and rates of return on investments by each listed fund to the Office of the Controller. The funds which shall be reported are:

- (1)~~—~~ ~~The county sinking fund;~~
- ~~(2)~~ Tobacco research trust fund;
- ~~(2)~~~~(3)~~ The uninsured employers' fund;
- ~~(3)~~~~(4)~~ The administrative fund created by KRS 342.440, also known as the workers' compensation maintenance fund;
- ~~(4)~~~~(5)~~ The special claim fund; and
- ~~(5)~~~~(6)~~ The common school fund.

Section 3. KRS 65.005 is amended to read as follows:

- (1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.
- (b) "Governing body" means the body possessing legislative authority in a city, county, or special district.
- (2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes pursuant to which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer~~, Department of Local Government,~~ and the state local debt officer, **Department of Local Government**~~Office of the Controller, Finance and Administration Cabinet~~. The clerk shall be paid a fee of two dollars (\$2) by the district for recording and mailing the notification.
- (3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly-created special district shall submit the required notification at or before its first meeting.

Section 4. KRS 66.011 is amended to read as follows:

As used in this chapter, unless otherwise expressly provided:

- (1) "Bonds" means bonds, notes, commercial paper, and other instruments in writing, authorized by or issued pursuant to or in accordance with this chapter, to evidence an obligation to repay or guarantee the repayment of money borrowed, or to pay interest by, or to pay at any future time other money obligations.
- (2) "Capitalized interest" means all or a portion of the interest payable on bonds from their date to a date stated or provided for in the proceedings, which interest is to be paid from the proceeds of the bonds.
- (3) "Credit enhancement facilities" means letters of credit; lines of credit; stand-by, contingent, or firm bond purchase agreements; insurance, or surety arrangements; guarantees, and other arrangements that provide for direct or contingent payment of bonds; interest or redemption premium on bonds, for security or additional security in the event of nonpayment or default in respect of bonds, or for making payment of bonds; interest or redemption premium on bonds to and at the option and on demand of the holders of bonds or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of bonds; and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements for payment and reimbursement of the person providing the credit enhancement facilities and the security for that payment and reimbursement.
- (4) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on bonds as the payments come due and are payable and any charges related to credit enhancement facilities. The use of "debt charges" for this purpose does not imply that any particular obligations constitute debt within the meaning of the Kentucky Constitution or other laws.
- (5) "Financing costs" means all costs and expenses relating to the issuance and carrying costs of bonds including charges related to credit enhancement facilities which are not debt charges.
- (6) "Floating indebtedness" means the amount by which the total of all expenditures by an issuer in any fiscal year exceeds the total of all funds and receipts of the issuer for that fiscal year which are available to the issuer for the purpose of funding those expenditures, but only to the extent that the governing body of the issuer made good-faith estimates of expenditures and funds and receipts available to fund those expenditures and the shortfall in available funds and receipts was due to unforeseeable circumstances or events.
- (7) "Fully-registered bonds" means bonds in certificated or uncertificated form, registered as to both principal and interest in the name of the owner.
- (8) "Interest" or "interest equivalent" means those payments or portions of payments, however denominated, that constitute or represent consideration for forbearing the collection of money, or for deferring the receipt or payment of money to a future time.
- (9) "Issuer" means a county, city, urban-county, charter county, or other taxing district, and for purposes of making any determinations required under this chapter, may include an authorized representative of the issuer.
- (10) "Governing body" means the legislative authority of the issuer.
- (11) "Legislation" means an ordinance or resolution passed by a governing body.
- (12) "Mandatory sinking fund redemption requirements" means amounts required by proceedings to be deposited in a sinking fund for the purpose of paying, by mandatory redemption prior to stated maturity, the principal of bonds that is due and payable in a subsequent year or fiscal year.
- (13) "Net indebtedness" means the principal amount of outstanding bonds of an issuer as determined in accordance with KRS 66.031.
- (14) "Notes" means bonds that mature no later than five (5) years from the date they are issued.
- (15) "Obligation" means instruments in writing, which are not bonds within the meaning of this chapter, that evidence an obligation to repay money borrowed, or to pay interest by, or to pay at any future time other money obligations, including, without limitation, installment sale, lease, lease purchase, or similar agreements, which obligations bear interest or an interest equivalent.
- (16) "Outstanding," referring to bonds, means bonds that have been issued, delivered, and paid for, except any of the following:
 - (a) Bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;

- (b) Bonds in replacement of which or in exchange for which other bonds have been issued; or
 - (c) Bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the applicable legislation or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent.
- (17) "Public project" means any property, asset, or improvement certified by the governing body, which certification is conclusive, as being for a public purpose and having an estimated life or period of usefulness of one (1) year or more, and includes, but is not limited to, real estate, buildings, and personal property, equipment, furnishings, and site improvements, and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more and is to be used for a public purpose.
 - (18) "Person" or "persons" means political and corporate entities, societies, communities, the public generally, individuals, partnerships, and joint stock companies.
 - (19) "Proceedings" means the legislation, certifications, notices, orders, sale proceedings, trust agreements or indentures, mortgages, leases, lease-purchase agreements, assignments, credit enhancement facility agreements, and other agreements, instruments, and documents, as amended and supplemented, providing for the terms and conditions applicable to, or providing for the security or sale or award of, bonds, and includes the provisions set forth or incorporated in those bonds and proceedings.
 - (20) "Refund" means to provide for the payment of debt charges and expenses related to that payment at or prior to retirement by purchase, call for redemption, payment at maturity, or otherwise, outstanding obligations of an issuer or its instrumentality, including, without limitation, bonds.
 - (21) "Register" means the books kept and maintained for registration, exchange, and transfer of registered bonds.
 - (22) "Self-supporting obligations" means obligations issued for the purpose of paying costs of public projects to the extent that receipts of the issuer, other than the proceeds of taxes levied by that issuer, derived from or with respect to that public project or the operation of the public project being financed, or the enterprise, system, or category of public project of which the public project being financed is part, are estimated by the governing body or a representative of the governing body to be sufficient to pay the current expenses of that operation or of that public project, enterprise, or system and the debt charges payable from those receipts on obligations issued for that public project.
 - (23) "Sinking fund" means a fund established for the management of moneys to be used for the retirement of outstanding bonds.
 - (24) "State local debt officer" as used in this chapter and other provisions of law, means the **commissioner, Department of Local Government** ~~{state controller, Finance and Administration Cabinet,}~~ or **the commissioner's**~~{his}~~ agent designated in writing ~~{with the approval of the secretary of the Finance and Administration Cabinet}~~.
 - (25) "Taxing district" means an issuer, other than a county, city, urban-county, or charter county authorized to levy ad valorem taxes within the meaning of Section 157 of the Constitution of Kentucky which is not a school district.
 - (26) "Tax-supported lease" means a lease entered into under KRS 65.942 to 65.956 in which the lessee has agreed to levy and collect taxes to make lease payments.

Section 5. KRS 66.370 is amended to read as follows:

- (1) A county may, by order of its fiscal court, surrender to the state local debt officer, **Department of Local Government**, all money in hand, notes, bonds, accounts, or other credits representing assets available, and any other sums which may hereafter become available from any and all sources, for paying the principal and interest of any bonded debt of the county; however, if a county surrenders the sinking fund for any bond issue payable either from the tax levy authorized by Section 157 or by Section 157a of the Constitution of Kentucky or from any special tax levy authorized by law, it shall also surrender the sinking funds for all other bonds

payable from the same tax levy as herein defined. The surrender shall be irrevocable on the part of the county. Any county which has a bond issue approved under KRS 66.310 may comply with the provisions of this subsection with respect to the sinking funds for the bonds thus approved and for any other bonds payable from the same tax levy as herein defined.

- (2) All cash received under this section by the state local debt officer, *Department of Local Government*, shall be deposited with the *commissioner, Department of Local Government*~~[State Treasurer]~~ to the credit of a fund designated the "county sinking fund." All assets other than cash shall be deposited with the *commissioner, Department of Local Government*~~[State Treasurer]~~ and shall be liquidated, upon authorization of the commission, within a reasonable time.
- (3) The county treasurer of any county complying with the provisions of this section shall remit monthly to the state local debt officer, *Department of Local Government*, all moneys received from any tax levy made for the exclusive purpose of paying principal and interest on any bonds. Any moneys appropriated in the county budget from any other source or any moneys required by law to be used for the same purpose shall be remitted as required for paying any principal or interest maturities, or both, or meeting sinking fund requirements. The state local debt officer, *Department of Local Government*, may institute actions in the Franklin Circuit Court to enforce the provisions of this subsection or to recover any funds that may have been misapplied.
- (4) Accounts showing the county sinking fund receipts and disbursements shall be kept by the state local debt officer, *Department of Local Government*, for each bond issue of each county for which deposits are made in the fund. As of the close of the county fiscal year the state local debt officer, *Department of Local Government*, shall, within thirty (30) days thereafter, render to the county judge/executive of each county having deposits in the fund a statement thereof for each bond issue of that county. On or about the first day of May of each year, the state local debt officer, *Department of Local Government*, shall deliver to the county judge/executive an estimate of the principal and interest requirements of outstanding bonds issued by that county or of the proportionate annual amount which should be deposited in a sinking fund.
- (5) Disbursements from the county sinking fund shall, when authorized by the state local debt officer, *Department of Local Government*, be made in the same manner as other claims on the Commonwealth are paid. Disbursements may be made only for:
 - (a) The payment of principal or interest, or both, of the bonds for which the deposit was made; and
 - (b) The investment of the funds as authorized by law.
- (6) All coupons and bonds for the payment of which deposits are made in the county sinking fund shall be paid either directly by the state local debt officer, *Department of Local Government*, or by the bank designated as paying agent. That bank may be paid a reasonable fee for its services by the *Department of Local Government*~~[Finance and Administration Cabinet]~~ out of its appropriation. All paid bonds and coupons shall be surrendered to the state local debt officer and canceled, and shall be delivered to the judge/executive of each county along with the annual statement provided for in this section.

Section 6. KRS 147A.020 is amended to read as follows:

- (1) The state local debt officer~~[within the Office of the Controller, Finance and Administration Cabinet]~~ and the state local finance officer within the Department of Local Government shall exercise the following administrative functions of the state:
 - (a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and
 - (b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.
- (2) The state local debt officer shall have the following powers and duties:
 - (a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the *Department of Local Government*~~[Office of the Controller]~~;

- (b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and
 - (d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.
- (3) The state local finance officer shall have the following powers and duties:
- (a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;
 - (b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and
 - (c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

Section 7. The following KRS section is repealed:

42.170 Functions of state local debt officer exercised by Office of the Controller.

Section 8. The General Assembly confirms Executive Order 96-1376, dated October 11, 1996, relating to the reorganization of the Department of Local Government, which transfers the duties and functions of the state local debt officer in the Finance and Administration Cabinet to the Department of Local Government, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 18, 1998

CHAPTER 86

(HB 356)

AN ACT relating to reorganization.

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

SECTION 1. KRS 42.660 IS REPEALED AND REENACTED AS A NEW SECTION OF KRS CHAPTER 36 TO READ AS FOLLOWS:

As used in *Sections 1 to 5 of this Act* [~~KRS 42.660 to 42.680~~]:

- (1) "Board" means the Kentucky Community Crisis Response Board;
- (2) "Community crisis response team" means the statewide membership of trained volunteers that provide crisis response services under the direction of the board;
- (3) "Crisis response services" means consultation, risk assessment, referral, and on-site crisis intervention services to persons impacted by crisis or disaster, but shall not be construed to include any services performed or intended to be performed by any other agency of the Commonwealth, any of its subdivisions, or any private party under KRS Chapter 224 or 39;
- (4) "Debriefing session" means the crisis response services rendered during or after a crisis or disaster; and
- (5) "Local community crisis response team" means a team formed to provide crisis response services in a county, district, or region and which operates in accordance with protocols and procedures established by the board.

SECTION 2. KRS 42.665 IS REPEALED AND REENACTED AS A NEW SECTION OF KRS CHAPTER 36 TO READ AS FOLLOWS:

- (1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the *Department of Military Affairs* [~~Finance and Administration Cabinet~~].

- (2) The membership of the board shall consist of the following:
- (a) The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee;
 - (b) The commissioner of the Department for Health Services, or the commissioner's designee;
 - (c) The commissioner of the Department of Education, or the commissioner's designee;
 - (d) The commissioner of the Kentucky State Police, or the commissioner's designee;
 - (e) The Kentucky state fire marshal, or the fire marshal's designee;
 - (f) The executive director of the Division of Disaster and Emergency Services, or the executive director's designee;
 - (g) The Attorney General, or the Attorney General's designee;
 - (h) One (1) representative of local community crisis response teams appointed by the Governor;
 - (i) Four (4) members appointed by the Governor to represent mental health disciplines;
 - (j) Two (2) members appointed by the Governor to represent emergency services disciplines; ~~and~~
 - (k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board;
 - (l) One (1) member, appointed by the Governor, from a state-wide chaplain's association involved in emergency services, who is trained in grief counseling and has experience in crisis response;*
 - (m) One (1) member from the Kentucky Chapter of the American Red Cross; and*
 - (n) The commissioner of the Department for Social Services or the commissioner's designee.*
- (3) All board members appointed pursuant to subsections (2)(h) to (2)(~~l~~)(~~k~~) of this section shall be approved members of the existing community crisis response team.
- (4) All board members appointed pursuant to subsections (2)(h) to (2)(~~l~~)(~~k~~) of this section shall have demonstrated a commitment to the provision of community crisis response services.
- (5) The members of the board appointed by the Governor shall serve for two (2) years, and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.
- (6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.
- (7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.
- (8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in **Section 3 of this Act**~~[KRS 42.670(7)]~~, nothing in **the provisions of Sections 1 to 5 of this Act**~~[KRS 42.660 to 42.680]~~ shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

SECTION 3. KRS 42.670 IS HEREBY REPEALED AND REENACTED AS A NEW SECTION OF KRS CHAPTER 36 TO READ AS FOLLOWS:

The board shall:

- (1) Establish and maintain necessary offices, appoint an executive director, and hire other employees as necessary and prescribe their duties and compensation;
- (2) Recruit and train volunteer members who shall comprise the community crisis response team;

- (3) Maintain a team of volunteer members to provide crisis response services statewide;
- (4) Provide technical assistance for the development of local community crisis response teams;
- (5) Promulgate administrative regulations pursuant to KRS Chapter 13A relating to the operation of crisis response services;
- (6) Provide training programs on the operation of the crisis response teams and the provision of crisis response services;
- (7) Develop agreements with agencies in both the public and private sectors;
- (8) Promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to execute the duties of the board;
- (9) Make recommendations to the Governor and to the General Assembly related to the planning and provision of crisis response services; and
- (10) Receive funding from any source and apply for public and private grants as it deems necessary.

SECTION 4. KRS 42.675 IS HEREBY REPEALED AND REENACTED AS A NEW SECTION OF KRS CHAPTER 36 TO READ AS FOLLOWS:

If any member of the board or any member of a crisis response team authorized by *Sections 1 to 5 of this Act* [~~KRS 42.660 to 42.680~~] does any act in the discharge of his duty that causes him to be proceeded against by civil court action, the Attorney General shall represent him in the civil proceedings.

SECTION 5. KRS 42.680 IS HEREBY REPEALED AND REENACTED AS A NEW SECTION OF KRS CHAPTER 36 TO READ AS FOLLOWS:

Whenever the employees of the Commonwealth of Kentucky or any county, urban-county, charter county, or city government, are rendering outside aid pursuant to the authority contained in *Sections 1 to 5 of this Act* [~~KRS 42.660 to 42.680~~], those employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they are normally employed.

Section 6. KRE 506 is amended to read as follows:

(a) Definitions. As used in this rule:

(1) A "counselor" includes:

- (A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;
- (B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;
- (C) A certified professional art therapist who is engaged to conduct art therapy pursuant to KRS 309.130 to 309.1399;
- (D) A certified marriage and family therapist as defined in KRS 335.300 who is engaged to conduct marriage and family therapy pursuant to KRS 335.300 to 335.399;
- (E) A certified professional counselor as defined in KRS 335.500;
- (F) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team pursuant to *Sections 1 to 5 of this Act* [~~KRS 42.660 to 42.680~~]; and
- (G) A victim advocate as defined in KRS 421.570 except a victim advocate who is employed by a Commonwealth's attorney pursuant to KRS 15.760 or a county attorney pursuant to KRS 69.350.

(2) A "client" is a person who consults or is interviewed or assisted by a counselor for the purpose of obtaining professional or crisis response services from the counselor.

- (3) A communication is "confidential" if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.
- (b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.
- (c) Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person's employer) may claim the privilege in the absence of the client, but only on behalf of the client.
- (d) Exceptions. There is no privilege under this rule for any relevant communication:
- (1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.
 - (2) If the judge finds:
 - (A) That the substance of the communication is relevant to an essential issue in the case;
 - (B) That there are no available alternate means to obtain the substantial equivalent of the communication; and
 - (C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

Section 7. The General Assembly hereby confirms Executive Order 97-827, dated July 3, 1997, transferring the Kentucky Community Crisis Response Board and the Office of Kentucky Community Crisis Response from the Finance and Administration Cabinet to the Department of Military Affairs, to this extent it is not otherwise confirmed by this Act.

Approved March 18, 1998

CHAPTER 87

(HB 357)

AN ACT relating to the reorganization of the Finance and Administration Cabinet.

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

Section 1. KRS 42.027 is amended to read as follows:

- (1) The Department for Facilities Management established in the Finance and Administration Cabinet by KRS 42.014 shall be generally responsible for performance of the cabinet's functions and duties as outlined in KRS Chapters 45, 45A, and 56 with relation to the management and administration of the State Capital Construction Program, including without limitation to the generality thereof, the procurement of necessary consulting services related to capital construction and building renovation projects, construction services, and supervision of building construction projects, and for the maintenance and operation of the state government's telecommunications systems, real property management functions, and physical plant management functions. The department shall be divided for administrative and operational purposes into a Division of Engineering, a Division of Contracting and Administration, a Division of Telecommunications, a Division of **Building Services**~~[Physical Plant]~~, **a Division of Mechanical Maintenance and Operations**, a Division of Real Property, and a Division of Historic Properties, each of which shall be headed by a director appointed by the secretary, subject to the approval of the Governor and responsible to the commissioner. The commissioner shall provide for the distribution of the department's work among the divisions within the department.
- (2) In conjunction with the responsibilities listed in subsection (1) of this section, the Department for Facilities Management shall have the following duties:
 - (a) Establish policies to ensure efficient utilization of state property by:

1. Requiring the development of guidelines which set forth space standards and criteria for determining the space needs of state agencies, and maintaining an inventory which tracks the agencies' compliance with those standards and criteria; and
 2. Requiring certification of compliance, or justification for exceptions, as a criterion for approval of additional space.
- (b) Establish policies to ensure effective planning for state facilities by:
1. Developing a long-range plan for the Frankfort area, with priority on reducing dependency on leased space and encouraging the consolidation of agencies' central offices into single locations, and shared offices for agencies with similar functions; and
 2. Developing long-range plans for housing state agencies in metropolitan areas, with priority on centralization of services and coordination of service delivery systems; and
 3. Encouraging executive branch agencies to expand long-range planning efforts, consistent with the policies of the Capital Planning Advisory Board; and
 4. Supporting long-range planning for a statewide information technology infrastructure to more efficiently deliver state government services.
- (c) Establish priorities to allow least-cost financing of state facilities by:
1. Initiating policies which authorize the state to use innovative methods to lease, purchase, or construct necessary facilities; and
 2. Requiring cost analysis to determine the most effective method of meeting space needs, with consideration for ongoing operations and initial acquisition.
- (3) The Department for Facilities Management shall develop plans for the placement of computing and communications equipment in all facilities owned or leased by state government. As part of this planning process, the department shall:
- (a) Provide adequate site preparation in all state-owned facilities, and require the same of those from whom the state leases space, as part of the lease agreement;
 - (b) Fund a minimum level of site preparation for computing and communications in each new state-owned facility; and
 - (c) As new office sites are developed, or existing ones undergo renovation, consider the placement of shareable high-cost, high-value facilities at strategic locations throughout the state. These facilities may include video teleconference centers, optical scanning and storage services, and gateways to high-speed communication networks.

Section 2. The General Assembly confirms Executive Order 97-892, dated July 17, 1997, relating to the reorganization of the Finance and Administration Cabinet, to the extent it is not otherwise confirmed by this Act.

Approved March 18, 1998

CHAPTER 88

(HB 360)

AN ACT relating to reorganization.

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

Section 1. KRS 36.300 is amended to read as follows:

- (1) There is created the Department of Veterans' Affairs, which shall be attached to the Office of the Governor for administrative purposes. Notwithstanding KRS 12.028, the department's status as a separate organizational unit attached to the Office of the Governor shall not be changed except by action of the General Assembly. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. *The Office of the Commissioner is created within the department.*

- (2) The Department of Veterans' Affairs shall include the Advisory Board for Veterans' Affairs established by KRS 36.310.
- (3) The Department of Veterans' Affairs shall be responsible for providing services to veterans in accordance with KRS 36.330 and 36.350 to 36.370.

Section 2. The General Assembly confirms Executive Reorganization Order 97-733, issued June 13, 1997, to the extent that it is not otherwise confirmed by Section 1 of this Act.

Approved March 18, 1998

CHAPTER 89

(HB 365)

AN ACT relating to reorganization.

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

Section 1. KRS 156.760 is amended to read as follows:

- (1) As used in KRS 156.760 to 156.766, "commission" means the Kentucky ***Commission on Community Volunteerism and Service***~~[Community Service Commission]~~.
- (2) The Kentucky ***Commission on Community Volunteerism and Service***~~[Community Service Commission]~~ is created and shall be attached to the Council on Postsecondary Education for administrative purposes only. Initial temporary staffing for the commission shall be provided jointly by existing staff of the Council on Postsecondary Education and the Department of Education. A director and other appropriate staff shall be hired by the commission when federal funds become available.

Section 2. KRS 12.020 is amended to read as follows:

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

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

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

- (b) Kentucky Council on Agriculture.
 - 7. Superintendent of Public Instruction.
 - 8. Auditor of Public Accounts.
 - 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
- 1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 - 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 - 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.

- (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.

- (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.

- (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.

- (k) Office of General Counsel.
- (l) Office of Communication Services.
- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.

(a) Kentucky *Commission on Community Volunteerism* *and*
~~Service/Community Service Commission].~~

- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 3. The General Assembly hereby confirms Executive Order 97-1291, dated October 2, 1997, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 18, 1998

CHAPTER 90

(HB 412)

AN ACT relating to embalmers and funeral directors.

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

Section 1. KRS 316.010 is amended to read as follows:

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

- (1) "Apprentice" means a person engaged in learning the practice of embalming or funeral directing who is under the instruction and personal supervision of a Kentucky-licensed embalmer or a Kentucky-licensed funeral director;
- (2) "Board" means the Kentucky Board of Embalmers and Funeral Directors;
- (3) "Embalmer" means a person who preserves, restores, and disinfects dead human bodies by the application of chemical substances either externally or internally, or both;
- (4) "Funeral director" means a person who, for profit, engages in or represents himself as engaged in the supervision, direction, and arrangement of funeral services, transportation, burials, and disposals of dead human bodies;
- (5) "Funeral establishment" means a place of business where dead human bodies are embalmed or otherwise prepared or held for burial or where funerals are provided;
- (6) "Person" as used in this chapter includes, but is not limited to, an individual, partnership, firm, association, or corporation;
- (7) *"In use" means that funeral directing or embalming is taking place in a funeral establishment;*

- (8) *"Courtesy card" means a card that is issued by the board to a funeral director or an embalmer from another state that gives the director or embalmer permission to receive and transport a dead human body to and from Kentucky for a funeral and to conduct funeral services and burials in Kentucky; and*
- (9) *"Supervision" means responsibility for the professional activities of the funeral establishment that requires a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, to be on the premises when the funeral establishment is in use. If the Kentucky-licensed funeral director or the Kentucky-licensed embalmer is unable to be on the premises due to a reasonable circumstance, then the Kentucky-licensed funeral director or the Kentucky-licensed embalmer shall be within a reasonable proximity to the funeral establishment so that upon contact the funeral director or embalmer is able to immediately return to the funeral establishment.*

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

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

Section 3. KRS 316.140 is amended to read as follows:

- (1) Any person holding an embalmer's or a funeral director's license issued in another state or federal district may obtain a Kentucky embalmer's or a Kentucky funeral director's license if the board finds that the person, before or after obtaining a license in another state or federal district, has met the same or similar requirements for a license as set out in KRS 316.030 and pays to the board a fee equal to the license renewal fee.
- (2) *The board may issue an annual courtesy card to a licensed funeral director or licensed embalmer from another state that has reciprocal laws with Kentucky upon application and payment by the funeral director or embalmer of a fee prescribed by the board in administrative regulations promulgated under KRS Chapter 13A. The application shall be approved by the board, at its discretion. A holder of a courtesy card shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in Kentucky nor shall he or she be permitted to maintain an office in this state. A violation of this section or any other section of this chapter shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator and to pursue other remedies provided by this chapter.*

Section 4. KRS 316.150 is amended to read as follows:

- (1) The board may refuse to issue or renew, may revoke, or suspend and impose probationary conditions on the license of any Kentucky-licensed embalmer or Kentucky-licensed funeral director, and may issue a written reprimand and impose a fine, for:

- (a) Violating any provision of this chapter, any lawful order of the board, or any administrative regulation promulgated by the board pursuant to this chapter;
 - (b) Being convicted of any felony, or any misdemeanor if the misdemeanor relates to the practice of embalming or funeral directing. For purposes of this subsection, a conviction includes a finding or verdict of guilt or an entry of a guilty plea or a plea of no contest;
 - (c) Paying or offering to pay, directly or indirectly, any consideration of value to secure a funeral, prior to or after an individual's death, or allowing the applicant's or licensee's employee or immediate family member to pay anything of value to secure a funeral;
 - (d) Soliciting business in any way by offering or giving any service which is not a normal function of a licensed embalmer or a licensed funeral director in a regular service;
 - (e) Permitting any person who is not a Kentucky-licensed embalmer or Kentucky-licensed funeral director to perform any service pertaining to embalming or funeral directing required by law of a licensed embalmer or a licensed funeral director, from the time of death until interment;
 - (f) Misrepresenting or concealing a material fact in obtaining a license or an apprentice registration;
 - (g) Assisting any applicant for an embalmer's or a funeral director's license in obtaining the license by misrepresentation or concealment of a material fact in registering for an apprenticeship, or during the period of serving an apprenticeship, or in taking or passing the examination for an embalmer's or a funeral director's license;
 - (h) Being sanctioned for a violation of any state or federal statute or administrative regulation governing the funeral industry or its practice for which a plan of correction or remedial action was not accepted by the state or federal authority; or
 - (i) Committing any act which constitutes unprofessional, fraudulent, misleading, corrupt, deceptive, or dishonest conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to a disciplinary action.
- (2) The board may refuse to issue, may revoke, or suspend and impose probationary conditions on the registration of an apprentice, and may issue a written reprimand and impose a fine, for:
- (a) Violating any of the provisions set out in paragraphs (a) to (i) of subsection (1) of this section;
 - (b) Disobeying the proper orders or instructions of a superior.
- (3) The board may refuse to issue or renew, may revoke, or suspend and impose probationary conditions on the license of any funeral establishment, and may issue a written reprimand and impose a fine, for:
- (a) Misrepresenting or concealing a material fact in obtaining a funeral establishment license;
 - (b) Operating a funeral establishment in violation of any lawful order of the board or any state or federal statute or administrative regulation governing the operation of a funeral establishment; or
 - (c) Operating a funeral establishment without the ~~direct and constant~~ supervision of a Kentucky-licensed embalmer ~~or~~ a Kentucky-licensed funeral director.

Approved March 18, 1998

CHAPTER 91

(HB 218)

AN ACT relating to inactive license status for cosmetology licensees.

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

Section 1. KRS 317A.050 is amended to read as follows:

- (1) The cosmetologist board shall issue an apprentice cosmetologist license to any person who:
 - (a) Is of good moral character and temperate habit;
 - (b) Is at least sixteen (16) years of age;

- (c) Has at least two (2) years high school education or its equivalent;
 - (d) Has graduated from a licensed school of cosmetology;
 - (e) Has passed an examination prescribed by the board to determine fitness to practice as an apprentice cosmetologist; and
 - (f) Has paid a fee of twelve dollars (\$12).
- (2) The cosmetologist board shall issue a cosmetologist license to any person who:
- (a) Has at least two (2) years high school education, or its equivalent;
 - (b) Has practiced as a licensed cosmetology apprentice for at least six (6) months under the immediate supervision of a licensed cosmetologist;
 - (c) Has satisfactorily passed an examination prescribed by the board to determine fitness to practice cosmetology; and
 - (d) Has paid a fee of fifteen dollars (\$15).
- (3) The cosmetologist board shall issue a license to act as a nail technician to any person who:
- (a) Is of good moral character and temperate habit;
 - (b) Has completed satisfactorily a nail technician course of study of six hundred (600) hours in a licensed school of cosmetology;
 - (c) Has satisfactorily passed an examination prescribed by the board to determine fitness to practice as a nail technician;
 - (d) Has two (2) years of high school education or its equivalent; and
 - (e) Has paid a fee of twelve dollars (\$12).
- (4) (a) The cosmetologist board shall issue a license to operate a beauty salon to any licensed cosmetologist upon receipt of the completed application, accompanied by a fee of twenty-five dollars (\$25). The board may refuse to issue a license if the applicant fails to comply with the provisions of this chapter or the administrative regulations promulgated by the board. If an owner is not a licensed cosmetologist, he shall have a licensed cosmetologist manage the beauty salon at all times. A new license shall be purchased if the salon's owner, manager, or location changes.
- (b) The cosmetologist board shall issue a license to operate a nail salon to any licensed nail technician upon receipt of the completed application and payment of a fee of twenty-five dollars (\$25). The board may refuse to issue a license if the applicant fails to comply with the provisions of this chapter or administrative regulations promulgated by the board pursuant to this chapter. An owner who is not a licensed nail technician shall have a licensed nail technician or cosmetologist as manager of the nail salon at all times. If the owner, manager, or location of a nail salon changes, a new license shall be purchased.
- (c) Any person who leases or rents space in a beauty salon or nail salon shall be considered an independent owner and shall meet the qualifications for the respective salon owner as set out in paragraphs (a) and (b) of this subsection.
- (5) The cosmetologist board shall issue an apprentice license to teach cosmetology to any person who:
- (a) Has paid a fee of twenty-five dollars (\$25);
 - (b) Has a high school education and one (1) year experience as a licensed cosmetologist; and
 - (c) Has submitted an application that has been signed by the owners of the school in which the applicant will study. The course of instruction shall be for a period of one thousand (1,000) hours and not less than six (6) months at one (1) school providing this instruction. The school owner shall certify to the board the completion of one thousand (1,000) hours.
- (6) The cosmetologist board shall issue a license to teach cosmetology to any person who:
- (a) Is of good moral character and temperate habit;

- (b) Has a high school education;
 - (c) Has held an apprentice instructor license for at least six (6) months;
 - (d) Has satisfactorily passed the examination for the teaching of cosmetology as prescribed by the board; and
 - (e) Has paid a fee of thirty-five dollars (\$35).
- (7) The cosmetologist board may issue a license to operate a school of cosmetology to any person who:
- (a) Has complied with the administrative regulations promulgated by the board including, but not limited to, administrative regulations governing the necessary equipment, supplies, and facilities;
 - (b) Has furnished proof to the board that the school of cosmetology is needed, that he is otherwise qualified to operate a school of cosmetology, and that he intends to establish a bona fide school for the education and training of competent cosmetologists and that he will employ a sufficient number of licensed instructors of cosmetology to conduct the school;
 - (c) That the licensee shall have as manager at all times a person licensed as an instructor who will be charged with the responsibility of having a sufficient number of licensed instructors of cosmetology to conduct the school. The designated manager shall be approved by the board before a license may be issued;
 - (d) Complies with the administrative regulations promulgated by the board including, but not limited to, those regarding courses, curriculum, and hours of instruction;
 - (e) Otherwise complies with this chapter;
 - (f) Has paid a fee of one thousand dollars (\$1,000);
 - (g) Has been a resident of Kentucky for five (5) years, if the applicant is an individual. If the applicant is a firm or corporation, it shall be a Kentucky corporation or licensed or qualified to do business in Kentucky and shall have been in existence for a period of at least five (5) years;
 - (h) Any student enrolling in the school shall pay a fee of five dollars (\$5) to the board before enrollment in the school shall be allowed; and
 - (i) The transfer of any license to operate a school of cosmetology shall require the board's approval and shall become effective upon filing a new application with the board and paying a fee of one thousand dollars (\$1,000).
- (8) Licenses issued by the board shall be renewed upon receipt, beginning July 1 through July 31 of each year. Beginning July 1, 1997, any license shall be renewed by the board upon receipt, if the applicant has provided proof of continuing education as determined by the board by promulgation of an administrative regulation. Cosmetology instructors shall provide proof of eight (8) clock hours of continuing education, and cosmetologists and nail technicians shall provide proof of six (6) clock hours of continuing education. The application for renewal shall be completed in full and accompanied by the appropriate renewal fee required by subsection (9) of this section. Applications for renewal shall comply with the provisions of this chapter and the administrative regulations promulgated by the board. Any license application received or postmarked after July 31 shall be considered expired and the appropriate restoration fee required by subsection (11) of this section shall apply.
- (9) The annual renewal license fee for each type of license renewal shall be as follows:
- (a) Apprentice cosmetologist -- \$10;
 - (b) Cosmetologist -- \$12;
 - (c) Nail technician -- \$10;
 - (d) Beauty salon -- \$15;
 - (e) Nail salon -- \$15;
 - (f) Apprentice instructor of cosmetology -- \$15;
 - (g) Instructor of cosmetology -- \$25; and

- (h) Cosmetology school -- \$100.
- (10) Applications for examinations required by this section shall be accompanied by an examination fee as follows:
 - (a) Apprentice cosmetologist -- \$25;
 - (b) Cosmetologist -- \$35;
 - (c) Nail technician --\$35;
 - (d) Instructor of cosmetology -- \$50;
 - (e) Cosmetologist out-of-state -- \$75;
 - (f) Instructor out-of-state -- \$150; and
 - (g) Where examination is not required by the board -- \$50.
- (11) The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:
 - (a) Apprentice cosmetologist -- \$50;
 - (b) Cosmetologist -- \$50;
 - (c) Nail technician -- \$50;
 - (d) Beauty salon -- \$50;
 - (e) Nail salon -- \$50;
 - (f) Cosmetology school -- \$500;
 - (g) Instructor -- \$75; and
 - (h) Apprentice instructor -- \$50.
- (12) The requirements for a new license for any person whose license has expired for a period exceeding five (5) years shall be as follows:
 - (a) Cosmetologists shall retake and pass the practical examination only;
 - (b) Apprentice cosmetologists shall complete one hundred fifty (150) additional hours training in a licensed school of cosmetology and pass the prescribed examination;
 - (c) Instructors of cosmetology shall retake and pass both the practical and science examination;
 - (d) Nail technicians shall retake and pass the practical examination, only; and
 - (e) The appropriate restoration fee as set forth in subsection (11) of this section shall be required.
- (13) Guest artists or demonstrators appearing and demonstrating before persons other than licensed hairdressers, cosmetologists, and nail technicians shall pay a fee of thirty-five dollars (\$35) for a permit that shall be in effect for ten (10) days. Guest artists performing before a nonprofit, recognized professional hairdressers, cosmetologists, and nail technicians group shall not be required to pay the fee.
- (14) ***The board shall issue an inactive license to any person licensed under subsections (2), (3), and (6) of this section and in good standing with the board, upon application and submission of a twelve dollar (\$12) fee. An inactive licensee shall not be required to complete the continuing education requirements contained in subsection (8) of this section. An inactive license may be restored to active status upon application to the board. In addition, the board may require the completion of continuing education not to exceed the amount required for license renewal for one (1) year. A person who possesses an inactive license shall not engage in the practice of cosmetology for consideration, but an inactive licensee shall have the same right to purchase supplies as accorded an active licensee.***
- (15) The fee for certification shall be five dollars (\$5).
- ~~(16)~~(15) The fee for a duplicate license shall be five dollars (\$5).

Approved March 20, 1998

CHAPTER 92

(HB 392)

AN ACT relating to the selection of underwriters and bond counsel firms.

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

Section 1. KRS 45A.847 is amended to read as follows:

- (1) ***After a person has been appointed to***~~Before a person joins~~ a selection committee, he shall receive an orientation from the office. The orientation shall include, but not be limited to, an explanation of all statutes and administrative regulations pertaining to the person's service on the selection committee.
- (2) For administrative purposes, a selection committee shall be attached to the office.
- (3) The office shall provide a selection committee with:
 - (a) Suitable quarters in Frankfort, Kentucky, in which to conduct its business;
 - (b) Staff support necessary for the expeditious conduct of a selection committee's duties and responsibilities; and
 - (c) Office supplies.

Section 2. KRS 45A.850 is amended to read as follows:

- (1) ~~(a) Pursuant to KRS 45A.853 and 45A.857, one (1) underwriter and one (1) bond counsel shall be chosen for the State Property and Buildings Commission.~~
 - ~~(b) The underwriter and the bond counsel chosen for the commission shall provide their services for all bonds issued in one (1) bond project.~~
- ~~(2) (a)~~ Pursuant to KRS 45A.853 and 45A.857, one (1) ***or more underwriters***~~underwriter~~ and one (1) ***or more*** bond counsel ***firms*** shall be chosen for each of the following agencies:
 1. Turnpike Authority of Kentucky;
 2. Kentucky Housing Corporation;
 3. Kentucky Infrastructure Authority;
 4. Kentucky Higher Education Student Loan Corporation;
 5. Kentucky River Authority;
 6. Kentucky Agricultural Finance Corporation;~~and~~
 7. Kentucky Local Correctional Facilities Construction Authority; ***and***
 8. ***State Property and Buildings Commission.***
 - (b) The underwriter and the bond counsel chosen for each agency shall provide their services for all bond ***issuances***~~issuance~~ over a period of twelve (12) months from their selection. At the conclusion of the twelve (12) month period, the executive director may continue the employment of the underwriter or the bond counsel, on the same terms and conditions, for another twelve (12) month period. If the employment is not continued, the choosing of an underwriter or bond counsel, as appropriate, shall be conducted pursuant to KRS 45A.853 and 45A.857.
- ~~(2) (3)~~ ~~(a)~~ Pursuant to KRS 45A.853 and 45A.857, one (1) ***or more underwriters***~~underwriter~~ and one (1) ***or more*** bond counsel ***firms*** shall be chosen to provide their services for all of the following agencies:
 1. School Facilities Construction Commission;
 2. Murray State University;
 3. Western Kentucky University;
 4. University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605;

5. Northern Kentucky University;
 6. Kentucky State University;
 7. University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605;
 8. Morehead State University;
 9. Eastern Kentucky University; and
 10. Kentucky Community and Technical College System.
- (b) The underwriter and the bond counsel chosen for all of the agencies shall provide their services for all bond ~~issuances~~~~[issuance]~~ of the agencies for a period of twelve (12) months from the underwriter's and the bond counsel's selection. At the conclusion of the twelve (12) month period, the executive director may continue the employment of the underwriter or the bond counsel, on the same terms and conditions, for another twelve (12) month period. If the employment is not continued, the choosing of an underwriter or bond counsel, as appropriate, shall be conducted pursuant to KRS 45A.853 and 45A.857.
- ~~(3)~~~~(4)~~ Pursuant to KRS 45A.853 and 45A.857, one (1) or more financial advisors, managing underwriters, and remarketing agents and one (1) bond counsel shall be chosen for the Kentucky Asset/Liability Commission. The commission shall enter into agreements with the individuals or entities for a maximum contract period of twenty-four (24) months. At the conclusion of the contract period, the executive director may continue the employment of the financial advisor, underwriter, remarketing agent, or bond counsel for another contract period, not to exceed twenty-four (24) months. If the employment is not continued or terminated, the selection of a financial advisor, underwriter, remarketing agent, or bond counsel, as appropriate, shall be conducted pursuant to KRS 45A.853 and 45A.857.
- ~~(4)~~~~(5)~~ The office may select national comanaging underwriters and Kentucky comanaging underwriters who shall provide national and local marketing expertise for bond issuances. The executive director shall recommend to the secretary of the Finance and Administration Cabinet the number of national and Kentucky comanaging underwriters, if any, to be utilized on each bond issuance. The executive director shall consider the following issues when making the recommendations:
- (a) Principal amount of bonds being issued;
 - (b) Structure of the bond issue; and
 - (c) Composition of expected buyers of the bonds.

Kentucky comanaging underwriters shall be selected pursuant to a request for proposals. National comanaging underwriters shall be selected pursuant to an administrative regulation promulgated by the office. Comanaging underwriters selected pursuant to this subsection shall provide their services to a bond issuing agency as needed over the appropriate period of time stated in this section.

Section 3. KRS 45A.853 is amended to read as follows:

- (1) (a) A firm shall not be considered for providing underwriting or bond counsel services unless the office has prequalified the firm prior to the date of issuance of the request for proposals.
- (b) A firm's prequalification shall remain in effect for **twenty-four (24)**~~twelve (12)~~ months from the date of prequalification.
- (2) (a) The office shall consult with the bond issuing agency before arriving at a request for proposals. The request for proposals shall include, but not be limited to:
 1. The deadline for posing written questions about the request for proposals to the selection committee chairman elected pursuant to subsection (7)(b) of this section. This deadline shall occur before the deadline for filing a written response to a request for proposals;
 2. The deadline for filing a written response;
 3. A description of the services sought;
 4. A description of the skills required to perform the services;

5. A description of evaluation factors and their relative weight; and
 6. In the case of a request for proposals from bond counsel firms, a requirement to submit proposed fees and expenses.
- (b) The office shall provide materials to the firms which have prequalified pursuant to subsection (1) of this section. The materials shall include, but not be limited to, the request for proposals and the evaluation sheet to be used by the relevant selection committee.
- (3) Prior to the deadline for posing questions established in the request for proposals, a firm may pose written questions about the request for proposals to the selection committee chairman. The chairman, shall respond in writing. If, in the discretion of the chairman, an answer could have a material effect on other respondents' proposals, then both the question and the answer shall be distributed to all firms at the same time prior to the deadline for the filing of responses to the request for proposals.
 - (4) A firm shall file a written response to the request for proposals prior to the deadline for filing a written response established in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
 - (5) The employees of the office and the members of the selection committee shall keep all responses to a request for proposals confidential until the contract to the winning firm has been awarded.
 - (6) The executive director of the office shall designate an office employee to identify which firms prequalified pursuant to subsection (1) of this section and filed, in a timely fashion, a written response to a request for proposals. He shall create a list of firms which have done so and certify the list.
 - (7) The office shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
 - (a) Determine whether a majority of the voting members are merit employees of the Commonwealth. If a majority are not merit employees, the selection committee shall disband, and another selection committee shall be selected pursuant to KRS 45A.843. A majority of its voting members shall be merit employees of the Commonwealth;
 - (b) Elect from among the voting members of the committee a chairman and vice chairman who shall hold their positions for the duration of the selection committee's involvement in the bond issuance;
 - (c) Be provided with:
 1. The certified list created pursuant to subsection (6) of this section;
 2. If applicable, an out-of-state firm's preference handicap created pursuant to KRS 45A.873(1);
 3. ~~Written questions and answers produced pursuant to subsection (3) of this section;~~
 4. ~~The firms' responses to the request for proposals;~~
 5. ~~The request for proposals;~~
 4. ~~6.~~ Forms for keeping a log of all contacts with firms which have responded to the request for proposals as well as contacts with persons acting on behalf of those firms. Each committee member shall keep a log which shall summarize the subject of any contact and state the date and place of the contact; and
 5. ~~7.~~ The selection evaluation sheets; and
 - (d) Discuss the future conduct of its affairs.
- (8) ***At the second meeting of a selection committee, the committee shall:***
- (a) ***Be provided with the following:***
 1. ***Written questions and answers produced pursuant to subsection (3) of this section; and***
 2. ***The firms' responses to the request for proposals; and***
 - (b) ***Discuss the future conduct of its affairs.***

Section 4. KRS 45A.857 is amended to read as follows:

- (1) A selection committee shall meet in executive session to:
 - (a) Evaluate the materials with which it has been provided;
 - (b) Select the *two (2)*~~three (3)~~ to five (5) most qualified firms based upon the weighted evaluation factors in the request for proposals; and
 - (c) Rank the firms.
- (2) In executive session, a selection committee, at its discretion by majority vote, shall determine whether not to interview and to leave the rankings in place, or to interview the *two (2)*~~three (3)~~ to five (5) firms to arrive at new rankings. If the selection committee decides not to interview and to leave the rankings in place, the ~~top three (3) ranked firms shall be made finalists. The~~ winning firm shall be chosen pursuant to paragraph (a) or paragraph (b) of subsection (4) of this section, as appropriate.
- (3)
 - (a) If the selection committee decides to interview the *two (2)*~~three (3)~~ to five (5) firms, it shall do so preferably on the same day. The firms shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the firm and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the contract to the winning firm is awarded.
 - (b) After the *two (2)*~~three (3)~~ to five (5) firms have been interviewed, the selection committee shall meet in executive session to:
 1. Rank the ~~three (3) to five (5)~~ firms *interviewed* based upon the weighted evaluation factors established in the request for proposals; and
 2. Forward the rankings to the executive director.
 - ~~(c) The top three (3) ranked firms shall be made finalists.~~
 - ~~(d)~~ The winning firm shall be awarded pursuant to paragraph (a) or paragraph (b) of subsection (4) of this section, as appropriate.
- (4)
 - (a) For underwriter services:
 1. The name of the top-ranked underwriter firm shall be provided to the executive director. He shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection. The secretary shall order that procurement proceed under subparagraph 2. of this paragraph, or he shall order that the procurement procedure start again from the beginning pursuant to KRS 45A.843. The secretary shall state in writing the reasons for his actions.
 2. The executive director of the office shall negotiate a contract with the top-ranked underwriter firm, as determined by the selection committee, at compensation which the executive director determines in writing to be fair and reasonable to the Commonwealth. In making this decision, he shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the executive director be able to negotiate a satisfactory price, the top-ranked firm shall be awarded the contract. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his justifications for the negotiated price.
 3. Should the executive director be unable to negotiate a satisfactory contract with the top-ranking firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The selection committee shall provide the executive director the name of the second-ranked firm. The executive director shall then undertake price negotiations with the second-ranked firm. Should the executive director be able to negotiate a satisfactory price, the second-ranked firm shall be awarded the contract. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his justifications for the negotiated price.
 4. Failing accord with the second-ranked firm, the executive director shall formally terminate negotiations. The selection committee shall provide the executive director the name of the third-ranked firm, *if any*. The executive director shall then undertake price negotiations with the third-

ranked firm. Should the executive director be able to negotiate a satisfactory price, the third-ranked firm shall be awarded the contract. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the price. Should the executive director be unable to negotiate a satisfactory contract with the third-ranked firm, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.843.

(b) For bond counsel services:

1. ~~The top ranked bond counsel firm shall be contacted to confirm its fee proposal in writing.~~
 2. ~~The name of the top-ranked firm shall be provided to the executive director. The executive director shall award the contract to the top ranked firm unless the firm's final fee proposal is higher than the one submitted in its response to the request for proposal. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection and the secretary shall order the hiring or not of the firm. The secretary shall state in writing his reasons for his actions.~~
 3. ~~If the executive director does not agree with the selection recommended by the selection committee, [However, if the firm's fee proposal is higher than the one submitted in its response to the request for proposals, then that firm shall not be further considered, and] the name of the second-ranked firm shall be submitted to the executive director. The second ranked firm shall be contacted to confirm its fee proposal in writing.~~
2. ***The executive director shall submit the name of the first-ranked firm, or the second-ranked firm if the executive director did not agree with the first selection made by the selection committee, to the secretary of the Finance and Administration Cabinet.*** The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection. The secretary shall order the hiring of the selected firm, or he shall order that the procurement procedure shall start again from the beginning pursuant to KRS 45A.843. The secretary shall state in writing the reasons for his actions.

Section 5. KRS 45A.860 is amended to read as follows:

- (1) After a winning underwriter or bond counsel contract has been awarded by the secretary of the Finance and Administration Cabinet pursuant to KRS. 45A.853 and 45A.857, the executive director shall supply the name of the firm to each member of the selection committee. The executive director shall also send a letter to each firm which responded to the request for proposals, informing the firm of the name of the underwriter or bond counsel which has been awarded the contract.
- (2) The secretary of the Finance and Administration Cabinet, executive director, head of the relevant bond issuing agency, and each voting member of the selection committee shall sign separate certificates, devised by the office, which shall certify that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a willful violation of KRS 45A.840 to 45A.879 which has arisen in the procurement process.
- (3) Any employee of the Auditor of Public Accounts, who was appointed to serve as a nonvoting member of the selection committee and who attended any committee proceeding, shall participate in the preparation of a report for filing with the Capital Projects and Bond Oversight Committee certifying that the applicable procedural provisions of KRS 45A.840 to 45A.879 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.
- (4) The Finance and Administration Cabinet shall retain the logs created pursuant to KRS 45A.853(7)(c)4. ~~6.~~ and the completed selection evaluation sheets required by KRS 45A.853(7)(c)5. ~~7.~~ The Finance and Administration Cabinet shall permit the public to inspect these documents. Each evaluation sheet and each log shall be signed by the person who completed it. The cabinet shall permit the public to inspect these documents and shall not black out the signature of the person who signed the evaluation sheet or the log.

Approved March 20, 1998

CHAPTER 93**(HB 342)**

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The Office of Coal County Development is created within the Office of the Secretary. The Office of Coal County Development shall promote the Local Government Economic Development Program which funds infrastructure to new and expanding business and industry, thereby diversifying eligible county economies and creating an environment more conducive to business activity.*
- (2) *The Office of Coal County Development shall be headed by an executive director appointed by the secretary pursuant to KRS 154.10-050 (3).*

Section 2. The General Assembly confirms Resolution Order 97-1, dated September 10, 1997, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 20, 1998

CHAPTER 94**(HB 409)**

AN ACT relating to escheats.

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

Section 1. KRS 393.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state;
 - (b) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two (2) or more individuals;
 - (c) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state;
 - (d) "Life insurance corporation" means any corporation or association transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities;
 - (e) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;
 - (f) "Treasurer" means the State Treasurer;
 - (g) "Department" means the Department of the Treasury;
 - (h) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.
- (2) This chapter does not apply to *money, funds, or any other property held by or owing to any nonprofit, Internal Revenue Code Section 501(c)(3), tax-exempt hospital, or to* bonds of counties, cities, school districts, or other tax-levying subdivisions of this state or to any money, funds, or other intangible property at any time held or owing for any minerals or other raw materials capable of being used for fuel in the course of manufacturing, processing, production, or mining. The provisions of this subsection shall be effective

retroactively to all such moneys, funds, or other intangible property held or owing by any person on June 1, 1960, or thereafter.

Approved March 20, 1998

CHAPTER 95

(HB 476)

AN ACT relating to the Breast Cancer Advisory Committee

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

Section 1. KRS 214.554 is amended to read as follows:

- (1) There is hereby established within the department a Breast Cancer Screening Program for the purposes of:
 - (a) Reducing morbidity and mortality from breast cancer in women through early detection and treatment; and
 - (b) Making breast cancer screening services of high quality and reasonable cost available to women of all income levels throughout the Commonwealth and to women whose economic circumstances or geographic location limits access to breast cancer screening facilities.
- (2) Services provided under the Breast Cancer Screening Program may be undertaken by private contract for services or operated by the department and may include the purchase, maintenance, and staffing of a truck, a van, or any other vehicle suitably equipped to perform breast cancer screening. The program may also provide referral services for the benefit of women for whom further examination or treatment is indicated by the breast cancer screening.
- (3) The department may adopt a schedule of income-based fees to be charged for the breast cancer screening. The schedule shall be determined to make screening available to the largest possible number of women throughout the Commonwealth. The department shall, where practical, collect any available insurance proceeds or other reimbursement payable on behalf of any recipient of a breast cancer screening under KRS 214.552 to 214.556 and may adjust the schedule of fees to reflect insurance contributions. All fees collected shall be credited to the fund.
- (4) The department may accept any grant or award of funds from the federal government or private sources for carrying out the provisions of KRS 214.552 to 214.556.
- (5) For the purpose of developing and monitoring the implementation of guidelines for access to and the quality of the services of the Breast Cancer Screening Program, there is hereby created a Breast Cancer Advisory Committee to the commissioner of the Department for Health Services which shall include the directors of the James Graham Brown Cancer Center and the Lucille Parker Markey Cancer Center, the director of the Kentucky Cancer Registry, ***one (1) radiologist with preference given to one who has been fellowship-trained in breast diagnostics and who shall be appointed by the Governor***, one (1) representative of the Kentucky Office of Rural Health appointed by the Governor, one (1) representative of the Kentucky Commission on Women appointed by the Governor, and at least three (3) women who have had breast cancer and who shall be appointed by the Governor.
- (6) The commissioner of the Department for Health Services, in consultation with the Breast Cancer Advisory Committee, shall annually, but no later than ~~November~~^{July} 1 of each year, make a report to the Governor, the Legislative Research Commission, and the Interim Joint Committees on Appropriations and Revenue and on Health and Welfare on the:
 - (a) Implementation and outcome from the Breast Cancer Screening Program including, by geographic region, numbers of persons screened, numbers of cancers detected, referrals for treatment, and reductions in breast cancer morbidity and mortality;
 - (b) Development of quality assurance guidelines, including timetables, for breast cancer screening under this section, and monitoring of the manner and effect of implementation of those guidelines; and
 - (c) Funds appropriated, received, and spent for breast cancer control by fiscal year.

Approved March 20, 1998

CHAPTER 96**(HB 542)**

AN ACT relating to motor vehicles.

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

Section 1. KRS 367.841 is amended to read as follows:

- (1) "Buyer" means any resident person who buys or contracts to buy a new motor vehicle in the Commonwealth of Kentucky.
- (2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles new motor vehicles, *including new conversion van manufacturers*, which are sold in the Commonwealth of Kentucky.
- (3) "Motor vehicle" means every vehicle which is self propelled, and which is intended primarily for use and operation on the public highways and required to be registered or licensed in the Commonwealth prior to such use or operation; however, "motor vehicle" shall not include:
 - (a) *Any vehicle substantially altered after its initial sale from a dealer to an individual;* ~~conversion vans;~~
 - (b) Motor homes;~~;~~
 - (c) Motorcycles;~~;~~
 - (d) Mopeds;~~;~~
 - (e) Farm tractors and other machines used in the production, harvesting, and care of farm products;~~;~~ or
 - (f) Vehicles which have more than two (2) axles.
- (4) "New motor vehicle" means a motor vehicle which has been finally and completely assembled and is in the possession of a manufacturer, factory branch, distributor, wholesaler or an authorized motor vehicle dealer operating under a valid sales and service agreement, franchise or contract for the sale of such vehicle granted by the manufacturer, factory branch, distributor or wholesaler which is, in fact, new and on which the original title has never been issued.
- (5) "Express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under the warranty.
- (6) "Nonconformity" means a failure to conform with an express warranty in a manner which substantially impairs the use, value, or safety of the motor vehicle.
- (7) "Reasonable allowance for use" means the amount directly attributable to a consumer's use of the vehicle other than those time periods when the vehicle is out of service due to the nonconformity.

Approved March 20, 1998

CHAPTER 97**(HJR 2)**

A JOINT RESOLUTION directing the Finance and Administration Cabinet to rename the Kentucky Veterans Center the "Thomson-Hood Veterans Center" in honor of Lieutenant Colonel George Thomson and Mrs. Beatrice Hood.

WHEREAS, Lieutenant Colonel George Thomson served his country and state with dedication, courage, and honor during three U.S. military conflicts: World War II, the Korean War, and the Vietnam War, and after this service, performed admirably in support of veteran programs; and

WHEREAS, Lieutenant Colonel George Thomson provided the vision, leadership, and initiative that resulted in the Commonwealth of Kentucky authorizing the construction of a 300-bed, long term care facility to serve the state's elderly veterans; and

WHEREAS, Mrs. Beatrice Hood served with remarkable effectiveness as the first administrator of the Kentucky Veterans Center, consistently providing an exceptionally high quality of care for Kentucky veterans and creating a model for other long term care facilities around the country; and

WHEREAS, Mrs. Hood's high personal and professional standards were reflected in her numerous achievements which included the award of a "Superior" rating to the Kentucky Veterans Center for each year of operation; and

WHEREAS, Lieutenant Colonel George Thomson and Mrs. Beatrice Hood overcame many obstacles to insure a high quality of care for Kentucky's elderly veterans and will long be remembered and honored by all Kentuckians;

NOW, THEREFORE,

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

Section 1. The Finance and Administration Cabinet is directed to rename the Kentucky Veterans Center the "Thomson-Hood Veterans Center".

Section 2. The Transportation Cabinet shall prepare the appropriate highway signs to conform with Section 1 of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Finance and Administration Cabinet, the Secretary of the Transportation Cabinet, the Acting Commissioner of Veterans Affairs, and the Executive Director of the Kentucky Veterans Center in Wilmore, Kentucky.

Approved March 23, 1998

CHAPTER 98

(HB 15)

AN ACT relating to special local peace officers.

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

Section 1. KRS 61.300 is amended to read as follows:

No person shall serve as a deputy sheriff, deputy constable, patrol or other nonelective peace officer, or deputy peace officer, unless:

- (1) He is a citizen of the United States and is twenty-one (21) years of age or over;
- (2) If a deputy constable~~[or special local peace officer appointed pursuant to KRS 61.360]~~, he has resided in the county wherein he is appointed to serve for a period of at least two (2) years; and if a deputy sheriff, he agrees to reside in the county wherein he is appointed within ninety (90) days of his appointment, and to continue his residence therein during the term of his appointment. Any deputy sheriff appointed pursuant to this section who has not been a resident of the county for a period of at least two (2) years shall not be an active participant in any labor dispute and shall immediately forfeit his position if he violates this provision;
- (3) He has never been convicted of a crime involving moral turpitude;
- (4) He has not within a period of two (2) years hired himself out, performed any service, or received any compensation from any private source for acting, as a privately paid detective, policeman, guard, peace officer or otherwise as an active participant in any labor dispute, or conducted the business of a private detective agency or of any agency supplying private detectives, private policemen, or private guards, or advertised or solicited any such business in connection with any labor dispute; and
- (5) He has complied with the provisions of KRS 15.333.

Section 2. KRS 61.360 is amended to read as follows:

The Governor or his agent may appoint special local peace officers, for such time as he deems necessary, to preserve the peace and protect the property of any person from waste or destruction, provided, however, that no such peace

officer(s) shall be actively employed at any factory, mine, workshop, retail establishment, or at any other location where a strike, a slowdown, a sit in, or any other type of work stoppage exists, if the employment of such peace officer(s) would result in the unreasonable expansion of the normal complement of such peace officers or the relieving of normal guards or peace officers to perform other duties. Upon the application of an owner of property for such services, and upon payment of a fee of ten dollars (\$10) for each officer to be appointed, the Governor may immediately appoint the person recommended by the owner, if the person is eligible. No person shall be eligible for appointment under this section unless he has established to the satisfaction of the Governor that he possesses the following qualifications:

- (1) No person shall serve as a special local peace officer:
 - (a) Unless he is a citizen of the United States, is twenty-one (21) years of age or over, and unless he is able to read and write;
 - (b) Unless he has resided in the *Commonwealth* ~~county wherein he is appointed to serve~~ for a period of at least one (1) year;
 - (c) Who has ever been convicted of or is under indictment for a crime involving moral turpitude, dishonesty, or fraud; unauthorized divulging or selling of information or evidence; impersonation of a law enforcement officer or employee of the United States or any state or political subdivision thereof; illegally using, carrying, or possessing a firearm or dangerous weapon; habitual drunkenness; using or selling or possessing narcotics; or who has been adjudged mentally disabled by a court of competent jurisdiction and such adjudication has not been set aside; or has renounced his citizenship, or, being an alien, is illegally or unlawfully in the United States;
 - (d) Who within a period of two (2) years has hired himself out, performed any service, or received any compensation from any private source for acting, as a privately paid detective, policeman, guard, peace officer, or otherwise as an active participant in any labor dispute, or conducted the business of a private detective agency or of any agency supplying private detectives, private policemen, or private guards, or advertised or solicited any such business in connection with any labor dispute;
 - (e) Unless he has filed his photograph with the county clerk of the county in which he is to serve, together with his affidavit stating his full name, age, and residence address and that he is not prohibited from serving by this section.
- (2) The photograph so filed with the county clerk shall constitute a public record. The Governor may remove any officer so appointed at will or at the request of the owner of the property.
- (3) The duties of the officer shall be confined to the premises of the property to be protected, except while in pursuit of a person fleeing from the property after committing an act of violence or destruction of the property. In that case, the officer may pursue the person and make arrest anywhere within this state. He may wear such badges and insignia as will plainly indicate to the public that he is a special local peace officer, but he shall not, in any event, wear any uniform, or any part thereof, of any public police officer; nor shall he in any way impersonate a public police officer or represent himself to any person or persons as being a public police officer; nor shall he perform any of the duties of a public police officer, except those specifically herein granted and at the places herein specifically designated.
- (4) Application fees shall be placed in the State Treasury and credited to a revolving fund for administrative expenses.
- (5) Every special local peace officer appointed pursuant to this section shall execute bond in the amount of five thousand dollars (\$5,000).

Approved March 23, 1998

CHAPTER 99

(HB 415)

AN ACT relating to insurance.

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

Section 1. KRS 304.36-020 is amended to read as follows:

The purpose of this subtitle is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to *the extent provided in this subtitle to minimize*~~avoid~~ financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide *a means of funding*~~an association to assess~~ the cost of such protection among insurers.

Section 2. KRS 304.36-030 is amended to read as follows:

- (1) This subtitle shall apply to all kinds of direct insurance, except:
- (a) *Life, annuity, health, or disability;*
 - (b) *Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;*
 - (c) *Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;*
 - (d) *Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, indemnification for repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or that provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits;*
 - (e) *Title insurance;*
 - (f) *Ocean marine insurance;*
 - (g) *Any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, that involves the transfer of investment or credit risk and that is unaccompanied by transfer of insurance risk; or*
 - (h) *Any insurance provided, written, reinsured, or guaranteed by any government or governmental agencies*~~life, health, title, credit, mortgage guaranty, and ocean marine insurance~~.
- (2) Notwithstanding subsection (1) of this section, this subtitle shall apply to health insurance where such insurance is written by a member of the Kentucky Insurance Guaranty Association.

Section 3. KRS 304.36-040 is amended to read as follows:

This subtitle shall be ~~liberally~~ construed to effect the purpose under KRS 304.36-020 which shall constitute an aid and guide to interpretation.

Section 4. KRS 304.36-050 is amended to read as follows:

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

- (1) *"Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer.*
- (2) *"Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060.*
- (3) *"Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.*
- ~~(4)~~~~(2)~~ *"Commissioner" means the commissioner of insurance of Kentucky.*
- (5) *"Control" means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of any other person. This presumption may be rebutted by a showing that control does not exist in fact.*

(6) (a) ~~(3)~~ "Covered claim" means an unpaid claim, including one for unearned premiums, *submitted by a claimant*, which arises out of and is within the coverage *and is subject to the applicable limits* of an insurance policy to which this subtitle applies issued by an insurer, if ~~the~~~~such~~ insurer becomes an insolvent insurer after June 16, 1972, and:

1. ~~(a)~~ The claimant or insured is a resident of this state at the time of the insured event, *provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event*; or
2. ~~(b)~~ The *claim is a first-party claim for damage to property with a permanent location* ~~property from which the claim arises is permanently located~~ in this state.

(b) "Covered claim" shall not include *the following*:

1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;
2. *Any amount sought as a return of premium under any retrospective rating plan or dividends plan*;
3. *Legal expenses for policyholders who were not Kentucky residents on the date of the insured event*;
4. *Legal expenses for policyholders who were Kentucky residents at the time of the insured event if the legal expenses exceed the association's statutory cap*;
5. *Any first-party claim by an insured whose net worth exceeds twenty-five million dollars (\$25,000,000) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer, provided that an insurer's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis*;
6. *Any first-party claim by an insured that is an affiliate of an insolvent insurer*; or
7. *Any amount awarded as punitive or exemplary damages*.

(7) ~~(4)~~ "Insolvent insurer" means:

- (a) An insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred: ~~and~~
- (b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after June 16, 1972; ~~and~~
- (c) With respect to which no order, decree, or finding relating to the solvency of the insurer, whether preliminary or temporary in nature or otherwise has been issued by a court of competent jurisdiction or by any insurance commissioner, insurance department or similar official or body before June 16, 1972, or which was in fact insolvent before June 16, 1972, and ~~the~~~~such~~ de facto insolvency was known by the chief insurance regulatory official of the state of its domicile.

(8) ~~(5)~~ "Member insurer" means:

- (a) Any person who ~~(a)~~ writes any kind of insurance to which this subtitle applies under KRS 304.36-030, including the exchange of reciprocal or inter-insurance contracts: ~~and~~
- (b) *Any person who* is licensed to transact insurance in this state. *For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of his license to transact the kinds of insurance to which this subtitle applies. However, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license.*

(9) ~~(6)~~ "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees and policy fees levied and collected in this

state, less returns thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

- (10) *"Ocean marine insurance" includes any form of insurance, regardless of name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person. "Ocean marine insurance" includes that coverage written in accordance with the following:*
- (a) *The Jones Act (46 U.S.C. sec. 688);*
 - (b) *The Longshore and Harbor Workers' Compensation Act D(33 U.S.C. sec. 901 et seq.); or*
 - (c) *Any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.*

- (11) *"Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim.*

~~{(7) "Person" means any individual, corporation, partnership, association or voluntary organization.}~~

Section 5. KRS 304.36-080 is amended to read as follows:

- (1) The association shall:
- (a) Be obligated to the extent of the covered claims existing prior to the **order of liquidation**~~{determination of insolvency}~~ and arising within thirty (30) days after the **order of liquidation**~~{determination of insolvency}~~, or before the policy expiration date if less than thirty (30) days after the **order of liquidation**~~{determination}~~, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty (30) days of the **order of liquidation**~~{determination}~~. **The obligation shall be satisfied by paying to the claimant an amount as follows:**
 - 1. *The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;*
 - 2. *An amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium; or*
 - 3. *An amount not exceeding three hundred thousand dollars (\$300,000) per claimant for all other covered claims.*
 - (b) *Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars (\$10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a pre-insolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a*

~~manner as the association in its discretion deems equitable~~ ~~[Except in the case of a policy of workers' compensation insurance purchased to satisfy the requirements of KRS 342.340, such obligation shall include only that amount of each covered claim which is less than one hundred thousand dollars (\$100,000). In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises];~~

(c) ~~(b)~~ Be deemed the insurer to the extent of its obligation on the covered claims and to ~~that~~ ~~[such]~~ extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, **including but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations;**

(d) ~~(c)~~ Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under KRS 304.36-130 and other expenses authorized by this subtitle. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than **two percent (2%)** ~~one percent (1%)~~ of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;

(e) ~~(d)~~ Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;

(f) ~~(e)~~ Notify such persons as the commissioner directs under KRS 304.36-100(2)(a);

(g) ~~(f)~~ Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer; and

(h) ~~(g)~~ Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.

(2) The association may:

- (a) Appear in, defend, and appeal any action on a claim brought against the association;
- (b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
- (c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;
- (d) Sue or be sued;
- (e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;
- (f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and

- (g) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

Section 6. KRS 304.36-090 is amended to read as follows:

- (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.
- (b) If the association fails to submit a suitable plan of operation within ninety (90) days following June 16, 1972, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subtitle. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
- (2) All member insurers shall comply with the plan of operation.
- (3) The plan of operation shall:
- (a) Establish the procedures whereby all the powers and duties of the association under KRS 304.36-080 will be performed.
- (b) Establish procedures for handling assets of the association.
- (c) Establish the amount and method of reimbursing members of the board of directors under KRS 304.36-070.
- (d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.
- (e) Establish regular places and times for meetings of the board of directors.
- (f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.
- (g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.
- (h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.
- (i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation may provide that any or all powers and duties of the association, except those under KRS 304.36-080(1)(c) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.
- (5) The plan of operation may *establish procedures by which claims may be* ~~provide that covered claims not~~ filed with the association *and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver or* ~~within the time limits required by law for the filing of claims with the~~ liquidator ~~shall be barred~~.

Section 7. KRS 304.36-110 is amended to read as follows:

- (1) Any person recovering under this subtitle shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this subtitle shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out, *except as follows*:
 - (a) *Any insured whose net worth on December 31 of the year next preceding the date the insurer becomes an insolvent insurer exceeds twenty-five million dollars (\$25,000,000) and whose liability obligations to other persons are satisfied in whole or in part by payments made under this subtitle;*
 - (b) *Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this subtitle; and*
 - (c) *No limitation is placed on the ability of the association to recover from the principal all claim payments and expenses arising from a surety contract that is a covered claim to the association.*
- (2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this subtitle against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.
- (3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

Section 8. KRS 304.36-120 is amended to read as follows:

- (1) Any person having a claim against ~~an~~^{his} insurer under any provision in ~~an~~^{his} insurance policy *other than the policy of an insolvent insurer* which is also a covered claim shall be required to exhaust first his right under ~~the~~^{such} policy. Any amount payable on a covered claim under this subtitle shall be reduced by the amount of ~~off~~^{such} recovery under the ~~claimant's~~ insurance policy. *Any provision in an insurance policy includes but is not limited to the following coverages: basic reparation benefits under KRS Chapter 304, Subtitle 39, uninsured motorist, underinsured motorist, workers' compensation, and health care.*
- (2) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery under this subtitle shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.
- (3) The guaranty association shall receive the benefit of any reinsurance contract or treaties entered into by the insolvent insurer which cover any of the liabilities incurred by the insolvent insurer with respect to covered claims.

SECTION 9. A NEW SECTION OF SUBTITLE 36 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to waiver by the association in specific cases involving covered claims, be stayed for six (6) months and any additional time that may be determined by the court from the date that the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to covered claims arising from a judgment under decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of an insured, may apply to have the judgment, order, decision, verdict, or finding vacated or set aside and shall be permitted to defend the claim on its merits.

Approved March 23, 1998

CHAPTER 100**(HB 129)**

AN ACT relating to public assistance under Title IV-A of the federal Social Security Act.

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

Section 1. KRS 205.010 is amended to read as follows:

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

- (1) "Cabinet" means the Cabinet for Human Resources;
- (2) "Secretary" means the secretary for human resources or his authorized representative;
- (3) "Public assistance" means money grants, assistance in kind, or services to or for the benefit of needy aged, needy blind, needy permanently and totally disabled persons, needy children, or persons with whom a needy child lives or a family containing a combination of these categories, except that the term shall not be construed to permit the granting of financial aid where the purpose of such aid is to obtain an abortion. For purposes of this section and KRS 205.560, "abortion" means an act, procedure, device, or prescription administered or prescribed for a pregnant woman by any person, including the pregnant woman herself producing premature expulsion of the fetus. Abortion does not include an induced premature birth intended to produce a live viable child;
- (4) "Needy child" means a child who has been deprived of parental support by reasons prescribed by regulations within the scope of Title IV of the Social Security Act, its amendments, and federal regulations and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (5) "Parent", in addition to biological or adoptive parent, shall include stepparent;
- (6) "Needy aged" means a person who has attained the age of sixty-five (65) and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (7) "Needy blind" means a person who has no vision or whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (8) "Person with whom a needy child lives" means the individual prescribed by regulation, with whom such child is living in a place of residence maintained by such individual by himself or together with one (1) or more other persons;
- (9) "Needy permanently and totally disabled" means a person eighteen (18) years of age or older and who has a permanent physical or mental impairment, disease, or loss that substantially precludes him from engaging in useful occupations within his competence and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (10) "Private institution" means any establishment or place other than a public institution operated or maintained by any individual, association, corporation, or other organization which provides a group living arrangement for four (4) or more individuals, who are cared for and maintained in residence for compensation or otherwise;
- (11) "Public institution" means any establishment or place which is the responsibility of and administered by the state or any political subdivision thereof providing a group living arrangement in which one (1) or more individuals are cared for and maintained in residence;
- (12) "Public medical institution" means any public institution the primary purpose of which is to furnish hospital care and medical treatment;
- (13) "Person determined to be potentially responsible" means any person who:
 - (a) Is not aged, blind, disabled, incapacitated, or needed in the home:
 1. Because of the illness or incapacity of a member of the family; or
 2. Because of children in the home under the age of six; or
 - (b) Volunteers for such determination;

(14) ~~As used in KRS 205.650 to 205.700, unless the context otherwise requires:~~

- (a) ~~"Community work experience program" shall mean a program to provide work experience and training for recipients of public assistance who are not otherwise able to obtain employment or who are not actively participating in training or education programs;~~
- (b) ~~"Designated geographic area" shall mean one (1) county or a portion of one (1) county selected by the secretary as the site of a community work experience program; and~~
- (c) ~~"Recipient" shall mean a person who currently receives benefits from public assistance;~~

(15) ~~Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.~~

(15) ~~(16)~~ "Adult day-care center" means any adult care facility which provides part-time care, day or night, but less than twenty-four (24) hours, to at least four (4) adults not related to the operator of the adult care facility by blood, marriage, or adoption.

Section 2. KRS 205.200 is amended to read as follows:

- (1) A needy aged person, a needy blind person, a needy child, a needy permanently and totally disabled person, or a person with whom a needy child lives shall be eligible to receive a public assistance grant only if he has made a proper application or an application has been made on his behalf in the manner and form prescribed by administrative regulation. No individual shall be eligible to receive public assistance under more than one (1) category of public assistance for the same period of time.
- (2) The secretary shall, by administrative regulations, prescribe the conditions of eligibility for public assistance in conformity with the public assistance titles of the Social Security Act, its amendments, and other federal acts and regulations. The secretary shall also promulgate administrative regulations to allow for between a forty percent (40%) and a forty-five percent (45%) ratable reduction in the method of calculating eligibility and benefits for *public assistance under Title IV-A of the federal Social Security Act* ~~aid to families with dependent children~~. In no instance shall grants to families with no income be less than the appropriate ~~aid to families with dependent children~~ grant maximum *used for public assistance under Title IV-A of the federal Social Security Act*. As used in this section, "ratable reduction" means the percentage reduction applied to the deficit between the family's countable income and the standard of need for the appropriate family size.
- (3) The secretary may by administrative regulation prescribe as a condition of eligibility that a needy child regularly attend school, and may further by administrative regulation prescribe the degree of relationship of the person or persons in whose home such needy child must reside.
- (4) The secretary may by administrative regulation prescribe conditions for bringing paternity proceedings or actions for support in cases of out of wedlock birth or nonsupport by a parent in the *public assistance under Title IV-A of the federal Social Security Act* ~~aid to families with dependent children~~ program.
- (5) Public assistance shall not be payable to or in behalf of any individual who has taken any legal action in his own behalf or in the behalf of others with the intent and purpose of creating eligibility for ~~the~~ ~~such~~ assistance.
- (6) The cabinet shall promptly notify the appropriate law enforcement officials of the furnishing of *public assistance under Title IV-A of the federal Social Security Act* ~~aid to families with dependent children~~ in respect to a child who has been deserted or abandoned by a parent.
- (7) No person shall be eligible for public assistance payments if, after having been determined to be potentially responsible, and afforded notice and opportunity for hearing, he refuses without good cause:
 - (a) To register for employment with the state employment service,
 - (b) To accept suitable training, or
 - (c) To accept suitable employment.

The secretary may prescribe by administrative regulation *subject to the provisions of KRS Chapter 13A* standards of suitability for training and employment.

- (8) To the extent permitted by federal law, scholarships, grants or other types of financial assistance for education shall not be considered as income for the purpose of determining eligibility for public assistance.

- (9) To the extent permitted by federal law, any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange" by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam shall not be considered as income for the purpose of determining eligibility or continuing eligibility for public assistance and shall not be subject to a lien or be available for repayment to the Commonwealth for public assistance received by the recipient.

~~[(10) The cabinet shall include a special needs allowance to recipients of aid to families with dependent children for costs associated with education and training, limited to transportation to and from training or educational programs and child care costs necessary for participation in education and training programs. The cabinet shall promulgate administrative regulations setting forth the special needs which will be recognized and the circumstances under which they will be included, the amount of special needs allowances and the length of time recipients may receive such allowances. Such administrative regulations shall provide that work expenses and child care costs resulting from employment in an employment search program or a community work experience program shall not be special needs.]~~

Section 3. KRS 205.2001 is amended to read as follows:

For purposes of eligibility for *public assistance under Title IV-A of the federal Social Security Act*, "*public assistance under Title IV-A of the federal Social Security Act*~~[aid to families with dependent children, "aid to families with dependent children]~~ standard of need" means ***an amount no less than*** the poverty income level by size of family unit, as annually issued by the U.S. Department of Health and Human Services, minus the combined value of the state's average Medicaid utilization for a given family size plus the value of U.S. food stamps for a given family size.

SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) ***The secretary shall by administrative regulations subject to the provisions of KRS Chapter 13 develop a work program for recipients of public assistance under Title IV-A of the federal Social Security Act to provide for immediate employment or preparation for employment.***
- (2) ***Self-sufficiency of participants shall be the primary goal of the work program. Participants shall bear the ultimate responsibility in pursuit of this goal.***
- (3) ***In partnership with participants, the cabinet shall assess their strengths and needs and provide supportive services to assist in the pursuit of work and self-sufficiency.***

Section 5. KRS 116.048 is amended to read as follows:

- (1) The following agencies are designated as voter registration agencies in accordance with the National Voter Registration Act of 1993:
 - (a) Agencies that provide benefits under *public assistance under Title IV-A of the federal Social Security Act*, the~~[Aid to Families with Dependent Children,]~~ Special Supplemental Food Program for Women, Infants, and Children, ***the Kentucky Medical Assistance Program***~~[Medicaid]~~, or ***the Food Stamps Program***~~[Programs]~~;
 - (b) Armed Forces recruitment offices;
 - (c) Other agencies as the Secretary of State shall determine to be providing public assistance; and
 - (d) Other agencies as the Secretary of State shall determine to be state-funded programs primarily engaged in providing services to persons with disabilities.
- (2) A voter registration agency that provides service or assistance in conducting voter registration shall:
 - (a) Distribute with each application for its service or assistance, and with each recertification, renewal, or change of address form, the office's own voter registration application form that complies with the requirements of Section 7 of Public Law 103-31, the National Voter Registration Act of 1993;
 - (b) Provide a form that includes:
 1. The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";
 2. If the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

3. Boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of paragraph (c) of this subsection), together with the statement in close proximity to the boxes and in prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";
 4. The statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and
 5. The statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____.", the blank being filled by the name, address, and telephone number of the appropriate official to whom a complaint should be addressed; and
- (c) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses assistance.
- (3) (a) At each voter registration agency, the following services shall be made available:
1. Distribution of mail voter registration forms;
 2. Assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance; and
 3. Acceptance of completed voter registration application forms for transmittal to the county clerk of the county of the applicant's voting residence.
- (b) If a voter registration agency designated under subsection (1)(d) of this section provides services to a person with a disability at the person's home, the agency shall provide the services described in paragraph (a) of this subsection at the person's home.
- (4) A person who provides services described in subsection (3) of this section shall not:
- (a) Seek to influence an applicant's political preference or party registration;
 - (b) Display any material indicating the person's political preference or party allegiance;
 - (c) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
 - (d) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register to vote has any bearing on the availability of services or benefits.
- (5) The State Board of Elections may designate requirements for record keeping and document retention it deems necessary to comply with the National Voter Registration Act of 1993 and the provisions of this chapter.
- (6) (a) A completed registration application accepted at a voter registration agency shall be transmitted to the county clerk of the county of the applicant's voting residence or the State Board of Elections not later than ten (10) days after the date of acceptance.
- (b) If a registration application is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk of the county of the applicant's voting residence or the State Board of Elections not later than five (5) days after the date of acceptance.

Section 6. KRS 205.710 is amended to read as follows:

As used in KRS 205.712 to 205.800, unless the context clearly dictates otherwise:

- (1) "Cabinet" shall mean the Cabinet for Human Resources;
- (2) "Secretary" shall mean the secretary of the Cabinet for Human Resources;

- (3) "Court order" shall mean any judgment, decree, or order of the courts of this state or any other state. For the purposes of KRS 205.715 to 205.800, 403.215, 405.405 to 405.520, and 530.050, it shall also include an order of an authorized administrative body;
- (4) "Dependent child" or "needy dependent child" shall mean any person under the age of eighteen (18), or under the age of nineteen (19) if in high school, who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and is a recipient of or applicant for services under Part D of Title IV of the Social Security Act;
- (5) "Duty of support" shall mean any duty of support imposed or imposable by law or by court order, decree, or judgment, whether interlocutory or final, and includes the duty to pay maintenance when included in the child support order or when assigned to the cabinet and arrearages of support past due and unpaid in addition to medical support whenever health care coverage is available at a reasonable cost;
- (6) "Recipient" shall mean a relative or payee within the meaning of the Social Security Act and federal and state regulations who is receiving public assistance on behalf of a needy dependent child;
- (7) "Consumer reporting agency" means any person or organization which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;
- (8) "Obligor" means a parent who has an obligation to provide support;
- (9) "Employer" means any individual, sole proprietorship, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which hires and pays an individual for his services;
- (10) "Income" means but is not limited to any of the following:
 - (a) Commissions, earnings, salaries, wages, and other income due or to be due in the future from a person's employer and successor employers;
 - (b) Any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, proceeds derived from state lottery winnings, unemployment compensation, supplemental unemployment benefits, and workers' compensation; and
 - (c) Any amount of money which is due to the obligor under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the obligor;
- (11) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and notwithstanding any other provision of law exempting such payments from garnishment, attachment, or other process to satisfy support obligations and specifically includes periodic payments from pension and retirement programs and insurance policies of any kind. Earnings shall include all gain derived from capital, from labor, or both, including profit gained through sale or conversion of capital assets and unemployment compensation benefits, or any other form of monetary gain. The term "disposable earnings" means that part of earnings remaining after deductions of any amounts required by law to be withheld;
- (12) "Enforce" means to employ any judicial or administrative remedy under KRS 405.405 to 405.420 and KRS 405.991(2) or under any other Kentucky law;
- (13) "Need" includes, but is not limited to, the necessary cost of food, clothing, shelter, and medical care. The amount determined under the suggested minimum support obligation scale shall be rebuttably presumed to correspond to the parent's ability to pay and the need of the child. A parent shall be presumed to be unable to pay child support from any income received from ~~aid to families with dependent children, or other continuing~~ public assistance *under Title IV-A of the federal Social Security Act*;
- (14) "Parent" means a biological or adoptive mother or father of a child born in wedlock or a father of a child born out of wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the

laws of this or any other state, whose child is entitled to support, pursuant to court order, statute, or administrative determination; and

- (15) "Real and personal property" includes all property of all kinds, including but not limited to, all gain derived from capital, labor, or both; compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise; periodic payments from pension and retirement programs; and unemployment compensation and insurance policies.

Section 7. KRS 205.721 is amended to read as follows:

- (1) All services available to individuals receiving **public assistance under Title IV-A of the federal Social Security Act** ~~aid to families with dependent children (AFDC)~~ benefits shall also be available to individuals not receiving **public assistance** ~~AFDC~~ benefits, upon application by the individual with the cabinet.
- (2) The cabinet shall continue to provide IV-D services when a family ceases to receive public assistance without requiring a formal application and without payment of the application fee specified in subsection (3) of this section. IV-D services shall be discontinued upon the request of the recipient.
- (3) Except as provided in subsection (2) of this section, the cabinet may charge an application fee for the services based on a fee schedule, which shall take into account the applicant's net income. No application fee shall be required from individuals receiving public assistance.

Section 8. KRS 403.212 is amended to read as follows:

- (1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.
- (2) For the purposes of the child support guidelines:
- (a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.
- (b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to **public assistance under Title IV-A of the federal Social Security Act and** ~~Aid to Families with Dependent Children (AFDC), and~~ food stamps.
- (c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.
- (d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility. Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the

community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

- (e) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines.
- (f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed.
- (g) "Combined adjusted parental gross income" means the combined gross incomes of both parents, less any of the following payments made by the parent:
1. The cost of health insurance coverage for the child;
 2. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;
 3. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and
 4. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.
- (3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their adjusted gross income.
- (4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars (\$60) per month.
- (5) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.
- (6) The child support guidelines table is as follows:

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME						
	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE
\$ 0	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60
100	60	60	60	60	60	60
200	70	70	70	70	70	70
300	80	80	80	80	80	80
400	90	90	90	90	90	90
500	100	105	110	115	120	125
600	120	125	130	135	140	145
700	140	156	161	166	171	176
800	160	203	208	213	218	223

900	180	261	266	271	276	281
1,000	195	303	325	330	335	340
1,100	212	324	384	389	394	399
1,200	229	346	433	446	451	456
1,300	246	367	460	504	510	515
1,400	262	392	491	554	576	582
1,500	277	417	522	588	642	650
1,600	293	437	548	618	674	717
1,700	308	458	574	647	706	755
1,800	322	478	599	675	736	788
1,900	336	495	620	699	763	816
2,000	350	512	642	723	789	844
2,100	364	529	663	747	815	872
2,200	376	546	684	771	841	900
2,300	389	563	706	795	868	928
2,400	401	580	727	819	894	956
2,500	413	597	749	843	920	984
2,600	424	614	770	867	946	1,012
2,700	435	630	790	889	970	1,038
2,800	445	646	809	911	994	1,064
2,900	455	662	829	934	1,019	1,090
3,000	465	677	849	956	1,043	1,116
3,100	475	693	868	978	1,067	1,142
3,200	485	709	888	1,001	1,092	1,168
3,300	495	725	908	1,023	1,116	1,194
3,400	506	741	928	1,045	1,140	1,220
3,500	516	757	947	1,067	1,164	1,246
3,600	526	773	967	1,090	1,189	1,272
3,700	536	790	988	1,113	1,215	1,299
3,800	548	808	1,011	1,139	1,243	1,329
3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418
4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507
4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561

ACTS OF THE GENERAL ASSEMBLY

4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661
5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950
6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058
6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194
7,700	896	1,342	1,679	1,893	2,066	2,208
7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238
8,000	912	1,368	1,713	1,929	2,106	2,252
8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311

8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354
8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472
9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493
10,400	1,022	1,541	1,932	2,202	2,372	2,536
10,500	1,027	1,548	1,940	2,212	2,382	2,546
10,600	1,032	1,554	1,948	2,221	2,392	2,557
10,700	1,036	1,561	1,956	2,230	2,402	2,567
10,800	1,040	1,567	1,965	2,240	2,412	2,578
10,900	1,044	1,573	1,973	2,249	2,422	2,589
11,000	1,049	1,580	1,981	2,258	2,432	2,599
11,100	1,053	1,587	1,989	2,268	2,443	2,610
11,200	1,058	1,593	1,997	2,277	2,453	2,620
11,300	1,062	1,600	2,005	2,286	2,463	2,631
11,400	1,066	1,606	2,013	2,295	2,473	2,642
11,500	1,070	1,613	2,021	2,305	2,483	2,652
11,600	1,075	1,619	2,029	2,314	2,493	2,663
11,700	1,079	1,626	2,037	2,323	2,503	2,673
11,800	1,084	1,633	2,046	2,333	2,513	2,684
11,900	1,088	1,639	2,054	2,342	2,523	2,695
12,000	1,093	1,646	2,062	2,351	2,533	2,705
12,100	1,097	1,653	2,070	2,361	2,544	2,716
12,200	1,102	1,659	2,078	2,370	2,554	2,726
12,300	1,106	1,666	2,086	2,379	2,564	2,737
12,400	1,110	1,672	2,094	2,388	2,574	2,748
12,500	1,114	1,679	2,102	2,398	2,584	2,758

ACTS OF THE GENERAL ASSEMBLY

12,600	1,119	1,685	2,110	2,407	2,594	2,769
12,700	1,123	1,692	2,118	2,416	2,604	2,779
12,800	1,128	1,699	2,127	2,426	2,614	2,790
12,900	1,132	1,705	2,135	2,435	2,624	2,801
13,000	1,137	1,712	2,143	2,444	2,634	2,811
13,100	1,141	1,719	2,151	2,454	2,645	2,822
13,200	1,146	1,725	2,159	2,463	2,665	2,832
13,300	1,150	1,732	2,167	2,472	2,665	2,843
13,400	1,154	1,738	2,175	2,481	2,675	2,854
13,500	1,158	1,745	2,183	2,491	2,685	2,864
13,600	1,163	1,751	2,191	2,500	2,695	2,875
13,700	1,167	1,758	2,199	2,509	2,705	2,885
13,800	1,172	1,765	2,208	2,519	2,715	2,896
13,900	1,176	1,771	2,216	2,528	2,725	2,907
14,000	1,181	1,778	2,224	2,537	2,735	2,917
14,100	1,185	1,785	2,232	2,547	2,746	2,928
14,200	1,190	1,791	2,240	2,556	2,756	2,938
14,300	1,194	1,798	2,248	2,565	2,766	2,949
14,400	1,198	1,804	2,256	2,574	2,776	2,960
14,500	1,202	1,811	2,264	2,584	2,786	2,970
14,600	1,207	1,817	2,272	2,593	2,796	2,981
14,700	1,211	1,824	2,280	2,602	2,806	2,991
14,800	1,216	1,831	2,289	2,612	2,816	3,002
14,900	1,220	1,837	2,297	2,621	2,826	3,013
15,000	1,225	1,844	2,305	2,630	2,836	3,023

Section 9. KRS 205.690 is amended to read as follows:

The secretary shall submit a written report to the General Assembly during each regular session thereof and shall upon written request, submit a written report to or appear in person before any joint interim committee of the General Assembly within thirty (30) days of such request, the following information ***related to the implementation of Section 4 of this Act***:

- (1) The number of recipients placed in ***public and private*** ~~[a community]~~ work experience ***programs*** ~~[program]~~;
- (2) The number of recipients placed ***in*** ~~[from such program into]~~ regular full-time employment; and
- (3) The costs to the Commonwealth and participating local agencies or organizations of the implementation of ***the work program required under Section 4 of this Act*** ~~[such program]~~.

Section 10. The following KRS sections are repealed:

195.120 Purpose of KRS 195.130 and 195.140.

195.130 Definition for KRS 195.120 to 195.140.

195.140 Programs for displaced homemakers.

205.2002 Education or training or employment of adults in families with dependent children -- Goals for cabinet -- Sanctions for noncompliance -- Report to General Assembly.

- 205.215 Short-term assistance to families with children.
- 205.650 Development of programs.
- 205.660 Participation as a condition of receiving public assistance -- Exceptions.
- 205.670 Specifications of types of programs -- Hours -- Transportation.
- 205.680 Conditions for types of employment.
- 205.700 Participation by food stamp recipients.
- 205.810 Money payment in crisis situation -- Eligibility -- Limitations -- Reimbursement -- Registration for employment -- Prompt payment.

Approved March 23, 1998

CHAPTER 101

(HB 159)

AN ACT relating to child support and declaring an emergency.

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

Section 1. KRS 407.5101 is amended to read as follows:

As used in KRS 407.5101 to 407.5902:

- (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- (2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
- (3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
- (4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six (6) month or other period.
- (5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.
- (6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by KRS 403.212, to withhold support from the income of the obligor.
- (7) "Initiating state" means a state ~~from~~ ⁱⁿ which a proceeding ***is forwarded or in which a proceeding is filed for forwarding to a responding state*** under this chapter or a law ***or procedure*** substantially similar to KRS 407.5101 to 407.5902, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act ~~is filed for forwarding to a responding state~~.
- (8) "Initiating tribunal" means the authorized tribunal in an initiating state.
- (9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.
- (10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.
- (11) "Law" includes decisional and statutory law and rules and regulations having the force of law.
- (12) "Obligee" means:
 - (a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

- (b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
 - (c) An individual seeking a judgment determining parentage of the individual's child.
- (13) "Obligor" means an individual, or the estate of a decedent:
- (a) Who or is alleged to owe a duty of support;
 - (b) Who is alleged but has not been adjudicated to be a parent of a child; or
 - (c) Who is liable under a support order.
- (14) "Register" means to file a support order or judgment determining parentage with the Cabinet for Human Resources.
- (15) "Registering tribunal" means a tribunal in which a support order is registered.
- (16) "Responding state" means a state ~~in~~ ~~to~~ which a proceeding is **filed or to which a proceeding is** forwarded **for filing from an initiating state** under this chapter or a law **or procedure** substantially similar to KRS 407.5101 to 407.5902, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
- (17) "Responding tribunal" means the authorized tribunal in a responding state.
- (18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.
- (19) "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, **the United States Virgin Islands**, or any territory or insular possession subject to the jurisdiction of the United States. The term ~~"state"~~ includes:
- (a) Indian tribe; and ~~includes~~
 - (b) A foreign jurisdiction that has **enacted a law or** established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, **the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.**
- (20) "Support enforcement agency" means a public official or agency authorized to seek:
- (a) Enforcement of support orders or laws relating to the duty of support;
 - (b) Establishment or modification of child support;
 - (c) Determination of parentage; or
 - (d) To locate obligors or their assets.
- (21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.
- (22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Section 2. KRS 407.5205 is amended to read as follows:

- (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:
- (a) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
 - (b) Until **all of the parties who are individuals have** ~~each individual party has~~ filed written **consents** ~~consent~~ with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

- (2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to KRS 407.5101 to 407.5902.
- (3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to KRS 407.5101 to 407.5902, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:
 - (a) Enforce the order that was modified as to amounts accruing before the modification;
 - (b) Enforce nonmodifiable aspects of that order; and
 - (c) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
- (4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to KRS 407.5101 to 407.5902.
- (5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
- (6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Section 3. KRS 407.5207 is amended to read as follows:

- (1) If a proceeding is brought under *this chapter and only one (1) tribunal has issued a child support order, the order of that tribunal controls and shall be recognized.*
- (2) *If a proceeding is brought under KRS 407.5101 to 407.5902 and two (2) or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:*
 - (a) *If only one (1) of the tribunals would have continuing, exclusive jurisdiction under KRS 407.5101 to 407.5902, the order of that tribunal controls and shall be recognized.*
 - (b) *If more than one (1) of the tribunals would have continuing, exclusive jurisdiction under KRS 407.5101 to 407.5902, an order issued by a tribunal in the current home state of the child controls and shall be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and shall be recognized.*
 - (c) *If none of the tribunals would have continuing, exclusive jurisdiction under KRS 407.5101 to 407.5902, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which controls and shall be recognized.*
- (3) *If two (2) or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and shall be recognized under subsection (2) of this section. The request shall be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination. ~~[KRS 407.5101 to 407.5902, and one (1) or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:~~*
 - ~~(a) If only one (1) tribunal has issued a child support order, the order of that tribunal must be recognized.~~
 - ~~(b) If two (2) or more tribunals have issued child support orders for the same obligor and child, and only one (1) of the tribunals would have continuing, exclusive jurisdiction under KRS 407.5101 to 407.5902, the order of that tribunal must be recognized.~~
 - ~~(c) If two (2) or more tribunals have issued child support orders for the same obligor and child, and more than one (1) of the tribunals would have continuing, exclusive jurisdiction under KRS 407.5101 to~~

~~407.5902, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.~~

- ~~(d) If two (2) or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under KRS 407.5101 to 407.5902, the tribunal of this state may issue a child support order, which must be recognized.]~~
- ~~(4)(2)~~ The tribunal ~~that~~~~[which has]~~ issued *the controlling*~~[an]~~ order~~[recognized]~~ under subsection (1), (2), or (3) of this section is the tribunal *that has*~~[having]~~ continuing, exclusive jurisdiction *under Section 2 of this Act.*
- (5) *A tribunal of this state that determines by order the identity of the controlling order under subsection (2)(a) or (2)(b) of this section or that issues a new controlling order under subsection (2)(c) of this section shall state in that order the basis upon which the tribunal made its determination.*
- (6) *Within thirty (30) days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.*

Section 4. KRS 407.5304 is amended to read as follows:

- (1) Upon the filing of a petition authorized by KRS 407.5101 to 407.5902, an initiating tribunal of this state shall forward three (3) copies of the petition and its accompanying documents:
- (a)~~(1)~~ To the responding tribunal or appropriate support enforcement agency in the responding state; or
- (b)~~(2)~~ If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.
- (2) *If a responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to the Uniform Interstate Family Support Act, a tribunal of this state may issue a certificate or other document and make findings required by law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.*

Section 5. KRS 407.5305 is amended to read as follows:

- (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to KRS 407.5301(3), it shall cause the petition or pleading to be filed and notify the petitioner~~[by certified mail, return receipt requested,]~~ where and when it was filed.
- (2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one (1) or more of the following:
- (a) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (c) Order income withholding;
- (d) Determine the amount of any arrearages, and specify a method of payment;
- (e) Enforce orders by civil or criminal contempt, or both;
- (f) Set aside property for satisfaction of the support order;
- (g) Place liens and order execution on the obligor's property;
- (h) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

- (i) Issue a bench warrant or writ of arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant or writ of arrest in any local and state computer systems for criminal warrants;
 - (j) Order the obligor to seek appropriate employment by specified methods;
 - (k) Award reasonable attorney's fees and other fees and costs; and
 - (l) Grant any other available remedy.
- (3) A responding tribunal of this state shall include in a support order issued under KRS 407.5101 to 407.5902, or in the documents accompanying the order, the calculations on which the support order is based.
- (4) A responding tribunal of this state may not condition the payment of a support order issued under KRS 407.5101 to 407.5902 upon compliance by a party with provisions for visitation.
- (5) If a responding tribunal of this state issues an order under KRS 407.5101 to 407.5902, the tribunal shall send a copy of the order ~~by certified mail, return receipt requested,~~ to the petitioner and the respondent and to the initiating tribunal, if any.

Section 6. KRS 407.5306 is amended to read as follows:

If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner ~~by certified mail, return receipt requested,~~ where and when the pleading was sent.

Section 7. KRS 407.5307 is amended to read as follows:

- (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.
- (2) A support enforcement agency that is providing services to the petitioner as appropriate shall:
 - (a) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
 - (b) Request an appropriate tribunal to set a date, time, and place for a hearing;
 - (c) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
 - (d) Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from initiating, responding, or registering tribunal, send a copy of the notice ~~by certified mail~~ to the petitioner;
 - (e) Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by certified mail~~ to the petitioner; and
 - (f) Notify the petitioner if jurisdiction over the respondent cannot be obtained.
- (3) KRS 407.5101 to 407.5902 does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Section 8. KRS 407.5501 is amended to read as follows:

- (1) An income-withholding order issued in another state may be sent ~~by first class mail~~ to the person or entity defined as the obligor's employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state. ~~Upon receipt of the order, the employer shall:~~
 - ~~(a) Treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;~~
 - ~~(b) Immediately provide a copy of the order to the obligor; and~~
 - ~~(c) distribute the funds as directed in the withholding order.~~

- ~~(2) An obligor may contest the validity or enforcement of an income withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. KRS 407.5604 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~
- ~~(a) The person or agency designated to receive payments in the income withholding order; or~~
- ~~(b) If no person or agency is designated, the obligee.]~~

SECTION 9. A NEW SECTION OF KRS 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 407.5502:

- (1) *Upon receipt of an income-withholding order, the obligator's employer shall immediately provide a copy of an order to the obligor.*
- (2) *The employer shall treat an income-withholding order that has been issued in another state and that appears regular on its face as if it had been issued by a tribunal of this state.*
- (3) *Except as otherwise provided in subsection (4) of this section and Section 10 of this Act, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order terms that specify:*
 - (a) *The duration and amount of periodic payments of current child support, stated as a sum certain;*
 - (b) *The person or agency designated to receive payments and the address to which the payments are to be forwarded;*
 - (c) *Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;*
 - (d) *The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and*
 - (e) *The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.*
- (4) *An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:*
 - (a) *The employer's fee for processing an income-withholding order;*
 - (b) *The maximum amount permitted to be withheld from the obligor's income; and*
 - (c) *The times within which the employer must implement the withholding order and forward the child support payment.*

SECTION 10. A NEW SECTION OF KRS 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 407.5503:

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

SECTION 11. A NEW SECTION OF KRS CHAPTER 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 407.5504:

An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

SECTION 12. A NEW SECTION OF KRS 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 407.5505:

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

SECTION 13. A NEW SECTION OF KRS CHAPTER 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 407.5506:

- (1) *An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. KRS 407.5604 applies to the contest.*
- (2) *The obligor shall give notice of the contest to:*
 - (a) *A support enforcement agency providing services to the obligee;*
 - (b) *Each employer that has directly received an income-withholding order; and*
 - (c) *The person or agency designated to receive payments in the income-withholding order, or, if no person or agency is designated, the obligee.*

Section 14. KRS 407.5502 is repealed, reenacted, and renumbered as KRS 407.5507 to read as follows:

- (1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.
- (2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to KRS 407.5101 to 407.5902.

Section 15. KRS 407.5605 is amended to read as follows:

- (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by certified or registered mail or by any means of personal service authorized by the law of this state.~~ The notice ~~shall~~**must** be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
- (2) The notice ~~shall~~**must** inform the nonregistering party:
 - (a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
 - (b) That a hearing to contest the validity or enforcement of the registered order shall be requested within twenty (20) days ~~after the date of mailing or personal service~~ of the notice;
 - (c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
 - (d) Of the amount of any alleged arrearages.
- (3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to KRS 403.215 or KRS 405.465.

Section 16. KRS 407.5606 is amended to read as follows:

- (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty (20) days after ~~the date of mailing or personal service of~~ notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to KRS 407.5607.
- (2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
- (3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by certified mail, return receipt requested,~~ of the date, time, and place of the hearing.

Section 17. KRS 407.5611 is amended to read as follows:

- (1) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if *Section 18 of this Act does not apply and if* after notice and hearing it finds that:
 - (a) The following requirements are met:
 1. The child, the individual obligee, and the obligor do not reside in the issuing state;
 2. A petitioner who is a nonresident of this state seeks modification; and
 3. The respondent is subject to the personal jurisdiction of the tribunal of this state; or
 - (b) ~~An individual party or~~ The child, *or a party who is an individual*, is subject to the personal jurisdiction of the tribunal *of this state* and all of the ~~individual~~ parties *who are individuals* have filed ~~a~~ written consent ~~with~~ the issuing tribunal ~~for~~ a tribunal of this state ~~to~~ modify the support order and assume continuing, exclusive jurisdiction over the order. *However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.*
- (2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
- (3) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. *If two (2) or more tribunals have issued child support orders for the same obligor and child, the order that controls and shall be recognized under Section 3 of this Act establishes the nonmodifiable aspects of the support orders.*
- (4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.
- ~~(5) Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.~~

SECTION 18. A NEW SECTION OF KRS CHAPTER 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND BE NUMBERED AS KRS 407.5613:

- (1) *If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.*
- (2) *A tribunal of this state exercising jurisdiction under this section shall apply the provisions of KRS 407.5101 to 407.5209, KRS 407.5601 to 407.5614, and the procedural and substantive law of the state to the proceeding for enforcement or modification. KRS 407.5301 to 407.5507 and KRS 407.5701 to 407.5802 do not apply.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 407.5101 TO 407.5902 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 407.5614:

Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Section 20. Section 65 of 1996 Kentucky Acts Chapter 365 is hereby repealed and this section is enacted in lieu thereof. Whereas adoption of the Uniform Interstate Family Support Act, with amendments adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws, is a necessary condition for continued receipt of certain federal funds, an emergency is declared to exist and the following provisions take effect upon the passage and approval of this Act by the Governor or upon this Act's otherwise becoming a law:

- (1) This Act;
- (2) Those sections of Sections 13 to 63 of 1996 Kentucky Acts Chapter 365 not amended or not repealed and reenacted by this Act; and
- (3) Section 64 of 1996 Kentucky Acts Chapter 365.

Approved March 23, 1998

CHAPTER 102

(HB 370)

AN ACT relating to jail standards.

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

Section 1. KRS 441.055 is amended to read as follows:

- (1) The Department of Corrections shall for those counties which elect to house state prisoners in their jail:
 - (a) Adopt the recommendations of the Jail Standards Commission created pursuant to Executive Order number 81-1026 and promulgate regulations pursuant to KRS Chapter 13A establishing minimum standards for jails. These standards shall include, but not be limited to, rules governing the following areas:
 1. Health and safety conditions;
 2. Fire safety;
 3. Jail operations, recordkeeping, and administration;
 4. Curriculum of basic and continuing annual training for jailers and jail personnel, including training relating to juvenile holding facilities;
 5. Custody, care, and treatment of prisoners;
 6. Medical care; and
 7. Jail equipment, renovation, and construction;
 - (b) Develop a jail standards review process, which shall include the participation of persons knowledgeable of jail operations to review and amend the standards as necessary. The jail standards shall be reviewed no later than December 31, 1992, and at least every two (2) years thereafter. Fifty percent (50%) of the participants in the review process shall be appointed from persons representing county interests and fifty percent (50%) shall be appointed from persons representing state interests; and
 - (c) Provide technical assistance and consultation to local governments in order to facilitate compliance with standards.
- (2) ***The department shall, for those counties that elect not to hold state prisoners in their jails, adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations pursuant to KRS Chapter 13A to establish minimum standards for those jails. These standards shall be limited to health and life safety.***
- (3) The department may establish classifications of jails based on the maximum permissible period of incarceration or other criteria and promulgate standards for each class of jail.

Section 2. KRS 441.064 is amended to read as follows:

- (1) The department shall employ the jail consultants, inspectors, and other employees necessary to administer and enforce the provisions of KRS 441.055 to 441.075.
- (2) The department shall inspect each jail ~~which holds state prisoners~~ biannually and may inspect jails more frequently.

- (3) The department shall be granted access at any reasonable time to any jail facility or part of any jail facility and shall be granted access to all books, records, and data pertaining to any jail which the department deems necessary for the administration and enforcement of the provisions of KRS 441.055 to 441.075.
- (4) Following an inspection of a jail, the department shall notify the jailer and the fiscal court by certified mail of any deficiencies which are discovered and documented. If the deficiencies are related to health or safety, the notification shall be sent within ten (10) working days, excluding weekends and holidays. The department shall submit an annual written report of the findings of its inspections and the condition of the jail to the jailer and the fiscal court.

Approved March 23, 1998

CHAPTER 103

(HB 390)

AN ACT relating to insurance.

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

Section 1. KRS 304.9-140 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a life insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement.
- (2) Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105 except as to the residence requirement~~[provided that such agent shall not solicit business, advertise, or take applications for insurance within this state. Nothing herein is intended in any way to limit or prohibit such a nonresident licensed agent from entering this state to service an existing insurance policy.]~~
- (3) Nonresidents of this state other than those referred to in subsection (1) of this section, may be licensed as insurance agents in this state without taking an examination if:
 - (a) A written examination is required of applicants for an insurance agent's license in such other state.
 - (b) The appropriate official of such other state certifies that the applicant holds a currently valid license as an insurance agent in such other state and either passed such written examination or was the holder of an insurance agent's license prior to the time such written examination was required.
 - (c) In such other state, a resident of this state is privileged to procure an insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state.
- (4) Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state who is a full-time employee of an insurer or an affiliate of an insurer, and not compensated on a commission basis, may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement, and may act as an agent in Kentucky under said license, provided that such insurer maintains a place of business in this state.

Section 2. KRS 304.9-120 is amended to read as follows:

- (1) Each applicant for license as agent, who is an independent contractor agent compensated on a commission basis, and each applicant for license as a solicitor, must be a bona fide resident of this state at the date of application for the license, and must continue to be a resident of this state while so licensed.
- (2) In determining the good faith of an applicant's claim to such residence, the commissioner may give due consideration to the following:
 - (a) The amount of time actually spent by the applicant within this state during the claimed residence period;
 - (b) The circumstances of such residence, that is, whether in a single or multiple family-type dwelling, or leased apartment, or permanent residential type; or in hotel, resort, motel, mobile home or other temporary or transient type of dwelling or accommodation;

- (c) The circumstances of the applicant, his past history and activities, and the probability that he will continue as a resident of this state indefinitely into the future if the license were to be issued;
 - (d) All other pertinent factors.
- (3) The requirements of subsection (1) of this section shall not apply as to:
- (a) One employed to manage the insurance agency of a deceased licensed resident agent;
 - (b) An applicant or agent residing in any part of a city located partly within this state, if the other state in which the city is located in part has established a like exception to any residency requirement;
 - (c) Life or health insurance agents;
 - (d) Agents who are employees of the insurer or an affiliate of the insurer.
- (4) The commissioner shall license as life insurance agent any person, firm, or corporation who is otherwise qualified therefor under this code, but who is not a resident of this state if by the laws of the state or province of the residence of such person, firm, or corporation, residents of this state may be licensed in such state or province as nonresident life *and general lines* insurance agents and the commissioner may negotiate and enter into reciprocal arrangements with the insurance supervisory official of any other state or province under which the residence requirements of this subsection (4) will be waived in favor of residents of such other state or province if like privileges in such other state or province are granted to residents of this state.
- (5) If, under the laws of any other state or province, greater restrictions regarding residents and personal qualifications are imposed upon the licensing of residents of this state as agents than those imposed upon the licensing of nonresidents of this state under the laws of this state, then the commissioner may, when he considers such action necessary for the protection of domestic insurers or resident agents, impose such greater restrictions upon the licensing of residents of such state or province.

Section 3. The following KRS sections are repealed:

304.3-250 Resident agent -- Countersignature law.

304.3-260 Exceptions to resident agent countersignature law.

Approved March 23, 1998

CHAPTER 104

(HB 624)

AN ACT relating to a compact between a city of the first class and a county containing a city of the first class and declaring an emergency.

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

Section 1. KRS 79.310 is amended to read as follows:

- (1) Within one hundred and twenty (120) days of July 15, 1986, there shall be entered into by each city of the first class and a county containing such city of the first class a cooperative compact pursuant to this section and KRS 79.315 to 79.330. Such compact shall provide a framework for cooperation between the city and the county and shall contain such provisions as are required by this section and KRS 79.315 to 79.330 and may contain any other provisions which are not in conflict with this section and KRS 79.315 to 79.330 as may be agreed upon by the city and the county. The compact shall be executed by the mayor of the city of the first class with the consent of the legislative body of the city and the county judge/executive of the county with the consent of the fiscal court.
- (2) The compact entered into pursuant to subsection (1) of this section shall be for a period of twelve (12) years, except that if any mandatory provision of the compact or 1986 Acts Chapter 77 is adjudicated invalid or if any provision of this section or KRS 79.315 to 79.330 is amended or repealed by subsequent act of the General Assembly, the compact shall immediately terminate.
- (3) *Upon the expiration or termination of the cooperative compact entered into according to subsection (1) of this section, a city of the first class and a county containing a city of the first class may renew the*

cooperative compact according to this section and KRS 79.315 to 79.330. Any cooperative compact renewed in accordance with this subsection shall be for a term of ten (10) years, and shall provide a framework for cooperation between the city and the county, shall contain the provisions as required by this section and KRS 79.315 to 79.330, and may contain any other provisions which are not in conflict with this section and KRS 79.315 to 79.330 as may be agreed to by the city and the county. To become effective, the compact shall be executed by the mayor of the city of the first class with approval by the legislative body of the city and the county judge/executive of the county containing a city of the first class, with the approval by the fiscal court.

- (4) Any compact entered into pursuant to this section and KRS 79.315 to 79.330 may be amended by the city and the county, provided that no such amendment shall conflict with the provisions of this section and KRS 79.315 to 79.330.

Section 2. KRS 81A.005 is amended to read as follows:

- (1) When a city of the first class, which has in effect a compact with the county pursuant to KRS 79.310 to 79.330, desires to annex unincorporated territory, the legislative body of the city shall enact an ordinance stating the intention of the city to annex. If an ordinance proposing to annex unincorporated territory has been enacted prior to July 15, 1986, and the ordinance annexing the territory to the city has not been enacted, then in order for the city to annex the territory during the time the compact is in effect, the legislative body of the city shall reenact the ordinance only including the same territory as the original and stating the intention of the city to annex. Such ordinances shall accurately define the boundary of the unincorporated territory proposed to be annexed, and declare it desirable to annex the unincorporated territory.
- (2) The mayor of the city shall deliver a certified copy of the ordinance to the county clerk of the county in which the territory proposed to be annexed is located, who shall have prepared to be placed before the voters in each precinct embraced in whole or in part within the territory proposed to be annexed the question: "Are you in favor of being annexed to the city of?" If only a part of any precinct is embraced within the territory proposed to be annexed only persons who reside within the territory proposed to be annexed shall be permitted to vote. The question shall be submitted to the voters at the next regular election if the ordinance is filed with the county clerk not later than the second Tuesday in August preceding the regular election. The clerk shall cause the sheriff or sheriffs to deliver to the election officers in each precinct in the appropriate counties copies of the ordinance proposing to annex:
- (a) If more than fifty percent (50%) of those voting on the question approve of the annexation, the legislative body may proceed to annex the territory. Within sixty (60) days of the certification of the election results in which more than fifty percent (50%) of those voting in the election approved the annexation, the legislative body of the city may enact an ordinance annexing to the city the territory described in the ordinance. Upon enactment of the ordinance the territory shall become part of the city for all purposes; or
- (b) If fifty percent (50%) or less of those voting on the question approve the annexation, the ordinance proposing annexation shall become ineffectual for any purpose, subject to the provisions of KRS 81A.460.
- (3) Once the ordinance stating the intention of the city to annex an area has been given its first reading or enacted by the city legislative body, no part of such area may be incorporated or be annexed by another city, unless such incorporation or annexation is pending at the time the ordinance is given its first reading, until the annexation proposal by the city of the first class is defeated pursuant to subsection (2) of this section or until the ordinance is withdrawn, repealed, or amended as to the area to be annexed **according to subsection (4) of this section**. This subsection shall apply to any proposing ordinance which has had a first reading or has been enacted as of January 1, 1986. Notwithstanding anything to the contrary in this subsection, any annexation by a city other than the first class or incorporation prior to January 1, 1986, shall not be nullified by the application of KRS 79.310 to 79.330; provided, however, that any city of the first class shall retain any legal annexation priorities which existed on January 1, 1986, to the territory so annexed or incorporated. All pending litigation challenging annexation of a specific unincorporated territory by the city of the first class arising from ordinances proposing to annex such territory enacted prior to July 15, 1986, shall, at the discretion of the court, be remanded on the docket of the appropriate court without prejudice during the term of the compact.
- (4) **The legislative body of the city may elect to amend the description of the territory proposed to be annexed under an ordinance stating the intention of the city to annex an area as described in subsection (1) of this section at any time after the effective date of this Act and prior to September 30, 1998, for the purpose of**

excluding a specific area or areas from the ordinance in order to permit these areas to be annexed by an abutting city located in the county according to KRS 81A. 412. Amendment of the ordinance according to this subsection shall not affect the priority granted this annexation proposal according to subsection (3) of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 79 IS CREATED TO READ AS FOLLOWS:

If any provision of Sections 1 and 2 of this Act or KRS 79.315 to 79.330 is held to be unconstitutional or invalid, that provision shall not be severable but Sections 1 and 2 of this Act and KRS 79.315 to 79.330 shall be invalidated, because it is the intention of the General Assembly that the provisions of Sections 1 and 2 of this Act and KRS 79.315 to 79.330 are so essentially and inseparably connected with and dependent upon every other provision that Sections 1 and 2 of this Act and KRS 79.315 to 79.330 would have not been enacted without the inclusion of every provision in Sections 1 and 2 of this Act and in KRS 79.315 to 79.330.

Section 4. Whereas the expiration of cooperative compacts in counties containing a city of the first class are to expire in 1998; and whereas, this expiration and the possible renewal of any cooperative compact should lend itself to scrutiny by the citizens of those counties in order to assure the provision of the most efficient use of governmental resources within each of those counties, there is created a Task Force on Local Government for each county containing a city of the first class to review and study local government in those counties and ways to promote efficiency, avoid duplication, and advance sound, economical management and practices relating to the governmental resources of the citizens of those counties.

- (1) The task force as a part of its work, shall include, but not be limited to, the review and study of any cooperative compact adopted in a county containing a city of the first class. The task force shall also make findings, and, if necessary, issue any necessary legislative recommendations relating to the most efficient structure and function of local governments in these counties.
- (2) The membership of each task force shall be as follows:
 - (a) All legislators representing the citizens of each county with a city of the first class;
 - (b) The mayor and all members of the board of alderman of each city of the first class;
 - (c) The county judge/executive and all other members of the fiscal court of each county containing a city of the first class;
 - (d) The sheriff in each county containing a city of the first class;
 - (e) The county clerk in each county containing a city of the first class; and
 - (f) Six (6) members appointed by a group representing a consortium of cities in a county containing a city of the first class, of which one (1) member shall represent a city of the second class, one (1) member shall represent a city of the third class, one (1) member shall represent a city of the fourth class, one (1) member shall represent a city of the fifth class, and one (1) member shall represent a city of the sixth class. Where a particular class of cities does not exist in a county with a city of the first class, or the number of members representing those classes of cities does not equal six (6), that remaining number of representatives shall be chosen at large by the group representing the consortium of cities.
- (3) Each task force shall begin its activities no later than June 1, 1998, and shall report their findings and recommendations to the Legislative Research Commission and the members of the Kentucky General Assembly no later than August 1, 1999.
- (4) Each task force shall be jointly chaired by the chair and vice chairs of the legislative delegation in each county containing a city of the first class.
- (5) Task force members, other than members of the General Assembly, shall be reimbursed for necessary expenses for travel to meetings outside of each county containing a city of the first class. The members of the General Assembly shall be paid their regular per diem allotment and necessary travel expenses for their attendance the same as for regular interim committee meetings.
- (6) Staff services to be utilized in completing this study are estimated to cost fifty thousand dollars (\$50,000). These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Section 5. Whereas the compacts entered into pursuant to Section 1 of this Act terminate on June 30, 1998, an emergency is declared to exist and this Act takes effect on June 1, 1998.

Approved March 24, 1998

CHAPTER 105

(HB 234)

AN ACT relating to retirement.

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

Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of State Police, or its successor;
- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided in KRS 61.555;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;
- (8) "Creditable compensation" means all salary and wages paid to the employee as a result of services performed for the employer *which are includable on the member's federal form W-2 wage and tax statement*, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4); living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (9) "Final compensation" at any time means the creditable compensation of a member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the five (5) year period, multiplied by twelve (12); the five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;

- (13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;
- (15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959. A member of the State Police Retirement System, a member of the County Employees Retirement System or a member of the Kentucky Employees Retirement System covered by this section with twenty (20) or more years of service credit, at least fifteen (15) of which are current may declare his "normal retirement date" to be some date prior to his fifty-fifth birthday;
- (16) "Disability retirement date" means the first day of the month following total and permanent disability or hazardous disability;
- (17) "Dependent child" means a child en ventre sa mere and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of *the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an act in line of duty shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description* ~~duty~~;
- (20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary does not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;

- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month;~~and~~
- (31) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically-demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically-acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (32) "*Fiscal year*" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year; and
- (33) "*Participating*" means an employee is currently earning service credit in the system as provided in KRS 16.543.

Section 2. KRS 16.520 is amended to read as follows:

- (1) Membership in the system shall consist of all regular full-time officers of the Kentucky State Police appointed pursuant to KRS 16.050 who are entitled to exercise the powers of peace officers except those who do not choose to participate pursuant to KRS 61.545(3).
- (2) Membership in the system shall not include those employees who are simultaneously *participating* ~~in contributing to~~ another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, *except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.*

Section 3. KRS 16.582 is amended to read as follows:

- (1) (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.
- (b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.
- (c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer *as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630* shall be considered.
- (d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.
- (2) Any person may qualify to retire on disability, subject to the following:
- (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;
- (b) The person shall be less than normal retirement age;
- (c) The person's application shall be on file in the retirement office no later than twelve (12) months after the person's last day of paid employment, *as defined in Section 1 of this Act*, as a regular full-time officer or in a regular full-time hazardous position *under KRS 61.592*;
- (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and
- (e) No disability application *based on the same claim of incapacity* shall be accepted *and considered for disability* for any person who has previously applied for and been denied disability benefits unless ~~it~~

~~application based on the same claim of incapacity]~~ is accompanied by evidence of a substantial change in the person's condition which shall satisfy subsection (4) of this section. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment as a regular full-time officer or in a regular full-time hazardous position.

- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
- (a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
 - (b) The incapacity is deemed to be permanent; and
 - (c) The incapacity does not result directly or indirectly from:
 - 1. Injury intentionally self-inflicted while sane or insane;
 - 2. Injury or disease resulting from military service; or
 - 3. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:
 - a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
 - b. The person has at least sixteen (16) years current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

For purposes of this subparagraph, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

- (4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.
2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
- (c) The person's physical exertion requirements shall be determined based on the following standards:
- 1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
 - 2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable

of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
 4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.
 5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.
- (5) The disability retirement allowance shall be determined as provided in KRS 16.576, subject to the following:
- (a) If the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years;
 - (b) If the member's total service credit on his last day of paid employment is twenty (20) or more years, then his total service credit shall be used.
- (6) If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:
- (a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and
 - (b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally-appointed guardian, or as directed by the system.
- (7) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.
- (8) If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.
- (9) For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) or (6) of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.

Section 4. KRS 16.596 is amended to read as follows:

Once each year following the retirement of a member on a disability retirement allowance, *or less frequently as determined by the board's medical examiner but not less than once every five (5) years*, the system may require the member, prior to his normal retirement date, to undergo a medical examination and financial review. If the member refuses to submit to the medical examination, his retirement allowance shall be discontinued until his withdrawal of refusal, and if he continues to refuse for one (1) year, all his rights to any further disability allowance shall cease.

Section 5. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, as provided for by KRS 61.535;
- (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (3) Actuarial bases, as provided for by KRS 61.670;
- (4) Duties of the employer, as provided for by KRS 61.675;
- (5) Exemption of benefits of the system for taxation, as provided for by KRS 61.690;
- (6) Retirement allowance increase, as provided for by KRS 61.691;
- (7) Calculation of retirement allowance, as provided for by KRS 61.595(3) and (4);
- (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;
- (9) Year of service credit, as provided for by KRS 61.545;
- (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- (13) Transfer of dormant accounts, as provided for by KRS 61.626;
- (14) Member's account, confidential, as provided for by KRS 61.661;
- (15) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (16) Correction of errors in records, as provided for by KRS 61.685;
- (17) Maximum disability benefit, as provided for by KRS 61.607;
- (18) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (19) Employer contributions, as provided for by KRS 61.565;
- (20) Reinstatement of lost service credit, purchase of service credit, interest paid, delayed contribution and installment payments, as provided for by KRS 61.552;
- (21) Reciprocal arrangement between systems, as provided by KRS 61.680;
- (22) Refund of contributions, conditions, as provided by KRS 61.625;
- (23) Hospital and medical insurance plan, as provided by KRS 61.702;
- (24) Death benefit, as provided by KRS 61.705;
- (25) Disability retirement allowance, reduction, discontinuance, as provided by KRS 61.615;
- (26) Service credit, Armed Forces, as provided by KRS 61.555;
- (27) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;~~and~~
- (28) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699; *and*
- (29) *Retirement of persons in hazardous positions, as provided for by KRS 61.592.***

Section 6. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members,

officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;

- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7) and 61.555, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he occupies the position during a legislative biennium subsequent to January 1, 1960;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he occupied the position during a legislative biennium prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service;
- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees paid to the employee as a result of services performed for the employer *which are includable on the member's federal form W-2 wage and tax statement*, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven thousand five hundred dollars (\$27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the biennium. In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (14) "Final compensation" of a member means the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars (\$27,500). The five (5) years may be fractional and need not be consecutive. If the number of

months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour work days, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, ***which shall also be the plan year***;
- (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150 and the assistants if employed by the General Assembly for at least six (6) legislative bienniums;
- (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:
 - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
 - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months; and
 - (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty;
- (22) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly-held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;
- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month;~~{and}~~
- (33) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically-demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically-acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; *and*
- (34) ***"Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543.***

Section 7. KRS 61.525 is amended to read as follows:

Membership in the system shall consist of the following:

- (1) All persons who become employees of a participating department after the date such department first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3);
- (2) All persons who are employees of a department on the date the department first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days following the department's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 61.515 to 61.705;
- (3) All persons who are employees of any credit union whose membership was initially limited to employees of state government and their families and which subsequently may have been extended to local government employees and their families;
- (4) All persons who were professional staff employees of the Council on Postsecondary Education or the Higher Education Assistance Authority and were contributing to the system on or after the effective date of Executive Order 74-762 or 75-964, respectively, and file a written election of their desire to continue in the system and all administrative and professional staff employees of the Higher Education Assistance Authority who, on or after January 1, 1993, are not participating in another retirement plan sponsored by the Higher Education Assistance Authority;
- (5) All persons who were professional staff employees of the Kentucky Authority for Educational Television on and after July 1, 1974;
- (6) All persons who are employees of the Teachers' Retirement System except employees who are required to participate under the Teachers' Retirement System under KRS 161.220(4)(d);

- (7) Membership in the system shall not include those employees who are simultaneously *participating in* ~~contributing to~~ another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, *except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360*; and
- (8) *Effective January 1, 1998*, employees of the Kentucky Community and Technical College System who were previously contributing members and are not required to participate in the Teachers' Retirement System as a member; *employees who were previously contributing members transferred from the Cabinet for Workforce Development as provided in KRS 164.5805(1)(a) and who have not exercised the option to participate in the new Kentucky Community and Technical College personnel system as provided in KRS 164.5805(1)(e)*; and new employees as of July 1, 1997, who are not eligible under the Teachers' Retirement System or who are not contributing to an optional retirement plan established by the board of regents for the Kentucky Community and Technical College System.

Section 8. KRS 61.545 is amended to read as follows:

- (1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.
- (2) (a) Employees participating in one (1) of the state-administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System, a state-operated school under KRS Chapter 167, or a Kentucky institution of higher education which participates in the Kentucky Employees Retirement System, to work less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit except the amount purchased shall not exceed three (3) months. The employee, the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board may purchase the service credit by paying the retirement system the member and employer contributions calculated on the average monthly rate multiplied by the number of months to be purchased. The payment shall be received by the retirement system by December 31 immediately following the school year in which the fractional year's service occurred. If the additional service credit is not purchased by December 31 following the close of each school year, the member shall pay interest on the cost of purchasing the credit at a rate established by the board of trustees. Members who have service credit prior to July 1, 1992, or their employers, may purchase service credit for previous years by paying the retirement system the member and employer contributions calculated on the average monthly rate, multiplied by the number of months to be purchased plus interest at the actuarial rate.
- (b) *The cost of service under this subsection may be paid by both the employer and employee. The employer shall pay the employer contributions plus interest and the employee shall pay the employee contributions plus interest. The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the retirement system.*
- (3) (a) An employee who is simultaneously eligible for membership in more than one (1) retirement system administered by the Kentucky Retirement Systems may, at his option, choose to participate in only one (1) of those systems. The choice, once made, shall remain in effect so long as the employee is eligible for membership in more than one (1) system.
- (b) *If the employee participates in more than one (1) of the retirement systems administered by the Kentucky Retirement Systems, the employee's service credit shall be divided between each system determined by dividing the employee's creditable compensation in each system by the employee's total creditable compensation in all systems.*
- (c) *If the employee earns creditable compensation in both a hazardous position, as defined by KRS 61.592, and a nonhazardous position, the employee's service credit shall be divided between the employee's hazardous and nonhazardous positions determined by dividing the employee's creditable compensation in the hazardous and nonhazardous positions by the employee's combined hazardous and nonhazardous creditable compensation.*

Section 9. KRS 61.552 is amended to read as follows:

- (1) Any employee participating in one (1) of the state-administered retirement systems or an employee of a parted employer who has been refunded his accumulated contributions under the provisions of KRS 16.645(22), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. If the participating employee dies before regaining lost service credit, the employee's beneficiary, as designated according to the requirements of the employee's retirement system, may regain the credit by paying the amount refunded with interest at a rate determined by the board of the respective retirement system. Thereafter the beneficiary shall be entitled to the benefits that are payable based upon the deceased employee's total service credit. The provisions of KRS 161.470 shall be met in order to regain the credit in the Teachers' Retirement System. KRS 21.460 shall govern with respect to regaining credit in the Judicial Retirement Plan or Legislators' Retirement Plan. The beneficiary shall make the payment within one (1) year of the date of the employee's death. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.
- (2) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (3) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (4) An employee may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments. Effective August 1, 1988, each employee of the Kentucky Racing Commission who was employed by the racing commission on the date that agency first participated in the Kentucky Employees Retirement System, whether or not the employee was eligible to participate in the retirement system on that date, shall receive current service credit for all employment with the racing commission from July 1, 1956, to the date the employee first began participating in the retirement system. The cost of the service credit shall be paid at the time of each member's retirement by the racing commission and shall be credited to the retirement allowance account.
- (5) An employee who is or was an employee of a county participating in the County Employees Retirement System which did not participate in the system effective July 1, 1958, may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. An employee participating in the Kentucky Employees Retirement System or the County Employees Retirement System, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates the full cost of the service credit purchased, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.

- (6) ~~After Effective~~ August 1, 1988, service credit obtained under subsections (1) to (5), (8) to (12), (14), (15), and (17) to ~~(25)~~~~(19)~~ of this section shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member, upon request, if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems or as an employee of a parted employer. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 61.600.
- (7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.
- (8) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not have the option to be covered at the university by a defined benefit retirement program, or did not participate in a retirement system which can be consolidated with other accounts pursuant to KRS 61.680(2), may obtain credit in the County Employees Retirement System, the Kentucky Employees Retirement System or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the county employees, Kentucky Employees Retirement System or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.
- (9) (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);
- (b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);
- (c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;
- (d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;
- (e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.
- (10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.
- (11) Members who served as assistants to officers and employees of the General Assembly who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960, if the service purchased when added to other accumulated service will total at least forty-eight (48) months.

Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).

- (12) Effective August 1, 1988, any employee participating in one (1) of the state-administered retirement systems may purchase service credit for seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4). Any noncertified employee of a school board may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 78.610(4).
- (13) A retired member, who is contributing to one (1) of the state-administered retirement programs and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:
 - (a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or
 - (b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.
- (14) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (15) Any employee participating in one (1) of the state-administered retirement systems may obtain credit for prior or current service for any period of approved maternity leave granted prior to January 1, 1972, or for any period of approved sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by making installment payments in lieu of a lump-sum payment.
 - (a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal.

- (b) Twelve (12) consecutive monthly installment payments shall be made for each one thousand dollars (\$1,000) or any part thereof of the total cost, except that the total number of installments shall not be less than twelve (12) and shall not exceed sixty (60).
 - (c) The employee shall pay the installments by payroll deduction each pay period. Upon notification by the retirement system, the employer shall report the installment payments separate from regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.
 - (d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.
 - (e) If the employee dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal of the purchase by lump sum. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.
 - (f) If the employer does not report installment payments on an employee for sixty (60) days, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased.
 - (g) If payments have ceased under subsection (16)(e) or (f) of this section and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.
 - (h) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by transferring funds directly from a retirement plan maintained by his employer which is a qualified plan pursuant to Section 401(a) of the Internal Revenue Code or by a rollover of funds from the plan pursuant to the rules specified in Section 402(c) of the Internal Revenue Code and the Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in Section 402 (c) and Section 401(a)(31) of the Internal Revenue Code. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.
- (17) *After August 1, 1998*, any employee participating in one (1) of the state-administered retirement systems who is age sixty-five (65) or older and has forty-eight (48) months service ***credit in the Kentucky Employees Retirement System or the County Employees Retirement System*** or, if younger, who has sixty (60) months service ***credit in the Kentucky Employees Retirement System or the County Employees Retirement System*** may purchase credit in the ***system in which the employee has the service credit*** ~~Kentucky Employees Retirement System~~ for up to ten (10) years service in a regular full-time position that was credited to a state or local government administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay the full cost of the service as determined by the system. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.
- (18) *After August 1, 1998*, any employee participating in ***one (1) of the state-administered retirement systems*** ~~the County Employees Retirement System~~, who has sixty (60) or more months of service ***in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County***

Employees Retirement System, may purchase credit in the **system in which the employee has the sixty (60) months of service credit**~~[County Employees Retirement System]~~ for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay the full cost of the service credit as determined by the system. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.

- (19) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.
- (20)~~[(a)]~~ An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65), or at least sixty (60) months' service if under age sixty-five (65), and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates the full cost of the service credit purchased, as determined by the system. **Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.**
- ~~[(b)] An employee participating in any state administered retirement system who has at least forty eight (48) months' service if age sixty five (65), or at least sixty (60) months' service if under age sixty five (65), who has served or is currently serving in an office established pursuant to KRS 160.160, and who has at least fifteen (15) years of service, may obtain credit not to exceed two (2) years for the period of his service in the office established pursuant to KRS 160.160, if the service to be purchased does not overlap with service in a position covered by another state administered retirement system, by paying to the state retirement system in which he participates the full cost of the service credit purchased, as determined by the system. The purchase of this service shall be made prior to December 31, 1996.~~
- ~~(c) Payment for purchase of service pursuant to paragraphs (a) and (b) of this subsection may be made in installments in lieu of lump sum payment. The payment shall not be picked up, as described in KRS 61.560(4), and shall be deposited to the individual member's account.]~~
- (21) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65), who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4).
- (22) Any employee participating in one (1) of the state-administered retirement systems on June 30, 2000, may obtain credit for subsequent service with a parted employer from the Commonwealth operating for the purposes of KRS 163.475, by paying to the respective retirement system a delayed contribution payment if the respective retirement system receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall be deposited to the individual member's account. The delayed contribution payment shall not be picked up by the employer as described in KRS 61.560(4).
- (23) Any employee participating in the County Employees Retirement System who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may purchase service credit for service with a city, county, or joint city-county planning commission, if that service was not covered by a state-administered retirement system. Notwithstanding any statute to the contrary, the employee shall be entitled to a full month of service for each month or portion of month that the employee occupied the position whether or not the employee would have qualified, at the time of planning commission service, for the service under KRS 6.525. The employee shall pay to the retirement system the full cost of the

service credit purchased, as determined by the board's actuary. The payment shall not be picked up, as described in KRS 78.610(4), by the employer and shall be deposited to the member's account. Payment may be by lump sum or in increments. The employee may obtain credit for service with a city, county, or joint city-county planning commission only if the Kentucky Retirement Systems receives a favorable letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor.

- (24) (a) *Any member or retired member of one (1) of the retirement systems administered by the Kentucky Retirement Systems who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or Section 23 of this Act may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.*
- (b) *Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.*
- (25) *Any employee participating in one (1) of the state-administered retirement systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or KRS 78.610(4), by the employer.*

Section 10. KRS 61.555 is amended to read as follows:

- (1) *After August 1, 1998*, any employee entering the Armed Forces of the United States after he first participates in the system, being on leave of absence from service and not withdrawing his accumulated contributions, shall be entitled to have credited as current service his period of active military duty in the Armed Forces of the United States, not to exceed six (6) years, if his discharge therefrom is honorable and he *returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems*~~is reemployed~~ within two (2) years after discharge, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge.
- (2) *After August 1, 1998*, any member of the system who, prior to the date he first participated in the system, terminated his employment in order to enter the Armed Forces of the United States and who *returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems*~~was or is reemployed~~ within two (2) years after his honorable discharge therefrom, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge, shall be entitled to have credited as prior service his period of active military duty in the Armed Forces, not to exceed six (6) years.
- (3) Any National Guard technician involuntarily serving on active military duty during the period between January 26, 1968, and January 1, 1970, who completes his eight (8) years service while on military duty during this period, shall have that portion of his active military duty, necessary to the completion of eight (8) years current service, credited to his account, as current service without having to meet the reemployment criteria.
- (4) Any employee eligible for retirement as prescribed in KRS 61.559 or any employee upon completion of five (5) years of service shall receive current service credit for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not

been credited with the service under subsections (1) to (3) of this section if he pays thirty-five percent (35%) of the cost of the service based on the formula adopted by the board. The payment by the member shall not be picked up by the employer, as described in subsection (4) of KRS 61.560, and shall be deposited to his individual member's account. The remaining sixty-five percent (65%) shall be paid by the state from funds appropriated specifically for the purpose and these payments shall be deposited to the respective retirement allowance accounts. If no funds are available in the special appropriation account, the system shall not accept employee payments until funds are available in the account.

- (5) A member eligible to purchase military service credit under subsection (4) of this section shall receive current service credit for active military duty as provided under subsection (4) of this section without payment of the current employee contribution ratio if the member was taken prisoner by a hostile power at any time during active military service.
- (6) Any member age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or any other member who has sixty (60) months of service, at least twelve (12) of which are current service (or his beneficiary if the member dies prior to retirement) shall receive current service for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (4) of this section, by paying the retirement system a delayed contribution payment as defined in subsection (22) of KRS 61.510. Payment shall be by lump sum, except that members may pay by increments. The delayed contribution payment shall not be picked up, as described in subsection (4) of KRS 61.560, by the employer and shall be deposited to the individual member's account.
- (7) Effective July 1, 1978, no veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for such pension in the future; but nothing in this section shall prohibit the purchase of credit if the military pension results from service primarily on inactive duty in a reserve component of the Armed Forces, or if the military pension is a disability pension, or is for a veteran sixty-five (65) years of age or older who is considered permanently and totally disabled. Any veteran receiving a military disability pension who retired prior to July 15, 1986, who was unable to purchase military service credit pursuant to subsection (4) or subsection (6) of this section, may make the payment required by subsection (4) or subsection (6), and his retirement benefits shall be recalculated to apply to all retirement allowances and insurance benefits received after the date of the payment. Retiree payments pursuant to subsection (4) of this section shall not be accepted unless matching state funds are available in the special appropriation account.

Section 11. KRS 61.600 is amended to read as follows:

- (1) Any person may qualify to retire on disability, subject to the following conditions:
 - (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1) or 78.615(1);
 - (b) The person shall be less than normal retirement age;
 - (c) The person's application shall be on file in the retirement office no later than twelve (12) months after the person's last day of paid employment, *as defined in Section 6 of this Act*, in a regular full-time position, *as defined in Section 6 of this Act or Section 21 of this Act*;
 - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and
 - (e) No disability application *based on the same claim of incapacity* shall be accepted *and considered for disability* for any person who has previously applied for and been denied disability benefits unless ~~it is an application based on the same claim of incapacity~~ is accompanied by evidence of a substantial change in the person's condition which shall satisfy subsection (4) of this section. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position.
- (2) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
 - (a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer *as provided in 42 U.S.C. sec. 12111(9) and 29 C. F. R. Part 1630* shall be considered;

- (b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
 - (c) The incapacity is deemed to be permanent; and
 - (d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. ***For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.***
- (3) Paragraph (d) of subsection (2) shall not apply if:
- (a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
 - (b) The person has at least sixteen (16) years current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.
- (4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.
2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
- (c) The person's physical exertion requirements shall be determined based on the following standards:
- 1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
 - 2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.
 - 3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
 - 4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.
- (5) Persons who have previously qualified for disability retirement and have had benefits discontinued shall be reevaluated under the criteria of subsection (2) of this section.

Section 12. KRS 61.605 is amended to read as follows:

Upon disability retirement, an employee may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability except that service credit shall be added to the employee's total service beginning with his last date of paid employment and continuing to his sixty-fifth (65th) birthday; however, the maximum service credit added shall not exceed the total service the employee had upon his last day of paid employment, and the maximum combined service credit for calculating his disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, an employee has accumulated twenty-five (25) or more years of total service, he shall receive added service necessary to bring his combined service credit, including total and added service, to thirty (30) years. When the employee has accumulated total service of thirty (30) or more years, his total service shall be used in computing disability benefits. ***For employees hired on or after the effective date of this Act, the total service and added service for determining disability benefits shall not exceed twenty-seven (27) years.***

Section 13. KRS 61.610 is amended to read as follows:

- (1) Once each year following the retirement of a member on a disability retirement allowance, ***or less frequently as determined by the board's medical examiner but not less than once every five (5) years***, the system may require the person, prior to his normal retirement date, to undergo a financial and medical staff review and, if necessary, be required to submit current medical information. If he refuses to submit to a medical examination, his retirement allowance shall be discontinued until his withdrawal of refusal, and if the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.
- (2) Disability retirees whose effective retirement date is August 1, 1988, or thereafter shall undergo an annual financial and medical staff review and, if necessary, be required to submit current medical information.

Section 14. KRS 61.625 is amended to read as follows:

- (1) ~~[[If a member's employment has been terminated or if the member is employed by a participating employer in an employment status as defined in KRS 61.510(21)(a) to (d) or 78.510(21)(a) to (d), that does not require the member to participate in the system, the]~~ member if living, or if not living, his designated beneficiary, shall have the right to request a refund of his accumulated contributions, including the amount of any employee contributions picked up by the employer pursuant to KRS 61.560(4), reduced by the amount of any retirement allowances previously received ***if:***
 - (a) ***The member's employment has been terminated and the member is not participating in the same retirement system;***
 - (b) ***The member is employed in an employment status as defined in paragraphs (a) to (d) of subsection (21) of Section 6 of this Act that does not require the member to participate in the system; or***
 - (c) ***The member has been laid off for ninety (90) days or more.***
- (2) Payments made under this section shall be in lieu of any other benefits due for the period of service under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, unless the period of service is regained as provided under KRS 61.552. Payments of taxable distributions made pursuant to this section shall be subject to state and federal tax as appropriate.
- ~~(3)~~~~(2)~~ Refund of contributions of members whose benefits have been terminated pursuant to KRS 6.696 shall be governed by that section.

Section 15. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:

- (a) The commissioner of personnel shall serve as trustee for as long as he occupies the position of commissioner under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
 - (b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
 - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
 - (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
 - (e) Three (3) trustees, appointed by the Governor of the Commonwealth, one (1) of whom shall be knowledgeable about the impact of pension requirements on local governments.
- (2) The board is hereby granted the powers and privileges of a corporation, including, but not limited to, the following powers:
- (a) To sue and be sued in its corporate name;
 - (b) To make bylaws not inconsistent with the law;
 - (c) To conduct the business and promote the purposes for which it was formed;
 - (d) To contract for investment counseling, actuarial, auditing, and other professional services as its statutory purpose may require, *notwithstanding the provisions of KRS Chapters 45 and 45A*;
 - (e) To purchase fiduciary liability insurance;
 - (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage any such property as its purpose may require, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
 - (g) The board shall reimburse any trustee or officer for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3)
- (a) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board;
 - (b) The trustee to be elected by the members of the County Employees Retirement System who replaces the Attorney General on the board shall have an initial term expiring on March 31, 1977, and nominations for this position and the election process shall take place within ninety (90) days after March 26, 1974, with the Attorney General serving until the elected member has been duly qualified and administered the oath of office;
 - (c) The term of office of the trustee elected by the membership of the Kentucky Employees Retirement System which now expires on December 10, 1975, shall be succeeded by a term expiring on March 31, 1978.
- (4)
- (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board shall nominate, not less than six (6) months before a term of office of a trustee is due to expire, at least three (3) constitutionally-eligible individuals;
 - (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the general manager, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members;
 - (c) Within three (3) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the general manager shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes;
 - (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address;

- (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected;
 - (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall record his Social Security number, sign, and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot;
 - (g) The board's contracted auditing firm shall report in writing the outcome to the chairman of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the commissioner of personnel resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of sixty dollars (\$60) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chairman or the general manager. It shall elect a chairman and a vice chairman. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) The board shall:
- (a) Appoint or contract for the services of a general manager and fix his compensation without limitation by the provisions of KRS Chapter 18A and KRS 64.640. The general manager shall be the chief administrative officer of the board;
 - (b) Authorize the general manager to appoint the employees he deems necessary. Appointees deemed to be in a policy making position shall be unclassified and their salaries shall be determined by the board. Other appointees shall be subject to the personnel classification system and salaries shall be subject to the commissioner of personnel;
 - (c) Require the general manager and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62;
 - (d) Establish a system of accounting; *and*
 - (e) ~~Expend funds for goods and services pursuant to the provisions of KRS Chapter 45A as they apply to state agencies, but if the board designates an emergency by letter to the secretary of the Finance and Administration Cabinet, the secretary shall within thirty (30) days of submission approve or reject a proposed personal service contract submitted to him by the board pursuant to KRS 45A.045. If the secretary rejects the proposed contract, he shall provide a detailed written statement of his reasons therefor. If the secretary fails or refuses to act within the thirty (30) day period, the proposed contract shall be deemed approved without further action pursuant to KRS 45A.045; and~~
 - (f) Do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852, necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be

the controlling legislative intent that the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 conform with federal statute or regulation. Provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 which conflict with federal statute or regulation shall not be available to the member. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation.

- (10) All employees of the board shall serve during its will and pleasure. *Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.*
- (11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and shall receive the agenda, board minutes, and other information distributed to trustees of the board. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 *or Chapter 13B*.
- (12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the general manager of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system ~~including investment related expenditures,~~ shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.
- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15)
 - (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
 1. In good faith;
 2. On an informed basis; and
 3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.
 - (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
 - (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
 2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
 3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
 - (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (c) of this section unwarranted.

- (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
 - 1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
 - 2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
 - (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraphs (e)1. and (e)2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
 - (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.

Section 16. KRS 61.650 is amended to read as follows:

- (1) The board shall be the trustee of the several funds created by KRS 16.510, 61.515, 61.701, and 78.520 and shall have full power to invest and reinvest such funds, subject to the limitations that no investments shall be made except in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state, except that the board may at its discretion purchase common stocks in corporations that do not have a record of paying dividends to their stockholders and may acquire real estate without obtaining the approval of the District Court as set forth in KRS 386.020(1)(h). Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of, any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds. The board members or any investment manager shall discharge their duties with respect to the assets of the several funds solely in the interest of the members and beneficiaries and:
 - (a) For the exclusive purposes of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the plan;
 - (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
 - (c) In accordance with the laws, administrative regulations and other instruments governing the several funds.
- (2) All registered securities acquired under authority of KRS 61.510 to 61.705 shall be registered in the name "Kentucky Retirement Systems of the Commonwealth of Kentucky" or nominee name as provided by KRS 287.225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished by the signatures of the chairman or a trustee appointed by the chairman and the general manager of the board of trustees.
- (3) The board, in keeping with its responsibility as trustee and wherever consistent with its fiduciary responsibilities, shall give priority to the investment of funds in obligation calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) *The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.*

Section 17. KRS 61.665 is amended to read as follows:

- (1) The board shall employ at least three (3) physicians, practicing in the state and not members of the system, upon terms and conditions it prescribes to serve as medical examiners, whose duty it shall be to pass upon all medical examinations required under KRS 61.510 to 61.705, KRS 16.505 to 16.652, and KRS 78.510 to 78.852, to investigate all health or medical statements and certificates made by or in behalf of any person in connection with the payment of money to the person under KRS 61.510 to 61.705, KRS 16.505 to 16.652, and KRS 78.510 to 78.852, and who shall report in writing to the system the conclusions and recommendations upon all matters referred to them.
- (2)
 - (a) Each employee requesting disability retirement shall furnish the retirement office with the names and addresses of two (2) or more physicians who have the necessary information to report the employee's physical and mental condition. The employee shall also **file at the retirement office**~~submit~~ a complete description of the job and duties from which he received his last pay as well as evidence that the employee has made a request for reasonable accommodation as provided for in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630.
 - (b) The employer shall **file at the retirement office**~~submit~~ a complete description of the job and duties for which the employee was last paid and shall submit a detailed description of reasonable accommodations attempted.
 - (c) The board shall prescribe forms upon which medical evidence shall be recorded. The forms shall be sent to the employee's physicians with the request that the documents be completed and filed at the retirement office.
 - (d) The cost of a medical examination shall be paid by the employee. The physicians shall be paid a reasonable amount by the retirement system for the filing of the medical report with the retirement office, pursuant to an administrative regulation promulgated by the board.
 - (e) The system shall select a medical examiner to evaluate the medical evidence submitted by the employee's physician. The examiner shall recommend that disability retirement be approved, or that disability retirement be denied. If the medical examiner recommends denial of disability benefits, the system shall submit the member's application to two (2) additional medical examiners. Both of the additional medical examiners shall recommend approval of disability benefits to overturn the original recommendation. Recommendations by the examiners shall be submitted to the board for approval.
 - (f) If the medical examiners recommend that the employee be approved for disability retirement, the general manager shall make retirement payments in accordance with the retirement plan selected by the employee.
 - (g) If the medical examiners recommend that the employee be denied disability retirement, the general manager shall notify the employee of this recommendation. The employee shall have sixty (60) days to **file at the retirement office**~~submit~~ additional medical information ~~to the retirement office~~ or to appeal his denial for disability benefits by **filing at the retirement office a request for**~~requesting~~ a formal hearing. An extension of time may be granted by the system for a medical examiner to evaluate additional medical information. The extensions of time shall not be for more than sixty (60) days for any one (1) extension, and no more than three (3) extensions shall be granted. The cumulative extension of time shall not exceed one hundred twenty (120) days. The extension of time shall end upon request of a formal hearing.
 - (h) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
 - (i) Notwithstanding the foregoing provisions of this section, the system may pay for one (1) or more medical examinations requested by the examiners for the purpose of providing medical information deemed necessary by the examiners. The system may direct that a specialist be sought.
- (3) Any person aggrieved by a final order or determination of the system may **file at the retirement office a request** that a hearing be conducted by the system in accordance with KRS Chapter 13B. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. If any extensions of time are granted by the system, they shall be as provided for in subsection (2)(g) of this section.

- (a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection (2)(g) of this section or KRS 61.615(1) may *file at the retirement office a request for* an administrative hearing with the system. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. The request shall be filed with the general manager, at the system's central office in Frankfort. The request for a hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability benefits is being contested. The request shall not operate as a stay of any reduction, discontinuance, or denial of benefits.
 - (b) Failure of the member to request a formal hearing within the period of time specified shall preclude the member from proceeding any further with his cause of action, except as provided in KRS 61.600(1)(e). This paragraph shall not limit the member's right to appeal to a court.
 - (c) The system may require the member requesting the formal hearing to submit to one (1) or more medical or psychological examinations. Notice of the time and place of the examination shall be mailed to the member or his legal representative. The system shall be responsible for the cost of the examination.
 - (d) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.
 - (e) A final order of the board which alters or amends the decision recommended pursuant to subsection (2)(g) of this section shall relate back and take effect on the date of the recommendation.
 - (f) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
 - (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
 - (6) The system, pursuant to regulations, may refer an employee determined by it to be disabled to the Kentucky Office of Vocational Rehabilitation for evaluation and, if appropriate, retraining.
 - (a) The cost of the evaluation and retraining shall be paid by the system in accordance with the regulations established by the board.
 - (b) The member shall perform all acts that are necessary to enroll in and satisfy the requirements of Vocational Rehabilitation as prescribed by the board. This shall include the exchange of confidential information between Kentucky Retirement Systems and the Kentucky Office of Vocational Rehabilitation as necessary to conduct the rehabilitation process. Failure of the member to cooperate with the system or Vocational Rehabilitation may result in his disability allowance being discontinued, reduced, or denied until the member complies with the agency requests. If the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.

Section 18. KRS 61.675 is amended to read as follows:

- (1) The employer shall prepare the records and, from time to time, shall furnish the information the system may require in the discharge of its duties. Upon employment of an employee, the employer shall inform him of his duties and obligations in connection with the system as a condition of employment.
- (2) The system may at any time conduct an audit of the employer in order to determine if the employer is complying with the provisions of KRS 16.505 to 16.652, 61.610 to 61.705, or 78.510 to 78.852. The system shall have access to and may examine all books, accounts, reports, correspondence files, and records of any employer. Every employer, employee, or agency reporting official of a department or county, as defined in KRS 78.510(3), having records in his possession or under his control, shall permit access to and examination of the records upon the request of the system.
- (3) ***Any agency participating in the Kentucky Employees Retirement System which is not an integral part of the executive branch of state government shall forward the employer and employee contributions required under KRS 61.560 and 61.565 to the retirement office within twenty (20) days of the tenth day of the month following the period being reported. If the agency fails to forward all contributions within the twenty (20)***

days, interest at the actuarial rate adopted by the board compounded annually on the delinquent contributions, but not less than one hundred dollars (\$100), shall be added to the amount due the system.

Section 19. KRS 61.680 is amended to read as follows:

- (1) Prior to August 1, 1982, every employee shall be deemed to consent and agree to any deduction from his compensation required by KRS 6.500 to 6.535, 16.510 to 16.652, 61.510 to 61.692, 78.510 to 78.852, and to all other provisions thereof. Thereafter, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4).
- (2)
 - (a) Notwithstanding any other provisions of KRS 6.500 to 6.535, 16.510 to 16.652, 61.510 to 61.692, 78.510 to 78.852 and 161.220 to 161.714, upon death, disability, or service retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System and Teachers' Retirement System shall be consolidated for the purpose of determining eligibility and amount of benefits. Vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education and accepted by the Kentucky Employees Retirement System or the County Employees Retirement System, may be used to determine eligibility for thirty (30) year retirement but not the amount of benefits. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, but the final compensation shall be determined as if all service were in one (1) system. If the member has prior service in more than one (1) system, he shall obtain at least twelve (12) months' current service in each system in which he has prior service in order to validate the prior service in each system for purposes of determining consolidated benefits under this section. Upon the determination of benefits, each system shall pay the applicable percentage of total benefits.
 - (b) The provisions of paragraph (a) of this subsection shall be waived if the member notifies the system of his desire to maintain separate retirement accounts in the State Police Retirement System, Kentucky Employees Retirement System or County Employees Retirement System, or if he is a member of the State Police Retirement System or is working in a hazardous position under the Kentucky Employees Retirement System or County Employees Retirement System and as a result of an act in line of duty, becomes disabled or deceased.
 - (c) If the member has not contributed at least one (1) year in a system in which he has prior service, his current service in the system shall be valid for purposes of determining eligibility and in computation of benefits on a consolidated basis.
- (3) A member with service credit in the Kentucky Employees Retirement System, State Police Retirement System or the County Employees Retirement System who becomes the holder of an office entitling him to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, but who does not elect within thirty (30) days after taking office in such service to participate in the plan, in accordance with KRS 6.505 or 21.360, shall be deemed to have elected to retain membership in the system in which he is a member, either the Kentucky Employees Retirement System, State Police Retirement System or the County Employees Retirement System. In that event, the agency employing the member shall withhold employee contributions, or picked-up employee contributions after August 2, 1982, make employer contributions and remit these contributions to the system in which the member retained his membership. Any person entitled to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, who does not elect within thirty (30) days after taking office to participate in the plan, in accordance with KRS 6.505 or 21.360, and who at the time of taking office is not a contributing member of, or does not have service credit in, any of the retirement systems mentioned in this section, or the Teachers' Retirement System, shall participate in the Kentucky Employees Retirement System. *A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the system in which the employer of the nonelected position participates. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is not employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the Kentucky Employees Retirement System.*
- (4)
 - (a) Prior to July 1, 1976, a person entering the service of an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System with service credit in the Teachers' Retirement System and who desires to retain membership in the Teachers' Retirement System,

and who is permitted by that system to continue, shall be exempt from participating in the Kentucky Employees Retirement System or the County Employees Retirement System.

- (b) Any person who has elected to retain membership in the Teachers' Retirement System as provided in paragraph (a) of this subsection may cancel his election and participate in the system under which his position would normally participate, if he elects to cancel his option prior to January 1, 1977.
 - (c) Any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System and who does not elect within thirty (30) days after taking office to participate in the Legislators' Retirement Plan, in accordance with KRS 6.505, shall during his term of office participate in the Kentucky Employees Retirement System unless an election to retain membership in the Teachers' Retirement System is filed in writing within ninety (90) days after his term of office begins. No contributions may be made to the Teachers' Retirement System for the same period of service under the Legislators' Retirement Plan or the Kentucky Employees Retirement System as a member of the General Assembly, but contributions made to the Teachers' Retirement System while a member of the General Assembly shall be transferred to the Legislators' Retirement Plan, as provided for in KRS 6.535, when the member elects to join the Legislators' Retirement Plan, and service credit in the Legislators' Retirement Plan shall be granted as provided for in KRS 6.505(3).
- (5) Effective July 1, 1974, any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in a position covered by one (1) of these retirement systems and his employee contributions, service credit and employer contributions made on his behalf are being transferred to the other retirement system shall contribute to the system in which his employer participates, or after August 1, 1982, the employer shall pick up the employee contributions, and no further contributions or service credit shall be transferred to the system in which he elected to retain membership, as subsection (2) of this section eliminates the necessity of the transfers.
- (6) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in more than one (1) position covered by the same retirement system, shall have his wages and contributions consolidated and his retirement account administered as a single account. If part-time positions are involved, an accumulation of all hours worked within the same retirement system shall be used to determine eligibility under KRS 61.510(21).
- (7) Notwithstanding the provisions of subsection (3) of this section, a person who does not have the amount of service required for service retirement in the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, *Legislators' Retirement Plan*, or Teachers' Retirement System, but who is a member of one (1) of the systems or is a former member of one (1) or more of the systems with valid service credit therein, shall become eligible for service retirement benefits attributable to the amount of his actual service credit in each system in which he has service credit when his combined service credit in all the systems, plus any service credit he has in the Judicial Retirement Plan ~~or Legislators' Retirement Plan~~, is equal to that required for service retirement in each respective system. The computation of benefits shall be based on the applicable formula in each system and service credit in each system. ~~but~~ The final compensation shall be determined **by using the creditable compensation reported to the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System and only as much of the compensation earned in the Judicial Retirement Plan as is needed to satisfy the final compensation requirement applicable in the respective retirement systems** ~~as if all service were in one (1) system~~.

Section 20. KRS 61.702 is amended to read as follows:

- (1) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section. The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems, who are under age sixty-five (65), to be included in the state employees' group for hospital and medical insurance and shall provide benefits

for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status.

- (2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.
- (3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:
1. *Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;*
 2. *Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;*
 3. *Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;*
 4. *Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient.*

If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.

5. In full from the *Kentucky Retirement Systems* insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, a State Police Retirement System member or a hazardous position employee, as defined in KRS 61.592, who becomes disabled in the line of duty, as defined in KRS 16.505(19), shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, a State Police Retirement System member or a hazardous position employee as defined in KRS 61.592, who is killed in the line of duty, as defined in KRS 16.505(19), shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."

- (b) For a member *electing insurance coverage through the Kentucky Retirement Systems*~~[of the County Employees Retirement System]~~, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service *credit in one of the other state-administered retirement plans*~~[for which benefits are eligible under KRS 21.345 to 21.510]~~.
1. *Effective August 1, 1998*~~[Upon request by a member]~~, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in *another state-administered retirement plan*~~[the Judicial Retirement System]~~, and calculate the portion of the member's premium to be paid by the *insurance fund*~~[County Employees Retirement System]~~, according to the criteria established in paragraph (a) of this subsection. *Each state-administered retirement plan*~~[The Judicial Retirement Fund]~~ annually shall pay to the *insurance fund*~~[County Employees Retirement System]~~ the percentage of the system's cost of the retiree's *monthly contribution for single coverage for hospital and medical insurance*~~[premium]~~ which shall be equal to the percentage of the member's number of months of service in the *other state-administered retirement plan*~~[Judicial Retirement System]~~ divided by his total combined service. The amounts paid by the *other state-administered retirement plans and the insurance fund*~~[Judicial Retirement Fund and the County Employees Retirement System]~~ shall not be more than one hundred percent (100%) of the *monthly contribution*~~[single premium amount]~~ adopted by the respective boards of trustees~~[or more than the maximum percentage payable under the program established under this section or KRS 21.427]~~.
 2. A member *may not elect coverage for*~~[who elects]~~ hospital and medical benefits under this subsection *through more than one of the state-administered retirement plans*~~[shall lose any claim to insurance benefits under the Judicial Retirement Plan as described in KRS 21.427, and the election shall be irrevocable]~~.
 3. *A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.*
- (4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (b) The other provisions of this section notwithstanding, the insurance fund shall pay ~~a~~*the same* percentage of the *monthly contribution*~~[premium]~~ for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary~~[, as the fund pays or paid for the member]~~. *The percentage of the monthly contribution paid for the spouse and dependents shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section.*
- (c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or dependent or beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.
- (5) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

Section 21. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7), 61.555, and 78.530;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, and fees paid to the employee as a result of services performed for the employer *which are includable on the member's federal form W-2 wage and tax statement*, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (14) "Final compensation" of a member means the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2080) hours for eight (8) hour workdays, nineteen hundred fifty (1950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, *which shall also be the plan year*;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;
 - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary, *also referred to as probationary*, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
 - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement

allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;~~and~~
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434; **and**
- (31) **"Participating" means an employee is currently earning service credit in the system as provided in Section 23 of this Act.**

Section 22. KRS 78.540 is amended to read as follows:

Membership in the system shall consist of the following:

- (1) All persons who become employees of a participating county after the date the county first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3), and except that mayors and members of city legislative bodies may decline prior to their participation in the system and city managers or other appointed local government executives who participate in a retirement system, other than Social Security, which operates in more than one (1) state, may decline prior to their participation in the system;
- (2) All persons who are employees of a county on the date the county first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days next following the county's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 78.520 to 78.852; and
- (3) All persons electing coverage in the system under KRS 78.530(3)(d).
- (4) The provisions of subsections (1) and (2) of this section notwithstanding, cities which participate in the CERS and close existing local pension systems to new, or all members pursuant to the provisions of KRS 78.530, 95.520, 95.621 or 95.852 shall not be required to provide membership in the County Employees Retirement System to employees in any employee category not covered by a city pension system at the date of participation.
- (5) Membership in the system shall not include those employees who are simultaneously **participating in**~~contributing~~ to another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, **except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.**

Section 23. KRS 78.615 is amended to read as follows:

- (1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).
 - (a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.

- (b) For noncertified employees of school boards, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee ***monthly or annually. The employer shall file at the retirement office the final monthly report or the annual report for a fiscal year no later than twenty (20) days following the completion of the fiscal year. The retirement system shall impose a penalty on the employer of one thousand dollars (\$1,000) if the information is not submitted by the date required with an additional two hundred and fifty dollars (\$250) for each additional thirty (30) day period the information is reported late.***
1. If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.
 2. If the employee works fewer than the number of contracted days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.
 3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.
- (2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.
- (3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:
- (a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and
 - (b) A member on educational leave who meets the criteria established by the state Department of Personnel for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.
- (4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

Section 24. KRS 78.616 is amended to read as follows:

- (1) Any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees may purchase service credit with the retirement system for up to six (6) months of unused sick-leave for each retiring employee.
- (2) Participation under this section shall be at the option of each participating employer. The election to participate shall be made by the governing authority of the participating employer and shall be certified in writing to the system on forms prescribed by the board. The certification shall provide for equal treatment of all employees.
- (3) (a) Upon the member's notification of retirement as prescribed in KRS 61.590, the employer shall certify the retiring employee's unused, accumulated sick-leave balance to the system. The member's sick-leave balance, expressed in days, shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. A maximum of six (6) months of the member's sick-leave balance, expressed in months, shall be added to his service credit for the purpose of determining his annual retirement allowance under KRS 78.510 to 78.852 and for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 78.510 to 78.852. Accumulated sick-leave in excess of six (6) months shall be added to the member's service credit if the member ***or employer*** pays to the retirement system the value of the additional service credit based on the formula adopted by the board.

- (b) *The employer may elect to pay fifty percent (50%) of the cost of the sick leave in excess of six (6) months on behalf of its employees. The employee shall pay the remaining fifty percent (50%). The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payments are received by the retirement system.*
- (c) *Once the employer elects to pay all or fifty percent (50%) of the cost on behalf of its employees, it shall continue to pay the same portion of the cost.*
- (4) The system shall compute the cost of the sick-leave credit of each retiring employee and bill the employer accordingly. The employer shall remit payment within thirty (30) days from receipt of the bill.
- (5) As an alternative to subsections (1), (3), and (4) of this section, any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees shall, at the time of termination, compensate the employee for unused sick-leave days the employee has accumulated which it is the uniform policy of the agency to allow. The rate of compensation for each unused sick-leave day shall be based on the daily salary rate calculated from the employee's current rate of pay. Payment for unused sick-leave days shall be incorporated into the **employee's final compensation**~~[annual salary of the final year of service]~~, if the employee and employer make the regular employee and employer contributions, respectively, on the sick-leave payment. The number of sick-leave days for which the employee is compensated shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. This number of months shall be added to the employee's total service credit and to the number of months used to determine creditable compensation, pursuant to KRS 78.510, but no more than sixty (60) months shall be used to determine final compensation.

Section 25. KRS 78.625 is amended to read as follows:

- (1) The agency reporting official of the county shall, by the tenth day of each month, forward to the system an amount equal to the aggregate amount of the employees' contributions deducted during the previous month in accordance with KRS 78.610 and the aggregate amount of the employer's contributions due for the previous month in accordance with KRS 61.565.
- (2) The agency reporting official or some other person designated by the county shall forward a record of all contributions to the system on the forms the board prescribes.
- (3) (a) If the agency reporting official fails to forward all contributions within twenty (20) days of the tenth day of the month following the period being reported, interest at the **actuarial rate adopted by the board**~~[of eight percent (8%) per year]~~ compounded annually on the delinquent contributions, but not less than one hundred dollars (\$100), shall be added to the amount due the system.
- (b) Delinquent contributions, with interest at the rate **adopted by the board**~~[of eight percent (8%) per year]~~ compounded annually, **or penalties** may be recovered by action in the Franklin Circuit Court against the county liable or may, at the request of the board, be deducted from any other moneys payable to the county by any department or agency of the state.
- (4) If an agency is delinquent in the payment of contributions due in accordance with any of the provisions of KRS 78.510 to 78.852, refunds and retirement allowance payments to members of this agency may be suspended until the delinquent contributions have been made.

Section 26. KRS 61.555 is amended to read as follows:

- (1) Any employee entering the Armed Forces of the United States after he first participates in the system, being on leave of absence from service and not withdrawing his accumulated contributions, shall be entitled to have credited as current service his period of active military duty in the Armed Forces of the United States, not to exceed six (6) years, if his discharge therefrom is honorable and he is reemployed within two (2) years after discharge, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge.
- (2) Any member of the system who, prior to the date he first participated in the system, terminated his employment in order to enter the Armed Forces of the United States and who was or is reemployed within two (2) years after his honorable discharge therefrom, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge, shall be entitled to have credited as prior service his period of active military duty in the Armed Forces, not to exceed six (6) years.

- (3) Any National Guard technician involuntarily serving on active military duty during the period between January 26, 1968, and January 1, 1970, who completes his eight (8) years service while on military duty during this period, shall have that portion of his active military duty, necessary to the completion of eight (8) years current service, credited to his account, as current service without having to meet the reemployment criteria.
- (4) Any employee eligible for retirement as prescribed in KRS 61.559 or any employee upon completion of five (5) years of service shall receive current service credit for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (3) of this section if he pays thirty-five percent (35%) of the cost of the service based on the formula adopted by the board. The payment by the member shall not be picked up by the employer, as described in subsection (4) of KRS 61.560, and shall be deposited to his individual member's account. The remaining sixty-five percent (65%) shall be paid by the state from funds appropriated specifically for the purpose and these payments shall be deposited to the respective retirement allowance accounts. If no funds are available in the special appropriation account, the system shall not accept employee payments until funds are available in the account.
- (5) A member eligible to purchase military service credit under subsection (4) of this section shall receive current service credit for active military duty as provided under subsection (4) of this section without payment of the current employee contribution ratio if the member was taken prisoner by a hostile power at any time during active military service.
- (6) Any member age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or any other member who has sixty (60) months of service, at least twelve (12) of which are current service (or his beneficiary if the member dies prior to retirement) shall receive current service for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (4) of this section, by paying the retirement system a delayed contribution payment as defined in subsection (22) of KRS 61.510. Payment shall be by lump sum, except that members may pay by increments. The delayed contribution payment shall not be picked up, as described in subsection (4) of KRS 61.560, by the employer and shall be deposited to the individual member's account.
- (7) Effective July 1, 1978, no veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for such pension in the future; but nothing in this section shall prohibit the purchase of credit if the military pension results from service primarily on inactive duty in a reserve component of the Armed Forces, or if the military pension is a disability pension, or is for a veteran sixty-five (65) years of age or older who is considered permanently and totally disabled. Any veteran receiving a military disability pension who retired prior to July 15, 1986, who was unable to purchase military service credit pursuant to subsection (4) or subsection (6) of this section, may make the payment required by subsection (4) or subsection (6), and his retirement benefits shall be recalculated to apply to all retirement allowances and insurance benefits received after the date of the payment. Retiree payments pursuant to subsection (4) of this section shall not be accepted unless matching state funds are available in the special appropriation account.
- (8) ***Any member of the Kentucky Employees Retirement System age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or any member of the Kentucky Employees Retirement System or the State Police Retirement System who has sixty (60) months of service, at least twelve (12) of which are current service, shall receive one (1) month of current service for each six (6) months of service in the National Guard or the military reserves of the United States, by paying the retirement system the full actuarial cost as determined by the system. The service shall be treated as service earned prior to participation in the system and shall not be included in the member's final compensation. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer, as described in KRS 16.545(4), 61.560(4), or 78,610(4) and shall be deposited in the member's individual retirement account.***

Section 27. KRS 161.507 is amended to read as follows:

- (1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the

employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.

- (2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.
- (3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.
- (4)
 - (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall contribute to the retirement system an amount equal to thirty-five percent (35%) of the actuarial cost for each year of service for which the member is receiving credit. Two percent (2%) of the thirty-five percent (35%) required payment shall be allocated to the medical insurance fund. These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.
 - (b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.
- (5) ***An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) month of service in the reserves or the National Guard. The member shall pay the full actuarial cost of the service in the military reserves or the National Guard. Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).***

Section 28. KRS 61.637 is amended to read as follows:

- (1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.515 to 61.705 and KRS 78.520 to 78.852 and who is reemployed in any position except as an independent contractor by a participating agency shall have his retirement payments suspended for the duration of reemployment. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.
- (2) Employer and employee contributions shall be made as provided in KRS 61.515 to 61.705 and KRS 78.520 to 78.852 on the compensation paid during reemployment except where monthly payments were not suspended as

provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar (\$1), and the member shall be credited with additional service credit.

- (3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.
- (4)
 - (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the federal Social Security Act in compensation from participating agencies during any calendar year of reemployment;
 - (b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment;
 - (c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:
 1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;
 2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);
 3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;
 4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691. If the member had selected the retirement allowance payable for ten (10) years certain under KRS 16.576(4) upon his initial retirement and is reemployed within the same system from which he retired in a nonhazardous position, upon termination the member shall receive a retirement allowance from his nonhazardous service payable for the number of months remaining under his hazardous benefit;
 5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.
- (5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents (\$0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar (\$1) for every three dollars (\$3) earned if over age sixty-five (65).
- (6)
 - (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095; and
 - (b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.
- (7) *Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the*

member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.

Approved March 25, 1998

CHAPTER 106

(SB 63)

AN ACT relating to health insurance coverage for autism.

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

SECTION 1. A NEW SECTION OF KRS 304.17A-100 TO 304.17A.160 IS CREATED TO READ AS FOLLOWS:

- (1) *All health benefit plans shall provide coverage, including therapeutic respite and rehabilitative care, for the treatment of autism of a child covered under the policy.*
- (2) *Coverage for autism shall be subject to a five hundred dollar (\$500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.*
- (3) *As used in this section, "autism" means:*
 - (a) *A total of six (6) or more items from subparagraphs 1., 2., and 3. of this paragraph, with at least two (2) from subparagraph 1. and one (1) each from subparagraphs 2. and 3.:*
 1. *Qualitative impairment in social interaction, as manifested by at least two (2) of the following:*
 - a. *Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;*
 - b. *Failure to develop peer relationships appropriate to developmental level;*
 - c. *A lack of spontaneous seeking to share enjoyment, interests, or achievement with other people; or*
 - d. *Lack of social or emotional reciprocity.*
 2. *Qualitative impairments in communication as manifested by at least one (1) of the following:*
 - a. *Delay in, or total lack of, the development of spoken language;*
 - b. *In individuals with adequate speech, marked impairment in the ability to imitate or sustain a conversation with others;*
 - c. *Stereotyped and repetitive use of language or idiosyncratic language; or*
 - d. *Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental levels.*
 3. *Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one (1) of the following:*
 - a. *Encompassing preoccupation with one (1) or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;*
 - b. *Apparently inflexible adherence to specific, nonfunctional routines or rituals;*
 - c. *Stereotyped and repetitive motor mannerisms; or*
 - d. *Persistent preoccupation with parts of objects;*
 - (b) *Delays or abnormal functioning in at least one (1) of the following areas, with onset prior to age three (3) years:*

1. *Social interaction;*
 2. *Language as used in social communication; or*
 3. *Symbolic or imaginative play; and*
- (c) *The disturbance is not better accounted for by Rett's Disorders of Childhood Disintegrative Disorder.*
- (4) *As used in this section, "child" means a person two (2) through twenty-one (21) years of age.*

Approved March 25, 1998

CHAPTER 107

(HB 185)

AN ACT relating to student activities.

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

Section 1. KRS 158.153 is amended to read as follows:

- (1) Unless the action is taken pursuant to KRS 158.150, no school, school administrator, teacher, or other school employee shall expel or punish a child based on information contained in a record of an adjudication of delinquency or conviction of an offense received by the school pursuant to KRS 610.345 or from any other source. Nothing in this subsection shall be construed to prohibit a local school board or school official from instituting disciplinary proceedings against any student for violating the discipline policy of the school or school district or taking actions necessary to protect staff and students. Actions to protect staff and students may be taken only after the principal makes a determination that the conduct of the student reflected in the records of the school or obtained by the school from the court indicates a substantial likelihood of an immediate and continuing threat that the student will cause harm to students or staff, and that the restrictions to be ordered represent the least restrictive alternative available and appropriate to remedy the threat, and that the determination and supporting material be documented in the child's record. The action of the principal, in addition to or in lieu of any other procedure available, may be appealed by the child or the child's parent or guardian to the superintendent of the school system or to the Circuit Court in the county in which the school is located, and the appealing party may be represented by counsel.
- (2) No school, school administrator, teacher, or other school employee who has custody of records received or maintained by the school pursuant to KRS 610.345 or who has received information contained in or relating to a record received by the school pursuant to KRS 610.345 shall disclose the fact of the record's existence, or any information contained in the record or received from the record to any other person, including but not limited to other teachers, school employees, pupils, or parents other than the pupil, or parents of the pupil who is the subject of the record.
- (3) The child and his parent or guardian shall have a civil cause of action against the school board and against any school administrator violating subsection (1) or (2) of this section or divulging information in violation of KRS 610.345 or 610.340. This civil cause of action shall be in addition to any other criminal or administrative remedy provided by law.
- (4) *Nothing in this section shall be construed to prohibit a local board of education from establishing district-wide standards of behavior for students who participate in extracurricular and cocurricular activities, including athletics. A school principal may deny or terminate a student's eligibility to participate in extracurricular or cocurricular activities if the student has violated the local district behavior standards or the council's criteria for participation, as described in KRS 160.345(2)(i)8. A student's right to participate in extracurricular or cocurricular activities, including athletics may be suspended, pending investigation of an allegation that the standards of behavior have been violated.*

Approved March 25, 1998

CHAPTER 108**(HB 215)**

AN ACT relating to school athletics.

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

Section 1. KRS 156.070 is amended to read as follows:

- (1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.
- (2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B ~~with final orders subject to review by the board~~.
 - (a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.
 - (b) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity wrestling, soccer, and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity wrestling, soccer, and football for students who have not successfully completed the eighth grade.
 - (c) ***Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only.***
- (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.
 - (b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written

notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

- (c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.
- (4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be inclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.
- (5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

Approved March 25, 1998

CHAPTER 109

(HB 259)

AN ACT relating to campaign finance violations.

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

Section 1. KRS 121.140 is amended to read as follows:

- (1) Upon the sworn complaint of any person, or on its own initiative, the registry shall investigate alleged violations of campaign finance law. In conducting any investigation, the registry shall have the power of subpoena and may compel production of evidence including the financial records of any person determined by the registry to be vital to the investigation. The records subject to subpoena include, but are not limited to, a person's bank records and other relevant documents, but excluding individual and business income tax records.
- (2) If the registry concludes that there is probable cause to believe that the law has been violated, the registry shall notify the alleged violator of its conclusions and the evidence supporting them, and shall offer the alleged violator a conciliation agreement to resolve the issue. A conciliation agreement may require the alleged violator to comply with one (1) or more of the following:
- (a) To cease and desist violations of the law;
 - (b) To file required reports or other documents or information;

- (c) To pay a penalty not to exceed one hundred dollars (\$100) a day, up to a maximum total fine of five thousand dollars (\$5,000), for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document, or information is filed; except that there shall be no maximum total fine for candidates for statewide office; or
- (d) To pay a penalty not to exceed five thousand dollars (\$5,000) per violation for acts of noncompliance with provisions contained within this chapter.
- (3) To accept a conciliation agreement, an alleged violator shall deliver the signed agreement to the registry either in person or by mail postmarked not later than ten (10) days after the day he received it. The registry may institute a civil action in Franklin Circuit Court or the Circuit Court for the county of the violator's residence to enforce the provisions of any conciliation agreement accepted by a violator who is not complying with its provisions.
- (4) If the alleged violator declines to accept the conciliation agreement or fails to respond within the time allowed, the registry shall ~~within five (5) days,~~ submit a written request to the Chief Justice of the Kentucky Supreme Court to recommend not fewer than **five (5)**~~ten (10)~~ nor more than **ten (10)**~~fifteen (15)~~ retired or former justices or retired or former judges of the Court of Justice who are qualified and willing to ~~serve on a panel which shall~~ conduct a hearing to determine if a violation has occurred. Upon receipt of the recommendations of the Chief Justice, the registry shall randomly select **one (1)**~~three (3)~~ retired or former **justice**~~Justices~~ or **judge**~~Judges~~ from the list to conduct the hearing, which shall be held in accordance with the Kentucky Rules of Civil Procedure, or, if the Chief Justice declines to make recommendations, the registry, on its own initiative, shall request retired or former justices or judges to serve ~~on the panel~~. The time and location of hearings shall be determined by the registry. Retired or former justices or judges selected to serve ~~on a three (3) judge panel~~ shall receive reimbursement from the registry for their reasonable and necessary expenses incurred as a result of the performance of their duties **at the hourly rate set for attorneys by the Finance and Administration Cabinet**. The registry shall notify the complainant and the alleged violator that a hearing shall be conducted of the specific offenses alleged not less than thirty (30) days prior to the date of the hearing. At the hearing, which shall be open to the public pursuant to KRS 61.810, the attorney for the registry shall present the evidence against the alleged violator, and the alleged violator shall have all of the protections of due process, including, but not limited to, the right to be represented by counsel, the right to call and examine witnesses, the right to the production of evidence by subpoena, the right to introduce exhibits and the right to cross-examine opposing witnesses. **If the justice or judge determines that the preponderance of the evidence shows a violation has occurred, the justice or judge shall**~~The panel shall conclude its proceedings and~~ render a decision not more than sixty (60) days after the **case is submitted for determination. The decision shall become the final decision of the registry unless the registry board at its next regular meeting acts to set aside or modify the justice's or judge's decision, in which case the registry board's decision shall become the final registry decision. A party adversely affected by the registry's order may appeal to Franklin Circuit Court within thirty (30) days after the date of the registry's order. The**~~date on which the panel was appointed to conduct a hearing. If the panel determines that the preponderance of the evidence shows a violation has occurred, it shall issue an order, which shall be appealable to the Court of Appeals within thirty (30) days after the date of the order, to the~~ violator **may be ordered** to comply with any one (1) or more of the following requirements:
- (a) To cease and desist violation of this law;
- (b) To file any reports or other documents or information required by this law;
- (c) To pay a penalty not to exceed one hundred dollars (\$100) a day, up to a maximum total fine of five thousand dollars (\$5,000), for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document, or information is filed; except that there shall be no maximum total fine for candidates for statewide office; or
- (d) To pay a penalty not to exceed five thousand dollars (\$5,000) per violation for acts of noncompliance with provisions contained within this chapter. An appeal of an order ~~of the panel~~ shall be advanced on the docket to permit a timely decision.
- (5) If the registry concludes that there is probable cause to believe that the campaign finance law has been violated knowingly, it shall refer the violation to the Attorney General or the appropriate Commonwealth's or county attorney for prosecution. The Attorney General may request the registry's attorney or the appropriate county or Commonwealth's attorney to prosecute the matter and may request from the registry all evidence collected in

its investigation. In the event the Attorney General or the appropriate local prosecutor fails to prosecute in a timely fashion, the registry may petition the Circuit Court to appoint the registry's attorney to prosecute, and upon a motion timely filed, for good cause shown, the court shall enter an order to that effect. Prosecutions involving campaign finance law violations, in which the reports are required to be filed in Frankfort, may be conducted in Franklin Circuit Court or in the Circuit Court for the county in which the contribution or expenditure constituting a campaign finance violation was solicited, made, or accepted. The prosecution of a person who unlawfully solicits, makes, or accepts a contribution or expenditure through the use of the mail may be conducted in the Circuit Court for the county in which the solicitation is mailed, the county in which the contribution is mailed or received, or the county in which the expenditure is mailed.

- (6) Any person directly involved or affected by an action of the registry~~[or the panel]~~ which is final, other than of a determination to refer a violation to the Attorney General or appropriate Commonwealth's or county attorney for prosecution, may seek judicial review of the action within thirty (30) days after the date of the action.
- (7) If judicial review is sought of any action of the registry~~[or the panel]~~ relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

Approved March 25, 1998

CHAPTER 110

(HB 352)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-26, dated January 7, 1997, dealing with the internal structure of the Department of Alcoholic Beverage Control. Under that order, the Administrative Services Branch is abolished and all personnel, records, files, equipment, and funds are transferred to the Division of Support Services Administration, which is created and which shall be responsible for financial and personnel functions. The General Counsel Branch is abolished and all personnel, records, files, equipment, and funds are transferred to the Office of Legal Services, which is created. The Enforcement Branch, including the positions of Deputy Chiefs of Enforcement, is abolished and all personnel, records, files, equipment, and funds are transferred to the Enforcement Division, which is created. The Tobacco Branch is abolished, and all of its personnel, records, files, equipment, and funds are transferred to the Division of Support Services Administration. The Field Office Branch, within the Commissioner's Office, is abolished and all personnel, records, files, equipment, and funds are transferred to the Field Offices, which is created within the Division of Distilled Spirits, and which will report to the Malt Beverage and Distilled Spirits Administrators.

Approved March 25, 1998

CHAPTER 111

(HB 308)

AN ACT relating to teacher scholarships.

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

Section 1. KRS 164.769 is amended to read as follows:

- (1) It is the intent of the General Assembly to establish a teacher scholarship program to assist highly qualified individuals to become certified Kentucky teachers and render teaching service in Kentucky schools.
- (2) For purposes of this section, the terms listed below shall have the following meanings:
 - (a) "Critical shortage area" means an understaffing of teachers in particular subject matters at the secondary level, in grade levels, or in geographic locations at the elementary and secondary level, as determined by the commissioner of education in consultation with the authority. The commissioner and the authority may use any source considered reliable including, but not limited to, local education agencies to identify the critical shortage areas.

- (b) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification, but does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.
 - (c) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying methodology set forth in 20 U.S.C. sec. 1087 kk to 1087 vv.
 - (d) "Participating institution" means an institution of higher education located in Kentucky which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.
 - (e) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school of the Commonwealth or a private school certified pursuant to KRS 156.160(3), ***except that an individual having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.), whose disability, certified by a licensed physician, prevents that individual from teaching a major portion of each school day, shall be deemed to perform qualified teaching service by teaching the maximum time permitted by the attending physician.***
 - (f) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.
 - (g) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.
- (3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, award teacher scholarships to persons eligible under subsection (4) of this section, who initially demonstrate financial need in accordance with standards and criteria established by the authority or received teacher scholarships pursuant to this section prior to July 1, 1996. Each teacher scholarship shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.
 - (4) Kentucky residents who are United States citizens and enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution shall be eligible, to apply for and be awarded teacher scholarships. Teacher scholarships shall first be awarded to highly qualified eligible students who meet standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program at a participating institution or who received teacher scholarships pursuant to this section prior to July 1, 1996. If funds are not depleted after awarding teacher scholarships to students who meet the preceding criteria, then awards shall be made to any otherwise eligible students seeking admission to a teacher education program.
 - (5) The authority shall establish, by administrative regulation, the maximum amount of scholarship to be awarded for each semester and summer term under this section, and shall prorate the amount awarded to any student enrolled less than full-time in accordance with paragraph (6)(a) of this section. The aggregate amount of scholarships awarded to an individual shall not exceed twelve thousand five hundred dollars (\$12,500) for undergraduate students and seven thousand five hundred dollars (\$7,500) for post-baccalaureate students, except that the aggregate amount of scholarships awarded to an individual who received teacher scholarships pursuant to this section prior to July 1, 1996, including any amount received pursuant to KRS 156.611, 156.613, 164.768, or 164.770, shall not exceed twenty thousand dollars (\$20,000), and the amount of each scholarship to be awarded shall not exceed the applicant's total cost of education minus other financial assistance received or expected to be received by the applicant during the academic period.
 - (6) (a) The authority shall disburse teacher scholarships to eligible students who agree to render qualified teaching service as certified teachers, and are unconditionally admitted and enrolled in an eligible program of study on a full-time basis, except that disbursements may be made to otherwise eligible students enrolled less than full-time in the semester or summer term in which the eligible program of study will be completed ***or otherwise eligible students having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.), who have been certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability.*** Teacher scholarships shall be disbursed to eligible students who received teacher scholarships pursuant to this section for recertification in a critical shortage area prior to July 1, 1996, who are enrolled in and

continuing toward completion of their program of study, and who agree to render qualified teaching service as certified teachers.

- (b) A teacher scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.
 - (c) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area designated by the authority shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate number of promissory notes.
 - (d) If the recipient of a teacher scholarship fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of scholarships under this paragraph shall be liable for interest accruing from the dates on which the teacher scholarships were disbursed.
 - (e) Recipients who have outstanding loans or scholarships under KRS 156.611, 156.613, 164.768, or 164.770 respectively, and who render qualified teaching service, shall have their notes canceled in accordance with subsection (6)(c) of this section.
 - (f) The authority shall establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, but not limited to, the selection criteria, eligibility for renewal awards, amount of scholarship payments, deferments, the rate of repayment, and the interest rate thereon.
 - (g) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.
- (7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher scholarship.
 - (8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.
 - (9) All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.
 - (10) The authority may execute appropriate contracts and promissory notes for administering this section.
 - (11) If available funds are insufficient for all requested scholarships for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher scholarships. If funds are insufficient to make all requested renewal scholarships to eligible applicants, the authority shall reduce all scholarship awards to the extent necessary to provide scholarships to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria, which may include expected family contribution and application date, and awards shall be made to highly qualified applicants until funds are depleted.

Approved March 25, 1998

CHAPTER 112

(HB 359)

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 97-734, dated June 13, 1997, which establishes the Division of Trial Services and the Division of Post-Trial Services within the Department of Public Advocacy.

Approved March 25, 1998

CHAPTER 113

(HB 361)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1091, dated August 25, 1997, which creates within the Office of the Secretary, Public Protection and Regulation Cabinet:

- (1) The Office of General Counsel, which shall report directly to the cabinet secretary; and
- (2) The Division of Administrative Services, which shall advise the cabinet secretary and provide oversight on budget, fiscal, and personnel services to select agencies within the cabinet.

Approved March 25, 1998

CHAPTER 114

(HB 363)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1037 as amended by 97-1114, which abolishes the Division of Rates and Research; renames the Division of Engineering and Services to the Division of Engineering; and establishes a Division of Research, a Division of Consumer Services, and a Division of Filings. The Division of Consumer Services shall be headed by a division director appointed by the executive director of the Public Service Commission. The Division of Filings shall be headed by a director with the title of secretary of the commission appointed by the executive director of the Public Service Commission, and shall be composed of organizational entities deemed appropriate by the executive director.

Approved March 25, 1998

CHAPTER 115

(HB 366)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1386, dated October 20, 1997, which creates the Division of Mine Licensing within the Department of Mines and Minerals; changes the name of the Division of Mine Safety and Health to the Division of Mine Safety Inspection; and changes the name of the Division of Mining, Training-Education, Certification and Instruction to the Division of Miner Training, Education and Certification.

Approved March 25, 1998

CHAPTER 116**(HB 375)**

AN ACT relating to the Commission on Sports, Physical Activity, and Wellness.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created the Governor's Commission on Sports, Physical Activity, and Wellness, which shall be attached to the Office of the Governor for administrative purposes.*
- (2) *The commission shall consist of eighteen (18) members, including one (1) person designated by and representing the Governor, and seventeen (17) additional members appointed by the Governor from among representatives of health and fitness organizations, amateur sports organizations, education, the sports and entertainment industry, and the private sector, including business and community organizations. Of the seventeen (17) members appointed by the Governor, three (3) shall be selected from the state at large and two (2) members shall be selected from each of the seven (7) Kentucky Supreme Court districts. Of the eighteen (18) members of the commission, nine (9) shall be males and nine (9) shall be females. The Governor shall designate one (1) member to serve as chairperson of the commission.*
- (3) *Members of the commission first appointed or reappointed to a full term after the effective date of this section shall serve for terms of four (4) years. The member designated as chairperson shall chair the commission for a term of two (2) years.*
- (4) *The commission shall meet at least four (4) times per year and as necessary upon the call of the chairperson.*
- (5) *Members of the commission who are not otherwise state officers or employees shall receive actual and reasonable travel expenses incurred while attending meetings of the commission.*
- (6) *The commission shall:*
 - (a) *Promote and sponsor an Olympic-style, year-round program of statewide amateur athletic competition to be known as the Bluegrass State Games;*
 - (b) *Serve as a resource to the Governor and the General Assembly on issues regarding sports, physical activity, and wellness;*
 - (c) *Increase awareness and develop physical fitness and activity goals for all Kentuckians;*
 - (d) *Encourage intergenerational activities, including fitness and sports, in strengthening the family unit;*
 - (e) *Support the missions of the National Association of Governors' Councils on Physical Fitness and Sports and the President's Council on Physical Fitness and Sports;*
 - (f) *Support collaboration among federal, state, and local agencies, education, business, industry, and other private sector organizations, and others in the promotion of sports, physical activity, and wellness;*
 - (g) *Submit an annual report to the Governor and the General Assembly on the state of sports, physical activity, and wellness in the Commonwealth;*
 - (h) *Solicit state and federal grant funds, where feasible, to carry out its programs and responsibilities; and*
 - (i) *Establish a fundraising subcommittee which shall work with the private sector to identify resources to support the projects planned and endorsed by the commission.*
- (7) *The Bluegrass State Games shall be designed to encourage the participation of a broad range of age and skill levels and shall be open to all residents of the state.*

Section 2. The General Assembly confirms Executive Order 97-932, issued July 25, 1997, to the extent that it is not otherwise confirmed by Section 1 of this Act.

Approved March 25, 1998

CHAPTER 117

(HB 405)

AN ACT relating to the emergency management assistance compact.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 39 IS CREATED TO READ AS FOLLOWS:

Emergency Management Assistance

Compact

ARTICLE I. Purpose and Authorities.

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term 'states' is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II. General Implementation.

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III. Party State Responsibilities.

- A. *It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:*
1. *Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;*
 2. *Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;*

3. *Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;*
 4. *Assist in warning communities adjacent to or crossing the state boundaries;*
 5. *Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;*
 6. *Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and*
 7. *Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.*
- B.** *The authorized representative of a party state may request assistance to another party state by contracting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty (30) days of the verbal request. Requests shall provide the following information:*
1. *A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;*
 2. *The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed and;*
 3. *The specific place and time for staging of the assisting party's response and a point of contact at that location.*
- C.** *There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.*

ARTICLE IV. Limitations.

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the Governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V. Licenses and Permits.

Whenever any person holds a license, certificate, or other permit issued by any party state to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving state party, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI. Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or

employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII. Supplementary Agreements.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII. Compensation.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX. Reimbursement.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

ARTICLE X. Evacuation.

Plans for the orderly evacuation and interstate reception for portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI. Implementation.

- A. This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.*
- B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty (30) days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.*
- C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.*

ARTICLE XII. Validity.

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

ARTICLE XIII. Additional Provisions.

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18 of the United States Code.

Section 2. KRS 39.460 is amended to read as follows:

The Governor is hereby authorized to take such actions as are necessary to effectuate the provisions of the compact set forth in *Section 1 of this Act* ~~[KRS 39.450]~~.

Section 3. The following KRS section is repealed:

39.450 Authority to execute Interstate Emergency Management and Disaster Compact.

Section 4. The participation of the Commonwealth of Kentucky in the Interstate Emergency Management and Disaster Compact set forth in KRS 39.450 is terminated.

Approved March 25, 1998

CHAPTER 118

(HB 427)

AN ACT relating to financial administration.

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

Section 1. KRS 41.010 is amended to read as follows:

- (1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300 or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "employee," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.
- (2) As used in this chapter;
 - (a) ~~[the words]~~ "Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government *designated to take custody of state funds on deposit, for periods greater than overnight, with the intent to honor presentments against those deposits;*
 - (b) *"Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check;*
 - (c) *"Form" or "report" means any written method of transporting data;*
 - (d) *"Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.*

Section 2. KRS 41.070 is amended to read as follows:

- (1) Unless otherwise expressly provided by law, no receipts from any source of state money or money for which the state is responsible shall be held, used, or deposited in any personal or special bank account, temporarily or otherwise, by any agent or employee of any budget unit, to meet expenditures or for any other purpose. All receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available. However in the case of state departments or agencies located outside Frankfort, and all state institutions, the Finance and Administration Cabinet may permit temporary deposits to be made to the accounts maintained by the agency, department, or institution in a bank which has been designated as a depository for state funds for a period not to exceed thirty (30) days, and may require that the money be forwarded to the State Treasury at the

time and in the manner and form prescribed by the cabinet. Nothing in this section shall be construed as authorizing any representative of any agency, department, or institution to enforce or cash, even for the purpose of a deposit, any check or other instrument of value payable to the Commonwealth or any agency thereof.

- (2) Each agency depositing its receipts directly with the State Treasurer shall do so *in the manner* ~~on a pay-in-voucher form~~ approved by the State Treasurer as agent in charge of public fund deposits.
- (3) The Revenue Cabinet may deposit ~~tax~~ receipts to the credit of the State Treasury directly with a depository designated by the Treasurer and utilized by the Commonwealth for its primary banking services. The State Treasurer, with the approval of the Finance and Administration Cabinet, may authorize other agencies to deposit receipts directly with a depository designated by the Treasury to the credit of the State Treasury if the Treasurer prescribes the manner in which the deposit is to be made, and the forms and reports to be filed with the Treasury Department. The Finance and Administration Cabinet shall prescribe the forms and reports to be filed with it when this type of deposit is made.
- (4) Each department, agency, or other budget unit which receives funds to be deposited into the State Treasury shall maintain records to report adequately each amount received, from whom received, and date received. Agency records shall be easily reconcilable with the *information* ~~pay-in-vouchers~~ forwarded to the State Treasurer.

Section 3. KRS 41.100 is amended to read as follows:

The Treasurer shall receive *notification from state agencies of* all money due or payable to the state ~~when tendered by a state agency~~. *The Treasurer* ~~He~~ shall *provide acknowledgment of the notification* ~~receipt one (1) copy of the pay-in-voucher and forward it~~ to the Finance and Administration Cabinet.

Section 4. KRS 41.120 is amended to read as follows:

All claims against the state shall be paid by the Treasurer on the warrants of the Finance and Administration Cabinet. All warrants issued in accordance with the provisions of this chapter shall, when signed by the secretary of the Finance and Administration Cabinet or an assistant designated by him, constitute full and sufficient authority to the Treasurer for the disbursement of public money in the amount set forth. ~~Said~~ Signatures may be placed on the warrants by means of an approved mechanical device. A signed transmittal which lists warrants may be accepted in lieu of each warrant being signed. *Electronic authorization, approved by the secretary of the Finance and Administration Cabinet, may be accepted in lieu of any signatures.*

Section 5. KRS 41.130 is amended to read as follows:

- (1) Each warrant of the Finance and Administration Cabinet upon the Treasury shall specify the date, ~~number,~~ amount, *and* person to whom payable ~~, on what account issued, and the particular appropriation against which it is drawn,~~ and no money shall be disbursed by the Treasurer unless the warrant contains these specifications. ~~The Finance and Administration Cabinet shall date and number each warrant.~~
- (2) No warrant shall be issued unless the money to pay it has been appropriated by law. The Finance and Administration Cabinet may require any claimant to state on the face of his claim the law under which it is payable.

Section 6. KRS 41.140 is amended to read as follows:

All warrants issued by the Finance and Administration Cabinet shall be submitted to the Treasurer ~~accompanied by a list of all the warrants submitted at any one (1) time,~~ showing for each warrant the name of the payee *and* ~~the amount, and the fund against which drawn, and each list shall show the total of the amounts of all the warrants listed.~~

Section 7. KRS 41.160 is amended to read as follows:

No money shall be paid out of the Treasury except by the check of the Treasurer upon a state depository, *or through the provisions of Section 19 of this Act.* ~~The Treasurer shall date and number his checks on each of the state depositories in the order in which they are issued.~~ Payments may be made direct by the Treasurer to the persons entitled to receive them, by mail or otherwise, or through the heads of the budget units which incurred the expenditures.

Section 8. KRS 41.165 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 337.010 through 337.070 and 41.160, the Treasurer shall pay, by electronic fund transfer, the wages of any state employee who makes a prior written request to the **employing state agency**~~Department of the Treasury~~ to be paid by electronic fund transfer. The Treasurer may refuse to comply with the request of an employee if the financial institution designated by the employee does not have the capability of receiving electronic transfers of funds.
- (2) The Department of Personnel shall provide forms on which to request wage payments by electronic transfer of funds. The Department of Personnel may, by regulations promulgated pursuant to KRS Chapter 13A, require information on the request forms for wage payment by electronic transfer of funds that sufficiently identifies the employee and the designated financial institution of the employee.
- (3) Any state agencies which employ persons who have exercised the option authorized by subsection (1) of this section shall retain the forms described in subsection (2) of this section.

Section 9. KRS 41.167 is amended to read as follows:

- (1) The State Treasurer may withdraw funds from or deposit funds in the State Treasury by means of electronic funds transfers. The **Finance and Administration Cabinet**~~Treasurer~~ shall obtain a payee's prior, written consent for the payment of funds due him from the State Treasury by means of direct deposit rather than by means of a paper check issued to him. A single authorization may be granted for multiple payments to a payee by means of direct deposit.
- (2) For the purpose of implementing this section and unless the context requires a different meaning, the term "check" as used in this chapter shall mean either a paper check or a paperless entry on an electronic data processing medium that substitutes for a paper check for the purposes of debiting or crediting an account and of which a permanent record is made.

Section 10. KRS 41.170 is amended to read as follows:

The Finance and Administration Cabinet shall **record**~~enter~~ all warrants **in the unified and integrated system of accounts**~~into a general ledger account for warrants payable~~. After the Treasurer has issued a check to pay the warrant, **the Treasurer**~~he~~ shall notify the Finance and Administration Cabinet~~in writing~~; a single notification may reflect all warrants paid each day.

Section 11. KRS 41.260 is amended to read as follows:

Whenever the Treasurer decides to transfer any deposit of public money from one (1) state depository bank to another, **the Treasurer**~~he~~ shall **notify**~~cause to be prepared and transmitted to~~ the Finance and Administration Cabinet,~~a voucher~~ describing the proposed transfer and the ~~pay in vouchers for the~~ deposit of ~~the~~ money to be ~~so~~ transferred. On receipt of **the notification**~~these documents~~ the Finance and Administration Cabinet shall register the proposed transfer~~in a book to be maintained for this purpose~~ and issue its warrant for the amounts specified by the Treasurer.~~The Finance and Administration Cabinet shall fill in on the warrant the bank at which it is payable as specified by the Treasurer and shall transmit the warrant accompanied by all copies of the pay in vouchers to the Treasurer.~~ When the transfers have been completed the Treasurer shall immediately **notify**~~transmit receipted copies of the pay in vouchers to~~ the Finance and Administration Cabinet.

Section 12. KRS 41.310 is amended to read as follows:

The Finance and Administration Cabinet shall furnish the Treasurer **with information regarding**~~reports which exhibit~~ the status of each receipt and expenditure account. At the end of each month, the Treasurer shall furnish the Finance and Administration Cabinet **with information regarding**~~a report showing~~ the accumulated receipts and a listing of all warrants unpaid as of the end of the last day of each month.

Section 13. KRS 41.350 is amended to read as follows:

- (1) Canceled checks of the State Treasurer upon state depository banks shall be microfilmed and the original check preserved by the State Treasurer for a period of one (1) year. At the expiration of this period, unless required for the purpose of an action then pending, the checks shall be sold as waste paper or destroyed. Microfilm reproductions of Treasury Department checks shall be preserved for a period of five (5) years. Microfilm reproductions of **printed** warrants shall be preserved for a period of five (5) years.
- (2) Microfilm reproductions of electronic fund transfer entries debiting state accounts transmitted to the State Treasurer by state depositories shall be preserved by the State Treasurer for a period of five (5) years. At the expiration of this period, unless required for the purpose of an action then pending, they may be destroyed.

Section 14. KRS 41.370 is amended to read as follows:

- (1) Any check issued by the State Treasurer shall not be valid as an order for payment after one (1) year from its date of issue and this limitation shall appear on all checks issued. The State Treasurer is authorized to clear ~~the~~~~his~~ records of all such unpaid checks and credit the amounts to the fund against which it was originally drawn.
- (2) When any properly endorsed check issued by the State Treasurer is presented for payment more than one (1) year after its date of issue and within the period prescribed by KRS 413.120, the State Treasurer shall, upon satisfactory proof of ownership, cancel ~~the~~~~such~~ check and forward it to the secretary of the Finance and Administration Cabinet with the date and **identifying information**~~number of the pay-in voucher~~ which credited the amount of ~~the~~~~such~~ check to a particular fund. The secretary of the Finance and Administration Cabinet shall draw a warrant against the check. All endorsements on the surrendered check shall have the same effect as if the check were paid by the drawee. All checks paid in the manner herein set forth shall be charged against the fund against which they were originally drawn.
- (3) There shall be a fee charged for each check presented for reissue. The fee shall be twenty-five dollars (\$25). If the check to be reissued is less than twenty-five dollars (\$25) and replacement is required, a check payable to the Kentucky State Treasurer shall accompany the request for reissue. Reissued checks greater than twenty-five dollars (\$25) shall have the fee deducted from the face value of the original check.
- (4) Fees collected by the Treasurer shall be deposited in the surplus account of the general fund.

SECTION 15. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check.

Section 16. KRS 45.305 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall install a unified and integrated system of accounts for the state which shall comply with generally accepted accounting principles, and which shall be in addition to other accounts required by this chapter, and which shall include:
 - (a) A set of budgetary control accounts for each fund, comprising an account with the available cash of the fund, an account with the budget estimate of the amount of money to be derived from each source of revenue and nonrevenue receipts, an account with the total of the unallotted balances of appropriations, an account with the total of the free balances of allotments, an account with the total commitments under allotments, and an account with the estimated cash surplus or deficit, so as to show at all times the status of the budget fund.
 - (b) A subsidiary appropriation ledger for each fund from which appropriations are made, embracing an account with each appropriation, and designed to show the budget unit to which the appropriation was made, the purpose of the appropriation, the amount appropriated, the additions to the appropriation, the allotments from the appropriation, the unallotted balance of the appropriation, the commitments charged to allotments, and the free balances of the total amount allotted.
 - (c) A set of general controlling proprietary and operating accounts for each fund, so as to record the transactions to the fund in summary form and to show the actual current assets, prepaid expenses, current liabilities, deferred credits to income, reserves, actual income, actual expenditures, and the current surplus or deficit.
 - (d) A uniform classification of the sources of revenue and nonrevenue receipts.
 - (e) Standard classifications of the expenditures of the budget units.
 - (f) A standard classification of the budget units.
 - (g) Such other accounts, records, and devices as the Finance and Administration Cabinet deems necessary for the production of needed information respecting financial condition, financial operations and costs.
- (2) The accounts provided for in paragraphs (a), (b) and (c) of subsection (1) of this section or summary records shall be maintained by the Finance and Administration Cabinet.

- (3) The Finance and Administration Cabinet shall keep controlling accounts with receipts, payments and state depositories ~~entirely independent of those maintained by the State Treasurer~~. The cabinet shall obtain from the State Treasurer the figures for the entries required to open ~~the~~^{the [such]} accounts, and thereafter it shall obtain the information required for the keeping of ~~the~~^{the [such]} accounts from ~~deposits~~^{deposits [the pay-in vouchers]}, lists of warrants drawn under appropriations, and vouchers requesting transfers of deposits among state depositories.
- (4) The accounting system prescribed and installed by the Finance and Administration Cabinet shall provide for the settlement of transactions between budget units by making debit and credit entries on the books of the cabinet on the basis of adequate expenditure vouchers, without the issuance of warrants.
- (5) The accounting system prescribed and installed by the Finance and Administration Cabinet shall include the following fund classifications:
 - (a) Governmental fund: This classification shall include those funds through which most governmental functions typically are financed including, but not limited to, the general fund, the road fund, bond debt related fund, federal fund, agency receipts funds, and the capital construction fund.
 - (b) Proprietary fund: This classification shall account for governmental activities which are similar to those activities found in the private sector. Activities which provide services to other governmental units and activities which provide services principally to the private sector are included.
 - (c) Fiduciary fund: This classification shall account for assets held by a governmental unit in a trustee capacity or as an agent for individuals, private organizations, other governmental units, or other funds. These include expendable trust funds, nonexpendable trust funds, pension trust funds and agency funds.
 - (d) Loan fund: This classification shall account for funds advanced or to be advanced to other governments, other governmental agencies or private organizations or individuals.
- (6) Account groups. In order to establish accounting control and accountability for general fixed assets and the unmatured principal of general long-term debt, a general fixed assets account group and a general long-term debt account group may be established.

Section 17. KRS 45.310 is amended to read as follows:

The Finance and Administration Cabinet shall keep an accurate ~~account~~^{record} of all warrants and certificates drawn or issued by the cabinet, showing in due succession the date, ~~number,~~ and amount of each warrant, and for what and to whom issued. The cabinet shall also keep ~~records~~^{a record} of all receipts paid into the State Treasury.

Section 18. KRS 45.454 is amended to read as follows:

An interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of the *goods or services* or vendor's invoice by a purchasing agency.

Section 19. KRS 45A.655 is amended to read as follows:

- (1) Subject to the provisions of this code, any budget unit may establish one (1) or more imprest cash funds when provided for by appropriation or when authorized by the Finance and Administration Cabinet for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of this code. The State Treasurer, upon warrants of the Finance and Administration Cabinet based upon a requisition from the head of the budget unit, shall pay to the head of ~~the~~^{the [such]} budget unit the amount necessary to establish ~~such~~ a fund.
- (2) A custodian shall be designated by the head of the budget unit and, after appropriate instruction and testing, certified by the Finance and Administration Cabinet as qualified to administer the fund. The custodian shall file with the Finance and Administration Cabinet a schedule of the disbursements from the fund as often as may be necessary to replenish the fund and at least once each month. The schedule of disbursements shall be accompanied by appropriate vouchers and statements of indebtedness therefor approved by the head of the budget unit, and by a certificate as to the condition of the fund. The amount of the total of the approved voucher shall be paid to the custodian of the fund on the warrant of the Finance and Administration Cabinet, and the amount shall be devoted to reimbursement of the fund. Any question relative to the amount to be allowed in any imprest cash fund, the expenditure thereof, the accounting thereof, and the repayment thereof to the State Treasurer, shall be determined by the Finance and Administration Cabinet.

- (3) The agency head shall be responsible for expenditures authorized from ~~the~~ funds, and the custodian shall be responsible for administration of the fund. Each agency head and custodian shall be separately bonded in the amount by which the total authorization for the fund exceeds the state blanket bond for such officials.
- (4) A post audit of each imprest fund shall be conducted as required by KRS 43.050.
- (5) Each imprest fund shall lapse with the appropriation on which it is based but may be reestablished by appropriation for the next ensuing year or when authorized by the Finance and Administration Cabinet.
- (6) If work not subject to the provisions of the law for competitive bidding is done on public projects by the state through the use of its own personnel or facilities in whole or in part, the budget unit having ~~the~~ work performed may, when authorized by the Finance and Administration Cabinet, establish an imprest cash fund for the purpose of defraying the expenses of the proposed project. This fund shall not exceed at any time an amount equal to twenty-five percent (25%) of the anticipated total cost of the project.
- (7) *Imprest cash funds may be authorized by the Finance and Administration Cabinet to operate within the unified and integrated system of accounts, as defined in Section 16 of this Act. These funds shall allow agencies to record expenses into the statewide system and to write the check at the agency site. The reimbursement and reconciliation processes shall be performed by the Treasurer.*

Section 20. The following KRS section is repealed:

41.270 Monthly statements from depositories.

Approved March 25, 1998

CHAPTER 119

(HB 445)

AN ACT relating to capital projects.

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

Section 1. KRS 45.750 is amended to read as follows:

- (1) As used in KRS 45.760 to 45.810:
 - (a) "Committee" means the Capital Projects and Bond Oversight Committee.
 - (b) "Capital construction item" means:
 - 1. The construction, reconstruction, acquisition, and structural maintenance of buildings;
 - 2. The installation of utility services, including roads and sewers;
 - 3. The acquisition or improvement of real property;
 - 4. The purchase and installation initially *or during major renovation* of equipment, facilities, and furnishings of a permanent nature for buildings;
 - 5. The acquisition of any building to be occupied by any:
 - a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;
 - b. Municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis; and
 - c. Institution of higher education.
 - (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase of any real property space occupied by:

1. Any entity listed in paragraph (b)5. of this subsection;
 2. The legislative branch; or
 3. The judicial branch when leased from a private sector landlord.
- (d) "Equipment" means:
1. Any major item of equipment, including aircraft;
 2. Any movable furnishing, appurtenance, or other equipment, necessary to make a building operable; and
 3. Equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.
- (e) "System" means any computer or telecommunications system, as defined in an administrative regulation which shall be promulgated by the Kentucky Information Resources Management Commission.
- (f) "Capital projects" means, regardless of the source of cash or other consideration:
1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration;
 2. Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars (\$200,000);
 3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars (\$200,000) on an annual basis;
 4. Any item of equipment estimated to cost one hundred thousand dollars (\$100,000) or more in cash or other consideration;
 5. Any lease of an item of movable equipment if the **annual cost of the lease is one hundred thousand dollars (\$100,000) or more or if the** total cost of the ~~lease,~~ lease-purchase~~,~~ or lease with an option to purchase is one hundred thousand dollars (\$100,000) or more; and
 6. Any system estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration.
- (g) "Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:
1. Necessitated by injury or damage resulting from a disaster; or
 2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or
 3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.
- (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.
- (i) "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.
- (j) "Entity head" means the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House of Representatives, the secretary of the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan

Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.

- (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:
 - (a) The state government;
 - (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;
 - (c) A municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and
 - (d) Institutions of higher education.
- (3) KRS 45.760 to 45.810 shall not apply to:
 - (a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including, but not limited to, bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and
 - (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

Section 2. KRS 45.793 is amended to read as follows:

- (1) Beginning in October, 1992, the Finance and Administration Cabinet shall provide to the committee at its January, April, July, and October regular meetings a status report on the progress of capital projects ***not yet completed*** which received line item authorization ~~by~~ ~~in either of the two (2) preceding sessions of~~ the Kentucky General Assembly and which were:
 - (a) Financed with at least four hundred thousand dollars (\$400,000) from the general fund, the road fund, restricted agency funds, federal funds, investment income, capital construction surplus funds, or bond surplus funds, excluding items of equipment; or
 - (b) State or agency bond-funded.
- (2) For each capital project identified in subsection (1)(a) of this section, the status report shall include, but not be limited to, the:
 - (a) Project title;
 - (b) Amount authorized, including any project cost modification reported to the committee pursuant to KRS 45.760, 45.770, and 45.800;
 - (c) Source of funds;
 - (d) County or counties in which the project is located;
 - (e) Current phase of the project;
 - (f) Status of the assistance agreement, if applicable;
 - (g) Explanation of any delay or major change in the project; and
 - (h) Other information which might be useful in explaining the status of the project.

- (3) For each capital project identified in subsection (1)(b) of this section, the status report shall include the information required in subsection (2) of this section as well as the status of the bond sale which shall include, but not be limited to:
- (a) The estimated sale date or date sold;
 - (b) The bond issue series name or number;
 - (c) An explanation of the difference, if any, between the budgeted and actual annual debt service requirements; and
 - (d) If the bonds have not yet been sold, an explanation of why authorized bonds have not been sold.

Approved March 25, 1998

CHAPTER 120

(HB 470)

AN ACT relating to government operations.

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

Section 1. KRS 41.010 is amended to read as follows:

- (1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300 or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "employee," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.
- (2) As used in this chapter:~~{;}~~
 - (a) ~~{the words }~~"Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government.
 - (b) ***"Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 3. KRS 43.010 is amended to read as follows:

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

- (1) "Auditor" means the Auditor of Public Accounts.
- (2) "Budget unit" means a department or other unit of organization for which separate appropriations are made from those for any other organization unit.
- (3) "State agency" means any state officer, department, board, commission, institution, division, or other person or functional group that is authorized to exercise or does exercise any executive or administrative jurisdiction, powers, duties, rights or obligations of the state government conferred or imposed by law or exercised, performed or discharged by legal authority in compliance with law.
- (4) ***"Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.***

SECTION 4. A NEW SECTION OF KRS CHAPTER 44 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

- (1) **"Document"** means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.
- (2) **"Warrant"** means a printed or electronic authorization from the Finance and Administration Cabinet for the State Treasurer to issue a check.
- (3) **"Writing" or "written"** means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 6. KRS 45.149 is amended to read as follows:

- (1) A budget unit of any branch of government may request that an audit be performed by the Auditor of Public Accounts. Such request shall be in writing and shall include a statement of the scope and nature of the proposed audit.
- (2) No budget unit shall enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within **fifteen (15)** ~~thirty (30)~~ days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:
 - (a) The certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts and to the Legislative Research Commission; and,
 - (b) The Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.

Section 7. KRS 45.242 is amended to read as follows:

No head of a budget unit or assistant designated by him shall approve any advice of employment, purchase order, contract requisition for reservation of funds or letter of travel authorization **request** for travel outside of Kentucky that will involve an expenditure of any sum in excess of the unencumbered balance of the allotment to which the resulting expenditure will be chargeable.

Section 8. KRS 45.457 is amended to read as follows:

The **State Treasurer** ~~Department of the Treasury~~ shall transmit to the purchasing agency **or vendor** a check for payment to a vendor within five (5) working days of receipt of a warrant for payment from the Finance and Administration Cabinet. The purchasing agency shall **transmit the** ~~mail a~~ check for payment to a vendor within five (5) working days of receipt of the check from the **State Treasurer** ~~Department of the Treasury~~.

Section 9. KRS 45A.030 is amended to read as follows:

The words defined in this section shall have the meanings set forth below whenever they appear in this code, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular section, group of sections or provision.

- (1) "Business" **means** ~~shall mean~~ any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.
- (2) "Change order" **means** ~~shall mean~~ a written order signed by the purchasing officer, directing the contractor to make changes which the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor.
- (3) "Chief purchasing officer" **means** ~~shall mean~~ the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 176, 177 and 180.
- (4) "Construction" **means** ~~shall mean~~ the process of building, altering, repairing, improving or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property.
- (5) "Contract" **means** ~~shall mean~~ all types of state agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It shall include awards; contracts of a fixed-

price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and insurance contracts except as provided in KRS 45A.022. It also includes supplemental agreements with respect to any of the foregoing.

- (6) "Contract modification" ~~means~~~~[shall mean]~~ any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.
- (7) "Contractor" ~~means~~~~[shall mean]~~ any person having a contract with a governmental body.
- (8) "Data" ~~means~~~~[shall mean]~~ recorded information, regardless of form or characteristic.
- (9) "Designee" ~~means~~~~[shall mean]~~ a duly authorized representative of a person holding a superior position.
- (10) **"Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.**
- (11) "Employee" ~~means~~~~[shall mean]~~ an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.
- ~~(12)~~~~(11)~~ "Governmental body" ~~means~~~~[shall mean]~~ any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government.
- ~~(13)~~~~(12)~~ "May" ~~means~~~~[shall mean]~~ permissive.
- (14) "Meeting" means all gatherings of every kind, including video teleconferences.**
- ~~(15)~~~~(13)~~ "Negotiation" ~~means~~~~[shall mean]~~ contracting by either the method set forth in KRS 45A.085, 45A.090 or 45A.095.
- ~~(16)~~~~(14)~~ "Person" ~~means~~~~[shall mean]~~ any business, individual, organization or group of individuals.
- ~~(17)~~~~(15)~~ "Procurement" ~~means~~~~[shall mean]~~ the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It shall also include all functions that pertain to the obtaining of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~(18)~~~~(16)~~ "Purchase request" or "purchase requisition" ~~means~~~~[shall mean]~~ that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025.
- ~~(19)~~~~(17)~~ "Purchasing agency" ~~means~~~~[shall mean]~~ any governmental body which is authorized by this code or its implementing regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer.
- ~~(20)~~~~(18)~~ "Purchasing officer" ~~means~~~~[shall mean]~~ any person authorized by a governmental body in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations and findings with respect thereto. The term shall also include an authorized representative acting within the limits of authority.
- ~~(21)~~~~(19)~~ "Services" ~~means~~~~[shall mean]~~ the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services.
- ~~(22)~~~~(20)~~ "Shall" ~~means~~~~[shall mean]~~ imperative.
- ~~(23)~~~~(21)~~ "Supplemental agreement" ~~means~~~~[shall mean]~~ any contract modification which is accomplished by the mutual action of the parties.
- ~~(24)~~~~(22)~~ "Supplies" ~~means~~~~[shall mean]~~ all property, including but not limited to leases of real property, printing and insurance, except land or a permanent interest in land.

- (25)~~(23)~~ "Using agency" ~~means~~~~[shall mean]~~ any governmental body of the state which utilizes any supplies, services, or construction purchased under this code.
- (26) *"Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.*
- (27) *"Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.*

Section 10. KRS 45A.080 is amended to read as follows:

- (1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include~~[whether]~~:
 - (a) *Whether* specifications can be prepared that permit award on the basis of best value; and
 - (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.
- (2) The invitation for bids shall state that awards shall be made on the basis of best value.
- (3) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth for the opening of bids. The notice may include *posting on the Internet or* publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet~~[for all price contracts and purchase contracts estimated to exceed twenty five thousand dollars (\$25,000)]~~ not less than seven (7) days before the date set for the opening of the bids. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.
- (4) Bids shall be opened publicly at the time and place designated in the invitation for bids. At the time the bids are opened, the purchasing agency shall announce the agency's engineer's estimate, *if applicable*, and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. *Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.*
- (5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.
- (6) Correction or withdrawal of bids ~~shall~~~~[may]~~ be allowed only to the extent permitted by regulations issued by the secretary.

Section 11. KRS 45A.115 is amended to read as follows:

The secretary of the Finance and Administration Cabinet may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. The secretary of the Finance and Administration Cabinet shall not prequalify a supplier as a responsible prospective contractor until the supplier provides the secretary with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation~~[mailing]~~ lists of potential contractors of such supplies, services, and construction shall include but shall not be limited to such prequalified suppliers. Prequalification shall not foreclose a written determination:

- (1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or
- (2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

Section 12. KRS 45A.345 is amended to read as follows:

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

- (1) "Aggregate amount" ~~means~~~~[shall mean]~~ the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.
- (2) "Chief executive officer" ~~means~~~~[shall mean]~~ the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.
- (3) "Construction" ~~means~~~~[shall mean]~~ the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (4) "Contract" ~~means~~~~[shall mean]~~ all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.
- (5) **"Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.**
- (6) "Established catalogue price" ~~means~~~~[shall mean]~~ the price included in the most current catalogue, price list, schedule, or other form that:
- (a) Is regularly maintained by the manufacturer or vendor of an item; and
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- ~~(7)(6)~~ "Evaluated bid price" ~~means~~~~[shall mean]~~ the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.
- ~~(8)(7)~~ "Invitation for bids" ~~means~~~~[shall mean]~~ all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.
- ~~(9)(8)~~ "The legislative body or governing board" ~~means~~~~[shall mean]~~ a council, commission, or other legislative body of a city or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.
- ~~(10)(9)~~ "Local public agency" ~~means~~~~[shall mean]~~ a city, county, urban-county, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.
- ~~(11)(10)~~ "May" ~~means~~~~[shall mean]~~ permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.
- ~~(12)(11)~~ "Negotiation" ~~means~~~~[shall mean]~~ contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.
- ~~(13)(12)~~ "Noncompetitive negotiation" ~~means~~~~[shall mean]~~ informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.
- ~~(14)(13)~~ "Objective measurable criteria" ~~means~~~~[shall mean]~~ sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective such as taste and appearance may be established when appropriate.

- (15)~~(14)~~ "Person" *means*~~{shall mean}~~ any business, individual, union, committee, club, or other organization or group of individuals.
- (16)~~(15)~~ "Procurement" *means*~~{shall mean}~~ the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (17)~~(16)~~ "Request for proposals" *means*~~{shall mean}~~ all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.
- (18)~~(17)~~ "Responsible bidder or offeror" *means*~~{shall mean}~~ a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (19)~~(18)~~ "Responsive bidder" *means*~~{shall mean}~~ a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.
- (20)~~(19)~~ "Services" *means*~~{shall mean}~~ the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.
- (21)~~(20)~~ "Shall" *means*~~{shall mean}~~ imperative.
- (22)~~(21)~~ "Specifications" *means*~~{shall mean}~~ any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (23)~~(22)~~ "Supplemental agreement" *means*~~{shall mean}~~ any contract modification which is accomplished by the mutual action of the parties.
- (24)~~(23)~~ "Supplies" *means*~~{shall mean}~~ all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.
- (25)~~(24)~~ "Energy efficiency measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
- (a) Insulation of the building structure or systems within the building;
 - (b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
 - (h) Energy conservation measures that provide long-term operating cost reductions; or
 - (i) Any life safety measures that provide long-term operating cost reductions.
- (26)~~(25)~~ "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy conservation measures and for implementation of one (1) or more of those measures. The contract shall

provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the systems.

- (27)~~(26)~~ "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy efficiency measures and is determined to be qualified by the local public agency.

Section 13. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385.
- (2) The invitation for bids shall state ~~that whether~~ the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.
- (3) ~~Adequate~~~~The~~ public ~~shall be given~~ notice of the invitation for bids **shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication** ~~for advertisement~~ in ~~a~~~~the~~ newspaper of **general** ~~largest~~ circulation in the local jurisdiction ~~at least once~~ not less than seven (7) days ~~nor more than twenty one (21) days~~ before the date set for the opening of the bids. The **public notice** ~~advertisement~~ shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. **Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.**
- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

Section 14. KRS 45A.370 is amended to read as follows:

- (1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:
 - (a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
 - (b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
 - (c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.
- (2) Proposals shall be solicited through **public notice** ~~advertisement~~ pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor.
- (3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (a) With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or
 - (b) Where time of delivery or performance will not permit discussions; or
 - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service or construction item that acceptance of

an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.

- (4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.
- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals.

Section 15. KRS 45A.675 is amended to read as follows:

- (1) The cabinet shall designate as small or small minority business set aside state contracts of goods, equipment, construction or services requested to be purchased by or for any agency whenever there is a reasonable expectation that bids can be obtained from at least three (3) small or small minority businesses capable of furnishing the desired property or services at a fair and reasonable price. Such designation should be made prior to the *public notice*~~[advertisement]~~ for bids, and the *notice*~~[advertisement]~~ shall *designate*~~[indicate]~~ this invitation as a small or small minority business set aside.
- (2) When an item has been designated as a small or small minority business set aside, invitations for bids shall be confined to small or small minority businesses and bids from other bidders may be rejected.
- (3) The cabinet shall award contracts to the~~[lowest and best]~~ responsible bidder *whose bid meets*~~[meeting]~~ specifications *and offers the best value to the Commonwealth.*

Section 16. KRS 45A.695 is amended to read as follows:

- (1) No one shall begin work on a personal service contract made by any contracting body, except as provided in subsection (8) of this section, until after~~[a copy of]~~ the personal service contract is filed with the Legislative Research Commission. Each service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each~~[copy of a]~~ proposed personal service contract submitted to the Legislative Research Commission shall be accompanied by documentation of:
 - (a) The need for the service;
 - (b) The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service; and
 - (c) In the case of an architectural or engineering services contract, the documents identified in KRS 45A.830(3).
- (3) Adequate notice of the need for the services shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or a designee of the officer may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or a designee of the officer, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals

shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

- (6) The Legislative Research Commission shall ~~document~~~~cause to be endorsed on the copies of~~ each personal service contract submitted the time and date of the filing and shall maintain a file of personal service contracts for public inspection, with suitable indexes.
- (7) Payment on contracts submitted to the subcommittee shall not be made before completion of the review procedure provided for in KRS 45A.705 unless the secretary of the Finance and Administration Cabinet determines that the time involved with the normal review procedure would be detrimental to the state's ability to act or to procure services. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the subcommittee along with the personal service contract for which emergency payment is deemed necessary.
- (8) In the event of a governmental emergency, work may begin prior to filing ~~a copy of~~ the personal service contract with the Legislative Research Commission ~~provided~~~~providing~~ that the normal process will not accommodate the emergency.
- (9) If an emergency exists and work is authorized to begin immediately, ~~a copy of~~ a statement, approved by the secretary of the Finance and Administration Cabinet, setting forth in detail the nature of the emergency shall be filed with the ~~copy of the~~ personal service contract.

Section 17. KRS 45A.705 is amended to read as follows:

- (1) There is hereby created a permanent subcommittee of the Legislative Research Commission to be known as the Personal Service Contract Review Subcommittee. The subcommittee shall be composed of seven (7) members which shall include members of the minority party as nearly proportioned to their membership in the General Assembly as mathematically possible. The Legislative Research Commission shall appoint the members of the subcommittee from the membership of the General Assembly for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chairman. Any vacancy which may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.
- (2) The subcommittee shall meet monthly at such time and place as the chairman may determine. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(3).
- (3) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).
- (4) All ~~copies of~~ proposed personal service contracts received by the Legislative Research Commission shall be submitted to the subcommittee to:
 - (a) Examine the stated need for the contract service;
 - (b) Examine whether the service could or should be performed by state personnel; and
 - (c) Examine the cost and duration of the contract. If the subcommittee believes that the contract service, other than an emergency contract approved by the Governor, is not needed, the service could and should be performed by state personnel, the cost is excessive, or the duration is excessive, the subcommittee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract and shall return the personal service contract to the secretary of the Finance and Administration Cabinet. The subcommittee shall give notice of such disapproval or objection to the director of the Legislative Research Commission. The subcommittee shall act on a personal service contract submitted to the Legislative Research Commission within forty-five (45) days of the submission of the personal service contract.
- (5) Upon receipt of the subcommittee's disapproval or objection to a personal service contract, the secretary of the Finance and Administration Cabinet shall determine whether a personal service contract:
 - (a) Shall be revised to comply with the objections of the subcommittee;
 - (b) Shall be cancelled if disapproved by the subcommittee; or
 - (c) Shall remain effective as originally approved by the Finance and Administration Cabinet.

- (6) The secretary of the Finance and Administration Cabinet shall notify the subcommittee of the action taken on personal service contracts referred to the Finance and Administration Cabinet by the subcommittee within thirty (30) days from the date the contracts were reviewed by the subcommittee.
- (7) The subcommittee shall report monthly to the Legislative Research Commission all actions taken on personal service contracts by the secretary of the Finance and Administration Cabinet and the subcommittee.

Section 18. KRS 45A.740 is amended to read as follows:

- (1) When a project requiring architectural or engineering services is proposed by a local public agency, except as provided by subsections (2) and (3) of this section, the agency shall:
 - (a) ~~Transmit~~~~Mail~~ a notice requesting a statement of interest in the proposed project from all firms that have a current qualifications statement on file;
 - (b) **Give adequate public notice of**~~Advertise~~ the proposed project, **which may include posting on the Internet or in a** newspaper **advertisement**~~that meets the requirements of KRS 424.120~~, requesting firms to submit qualification statements and statements of interest in ~~for~~ the proposed project; or
 - (c) Contact an appropriate professional organization for a list of firms capable of providing the necessary services.
- (2) If the regulations of a federal department or agency require a procurement process that is different from the process in KRS 45A.730 to 45A.750 in order that financial aid can be granted, then the local government agency may exempt itself from the provisions of KRS 45A.730 to 45A.750.
- (3) When a local public agency has formed a working relationship with one (1) or more firms based on work previously contracted between them, then the local public agency may enter directly into negotiations according to KRS 45A.750. If no contract is successfully negotiated, then the local public agency shall comply with this section, KRS 45A.745, and KRS 45A.750.

Section 19. KRS 45A.825 is amended to read as follows:

- (1) (a) A firm shall not be considered for providing architectural or engineering services to the Finance and Administration Cabinet or engineering or related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to ~~advertised~~ notice of a request for proposals to which that firm intends to respond.
- (b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.
- (2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.
- (b) The request for proposals:
 - 1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;
 - 2. Shall indicate the relative weight of evaluation factors; and
 - 3. Shall establish a timetable for:
 - a. The selection committee's first meeting held pursuant to subsection (6) of this section; and
 - b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.
- (c) ~~Through advertisement, and any other available means,~~ The procuring agency shall provide **adequate public** notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The **notice**~~advertisement~~ shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that engineering and architectural firms in all regions of the Commonwealth are given an equal opportunity to be selected.

- (3) A firm shall respond to a request for proposals by submitting~~[,]~~ before the deadline~~[, a one (1) page letter of interest as well as]~~ a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.
- (5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.
- (6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
 - (a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;
 - (b) Be provided with:
 1. The certified list created pursuant to subsection (5) of this section;
 2. The firms' responses to the request for proposals;
 3. The request for proposals;
 4. The ~~advertised~~ notice of request for proposals; and
 5. The project evaluation sheets; and
 - (c) Discuss the future conduct of its affairs.
- (7)
 - (a) When the Department of Transportation procures any engineering or related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars (\$50,000) or engineering services for an estimated fee of less than one hundred thousand dollars (\$100,000), this subsection and subsection (9) of this section shall govern the procurement process.
 - (b) The selection committee shall meet in executive session to:
 1. Evaluate the materials with which it has been provided;
 2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
 3. Notify the procuring agency of the ranking.
 - (c) The procuring agency shall **notify**~~send a letter to~~ each firm which responded to the request for proposals, informing the firm of:
 1. The three (3) finalists;
 2. Their ranking; and
 3. The rest of the procedure that will be followed in the awarding of the contract.
 - (d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (8)
 - (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars (\$50,000) or more or engineering services for an estimated fee of one hundred thousand dollars (\$100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.
 - (b) The selection committee shall meet in executive session to:
 1. Evaluate the materials with which it has been provided;

2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
 3. Notify the procuring agency of the three (3) finalists.
- (c) The procuring agency shall **notify**~~[send a letter to]~~ each firm which responded to the request for proposals, informing the firm of:
1. The three (3) finalists; and
 2. The rest of the procedure that will be followed in the awarding of the contract.
- (d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.
- (e) The selection committee shall meet in executive session to:
1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
 2. Forward the ranking to the procuring agency.
- (f) The procuring agency shall **notify**~~[send a letter to]~~ each finalist, informing the finalist of:
1. His ranking; and
 2. The rest of the procedure that will be followed in the awarding of the contract.
- (g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.
- (10) Once a procuring officer has negotiated a contract, the procuring agency shall **notify**~~[send a letter to]~~ the other finalists, informing them of:
- (a) Which firm has successfully negotiated a contract; and
 - (b) The rest of the procedure that will be followed in the awarding of the contract.
- (11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.
- Section 20. KRS 45A.830 is amended to read as follows:
- (1) After the procuring officer has negotiated an architectural or engineering services contract for the Finance and Administration Cabinet or an engineering or related services contract for the Transportation Cabinet, but before the contract is submitted to the Personal Service Contract Review Subcommittee, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process **for that contract**.

- (2) The secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. Any employee of the Auditor of Public Accounts, who was appointed to serve as a nonvoting member of the selection committee and who attended any committee proceeding, shall participate in the preparation of a report for filing with the Personal Service Contract Review Subcommittee certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.
- (3) The procuring agency shall file with the Personal Service Contract Review Subcommittee *upon request*:
 - (a) The certificates;
 - (b) The selection committee's ranking of firms; and
 - (c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Section 21. KRS 48.010 is amended to read as follows:

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

- (1) "Account" is a technical accounting term meaning a formal record in which related transactions and events, (i.e., expenditures, receipts, encumbrances, and inter-account charges or credits) which occur during a specific period of time, are summarized and accumulated.
- (2) "Activities" means those actions or services performed by a budget unit which depict in a quantitative manner the fulfillment of lawful purposes.
- (3) Appropriation-related terms are defined for procedures prescribed by this chapter as follows:
 - (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in this chapter;
 - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by this chapter and which authorizes the expenditure of public funds other than by a general appropriation bill;
 - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in an executive, judicial, or legislative branch budget bill as provided for by this chapter.
- (4) "Budget" means the complete financial plan for each fiscal year contained in a branch budget bill provided for by this chapter.
- (5) "Branch budget bill" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan of each branch of government.
- (6) "Branch budget recommendation" means the recommendations to the General Assembly of the Governor for the executive branch and for fiscal matters related to the function of the government of the Commonwealth, the Chief Justice for the judicial branch, and the Legislative Research Commission for the legislative branch, accompanied by an estimate of the receipts and expenditures for each branch and accompanying explanations provided for by this chapter for the next two (2) fiscal years.
- (7) "Budget unit request" means a detailed statement of the financial requirements of a budget unit by principal budget class, and an estimate of its receipts and expenditures for the next two (2) fiscal years, with the accompanying explanations provided for by this chapter.
- (8) "Budget unit" or "appropriation unit" means any subdivision of any branch of government, however designated in any branch budget bill.
- (9) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, equipment or other permanent properties, or in their construction, development, or permanent improvement.
- (10) "Disbursement" means cash actually paid out for any purpose.

- (11) "Employee" means the lawful incumbent of a position.
- (12) "Expenditure" means cash actually paid out or an exchange of value for any purpose.
- (13) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources or both together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities in accordance with legal restrictions or other limitations, to include:
- (a) "General Fund." This fund shall consist of all moneys, not otherwise restricted, available for the general operations of state government.
 - (b) "Bond Debt Related Fund." This fund shall consist of all outstanding bonded debt liability and related funds of state government, including all revenue bonds issued by or approved by the State Property and Buildings Commission. Accounts necessary to assure integrity of trust indentures shall be maintained. Funds appropriated for debt service shall be allotted to these accounts and any excess of appropriation over net requirements for principal, interest, and reserves for any issue shall lapse to the surplus account of the general fund if general funds are a part of the appropriation for that budget unit.
 - (c) "Capital Construction Fund." This fund shall consist of moneys appropriated under the provision of KRS 45.750 to 45.800 for capital construction projects, except road construction projects, for all budget units of state government.
 - (d) "Federal Fund." This fund shall include all receipts from the federal government for any purpose.
 - (e) "Fiduciary Fund." This fund shall consist of moneys held by a budget unit in a trustee capacity.
 - (f) "Restricted Fund." This fund shall consist of budget unit receipts restricted as to purpose by statute.
 - (g) "Road Fund." This fund shall consist of money derived from excise or license taxation relating to gasoline and other motor fuels, and moneys derived from fees, excise or license taxation relating to registration, operation or use of vehicles for use on public highways. A separate record of each source of receipt within this fund group shall be maintained.
- (14) "Principal budget class" includes the following:
- (a) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, or other permanent properties, or in their construction, development, or permanent improvement estimated to cost less than four hundred thousand dollars (\$400,000), and items of equipment or other capital items estimated to cost less than one hundred thousand dollars (\$100,000).
 - (b) "Debt service" means the amount of money required to pay the interest, principal, and required contributions to accumulate moneys for future retirement of lawfully incurred debt.
 - (c) "Grants, loans, or benefits" means expenditures for any grant, aid, loan, or relief payment to individuals, organizations, or jurisdictions not otherwise classified pursuant to this chapter.
 - (d) "Operating expenses" means expenditures directly attributable to the operation of state government not otherwise classified pursuant to this chapter.
 - (e) "Personnel costs" means the salaries, wages, benefits (including but not limited to, employer share of FICA, retirement contributions, insurance, unemployment insurance, workers' compensation), and increments of all officers and employees, and payment to persons awarded personal service contracts.
- (15) "Receipts" includes the following:
- (a) "Nonrevenue receipts" means values accruing that either decrease an asset or create a liability.
 - (b) "Operating receipts" means cash received by a budget unit for services rendered, or from the sale of materials, goods, or supplies created by the budget unit or of items held for resale.
 - (c) "Revenue receipts" means values accruing as a result of taxation or revenues, or both, and without resultant increase in liabilities or decrease in assets, whether such values are represented by cash actually received or by amounts due and payable, or partly by each.

- (16) *"Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.*

Section 22. KRS 56.440 is amended to read as follows:

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

- (1) "Commission" means the State Property and Buildings Commission;
- (2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;
- (3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);
- (4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;
- (5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;
- (6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;
- (7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;
- (8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;

- (9) "Cabinet" means the Finance and Administration Cabinet;
- (10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;
- (11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight; and
- (12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.
- (13) ***"Meeting" means all gatherings of every kind, including video teleconferences.***
- (14) ***"Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.***
- (15) ***"Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.***

Section 23. KRS 56.463 is amended to read as follows:

The cabinet shall have the power and duty:

- (1) To determine the comparative needs and demands of the various state agencies for acquiring real estate and for building projects;
- (2) To purchase or otherwise acquire all real property determined to be needed for state use and upon the approval of the secretary of the Finance and Administration Cabinet as to the determination of need and as to the action of purchase or other acquisition, except as provided in KRS Chapters 175, 176, 177, and 180. All such acquisitions of real property or interests therein shall be made in accordance with KRS 45A.045;
- (3) To sell or otherwise dispose of all property, including any interest in real property, of the state that is not needed or has become unsuitable for public use or would be more suitable consistent with the public interest for some other use as determined by the secretary of the Finance and Administration Cabinet. All such sales or other disposition shall be made in accordance with KRS 45A.045;
- (4)
 - (a) To control the use of any real property owned or otherwise held by the Commonwealth, or any state agency, and to determine for what periods of time and for what purposes any state agency may use the same, including the agency for whose use it was initially acquired or improved, and to determine what appropriate uses shall be made of such real property during periods that the cabinet finds the same is not required for the purposes of any particular state agency. The cabinet shall allocate to the General Assembly and the Legislative Research Commission the amount of space within the New State Capitol Annex, currently assigned to the legislative branch in the basement and on the first floor totalling forty-nine thousand six hundred thirty-eight (49,638) square feet; approximately twenty-four thousand four hundred fifty-two (24,452) square feet on the second floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms; approximately twenty-three thousand nine hundred forty (23,940) square feet on the third floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms; approximately twenty-two thousand fifty-six (22,056) square feet on the fourth floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms. The occupancy of the Capitol Annex by the legislative branch shall be phased in with the Capitol Annex renovation project and shall be completed no later than November 30, 1991. All space assigned to the legislative branch and plans, uses, furnishings, and equipment therefor are subject to the specific approval of the Legislative Research Commission;
 - (b) Forty percent (40%) of the additional floor space provided by this section for use by the legislative branch shall be assigned for the use of the Senate. Sixty percent (60%) of the additional floor space

provided by this section for use by the legislative branch shall be assigned for the use of the House of Representatives; and

- (c) To determine the housing and furnishings needs of the various state agencies located in Frankfort and to establish and put into effect a permanent program for housing them. Subject to paragraph (a) of this subsection, the cabinet is also authorized and directed to allocate office space and furnishings in existing public buildings located in Frankfort, exclusive of the third and fourth floors of the New State Capitol, according to the needs of the various agencies and when necessary to provide additional office space and furnishings in Frankfort under any building program the cabinet deems most advisable and economical for the state. The permanent housing program shall include provisions for housing the General Assembly and its related agencies, including the Legislative Research Commission, and its subcommittees, the executive offices, the Supreme Court and the clerk of the Supreme Court, the Department of Law and the law library, in the New State Capitol, provided the General Assembly and the Legislative Research Commission shall have complete control and exclusive use of the third and fourth floors of the New State Capitol and shall have exclusive use of the space in the New State Capitol Annex allocated to them under paragraph (a) of this subsection. If there be any additional space in the Capitol, it shall be assigned to agencies whose activities are most closely related to the agencies directed to be located permanently in the Capitol;
- (5) To acquire, by condemnation in the manner provided in the Eminent Domain Act of Kentucky, any real estate necessary for use by the state or by any state agency, when the cabinet is unable to agree with the owner thereof on a price for such real estate;
- (6) To lease any real property, or any interest in such real property, owned by the state or any agency thereof, in accordance with KRS 45A.045;
- (7) To provide for and adopt plans and specifications as may be necessary, to **provide adequate public notice**~~advertise~~ for and receive bids for any expenditures proposed to be made, to award contracts for the purpose authorized, to supervise construction and make changes and revisions in plans and specifications or in construction as may become necessary, and generally to do any and all other things as may become necessary or expedient in order to effectively fulfill and carry out the purposes of this chapter, including the right to employ clerks, engineers, statisticians, architects, or other persons required to be employed in order to fulfill the functions of the Commonwealth relating to state property and buildings provided in KRS 56.450 to 56.550; and
- (8) To adopt rules and **promulgate administrative** regulations as may be necessary to govern the acquisition, control, and disposition of the real property to which this section is applicable.

Section 24. KRS 56.491 is amended to read as follows:

- (1) No state agency shall have power or authority to make plans and specifications, **provide public notice of invitations**~~advertise~~ for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than one hundred and twenty-five thousand dollars (\$125,000) without first securing the approval of the Finance and Administration Cabinet.
- (2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

- (3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.
- (4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed one hundred and twenty-five thousand dollars (\$125,000), shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, **provide public notice of invitations**~~advertise~~ for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.
- (5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed one hundred and twenty-five thousand dollars (\$125,000), may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.
- (6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.
- (7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

Section 25. KRS 56.514 is amended to read as follows:

The following provisions shall be applicable to commission financing to carry out the purposes of this chapter:

- (1) As used in this section, the following terms shall have the following meanings:
 - (a) "Commercial paper revenue bonds" means revenue bond anticipation notes which by their terms mature not more than two hundred seventy (270) days from the date of issuance thereof and are to be refunded by the issuance of commercial paper revenue bonds or by refunding revenue bonds; provided, however, that all commercial paper revenue bonds must possess the characteristics set forth and described in subsection (3)(d) of this section;
 - (b) "Refunding revenue bonds" means revenue bonds issued by the commission to refund outstanding issues of revenue bonds, commercial paper revenue bonds and variable rate revenue bonds; and
 - (c) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to predetermined formulas and indices or pursuant to the standards set forth in subsection (3)(e) of this section.
- (2) The commission may issue and sell revenue or other authorized bonds, including variable rate and commercial paper bonds, to pay all or any part of the expense or cost of or incidental to an industrial development project, or a building project in denominations and amounts, as it deems to be for the best interest of the Commonwealth.
- (3)
 - (a) Revenue bonds issued to pay the costs of industrial development projects or building projects may bear interest at any rate or rates, either fixed or variable in accordance with such method as shall be determined by the commission, shall be payable either annually or at shorter intervals, may be of such terms and maturities, may bear such conversion privileges, may be executed by the manual or facsimile signatures of such officers of the commission, and shall be executed in such manner and at such time or times, or from time to time, and be payable at such times not exceeding forty (40) years from the date thereof, or, if commercial paper, from the date of initial issuance thereof, and at such place or places as the commission determines;
 - (b) Such revenue bonds may provide that they or any of them may be called for redemption prior to maturity under conditions determined by the commission before issuing the bonds;

- (c) Such revenue bonds may, at any time on or after the earliest redemption date provided therefor at the time of their issuance, be refunded by the commission, in such amount as the commission may deem necessary to refund the principal of the revenue bonds to be refunded, together with any unpaid interest thereon, to create any necessary debt service reserve fund, and to pay any premiums, expenses and commissions required to be paid in connection therewith;
- (d) At the time of the initial issuance of commercial paper revenue bonds to pay the costs of industrial development projects or building projects, the commission may designate individual officials of any state agency as agents for purposes of approving the principal amount, the interest rate, the discount, if any, and the maturity date of revenue bonds being issued later to refund the maturing commercial paper revenue bonds; provided, however, that at the time of the initial issuance of any such commercial paper revenue bonds, the commission shall set the maximum principal amount, the maximum interest rate, and the maximum discount, if any, of the refunding revenue bonds plus the final maturity date of the last issue of such refunding revenue bonds; and provided further that the commission shall retain the right to revoke any such agent's authority at any time and for any reason whatsoever. Individual issues of commercial paper revenue bonds, issued as part of a continuing financing program, may be refunded by the approvals of such agents of the commission;
- (e) At the time of issuance of variable rate revenue bonds to pay the costs of industrial development projects or building projects, the commission may designate individuals or institutions which in the sole judgment of the commission have financial market expertise to serve as agent for the commission for establishing and changing from time to time while such variable rate revenue bonds remain outstanding the rate of interest to be borne by and the price to be paid for such revenue bonds; provided, however, that the rate-setting procedures and authority of each such agent shall be set forth in writing, and may include a formula or an index or indices based upon market factors, and shall be established by the commission at the time of issuance of such revenue bonds; and provided further that at the time of the issuance of such revenue bonds, the commission shall establish the maximum interest rate to be borne by the revenue bonds; and provided further that the commission shall retain the right to remove or replace any such agent at any time and for any reason whatsoever;
- (f) Any revenue bonds issued and outstanding hereunder to pay the costs of industrial development projects or building projects and the interest due on such revenue bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid to the same extent as if they had actually been paid in cash and retired, if:
 - 1. In the event any of such revenue bonds are to be redeemed on any date prior to their maturity, the commission shall have given a trustee appointed for the holders of such revenue bonds in connection with their issuance, in form satisfactory to such trustee and in conformity with the requirements of the resolution authorizing their issuance irrevocable instructions to give notice of redemption of such revenue bonds to the holders thereof by written notice which is satisfactory to such trustee;
 - 2. There shall have been deposited with the trustee either money in an amount which shall be sufficient, or direct obligations of or obligations guaranteed by the United States of America, or other obligations specified by the commission, the principal of and the interest on which, when due, will provide money which, together with the money, if any, deposited with the trustee at the same time, shall be sufficient to pay when due the principal and the interest due and to become due on such revenue bonds on and prior to redemption date or maturity date thereof, as the case may be; and
 - 3. In the event that such revenue bonds are not to be redeemed within the next succeeding sixty (60) days, the commission shall have given the trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable, in a manner satisfactory to it, a notice to the holders of such revenue bonds that the deposit required by subparagraph 2. of this paragraph has been made with the trustee, that such revenue bonds are deemed to have been paid in accordance with the provisions hereof and stating such maturity or redemption date upon which money is to be available for the payment of the principal of and interest on such revenue bonds;
- (g) It is hereby declared and determined that the issuance of any and all refunding bonds as provided herein will be for a public purpose if the commission so declares in the proceedings authorizing same; and

- (h) If any officer whose signature or countersignature appears on revenue bonds issued to pay the costs of industrial development projects or building projects ceases to be such officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. Any such revenue bonds issued to pay the costs of industrial development projects or building projects shall be sold upon such terms as the commission deems best, either at public or private sale, and for such price, as the commission may determine. In the event the revenue bonds are sold at private, negotiated sale, the commission shall publish in accordance with the requirements of KRS Chapter 424 a notice of the intent of the commission to negotiate the sale of such revenue bonds within thirty (30) days of such proposed sale, which notice shall include the identification and description of such revenue bonds, an estimate of the week during which the negotiated sale is expected to occur and the identity of the state officer or agency and the fiscal advisor or managing underwriter from whom further information regarding the revenue bonds may be obtained. Revenue bonds, notes or other obligations issued by the commission under this chapter, the income thereon, and the transfer thereof, including any profit made on the sale thereof, shall at all times be exempt from taxation or assessment of any type by the Commonwealth, its agencies and departments, and by all political subdivisions within the state. Nothing contained in this section shall preclude or prevent the authorization and issuance by the commission from time to time of revenue bonds, notes or other obligations, the receipt of interest on which may be subject to federal income taxation.
- (4) The payment of revenue bonds issued to pay the cost of an industrial development project or building project, together with the interest thereon, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental, financing or operation of the industrial development projects or building projects involved, including rentals and financing payments made by the Finance and Administration Cabinet from appropriated funds on a biennial basis, pursuant to lease agreements or financing agreements between the Finance and Administration Cabinet and the commission. Neither the payment of any revenue bond, nor the interest thereon, issued under the authority of this section shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any revenue bond or interest thereon be payable out of any fund except funds derived from rentals, financing payments or other revenues derived from the operation of the industrial development projects or building projects or from revenues as are available for the purpose by law.
- (5) ~~If in the event~~ revenue bonds are sold at public, competitive sale, ~~the~~ ~~such~~ revenue bonds issued by the commission under the provisions of this section shall be sold after **notice adequate to inform the public of the sale. Notice may include posting on the Internet or newspaper advertising** ~~conforming to the requirements of KRS Chapter 424~~.
- (6) ~~If in the event~~ revenue bonds are sold at public, competitive sale, competitive bids for the sale of ~~the~~ ~~such~~ revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or ~~the secretary's~~ ~~his~~ representative at a designated place, day and hour, all of which shall be announced in the ~~notice~~ ~~advertising~~ made relative thereto.
- (7) All money from the sale of revenue bonds issued pursuant to this section shall be deposited in the State Treasury and shall be credited to a special account to be designated as directed by the Finance and Administration Cabinet, and no part thereof shall be withdrawn from the State Treasury except for the purposes authorized by this chapter, together with the cost incidental to the issuing and selling of the revenue bonds and other expenses directly related thereto. The commission may provide in any trust indenture securing revenue bonds for additional terms and conditions thereof, or for other restrictions not in conflict with this chapter.

Section 26. KRS 56.520 is amended to read as follows:

- (1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following purposes:
- (a) To acquire real estate for state governmental use;
 - (b) To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;
 - (c) To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.

- (2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of KRS Chapter 56, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.
- (3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or *the secretary's*~~his~~ representative at a designated place, day, and hour, all of which shall be *indicated*~~announced~~ in the *notice*~~advertising~~ made relative thereto.
- (4) ~~If in the event~~ the commission issues and sells bonds for a building project as authorized by KRS Chapter 56, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in connection with the building project, and it may so obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.
- (5) As provided in KRS 42.500, the commission may invest proceeds from the sale of its revenue or other authorized bonds as follows:
- (a) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
 - (b) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Services;
 - (c) Obligations for the Commonwealth of Kentucky;
 - (d) Bonds and notes of any state or local government or public authority;
 - (e) Savings certificates issued by any federal savings and loan association if any principal amount of the certificate in excess of the amount insured by the federal government, or any agency thereof, is fully collateralized;
 - (f) Prime quality commercial paper bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;
 - (g) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, if the accepting bank or its holding company is either incorporated in the Commonwealth of Kentucky or has outstanding publicly held obligations bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations;
 - (h) Participating share in a mutual fund for local government investment;
 - (i) A commingled investment pool established and administered under KRS 66.480;
 - (j) Evidences of ownership of or fractional undivided interests in future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian;
 - (k) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States or entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a federal reserve bank, or any commercial bank, trust company, or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

1. Such obligations that are subject to the repurchase agreement are delivered in physical or in book entry form to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority. The repurchase agreement shall provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;
2. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedure, conforming to the extent practicable with federal regulations and satisfactory to the local government or public authority, have been established for the benefit of the local government or public authority or its assignee;
3. The securities are free and clear of any adverse third party claims; and
4. The repurchase agreement is in a form satisfactory to the local government or public authority; and
 - (1) Guaranteed investment contracts with a bank or insurance company, if the bank or insurance company bears one (1) of the two (2) highest ratings of at least one (1) nationally recognized rating service and does not bear a rating below one (1) of the two (2) highest ratings by any nationally recognized rating service.

Section 27. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department at least ninety (90) calendar days before the space requested will be required by the agency. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, ***the commissioner***~~he~~ shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency~~by letter~~. A copy of the ***notice***~~letter~~ shall be kept on file.
- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.
- (5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall ***give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or***~~comply with procedures established in this subsection.~~
 - (a) ~~The department shall place~~ newspaper advertisements. Each ***notice***~~advertisement~~ shall contain general information concerning the agency requirements for the space sought~~to reasonably inform~~

persons having property to let within the county of the type of space wanted, the general location of the property, and the number of square feet needed,] and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be *stated*~~[noted]~~ in the *notice*~~[advertisement]~~.

- (b)~~[~~ If a daily newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.
 - (c)~~]~~ If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought and two (2) times in a daily newspaper not published, but of general circulation, in the county where space is sought.
 - (d)~~]~~ If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.
 - (e)~~]~~ If the Commonwealth intends to lease space in any county when the estimated annual rental charge will exceed one hundred thousand dollars (\$100,000), the requirements established in paragraphs (a), (b), (c), and (d) of this subsection shall be followed. In addition, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the secretary of the Finance and Administration Cabinet.
 - (f)~~]~~ When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.
 - (g)~~]~~ The Department for Facilities Management may use any means available to notify landlords that *a notice has been given*~~[advertisements have been placed]~~.
- (6) ~~[To respond to a newspaper advertisement,]~~A property owner, or his representative, shall respond in writing on or before the time and date designated in the *notice*~~[advertisement]~~ and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the *notice*~~[advertisement]~~.
 - (7) All written responses *received*~~[submitted]~~ on or before the time and date designated shall be opened *or downloaded* at the same time, publicly read *or posted*, and kept on file by the department.
 - (8) Within five (5) days of the opening of written responses~~[submitted on or before the time and date designated]~~, the department shall *transmit*~~[mail]~~ general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be *transmitted*~~[mailed]~~ to each person.
 - (9) After the general requirement specifications have been *transmitted*~~[mailed]~~, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the *notice given*~~[advertisement placed]~~ pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be *notified*~~[advised by letter]~~ of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each *notice*~~[of these letters]~~ shall be kept on file.
 - (10) ~~[After the general requirement specifications have been mailed,]~~The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or *the owner's*~~[his]~~ representative, shall provide access to the property for *the*~~[such]~~ inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.

- (11) After the commissioner has reviewed the completed site evaluation forms, *the commissioner*~~he~~ shall *inform*~~send to~~ each owner of property, or his representative, *of the steps necessary*~~a letter informing the person of what would have to be done~~ to bring the property up to general and specific requirement specifications. The *commissioner*~~commissioner's letter~~ shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be *provided to each bidder*~~enclosed with each letter~~. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated~~in the letter. A copy of each letter shall be kept on file~~.
- (12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.
- (13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:
- (a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;
 - (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.
- (14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the ~~advertised requirements and~~ general and specific requirement specifications.
- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.
- (15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:
- (a) Choose the best proposal in the interest of the Commonwealth;
 - (b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or
 - (c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.
- (16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.
- (b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.
- (17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.

- (18) The department shall ~~notify~~~~[send to]~~ each person who submitted a written response on or before the time and date designated in the ~~public notice~~~~[advertisement]~~ pursuant to subsection (6) of this section, but who was not awarded the lease, ~~of a letter stating~~ the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each ~~notice~~~~[letter]~~ shall state that fact. A copy of each ~~notice~~~~[of these letters]~~ shall be kept on file.

Section 28. KRS 56.805 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 56.803(4) to (18), this section shall govern the leasing of space in a building owned by the federal government, by a political subdivision or municipal corporation of the Commonwealth, or if the space is required as the result of a bona fide emergency.
- (2) When the commissioner of the Department for Facilities Management determines that it is in the Commonwealth's best interest for him to negotiate a lease in a building owned by the federal government or by a political subdivision or municipal corporation of the Commonwealth, he shall do so. The commissioner shall state in writing his justifications for the determination, and the writing shall be kept on file.
- (3) A bona fide emergency shall be deemed to exist only in cases where the head of an agency already occupying leased premises certifies in writing to the Secretary of the Finance and Administration Cabinet that:
 - (a) The leased premises have been damaged or destroyed by fire, windstorm, or other casualty; or
 - (b) The leased premises are found to be in violation of regulations of the Kentucky Occupational Safety and Health Review Commission, and the violations cannot be remedied within thirty (30) days after the issuance of a citation to the lessor of the premises; or
 - (c) The leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and regulations and cannot be made safe within a reasonable time; or
 - (d)
 1. The necessity for leased premises arises from the enactment or adoption of federal legislation or regulations or state legislation, the effective date of which mandates commencement of programs to be housed in leased space before there is time for space to be acquired by **public notice**~~[advertisement]~~; and
 2. The agency's functions will be impaired or have to be discontinued unless other quarters to house the agency's operations are immediately located and occupied by the agency; or
 - (e) An emergency, other than one described in paragraph (a), (b), (c), or (d) of this subsection, exists, and the Governor has given his express written authorization of an emergency lease. The certificate shall state the details of the emergency, and the head of the agency shall include the Governor's written authorization along with the certificate sent to the Secretary of Finance and Administration Cabinet.
- (4) Upon receipt by the Finance and Administration Cabinet of the certificate, written pursuant to paragraph (a), (b), (c), or (d) of subsection (3) of this section, or the certificate and the Governor's authorization written pursuant to paragraph (e) of subsection (3) of this section, the Department for Facilities Management shall take the action to locate and negotiate for the lease of space meeting the certifying agency's reasonable needs. As appropriate, the department shall keep the certificate or the certificate and the Governor's written authorization on file.

Section 29. KRS 56.814 is amended to read as follows:

- (1) No officer or employee of any state agency shall engage in any act or make any representation or commitment to any person relative to the lease of any real property by the state without specific written authorization from and approval by the Finance and Administration Cabinet and neither the state nor the department shall be bound by the act, representation, or commitment unless so authorized and approved.
- (2) No officer or employee of any state agency shall disclose to any person or firm who might reasonably be expected to submit a proposal, any approved plans by the department for the lease of real property for which **public notice**~~[advertisement]~~ is required under KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190 prior to the **public notice**~~[advertisement]~~. Discussions of approved leasing plans may be held after **public notice**~~[advertisement]~~ with persons interested in submitting a proposal pertaining to the space requirements.

Section 30. KRS 56.8169 is amended to read as follows:

- (1) In conducting the built-to-suit process, the commissioner of the Department for Facilities Management, after consultation with the agency or agencies for whose use the space is sought, shall arrive at a request for proposals.
- (2) The request for proposals shall indicate the relative importance of evaluation factors.
- (3) A request for proposals may be amended at any time prior to the deadline for the submission of proposals.
- (4) In soliciting the interest of firms to carry out a built-to-suit, the department shall comply with the procedures established in this subsection.
 - (a) The department shall ~~place newspaper advertisements. The advertisements shall~~ provide **adequated public** notice of a request for proposals and notice of the materials that the department will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the proposal evaluation sheet to be used by the selection committee. The ~~notice~~~~advertisement~~ shall also set a time and date for a written response to the ~~notice~~~~advertisement~~.
 - ~~(b) If a daily newspaper is published, and of general circulation in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.~~
 - ~~(c) If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought, and two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought.~~
 - ~~(d) If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.~~
 - ~~(e) In addition to the requirements of paragraphs (b) to (d) of this subsection, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the commissioner of the Department for Facilities Management.~~
 - ~~(f) When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.~~
 - ~~(g) The Department for Facilities Management may use any means available to notify firms that a notice has been given~~~~advertisements have been placed~~.
- (5) To respond to a ~~notice~~~~newspaper advertisement~~, a firm, or its representative, shall respond on or before the time and date designated in the ~~notice~~~~advertisement~~. ~~The~~~~Its~~ response shall ~~be in a~~~~take the~~ form **determined by the department and**~~of a one (1) page letter of interest which~~ shall provide ~~the firm's~~~~its~~ name and address.
- (6) All written responses submitted on or before the time and date designated shall be opened **or downloaded** at the same time, publicly read **or posted**, and kept on file by the department. A firm which fails to meet the deadline shall be barred from the procurement process.
- (7) The department shall **transmit**~~mail~~ to all firms that responded in time ~~to the advertisement~~ a request for proposals.
- (8) After the request for proposals have been **transmitted**~~mailed~~, but before written proposals are submitted, the commissioner, and his staff, may hold any meetings, discussions, or negotiations that they deem appropriate with the firms.
- (9)
 - (a) The commissioner shall **invite**~~send a letter to each of the firms, inviting~~ each firm to submit a written proposal, on a form created by the department, on or before the time and date set forth in the **invitation**~~letter~~. A form shall be **provided to each firm**~~enclosed with each letter~~.
 - (b) A firm that does not submit a written proposal, on a form created by this department, on or before the deadline shall be barred from the procurement process.

- (c) Employees of the department and the members of the selection committee shall keep the written proposals confidential until the lease is awarded.
- (10) The commissioner shall designate a department employee to determine which firms have filed, in a timely fashion, both a response to the *public noticed*~~[newspaper advertisement]~~ and a written proposal on a form created by the department. *The designated employee*~~[He]~~ shall create a list of the firms which have done so and certify the list.
- (11) The department shall organize the selection committee's first meeting. At that meeting, the selection committee shall:
- (a) Elect from its members a chairman and a vice chairman who shall hold their positions for the duration of the selection process;
 - (b) Be provided with:
 - 1. The certified list of firms;
 - 2. The firms' written proposals submitted in response to a request for proposals;
 - 3. The request for proposals;
 - 4. The~~[advertised]~~ notice of request for proposals;
 - 5. The proposal evaluation sheets; and
 - 6. A *notice*~~[letter]~~ from the commissioner informing the committee that the selection process is governed by KRS 56.800 to 56.823 and 56.990; and
 - (c) Discuss the future conduct of its affairs.
- (12) The selection committee shall meet in executive session to:
- (a) Evaluate the materials with which it has been provided;
 - (b) Select, but not rank, the three (3) most qualified firms, based upon the evaluation factors set forth in the request for proposals; and
 - (c) Notify the department of the three (3) finalists.
- (13) The department shall *notify*~~[send a letter to]~~ each firm which responded to the request for proposals, informing the firm of:
- (a) The three (3) finalists; and
 - (b) The rest of the procedure that will be followed in the awarding of the built-to-suit lease.
- (14) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview.
- (15) The selection committee shall meet in executive session to:
- (a) Rank the three (3) finalists based on the weighted evaluation factors in the request for proposals; and
 - (b) Forward the ranking to the department.
- (16) (a) The commissioner shall:
- 1. Award the built-to-suit lease to the top ranked finalist; or
 - 2. Request best-and-final offers.
- (b) The commissioner shall request best-and-final offers only of the three (3) finalists. *The commissioner's*~~[His]~~ written request shall include his reason for requesting best-and-final offers, and shall state a time and date by which all best-and-final offers will have to be received. A firm that does not submit a best-and-final offer by the deadline shall not be awarded the built-to-suit lease.
- (c) Employees of the department and the members of the selection committee shall keep the best-and-final offers confidential until the lease is awarded.

- (d) The selection committee shall meet in executive session to assess all the materials with which it was provided pursuant to subsection (11)(b) of this section, as well as the request for best-and-final offers and best-and-final offers. The committee shall rank the best-and-final offers of the three (3) finalists based on the weighted evaluation factors in the request for proposals. If the committee determines that the top ranked best-and-final offer is adequate, the committee shall forward the name of the firm that submitted the top ranked best-and-final offer to the department. If the committee determines that the top ranked firm's best-and-final offer is inadequate, the process shall end.
 - (e) The commissioner shall award the built-to-suit lease to the firm chosen by the selection committee.
- (17) After the best firm has been selected, the department shall ~~notify~~~~send a letter to~~ the finalists, informing them of:
- (a) Which firm has been selected for the proposed lease; and
 - (b) The rest of the procedure that will be followed in the awarding of the lease.

Section 31. KRS 58.605 is amended to read as follows:

- (1) Subject to the reporting and approval requirements in KRS 58.610, any governmental agency may issue energy conservation revenue bonds to pay for the cost of energy conservation projects for the purpose of reducing the cost of energy to buildings owned or operated by the governmental agency by making energy-saving improvements to these buildings.
- (2) Upon the receipt of a qualified energy audit, including a cost-benefit analysis which establishes the expected annual energy cost savings which will result from an energy conservation project, a governmental agency, or an agency acting on its behalf, may issue energy conservation revenue bonds to finance the energy conservation project, with the following limitations:
 - (a) The term of the bonds shall not exceed ten (10) years from the date of issuance, or the anticipated useful life of the energy conservation project as determined by generally accepted accounting principles, whichever is less;
 - (b) The annual debt service payments on the energy conservation revenue bonds shall not exceed eighty percent (80%) of the projected annual energy cost savings resulting from the energy conservation project; and
 - (c) The principal amount of the energy conservation revenue bonds issued to finance an energy conservation project shall in no case exceed ten percent (10%) of the estimated replacement cost of the building in which the energy conservation project is installed.
- (3) Energy conservation revenue bonds shall be issued in accordance with the provisions of KRS 58.010 to 58.140 and shall be sold at a ~~publicly advertised,~~ competitive sale ***preceded by adequate public notice*** and shall bear interest at an interest rate or rates determined by the governmental agency at the time of the sale.

Section 32. KRS 278.380 is amended to read as follows:

The commission shall deliver a certified copy of any order issued by it to each party to the proceeding in which the order was made, and to an officer or agent of the utility affected thereby. ***Notwithstanding any statute to the contrary, the commission may deliver its orders by means of electronic transmission rather than by United States mail in those proceedings where each party and each utility to be affected by the order has filed with the commission a written statement that it waives any right to service of commission orders by mail and that it, or its authorized agent, possesses the facilities to receive electronic transmissions. When service of a commission order is by electronic transmission, mailing shall be deemed to have occurred on the date the transmission of the order is completed.***

Approved March 25, 1998

CHAPTER 121

(HB 609)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 241.010 is amended to read as follows:

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

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.
- (2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of ***more than one percent (1%) of alcohol by volume, which is fit for beverage purposes*** ~~that permitted under KRS Chapter 242 and capable of being consumed by a human being~~. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products if they are unfit for use for beverage purposes:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions; ~~and~~
 - (d) Flavoring extracts and syrups; ~~and~~
 - (e) ***Denatured alcohol or denatured rum;***
 - (f) ***Vinegar and preserved sweet cider;***
 - (g) ***Wine for sacramental purposes;***
 - (h) ***Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and***
 - (i) ***Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof.***
- (3) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030.
- (4) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.
- (5) "Brewer" means any person who ***manufactures malt beverages or*** owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.
- (6) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.
- (7) "Building containing licensed premises" means the licensed premises themselves and includes ***the land, tract of land, or parking lot*** ~~any part of any building~~ in which the premises are contained, and any part of any ~~other~~ building connected ~~with the building~~ by direct access or by ~~an~~ ~~a common~~ entrance ***which is under the ownership or control of the licensee by lease holdings or ownership.***
- (8) ***"Cabinet" means the Revenue Cabinet unless the context requires otherwise.***
- (9) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)), or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.

- (10) **"Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider.**
- (11)~~(9)~~ "City administrator" means city alcoholic beverage control administrator.
- (12)~~(10)~~ "Commissioner" means the commissioner of alcoholic beverage control.
- (13) **"Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions.**
- (14)~~(11)~~ "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.
- (15)~~(12)~~ "County administrator" means county alcoholic beverage control administrator.
- (16)~~(13)~~ "Department" means the Department of Alcoholic Beverage Control.
- (17)~~(14)~~ "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, **hard cider, and malt beverages.**
- (18)~~(15)~~ "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state, and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.
- (19)~~(16)~~ "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.
- (20)~~(17)~~ "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail.
- (21)~~(18)~~ "Dry territory" means a county, city, district or precinct in which a majority of voters have voted in favor of prohibition~~, as prohibition is defined in KRS 242.010.~~
- (22) **"Election" means:**
- (a) **An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or**
- (b) **Any other election not pertaining to alcohol.**
- (23)~~(19)~~ "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes.
- (24)~~(20)~~ "License" means any license issued pursuant to KRS 243.020 to 243.670.
- (25)~~(21)~~ "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670.
- (26)~~(22)~~ "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under **subsection (2)(i) of this section**~~[KRS Chapter 242].~~
- (27)~~(23)~~ "Manufacture" means distill, rectify, brew, bottle, and operate a winery.
- (28)~~(24)~~ "Manufacturer" means a vintner, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages.
- (29)~~(25)~~ "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. **"Premises"**~~[It]~~ shall not include as a single unit two (2) **or more** separate businesses~~[or enterprises]~~ of one (1) owner on the same lot or tract of land, in the same or in different buildings **if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance**

accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on the effective date of this Act shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license.

- (30) ***"Prohibition" means the application of KRS 242.190 to 242.430 to a territory.***
- (31)~~(26)~~ "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.
- (32)~~(27)~~ "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.
- (33) ***"Restaurant" means a facility where the usual and customary business is the serving of meals to consumers and that has a bona fide kitchen facility.***
- (34) ***"Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not.***
- (35) ***"Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers.***
- (36)~~(28)~~ "Retail sale" means any sale where delivery is made in Kentucky to any ~~consumers~~~~person not holding a license~~.
- (37)~~(29)~~ "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.
- (38)~~(30)~~ "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.
- (39) ***"Secretary" means the secretary of the Kentucky Revenue Cabinet.***
- (40)~~(31)~~ "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.
- (41)~~(32)~~ "Small winery" means a winery producing wines from grapes, other fruit, or honey produced in Kentucky unless exempt under KRS 243.155(2), in an amount not to exceed fifty thousand (50,000) gallons in one (1) year.
- (42) ***"Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer.***
- (43)~~(33)~~ "State administrator" means the administrator of the Distilled Spirits Unit or the administrator of the Malt Beverage Unit or both, as the context requires.
- (44) ***"Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages.***
- (45)~~(34)~~ "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively.
- (46)~~(35)~~ "Warehouse" means any place in which alcoholic beverages are housed or stored.
- (47)~~(36)~~ "Wholesale sale" means a sale to any person for the purpose of resale.
- (48)~~(37)~~ "Wholesaler" means any person who ***distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet***~~sells at wholesale any alcoholic beverage for the sale of which a license is required, except a distiller, rectifier, brewer, or vintner~~.
- (49)~~(38)~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual ***processes of manufacture and normal additions, and***~~cellar treatment and necessary additions to correct~~

~~defects due to climatic, saccharine and seasonal conditions. It~~ includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. **It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It includes ciders, perry, or sake having an alcohol content greater than that permitted under subsection (2)(i) of this section.**

(50)~~(39)~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded. It includes a winery for the manufacture of wine in any state or county other than Kentucky, if the out-of-state winery has and maintains a branch factory, office, or storeroom within this state and receives wine within this state consigned to a United States government bonded winery, warehouse, or storeroom located within this state.

Section 2. KRS 241.150 is amended to read as follows:

Appeals from the orders of a county administrator may be taken to the board by filing with the board within **thirty (30)**~~ten (10)~~ days a certified copy of the orders of the county administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the county administrator shall be governed by KRS **Chapter 13B**~~[243.550 to 243.590]~~.

Section 3. KRS 242.030 is amended to read as follows:

- (1) The date of the **local option** election may be stated in the petition for election. If the date is not stated, it shall be designated by the county judge/executive.
- (2) The **local option** election shall be held not earlier than sixty (60) nor later than ninety (90) days after the date the petition is filed with the county clerk.
- (3) The **local option** election shall not be held on the same day that a primary or general election is held in the territory or any part of the territory, nor within thirty (30) days next preceding or following a regular political election.
- (4) **A local option**~~No~~ election in any territory less than the county shall **not** be held on the same day on which an election for the entire county is held, except as approved in KRS 242.125.
- (5) No **local option** election shall be held in the same territory **more**~~often~~ than once in every three (3) years.

Section 4. KRS 242.100 is amended to read as follows:

Upon each day that a **local option**~~primary or regular~~ election is held, no place where alcoholic beverages are sold in the county in which the territory affected is situated shall be open at any time during the day. ~~A~~~~No~~ person in that county shall **not** sell, loan, furnish, or give to any person any alcoholic beverage on that day.

Section 5. KRS 242.127 is amended to read as follows:

- (1) In any city of the fourth class in which prohibition is not in effect, an election may be held in the manner prescribed in KRS **Chapter 242**~~[242.010 to 242.040 and KRS 242.060 to 242.120]~~ to take the sense of the people of the city as to the sale of distilled spirits or wine by the drink for consumption on the premises in the city.
- (2) An election held pursuant to this section shall be city-wide.

Section 6. KRS 242.1292 is amended to read as follows:

- (1) The provisions of this section shall be applicable in any city of the second class notwithstanding any other provisions of this chapter relating to the discontinuance of prohibition in any county, city, or territory which may be to the contrary.
- (2) In any city of the second class in which prohibition is in effect in all or part of the city, and upon a determination that an economic hardship exists in one (1) or more of the voting precincts of the city in the manner prescribed in subsection (10) of this section, the governing body of the city shall by ordinance designate ~~the~~~~such~~ precinct or precincts as a limited sale precinct or precincts and shall provide for an election to be held in ~~the~~~~such~~ precinct or precincts to take the sense of the people of each ~~such~~ precinct as to the discontinuance of prohibition in ~~the~~~~such~~ precinct.

- (3) The election shall be held in ~~the~~^{such} precinct or precincts in the manner prescribed in KRS *Chapter 242*~~[242.010 to 242.040 and KRS 242.060 to 242.120]~~. ~~The~~^{Such} election shall not be deemed to be an election in the "same territory" within the meaning of subsection (5) of KRS 242.030; provided, however, ~~that~~ no election on the same question shall be held in the same precinct or precincts more ~~often~~ than once every five (5) years.
- (4) The question shall be presented to the voters in conformance with the requirements of KRS 242.050 except that the form of the proposition shall be, "Are you in favor of the sale of alcoholic beverages in (official name and designation of precinct)?"
- (5) If a majority of the votes cast in any limited sale precinct in which an election is held pursuant to this section are in favor of the sale of alcoholic beverages in that precinct, the governing body of the city shall by ordinance create or provide for the office of city alcoholic beverage control administrator and shall adopt a comprehensive regulatory ordinance covering the licensing and operation of establishments for the sale of alcoholic beverages within a limited sale precinct. In its discretion the governing body may provide that:
- (a) Only three (3) licenses permitting the package sale at retail of alcoholic beverages shall be granted within the territorial limits of any limited sale precinct.
 - (b) Only four (4) licenses to sell alcoholic beverages by the drink for consumption on the premises by the general public shall be granted in any one (1) limited sale precinct. One (1) ~~such~~ license in each limited sale precinct may be reserved for grant to any newly established hotel, motel, or inn containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons. The remaining three (3) licenses may be granted to a hotel, motel, or inn meeting the aforesaid requirements or to bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons. ~~and further provided that~~ Additional licenses to sell alcoholic beverages by the drink for consumption on the premises may be granted to social membership clubs established and maintained for the benefit of members only by bona fide fraternal or veterans organizations.
- (6) The governing body may also incorporate in the regulatory ordinance ~~such~~ other reasonable rules and regulations as may be necessary or desirable for the proper administration and enforcement of this section, ~~and~~ for the maintenance of public order in a limited sale precinct, and for the issuance of any licenses permitted by KRS 243.070; provided that any rule or regulation adopted in the regulatory ordinance shall conform to the requirements of KRS 241.190.
- (7) Notwithstanding any limitations imposed on the city's taxing or licensing power by KRS 243.070 upon the discontinuance of prohibition in any limited sale precinct, the governing body of the city ~~may~~^{is hereby authorized to} impose a regulatory license fee upon the gross receipts of each establishment located therein and licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each city budget period at such percentage rate as shall be reasonably estimated to fully reimburse the city for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. ~~The~~^{Such} regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against ~~the~~^{such} fee shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070.
- (8) Subject to the limitation imposed by subsection (3) of this section, no provision contained in this section providing for the establishment of a limited sale precinct shall preclude or abridge the right of the constitutionally qualified voters of ~~the~~^{such} precinct to petition for a subsequent election on the same question.
- (9) If an election is held pursuant to other provisions of KRS Chapter 242 in the city or the county in which a limited sale precinct is located for the purpose of taking the sense of the voters upon the question of adopting or repealing prohibition for the entire city or the entire county, the status of ~~the~~^{such} question in a limited sale precinct shall be determined in the following manner:
- (a) The status of a limited sale precinct shall not be affected by any election for the entire city or the entire county if ~~the~~^{such} limited sale precinct was established less than five (5) years prior to the date of the proposed election for the entire city or the entire county and ~~if so~~^{in such case} the voters of any limited sale precinct shall not vote in ~~the~~^{such} election.
 - (b) If ~~the~~^{such} limited sale precinct was established more than five (5) years prior to the date of the proposed election for the entire city or the entire county, the voters within each limited sale precinct

shall be presented with the question, "Are you in favor of continuing the sale of alcoholic beverages in (official name and designation of precinct) as a limited sale precinct?" No other question shall be presented to the voters of any limited sale precinct.

- (c) The votes of each limited sale precinct shall be counted separately, and, if a majority of the votes cast in the limited sale precinct are in favor of continuing the sale of alcoholic beverages therein as a limited sale precinct, then ~~the [such]~~ status shall continue within ~~the [such]~~ precinct, except that if the city or the county in which the limited sale precinct is located votes against prohibition in the remainder of the city or the county, the limited sale precinct status of any precinct may be terminated by the governing body of the city or the county and thereafter the status of ~~the [such]~~ precinct shall be the same as that in effect for the remainder of the city or the county.
- (10) Any precinct located entirely within any city of the second class in which prohibition is in effect in all or part of the city shall be designated as a limited sale precinct by the governing body of the city; ~~if provided that~~:
- (a) The governing body determines to its satisfaction that the general trade, business and economy of one (1) or more of the precincts within the city is substantially adversely affected by ~~reason of~~ the legal sale of alcoholic beverages in any neighboring or adjoining state, county, city, town, district, or precinct. For the purpose of making ~~this [such]~~ determination, the governing body may hold ~~[such]~~ hearings, examine ~~[such]~~ witnesses, or receive ~~[such]~~ evidence as it believes necessary or desirable for ~~this [such]~~ purpose; or
- (b) The governing body receives a petition signed by a number of constitutionally qualified voters of a precinct equal to thirty-three percent (33%) of the votes cast in the precinct at the last preceding general election requesting the governing body of the city to designate ~~the [such]~~ precinct as a limited sale precinct. The petition may consist of one (1) or more separate units and shall be filed with the mayor of the city. In addition to the name of the voter, the petition shall also state his *or her* post office address and the correct date upon which his *or her* name is signed. Upon receipt of the petition, the mayor shall ~~present it [cause the same to be presented]~~ to the governing body of the city at its next regularly scheduled meeting and, after verifying that ~~the [such]~~ petition is in compliance with the requirements of this section, the governing body shall forthwith by ordinance designate the precinct to be a limited sale precinct.

Section 7. KRS 242.240 is amended to read as follows:

~~A [No]~~ person shall *not* sell or give any of the articles listed in paragraphs (a) to ~~(h) [(i)]~~ of subsection ~~(2) [(1)]~~ of *Section 1 of this Act* ~~[KRS 242.010]~~ as not within the definition of alcoholic beverages, knowing that, or under such circumstances that, the seller or giver might reasonably deduce that the purchaser or person to whom the article is given intends to use it for beverage purposes.

Section 8. KRS 243.020 is amended to read as follows:

- (1) ~~A [No]~~ person shall *not* do any act authorized by any kind of license with respect to the manufacture, storage, sale, purchase, transporting, or other traffic in alcoholic beverages unless he holds the kind of license that authorizes ~~the [such]~~ act.
- (2) The holding of any permit from the United States government to traffic in alcoholic beverages without the corresponding requisite state and local licenses shall in all cases raise a *rebuttable* ~~[prima facie]~~ presumption that the holder of the United States permit is unlawfully trafficking in alcoholic beverages.
- (3) Except as provided in KRS 243.036, *243.260, and 243.290*, ~~a [no]~~ person, conducting a place of business patronized by the public, who does not hold a license to sell distilled spirits, ~~[and]~~ wine, *or malt beverages*, ~~[by the drink,]~~ shall *not* permit any person to sell, barter, loan, give away, or drink distilled spirits, ~~[or]~~ wine, *or malt beverages* on the premises of his place of business.
- (4) ~~Any [No]~~ distilled spirits or wine in excess of three (3) gallons (twelve (12) liters) shall *not* be stored or kept except upon the licensed premises of a person who is the holder of a license provided for in KRS 243.030.

Section 9. KRS 243.033 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise, "caterer" means a corporation, partnership, or individual ~~that [which]~~ operates the business of a food service professional by preparing food and beverages in

a licensed and inspected commissary, transporting the food and beverages to a location selected by the customer away from the commissary premises, and serving the food and beverages to the customer's guests.

- (2) A caterer's license may be issued as a supplementary license to a caterer that holds a retail package liquor license or a distilled spirits and wine by the drink retail license.
- (3) The caterer's license may be issued to a caterer, that does not meet the requirements of subsection (2) of this section, for the premises that serves as the caterer's commissary. The alcoholic beverage stock of the caterer shall be kept under lock and key at the licensed premises during the time that the alcoholic beverages are not being used in conjunction with a catered function.
- (4) The caterer's license shall authorize the caterer to:
 - (a) Purchase and store alcoholic beverages in the manner prescribed in KRS 243.250, 243.280, and 244.310;
 - (b) Transport, sell, serve, and deliver alcoholic beverages by the drink at locations in wet territory away from the licensed premises in conjunction with the catering of food and beverages for a customer and his guests. Distilled spirits and wine may only be transported, sold, served, or delivered in cities of the first, second, or third classes, counties containing cities of the first, second, or third classes, and cities of the fourth class in which the sale of distilled spirits and wine has been adopted pursuant to KRS 242.127;
 - (c) Receive and fill telephone orders for alcoholic beverages in conjunction with the ordering of food for a function catered by the licensee; and
 - (d) Receive payment for alcoholic beverages served at a function on a by-the-drink or by-the-function basis. The caterer may bill the host for by-the-function sales of alcoholic beverages in the usual course of the caterer's business.
- (5) A caterer licensee shall not cater alcoholic beverages at locations for which retail alcoholic beverage licenses or special temporary licenses have been issued.
- (6) A caterer licensee shall not cater distilled spirits and wine on Sunday except in territory in which the Sunday sale of distilled spirits and wine is permitted under the provisions of KRS 244.290~~[(2)]~~. A caterer licensee shall not cater malt beverages on Sunday except in territory in which the Sunday sale of malt beverages is permitted under the provisions of KRS 244.480.
- (7) The location at which alcoholic beverages are sold, served, and delivered by a caterer, pursuant to this section, shall not constitute a public place for the purpose of KRS Chapter 222. If the location is a multi-unit structure, only the unit or units at which the function being catered is held shall be excluded from the public place provisions of KRS Chapter 222.
- (8) The caterer licensee shall post a copy of his caterer's license at the location of the function for which alcoholic beverages are catered.
- (9) The name and license numbers of the caterer shall be painted, in a contrasting color, in a form prescribed by the board by promulgation of an administrative regulation, upon all vehicles used by the caterer to transport alcoholic beverages.
- (10) All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee not inconsistent with this section, shall apply to the caterer licensee.
- (11) The caterer licensee shall submit a list of functions catered or to be catered including location, host, date, and time upon request of the board.

Section 10. KRS 243.110 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, each kind of license listed in KRS 243.030 shall be inconsistent with every other kind listed in that section and no person holding a license of any of those kinds shall apply for or hold a license of another kind listed in KRS 243.030.
- (2) The holder of a retail package license may also hold either a retail drink license or a special nonindustrial alcohol license. The holder of a transporter's license may also hold a special storage or warehouse license. The holder of a wholesaler's license may also hold a special nonbeverage alcohol vendor's license~~[, a special industrial alcohol license or a vintner's license]~~. The holder of a distiller's license may also hold a rectifier's

license, *a special industrial alcohol license or a vintner's license*, and a souvenir retail liquor license. The holder of a *farm winery and a small winery license* may exercise all functions of such license as authorized by KRS 243.155 *and Section 12 of this Act*. A commercial airline system or charter flight system retail license, a commercial airline system or charter flight system transporter's license, and a retail drink license if held by a commercial airline or charter flight system may be held by the same person or corporation.

- (3) Any person may hold two (2) or more licenses of the same kind.
- (4) An applicant shall not evade the prohibition against applying for or holding licenses of two (2) kinds by applying for a second license under the cloak of a separate corporate entity. The state administrator may examine into the ownership and management of corporations which apply for or hold licenses, and shall deny the application for a license to any party substantially interested in an incompatible license.

Section 11. KRS 243.120 is amended to read as follows:

A distiller's, rectifier's or vintner's license shall authorize the licensee to engage in the business of distiller, rectifier, or vintner at the premises specifically designated in the license, *to maintain aging warehouses*, and to transport for himself *or herself* only any alcoholic beverage which he *or she* is authorized under the license to manufacture or sell. ~~The [Such]~~ licensee shall transport alcoholic beverages only by a vehicle owned and operated by himself *or herself*, which has affixed to its sides at all times a sign of form and size prescribed by the state board, containing among other things the name and license number of the licensee. No distilled spirits or wine shall be transported on the same truck or vehicle with malt beverages, except by a common carrier, unless the owner of ~~the [such]~~ truck or vehicle holds a distributor's license.

Section 12. KRS 243.156 is amended to read as follows:

- (1) A farm winery license shall authorize the licensee to perform the following functions, without having to obtain separate licenses:
 - (a) Manufacture wines and bottle wines at a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, in an amount not to exceed twenty-five thousand (25,000) gallons in one (1) year;
 - (b) Serve on the premises *or at an off-premise retail site* complimentary samples of wine produced by it in amounts not to exceed four (4) ounces per patron per day, if the farm winery *or off-premise retail site* is located in wet territory;
 - (c) Sell wine produced on the premises of the farm winery or produced by a licensed small winery by the package at retail to consumers, if the farm winery or off-premise retail site is located in wet territory and the wine produced by the small winery is made with Kentucky products;
 - (d) Sell and transport wine produced on the premises of the farm winery to wholesale liquor license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;
 - (e) Serve complimentary samples or sell wine produced on the premises of the farm winery at another farm winery or small winery sales site, if the other farm winery or small winery sales site is located in wet territory;
 - (f) Consume on the premises wine produced by the farm winery or a small winery and purchased by the package at the licensed premises, if the farm winery is located in wet territory; and
 - (g) Obtain a special temporary wine license for the purpose of selling wine produced by the farm winery or a licensed small winery at a fair, festival, or other similar type of event, if the event is held in a wet territory.
- (2) A licensed farm winery may establish one (1) off-premise retail sales outlet, if it is located in wet territory.
- (3) All of the fresh fruits, fruit juices, or honey used to manufacture wine at a farm winery shall be grown or produced in the Commonwealth of Kentucky.
- (4) If a licensed farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply.

- (5) This section shall not exempt the holder of a farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from administrative regulations of the board, except as expressly stated in this section.

Section 13. KRS 243.220 is amended to read as follows:

- (1) No license for the sale of alcoholic beverages at retail shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease for a term of not less than the license period.
- (2) (a) No premises shall be licensed for the sale of alcoholic beverages at retail ~~unless~~~~except where~~ the licensed premises and the entrance to the premises are on the street level and located in a business center or on a main thoroughfare.
- (b) Paragraph (a) of this subsection shall not apply to a hotel, club or restaurant, ~~if provided~~ the club or restaurant receives a minimum of ~~fifty~~~~forty~~ percent (50%)~~(40%)~~ of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables. In the ~~class of~~ cases described in this paragraph the administrator to whom the application is made may, in the exercise of his sound discretion, decide whether the premises are to be licensed.
- ~~{(3) (a) Except as provided in paragraphs (b) and (c) of this subsection, no license for the sale of alcoholic beverages at retail shall be issued for any premises that are located within two hundred (200) feet of a building used primarily as a church or for class rooms of a school, if the governing authority of the church or school, within ten (10) days after receiving notice of the application for the license, files written protest with the state administrator against the issuance of the license. The measurement shall be taken in a straight line from the nearest outside wall of the building on the licensed premises to the nearest outside wall of the church or school building. Proof of the giving of notice to the governing authority of the church or school must be furnished to the state administrator before the license is issued.~~
- ~~(b) A hotel, drug store, private club or other retail licensee which or who has been bona fide in business as a licensee at a particular location for not less than one (1) year preceding the passage of Acts 1978 or the establishment of the church or school, may be issued a license by the administrator, in the exercise of his sound discretion, regardless of protest, even though the premises are within less than two hundred (200) feet of a building occupied primarily as a church or for class rooms of a school.~~
- ~~(c) In cities of the first, second or third class, the city administrator, with the approval of the State Alcoholic Beverage Control Board, may issue a regulation in such city requiring written permission by the governing authority of the church or school for the licensing of retail premises within two hundred (200) feet of the church or school building, in which case the state administrator may not issue the license without such permission, except under the circumstances set forth in paragraph (b) of this subsection.~~

Section 14. KRS 243.230 is amended to read as follows:

- (1) Licenses to sell distilled spirits and wine by the drink for consumption on the premises may be issued only for premises located within cities of the first, second, or third class, or elsewhere in counties containing a city of the first, second, or third class if those counties maintain an adequate police force under KRS 70.540 and 70.150 to 70.170.
- (2) Notwithstanding any other provision of law, **a liquor by the drink**~~a special~~ license to sell distilled spirits and wine~~by the drink~~ for consumption on the premises may be issued for premises located within a city of the fourth class in which the majority of votes cast in the most recent election held ~~under~~~~pursuant to~~ KRS 242.127 and 242.129 were in favor of the proposition voted upon ~~if provided~~ the city has an adequate police force under KRS 95.710 and 95.760 to 95.787.
- (3) Licenses to sell distilled spirits or wine by the package may be issued only for premises located within incorporated cities, or elsewhere in counties containing a city of the first, second, or third class if those counties maintain an adequate police force under KRS 70.540 and 70.150 to 70.170.
- (4) Notwithstanding subsection (3) of this section, the board may, after a field investigation, issue a license to sell distilled spirits and wine by the package at premises not located within any city if:
- (a) Substantial aggregations of population would otherwise not have reasonable access to a licensed vendor;
- (b) The premises to be licensed under this subsection shall be used exclusively for the sale of distilled spirits and wine by the package and malt beverages, **where applicable**,~~if the premises are licensed to sell malt beverages at retail~~ and shall not be used in any manner, in connection with a dance hall,

roadhouse, restaurant, store, or any other commercial enterprise, except as a drug store in which a registered pharmacist is employed.

- (5) No retail package or drink license for the sale of distilled spirits or wine shall be issued for any premises used as or in connection with the operation of any business in which a substantial part of the commercial transaction consists of selling at retail staple groceries or gasoline and lubricating oil.

Section 15. KRS 243.270 is amended to read as follows:

- (1) A special private club license may be issued to any nonprofit social, fraternal, military, or political organization or club, which for more than one (1) year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded.
- (2) This license shall authorize the licensee to exercise the privilege of a *malt beverage or a* distilled spirits and wine retail drink licensee, *or both*, at the designated premises if the general public is excluded. ~~All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee shall apply to a special private club licensee.~~

Section 16. KRS 243.280 is amended to read as follows:

- (1) A malt beverage retailer's license shall authorize the licensee to sell malt beverages at retail from the licensed premises only and to purchase malt beverages only from a distributor.
- (2) ~~A~~ ~~No~~ malt beverage retailer's license shall *not* be issued to sell malt beverages at retail for any premises from which gasoline and lubricating oil are sold or from which the servicing and repair of motor vehicles is conducted, unless there is maintained in inventory on the premises for sale at retail not less than five thousand dollars (\$5,000) of food, groceries, and related products valued at cost.
- (3) The term "food and groceries" *means* ~~referred to in subsection (2) of this section shall mean~~:
- (a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, ~~and~~ hot foods, and hot food products prepared for immediate consumption;
- (b) Seeds and plants to grow food for personal consumption.
- ~~(4) This section shall be effective as to each malt beverage retail license which is no longer eligible for a retail malt beverage license hereunder upon the expiration of any current license issued by the state malt beverage administrator.~~
- ~~(5) The provisions of this section shall not apply to any licensed premises which sells no fuel other than marine fuel.~~

Section 17. KRS 243.340 is amended to read as follows:

A special agent's or solicitor's license may be issued to a duly authorized representative, employee, or agent of, or solicitor for a distiller, rectifier, vintner, or wholesaler licensed in Kentucky or by the state of his residence and by the United States if a resident therein. ~~The~~ ~~Such~~ license shall authorize the licensee to offer for sale and to solicit orders for the sale of any alcoholic beverage sold by a distiller, rectifier, vintner, or wholesaler who is licensed in Kentucky or who is a nonresident. The license shall set forth the name, address, and, unless the vendor is a nonresident, the license numbers of the vendors the agent or solicitor represents, as well as the name, address, and license number of the agent or solicitor. An agent or solicitor shall not represent any vendor or licensee whose name does not appear upon the license *or the application for the license*. ~~Every nonresident vendor licensed under the provisions of KRS 243.030(14) shall post a surety bond of five hundred dollars (\$500) with the administrator of the distilled spirits unit.~~

Section 18. KRS 243.350 is amended to read as follows:

A special storage or warehouse license may be issued to parties not otherwise entitled under Kentucky law to store or warehouse distilled spirits or wine, but who are so authorized by the federal government ~~and who are required to keep as a part of their permanent records United States Treasury Department forms 52A and 52B~~. ~~The~~ ~~This~~ license shall authorize the licensee to operate a warehouse or place of storage for distilled spirits or wine on the premises specifically designated.

Section 19. KRS 243.450 is amended to read as follows:

- (1) A license ~~to that might~~ be issued under KRS 243.020 to 243.670 shall be refused:

- (a) If the applicant or the premises for which the license is sought **does**~~do~~ not comply fully with all alcoholic beverage control statutes **and**~~;~~ the regulations of the board,~~all ordinances relative to the regulation of the manufacture, sale and transportation of alcoholic beverages, and~~
- (b) **If the applicant or the premises for which the license is sought does not comply with** all regulations of a city administrator or county administrator;
- (c)~~(b)~~ If the applicant has done any act for which a revocation of license would be authorized; or
- (d)~~(c)~~ If the applicant has made any false material statement in his application.
- (2) A license that might be issued under KRS 243.020 to 243.670 may be refused by a state administrator for any reason which **the administrator**~~he~~, in the exercise of his **or her** sound discretion, **deems**~~may deem~~ sufficient. Among those factors that the administrator shall consider in the exercise of his **or her** discretion are: public sentiment in the area; number of licensed outlets in the area; potential for future growth; type of area involved; type of transportation available; and financial potential of the area.

Section 20. KRS 243.460 is amended to read as follows:

If the payment of a license fee was erroneously made or the state administrator refuses to issue the license the department shall authorize the **payment of the refundable amount**~~refund of the amount paid~~, if at the expiration of **thirty (30)**~~ten (10)~~ days no appeal has been filed~~under KRS 243.470. The refunds shall be made whether the payments were voluntary or involuntary or were made under protest or not.~~

Section 21. KRS 243.470 is amended to read as follows:

- (1) If a state administrator **rejects**~~determines to reject~~ an application **the administrator**~~he~~ shall notify the applicant of his **or her decision**~~determination~~ by ~~mailing a~~ registered **mail at**~~letter to him, directed to~~ the address given in **the**~~his~~ application or **supplement**~~in the last statement filed supplementary thereto~~.
- (2) **The applicant may**,~~He~~ within **thirty (30)**~~ten (10)~~ days after the date of the mailing of **the**~~that~~ notice from the administrator, **indicate**,~~the applicant indicates~~ in writing, his **or her** desire **for a hearing. The hearing shall be conducted**~~to be present and heard, he shall have the opportunity to be heard~~ by the board or persons designated by the board **in compliance with the requirements of KRS Chapter 13B**~~. The application shall not finally be passed upon by the administrator until the board has conducted a hearing~~.

Section 22. KRS 243.490 is amended to read as follows:

- (1) Any license issued under KRS 243.020 to 243.670 may be revoked by the state board if the licensee shall have violated any of the provisions of KRS Chapter 241, 243, or 244, or any rule or regulation of the~~said~~ board or of the Revenue Cabinet relating to the regulation of the manufacture, sale, and transportation or taxation of alcoholic beverages or if **the**~~such~~ licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency, or commission, or any ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors or any rules or regulations of any local alcoholic beverage authority or any similar body heretofore in existence or authorized by the terms of KRS Chapters 241, 243, and 244 to be created, or if any clerk, agent, servant, or employee of any licensee shall violate any of the laws, regulations, or ordinances above referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any~~such~~ license may be revoked for any cause which the Alcoholic Beverage Control Board in the exercise of its sound discretion deems sufficient. A license may be revoked for any of the reasons for which the administrator would have been required to refuse a license if the facts had been known.
- ~~(2) Any license issued under KRS 243.020 to 243.670 may be revoked by the board if the licensee is guilty of unfair competition as defined in KRS 244.470.~~
- ~~(3)~~ If it is determined that an applicant for a license or license renewal under the provisions of this chapter is a delinquent taxpayer as defined in KRS 131.1815, the Department of Alcoholic Beverage Control may refuse to issue or renew the license to the applicant.

Section 23. KRS 243.550 is amended to read as follows:

Hearings upon appeals from orders of a county administrator or a city administrator, a determination of a state administrator, or upon proceedings for revocation or suspension shall be held by the board. The board may, at its discretion, hold the hearing in Frankfort, or in the county where the licensed premises, or the premises to be licensed,

are located. Decisions shall be made and final orders entered only upon the vote of a majority of the board. ***The hearings shall be conducted in accordance with the provisions of KRS Chapter 13B.***

Section 24. KRS 243.620 is amended to read as follows:

- (1) Before commencing or doing any business for the time for which a license has been issued, ***all licenses***~~the license~~ ***issued under KRS 243.020 to 243.670*** shall be posted and at all times displayed in a conspicuous place in the room or principal room where the business is carried on, so that all persons visiting the place may readily see the license.~~[Licenses issued under KRS 243.030 shall be inclosed in a wood or metal frame inclosing a clear glass space so that the whole of the license may be seen.]~~
- (2) No licensee shall post the license or permit it to be posted, upon premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy, or alter the license in any respect.
- ~~{(3) Whenever a license is lost or destroyed without the fault of the licensee or his agents or employees, a duplicate license shall be issued upon proof of loss satisfactory to the state administrator, and upon the payment of a fee of five dollars (\$5) for a license issued under KRS 243.030 or 243.050, or one dollar (\$1) for a license issued under KRS 243.040.}~~

Section 25. KRS 243.640 is amended to read as follows:

- (1) If a corporation or partnership that holds a license under KRS 243.020 to 243.670 is dissolved, or if a receiver, assignee for the benefit of creditors or a guardian or conservator for the property of a licensee under those sections is appointed during the time for which a license was granted, or if a licensee under those sections dies during the time for which the license was issued and a personal representative is appointed for his ***or her*** estate, that corporation, partnership, receiver or assignee, or the personal representative of the estate of the deceased or individual adjudged to be mentally disabled, may be permitted to continue the business upon the licensed premises for the balance of the term for which the license was effective, with the same rights and subject to the same restrictions and liabilities as if he ***or she*** had been the original licensee.
- (2) Before continuing the business the receiver, assignee, personal representative or committee shall file a statement setting forth in ***the***~~such~~ form~~as~~ the board prescribes the facts and circumstances by which he ***or she*** has succeeded to the rights of the original licensee. The state administrator of the unit that issued the original license may, in the exercise of his sound discretion, permit or refuse to permit the continuance of the business.
- (3) If the administrator permits the continuance of the business the license shall be submitted to him ***or her***, and he ***or she*** shall write or stamp across the face of the license the words: "... is permitted to exercise the rights and privileges of the original licensee as (assignee, receiver, personal representative or committee, as the case may be) of the original licensee for the unexpired term of this license." The indorsement on the face of the license shall be dated and signed by the person making it.
- ~~{(4) The applicant shall pay a fee of five dollars (\$5) for the indorsement.}~~

Section 26. KRS 244.050 is amended to read as follows:

No retail licensee shall give away any alcoholic beverage in any quantity, or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155, ***Section 12 of this Act, and KRS 243.157.***

Section 27. KRS 244.110 is amended to read as follows:

The entrance~~doors~~ of any premises for which a retail license has been issued shall be of clear glass ***and permit an unobstructed view***. The premises shall be so erected and maintained as to furnish a clear view of the~~entire~~ premises from the sidewalk, or, if the premises are not on the street level, from the entrance. No partition, box, stall, screen, curtain, or other device shall obstruct the view or the general observation of persons, but partitions, subdivisions, or panels that are not higher than forty-eight (48) inches from the floor shall not be construed as obstructing the view or the general observation of persons. ~~{Any license to any bona fide hotel or club shall entitle the licensee to serve such alcoholic beverages as it is licensed to sell in a separate room at banquets or dinners or where meals are served.}~~

Section 28. KRS 244.130 is amended to read as follows:

- (1) Except in conformity with regulations of the board, no licensee under KRS 243.020 to 243.670 shall~~;~~

~~(a) —~~ advertise or cause or permit to be advertised in any manner any product which he *or she* is licensed to manufacture or sell; ~~nor~~

~~(b) — Have or exhibit in a window any display of alcoholic beverages.~~

(2) Subsection (1) of this section shall not prohibit:

- (a) Advertising in newspapers, magazines, or periodicals having a general circulation;
- (b) Promotional advertising on radio or television limited to no more than the name of the licensee and the products the licensee is permitted to manufacture or sell;
- (c) Promotional advertising containing the names of establishments or products displayed on uniforms or equipment of sporting teams.

Section 29. KRS 244.150 is amended to read as follows:

- (1) Each licensee under KRS 243.020 to 243.670 shall keep and maintain upon the licensed premises, *or make readily available upon request of the department or the Revenue Cabinet*, adequate books and records of all transactions involved in the manufacture or sale of alcoholic beverages, in the manner required by regulations of the *department*~~board~~ and the Revenue Cabinet.~~[Such books and records shall be available at all reasonable times for inspection by the board and by the Revenue Cabinet.]~~
- (2) The commissioner ~~may~~*shall* require common carriers to provide information in such form as he *or she* deems wise respecting all shipments of alcoholic beverages to, from, or between persons in Kentucky.

Section 30. KRS 244.260 is amended to read as follows:

- (1) No wholesaler shall purchase, import, keep upon the licensed premises, or sell any distilled spirits or wine in any container except in the original sealed package containing quantities of not less than two hundred (200) milliliters each of distilled spirits or one hundred (100) milliliters of wine, and not exceeding 1.75 liters of distilled spirits or two hundred twenty (220) liters of wine, and fifty (50) milliliters of distilled spirits, as received from the distiller, rectifier, vintner, or wholesaler, as the case may be. The containers shall at all times have affixed to them all labels as may be required by the administrative regulations of the board, together with all necessary federal revenue and state excise tax stamps.
- (2) No wholesaler shall sell any distilled spirits or wine except in cases of containers of uniform size, except that wine may be sold in barrels or kegs. "Case" as used in this section means a carton of containers aggregating not less than six (6) liters nor more than *twenty-four (24)*~~twelve (12)~~ liters of wine and distilled spirits, *or case containing one hundred twenty (120) or two hundred forty (240) fifty (50) milliliter bottles of distilled spirits and wine.*

Section 31. KRS 244.270 is amended to read as follows:

Each wholesaler shall have painted on the front window of the licensed premises, or, if there is no window, on a sign affixed to the front of the building containing the licensed premises, the name of the licensee together with the inscription: "Kentucky Wholesaler's Liquor License No." in uniform letters not less than three ~~(3)~~*and one-half (3 1/2)* inches in height.

Section 32. KRS 61.170 is amended to read as follows:

- (1) County judges/executive, justices of the peace, sheriffs, coroners, surveyors, jailers, county attorneys, and constables may be indicted in the county in which they reside for misfeasance or malfeasance in office, or willful neglect in the discharge of official duties, and if convicted they shall be fined not less than one hundred (\$100) nor more than one thousand dollars (\$1,000), and the judgment of conviction shall declare the office held by such person vacant.
- (2) Any sheriff, deputy sheriff, policeman, or other peace officer who fails to enforce any provision of KRS *Chapter 242*~~[242.010 to 242.990]~~ after receiving information of a violation thereof, or having knowledge of a violation thereof and failing to act thereon, may be indicted for nonfeasance or malfeasance in office, and if convicted shall be fined not less than fifty (\$50) nor more than two hundred dollars (\$200), and the judgment of conviction shall declare the office held by such person vacant.
- (3) In the absence of good cause shown, a member of the fiscal court who fails to attend fifty percent (50%) of the regular terms of the fiscal court within a six (6) month period or who fails to attend two (2) consecutive terms of the fiscal court shall be charged with neglect of office and upon conviction shall forfeit his office.

Section 33. KRS 241.060 is amended to read as follows:

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

- (1) To promulgate reasonable administrative regulations governing the procedure relative to applications for and revocations of licenses and relative to all other matters over which the board has jurisdiction, and for the supervision and control of manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;
- (2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions ~~or of~~ subdivisions;
- (3) To hold hearings to be conducted in accordance with the provisions of KRS Chapter 13B. The department may pay witnesses the per diem and mileage provided in KRS 421.015;
- (4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;
- (5) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;
- (6) To be required, if violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises within the knowledge of the owner, or was committed or permitted in or upon premises owned by a licensee, to prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed; **and**
- (7) To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license; ~~and~~
- ~~(8) To promulgate administrative regulations and to provide forms that may be necessary to regulate the alcoholic beverage industry and to make KRS 244.380 to 244.470 effective.~~

Section 34. KRS 243.360 is amended to read as follows:

- (1) Every person, except an applicant for renewal of the same license for the same premises, or an applicant for a special agent's or solicitor's license, an industrial alcohol license, a nonindustrial alcohol license, a bonded warehouse license, a freight forwarding license, a storage warehouse license or a temporary drink license shall, before applying for any license under KRS 243.030 or 243.040, advertise by publication pursuant to KRS Chapter 424 his intention to apply. The advertisement shall state the name and address of the applicant if he is an individual, the names and addresses of the members of partnership if the applicant is a partnership, as well as the name of the business and its address, or, if the applicant is a corporation, the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself, the location of the premises for which the license is sought, and the type of license to be applied for.
- (2) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.
- (3) The board shall not consider protests received more than thirty-seven (37) days after an application for a license under KRS 243.030 is filed; nor shall it consider protests received more than seventeen (17) days after an application for a license under KRS 243.040 is filed; ~~provided, however, that this subsection shall not apply to a church or a school which has not received actual notice as required by KRS 243.220.~~

Section 35. KRS 244.990 is amended to read as follows:

- (1) Any person who, by himself or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided; ~~except KRS 244.380 to 244.470;~~ shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, he shall be guilty of a Class A misdemeanor. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license. If the offender is a corporation, joint stock company, association, or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

- (2) Any person who violates KRS 244.170 shall, upon the first conviction, be guilty of a Class A misdemeanor. Upon a second conviction he shall be guilty of a Class D felony. Upon the third and each subsequent conviction, he shall be guilty of a Class C felony.
- (3) Any person who violates any of the provisions of KRS 244.480 to 244.600 shall be guilty of a violation.
- (4) Any person, firm, or corporation violating any provision of KRS 244.083 and 244.085 shall be guilty of a violation and each violation shall constitute a separate offense.
- (5) Any person who violates the provisions of subsection (5) of KRS 244.085 shall, for the first offense, be guilty of a violation, and for each subsequent offense shall be guilty of a Class A misdemeanor.
- (6) Any person who violates KRS 244.125 shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

Section 36. KRS 413.241 is amended to read as follows:

- (1) The General Assembly finds and declares that the consumption of intoxicating beverages, rather than the serving, furnishing, or sale of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or another person.
- (2) Any other law to the contrary notwithstanding, no person holding a permit under KRS~~[243.010,]~~ 243.030, 243.040, 243.050, nor any agent, servant, or employee of ~~the~~~~[such a]~~ person, who sells or serves intoxicating beverages to a person over the age for the lawful purchase thereof, shall be liable to ~~that~~~~[such]~~ person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises including but not limited to wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served, unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving.
- (3) The intoxicated person shall be primarily liable with respect to injuries suffered by third persons.
- (4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.
- (5) This section shall not apply to civil actions filed prior to July 15, 1988.

Section 37. KRS 506.120 is amended to read as follows:

- (1) No person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall do any of the following:
 - (a) Organize or participate in organizing a criminal syndicate or any of its activities;
 - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
 - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
 - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
 - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
 - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;
 - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145,~~[244.390]~~ or 244.600.
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony.
- (3) As used in this section "criminal syndicate" means five (5) or more persons collaborating to promote or engage in any of the following on a continuing basis:
 - (a) Extortion or coercion in violation of KRS 514.080, 276.280, 276.310, or 521.020;
 - (b) Engaging in, promoting, or permitting prostitution in violation of KRS Chapter 529;
 - (c) Any theft offense as defined in KRS Chapter 514;

- (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
- (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237;
- (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.

Section 38. KRS 243.075 is amended to read as follows:

Notwithstanding the provisions of KRS 243.070, in any city of the third or fourth class in which the discontinuance of prohibition is effective by virtue of a local option election held in the manner prescribed in KRS **Chapter 242**~~[242.010 to 242.040 and KRS 242.060 to 242.120,]~~ and in the case of fourth class cities, KRS 242.127 to 242.129, the governing body of the city is authorized to impose a regulatory license fee upon the gross receipts of each establishment therein licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each city budget period at such percentage rate as shall be reasonably estimated to fully reimburse the city for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. ~~The~~~~Such~~ regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, but a credit against such fee shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070.

Section 39. The following KRS sections are repealed:

- 242.010 Definitions.
- 243.010 Definitions for chapter and for KRS 243.720 to 243.850.
- 244.380 Provisions contracts of sale to contain (fair trade contracts).
- 244.390 Minimum resale prices.
- 244.400 Contracts of producers and processors -- Filing -- Contents.
- 244.410 Contracts of wholesalers -- Filing -- Contents.
- 244.420 Nonresident producers and importers to sell under fair trade contract.
- 244.430 Amendments to fair trade contracts may be filed.
- 244.460 Close-out sales -- Requirements of.
- 244.470 Violators guilty of unfair competition.
- 244.520 Advertisement or label not to refer to alcoholic content.

Approved March 25, 1998

CHAPTER 122

(HB 37)

AN ACT relating to marriage and declaring an emergency.

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

Section 1. KRS 402.020 is amended to read as follows:

- (1) Marriage is prohibited and void:
 - (a) With a person who has been adjudged mentally disabled by a court of competent jurisdiction;
 - (b) Where there is a husband or wife living, from whom the person marrying has not been divorced;
 - (c) When not solemnized or contracted in the presence of an authorized person or society;

- (d) 1. *Except as provided in subparagraph 3. of this paragraph, when at the time of the marriage, the person is under sixteen (16) years of age;*
2. *Except as provided in subparagraph 3. of this paragraph, when at the time of marriage, the person is under eighteen (18) but over sixteen (16) years of age, if the marriage is without the consent of:*
- a.~~{1.}~~ The father or the mother of the person under eighteen (18) *but over sixteen (16)*, if the parents are married, the parents are not legally separated, no legal guardian has been appointed for the person under eighteen (18) *but over sixteen (16)*, and no court order has been issued granting custody of the person under eighteen (18) *but over sixteen (16)* to a party other than the father or mother;
- b.~~{2.}~~ Both the father and the mother, if both be living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) *but over sixteen (16)* has been issued and is in effect;
- c.~~{3.}~~ The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) *but over sixteen (16)* was issued prior to the death of either the father or mother, which order remains in effect;
- d.~~{4.}~~ The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the person under eighteen (18) *but over sixteen (16)* has not been ordered; or
- e.~~{5.}~~ Another person having lawful custodial charge of the person under eighteen (18) *but over sixteen (16)*;
3. ~~{Provided, however, that}~~In case of pregnancy the male and female, or either of them,~~{under the ages herein}~~ specified *in subparagraph 1. or 2. of this paragraph*, may apply to a District Court Judge for permission to marry, which application may be granted, *in the form of a written court order*, in the discretion of the judge. There shall be a fee of five dollars (\$5) for hearing each such application.~~{;}~~

- (2) For purposes of this section "parent," "father" or "mother" means the natural parent, father or mother of a child under eighteen (18) unless an adoption takes place pursuant to legal process, in which case the adoptive parent, father or mother shall be considered the parent, father or mother to the exclusion of the natural parent, father or mother, as applicable.

Section 2. KRS 402.030 is amended to read as follows:

- (1) Courts having general jurisdiction may declare void any marriage obtained by force or fraud.~~{or;}~~
- (2) At the instance of any next friend, *courts having general jurisdiction* may declare any marriage void where the person was under eighteen (18) *but over sixteen (16)* years of age at the time of the marriage, and the marriage was without the consent required by KRS 402.020(1)(d) and has not been ratified by cohabitation after that age.
- (3) *At the instance of any next friend, courts having general jurisdiction may declare void any marriage where:*
- (a) *The person was under sixteen (16) years of age at the time of the marriage;*
- (b) *The marriage was not conducted with the permission of a District Court Judge, as required by subsection (1)(d)3. of Section 1 of this Act, in the form of a written court order; and*
- (c) *The marriage has not been ratified by cohabitation after the person reached eighteen (18) years of age.*

Section 3. KRS 402.210 is amended to read as follows:

- (1) If either of the parties is under eighteen (18) *but over sixteen (16)* years of age and not before married, no license shall issue without the consent required by KRS 402.020(1)(d), personally given or certified in writing to the clerk over the signature of the person consenting in accordance with KRS 402.020(1)(d), attested by two (2) subscribing witnesses and proved by the oath of one (1) of the witnesses, administered by the clerk. If the parties are personally unknown to the clerk, a license shall not issue until bond, with good surety, in the penalty

of one hundred dollars (\$100) is given to the Commonwealth, with condition that there is no lawful cause to obstruct the marriage.

- (2) *If either of the parties is under sixteen (16) years of age, no license shall issue without the permission of a District Court Judge, as required by subsection (1)(d)3. of Section 1 of this Act, in the form of a certified copy of a written court order.*

Section 4. Whereas on a daily basis, children in Kentucky are marrying without understanding the adverse consequences for themselves and their own children, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 26, 1998

CHAPTER 123

(SB 142)

AN ACT relating to retirement.

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

Section 1. KRS 61.595 is amended to read as follows:

- (1) Effective July 1, 1990, upon retirement at normal retirement date, or subsequent thereto, a member may receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) for the County Employees Retirement System and one and ninety-seven hundredths percent (1.97%) for the Kentucky Employees Retirement System of final compensation multiplied by the number of years of service credit, except that:
- (a) *Effective February 1, 1999, a member of the Kentucky Employees Retirement System who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two percent (2%) of final compensation multiplied by the number of years of service credit. Any Kentucky Employees Retirement System member whose effective date of retirement is between February 1, 1999, and January 31, 2009, and who has at least twenty (20) years of service credit in one of the state-administered retirement systems and who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit. Notwithstanding the provisions of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance account.*
- (b) The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of January 6, 1978, shall not be less than two hundred forty dollars (\$240) multiplied by the number of years of service as a member of the General Assembly;
- (c)~~(b)~~ The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;
- (d)~~(c)~~ Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 regular session are eligible for an increased retirement allowance of two hundred forty dollars (\$240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving

a retirement allowance, he may reapply and his retirement allowance shall be recomputed in accordance with this paragraph, and he shall thereafter be paid in accordance with the option selected by him at the time of the reapplication;

- (e)~~(d)~~ The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars (\$512); and
- (f)~~(e)~~ The annual retirement allowance for a member of the Kentucky employees retirement system or County Employees Retirement System shall not exceed the maximum benefit as set forth in the Internal Revenue Code.
- (2) (a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.
- (b) There shall be no reduction in the retirement allowance of the member who has thirty (30) or more years of service credit, at least fifteen (15) of which are current service but a member of the Kentucky Employees Retirement System or the County Employees Retirement System who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education or the Higher Education Assistance Authority, may count the vested service toward attaining thirty (30) years of service credit to qualify for an unreduced retirement allowance. The credit from a Kentucky institution of higher education or the Higher Education Assistance Authority shall not be used to calculate his retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).
- (c) There shall be no reduction in the retirement allowance of the member who has twenty-six (26) years of service, sixteen (16) of which are current consecutive years of service as a cabinet secretary or administrative head of one (1) of the three (3) branches of government who has retired under the provisions of KRS 61.559(2)(e).
- (3) The retirement allowance shall be calculated by using the member's known creditable compensation prior to his last month's employment and an estimate of his creditable compensation during the last month he was employed. Based upon this calculation, the State Treasurer shall be requested to issue the initial retirement payment.
- (4) A new calculation shall be made when the official report has been received of the member's creditable compensation during his last month's employment. However, the retirement allowance determined in accordance with subsection (3) of this section shall be the official retirement allowance unless the new calculation derives an amount which is one dollar (\$1) greater or less than the amount of the initial retirement payment.

Section 2. KRS 61.705 is amended to read as follows:

- (1) Upon the death of a retired member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System who had a minimum of forty-eight (48) months of service, a death benefit of *five*~~two~~ thousand~~five hundred~~ dollars (*\$5,000*)~~(\$2,500)~~ shall be paid. Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.
- (2) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, an individual, his estate, a trust or trustee as the beneficiary of the death benefit. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1). If the beneficiary designated under this section dies prior to the member, the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation.

CHAPTER 124**(HB 299)**

AN ACT relating to traumatic brain injury.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act:

- (1) *"Board" means the Traumatic Brain Injury Trust Fund Board created pursuant to Section 2 of this Act;*
- (2) *"Cabinet" means the Cabinet for Human Resources;*
- (3) *"Traumatic brain injury" means a partial or total disability caused by injury to the central nervous system from physical trauma, damage to the central nervous system from anoxia, hypoxic episodes, allergic conditions, toxic substances, or other acute medical clinical incidents resulting in impaired cognitive abilities or impaired physical functioning. "Traumatic brain injury" does not include:*
 - (a) *Strokes that can be treated in nursing facilities providing routine rehabilitation services;*
 - (b) *Spinal cord injuries for which there are no known or obvious injuries to the intracranial central nervous system;*
 - (c) *Progressive dementias and other mentally impairing conditions;*
 - (d) *Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;*
 - (e) *Mental retardation and birth defect related disorders of long standing nature; or*
 - (f) *Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.*
- (4) *"Trust fund" means the traumatic brain injury trust fund created pursuant to Section 4 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Traumatic Brain Injury Trust Fund Board is hereby created for the purpose of administering the trust fund. The board shall be composed of nine (9) members including the Secretary of the Cabinet for Human Resources or the secretary's designee, the Executive Director of the Brain Injury Association of Kentucky or the executive director's designee, the state medical epidemiologist, and the following members, to be appointed by the Governor:*
 - (a) *One (1) member shall be a neurosurgeon;*
 - (b) *One (1) member shall be a neuropsychologist or psychiatrist;*
 - (c) *One (1) member shall be a rehabilitation specialist;*
 - (d) *One (1) member shall be a social worker experienced in working with brain-injured individuals; and*
 - (e) *Two (2) members shall be family members of or individuals with a brain injury.*
- (2) *Board members shall not be compensated for serving, but shall be reimbursed for ordinary travel expenses, including meals and lodging incurred in the performance of their duties.*
- (3) *The terms of appointed board members shall be four (4) years, except that the terms of initial members shall be staggered to end as follows:*
 - (a) *Two (2) on June 30, 2000;*
 - (b) *Two (2) on June 30, 2001; and*
 - (c) *Two (2) on June 30, 2002.*

- (4) *At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves two (2) consecutive four (4) year terms shall not be reappointed for four (4) years after completion of those terms.*
- (5) *A majority of the full authorized membership shall constitute a quorum.*
- (6) *The board shall elect, by a majority vote, a director who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The director shall be elected or reelected for each calendar year.*
- (7) *The board may establish any organizational structure it determines is necessary to accomplish its functions and duties, including the hiring of any necessary support personnel. The administrative costs of the board shall be limited to three percent (3%) of the proceeds from the trust fund.*
- (8) *Meetings of the board shall be held at least twice a year but may be held more frequently, as deemed necessary, subject to call by the director or by the request of a majority of the board members.*
- (9) *The board shall be attached to the cabinet for administrative purposes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The board shall:

- (1) *Promulgate administrative regulations necessary to carry out the provisions of Sections 1 to 5 of this Act;*
- (2) *Formulate policies and procedures for determining individual eligibility for assistance from the trust fund in accordance with the following guidelines:*
 - (a) *The trust fund shall serve as a funding source of last resort for residents of the Commonwealth of Kentucky. To be eligible for assistance from the trust fund, an individual must have exhausted all other funding sources that cover the type of services sought through the trust fund. Individuals who have continuing health insurance benefits, including Medicaid, may access the trust fund for services that are needed but not covered by insurance or any other funding source. Individuals who qualify for institutional care through Medicaid shall not qualify for services through the trust fund;*
 - (b) *All individuals receiving assistance from the fund shall receive case management services;*
 - (c) *Expenditures on behalf of any one (1) brain-injured individual may not exceed fifteen thousand dollars (\$15,000) for any twelve (12) month period, and may not exceed a lifetime maximum of sixty thousand dollars (\$60,000). At its discretion and subject to fund availability, the board may waive the expenditure or time limitations or both in special circumstances;*
 - (d) *Services covered by the trust fund shall include:*
 1. *Case management;*
 2. *Community residential services;*
 3. *Structured day program services;*
 4. *Psychological services;*
 5. *Prevocational services;*
 6. *Supported employment;*
 7. *Companion services;*
 8. *Respite care;*
 9. *Occupational therapy; and*
 10. *Speech and language therapy.*

Covered services shall not include institutionalization, hospitalization, environmental modifications, special medical equipment and supplies, medications, and behavioral programs;

- (3) *Establish a confidential medical registry for traumatic brain and spinal cord injuries occurring in the Commonwealth of Kentucky, or to residents of the Commonwealth of Kentucky.*

- (a) *The board may promulgate administrative regulations requiring licensed or certified professionals or health services providers to report the occurrence of brain and spinal cord injuries, relevant medical and epidemiological information about the injuries, and other information describing the circumstances of the injury to the board or its designated agent. The reporting of data by licensed hospitals under this section shall be limited to that which is reported to the Cabinet for Human Resources pursuant to KRS 216.2920 to 216.2929 and the board shall obtain this data from the Cabinet for Human Resources. Each licensed hospital shall grant the board, upon presentation of proper identification, access to the medical records of patients with reportable brain and spinal cord injuries for the sole purpose of collecting additional information that is not available in the data obtained from the Cabinet for Human Resources. All costs associated with copying medical records shall be borne by the board. No liability of any kind shall arise or be enforced against any licensed hospital or hospital employee for providing the board access to a patient's medical record.*
- (b) *The board and its designated agent, if one is appointed, shall observe the same confidentiality requirements established for the Kentucky birth surveillance registry in KRS 211.670.*
- (4) *Investigate the needs of brain-injured individuals and identify gaps in current services;*
- (5) *Assist the cabinet in developing programs for brain-injured individuals;*
- (6) *Monitor and evaluate services provided by the trust fund; and*
- (7) *Provide the Governor, the General Assembly, and the Legislative Research Commission an annual report by January 1 of each year summarizing the activities of the board and the trust fund.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The traumatic brain injury trust fund is created as a separate revolving fund. The trust fund shall consist of moneys collected from an additional assessment of twenty dollars (\$20) imposed on driving under the influence offenses, an additional assessment of ten dollars (\$10) imposed against selected speeding offenses, and an additional fine of ten dollars (\$10) imposed against selected moving violations.*
- (2) *The trust fund may receive the proceeds from grants, contributions, appropriations, and any other moneys that may be made available for the purposes of the trust fund.*
- (3) *Expenditures from the trust fund on behalf of the medical registry created under Section 3 of this Act shall not exceed one hundred twenty-five thousand dollars (\$125,000) for any fiscal year.*
- (4) *Funds unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (5) *Any interest earnings of the trust fund shall become a part of the trust fund and shall not lapse to the general fund.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

Trust fund moneys shall be distributed for the following purposes:

- (1) *To provide services to individuals suffering from conditions that qualify for assistance from the fund, in accordance with criteria established by the board in Section 3 of this Act;*
- (2) *To establish and maintain a state medical registry for traumatic brain and spinal cord injuries; and*
- (3) *To meet the obligations incurred by the board in meeting its duties in accordance with the provisions of Sections 2 and 3 of this Act.*

Section 6. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1)

year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

- (2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars (\$60) nor more than five hundred dollars (\$500).
- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.

- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100), and upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
 - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
 - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars (\$35) nor more than five hundred dollars (\$500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars (\$60) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) *Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to Section 4 of this Act, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in Sections 1 to 5 of this Act.*

(27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

~~(28)~~~~(27)~~ A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

- (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
- (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Section 7. KRS 189.394 is amended to read as follows:

(1) The fines for speeding in violation of KRS 189.390 shall be:

Mph.	Prima Facie or Maximum Speed											
Over												
Limit	15	20	25	30	35	40	45	50	55	60	65	Fine
1	16	21	26	31	36	41	46	51	56	61	66	\$1
2	17	22	27	32	37	42	47	52	57	62	67	2
3	18	23	28	33	38	43	48	53	58	63	68	3
4	19	24	29	34	39	44	49	54	59	64	69	4
5	20	25	30	35	40	45	50	55	60	65	70	5
6	21	26	31	36	41	46	51	56	61	66	71	16
7	22	27	32	37	42	47	52	57	62	67	72	17
8	23	28	33	38	43	48	53	58	63	68	73	18
9	24	29	34	39	44	49	54	59	64	69	74	19
10	25	30	35	40	45	50	55	60	65	70	75	20
11	26	31	36	41	46	51	56	61	66	71	76	22
12	27	32	37	42	47	52	57	62	67	72	77	24
13	28	33	38	43	48	53	58	63	68	73	78	26
14	29	34	39	44	49	54	59	64	69	74	79	28
15	30	35	40	45	50	55	60	65	70	75	80	30
16	31	36	41	46	51	56	61	66	71	76	81	32
17	32	37	42	47	52	57	62	67	72	77	82	34
18	33	38	43	48	53	58	63	68	73	78	83	36
19	34	39	44	49	54	59	64	69	74	79	84	38
20	35	40	45	50	55	60	65	70	75	80	85	40
21	36	41	46	51	56	61	66	71				43
22	37	42	47	52	57	62	67	72				46
23	38	43	48	53	58	63	68	73				49
24	39	44	49	54	59	64	69	74				52
25	40	45	50	55	60	65	70	75				55

- (2) For speeding in excess of the speeds shown on the specific fine schedule the fine shall be not less than sixty dollars (\$60) nor more than one hundred dollars (\$100).
- (3) For any violation shown on the chart for which a specific fine is prescribed, the defendant may elect to pay the fine and court costs to the circuit clerk before the date of his trial or to be tried in the normal manner. Payment of the fine and court costs to the clerk shall be considered as a plea of guilty for all purposes.
- (4) If the offense charged shows a speed in excess of the speeds shown on the specific fine schedule the defendant shall appear for trial and may not pay the fine to the clerk before the trial date.
- (5) Twelve dollars and fifty cents (\$12.50) shall be assessed for violations of KRS 189.390 in addition to the penalties set forth in subsections (1) and (2) of this section. Funds collected pursuant to this subsection shall be deposited in the spinal cord and head injury research trust fund, created pursuant to KRS 211.504, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.502.
- (6) ***Ten dollars (\$10) shall be assessed for violations of KRS 189.390 in addition to the penalties set forth in subsections (1) and (2) and the additional fee established in subsection (3) of this section. Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund created pursuant to Section 4 of this Act, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in Sections 1 to 5 of this Act.***
- (7) If the offense occurred in a highway work zone, the fine established by subsection (1) or (2) of this section shall be doubled.
- ~~(8)~~~~(7)~~ All fines collected for speeding in a highway work zone in violation of KRS 189.390 shall be deposited into a separate trust and agency account within the Transportation Cabinet known as the "Highway Work Zone Safety Fund." The highway work zone safety fund shall be used exclusively by the Transportation Cabinet to hire or pay for enhanced law enforcement of traffic laws within highway work zones.

Section 8. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) While the alcohol concentration in his blood or breath is 0.10 or more based on the definition of alcohol concentration in KRS 189A.005;
 - (b) While under the influence of alcohol;
 - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
 - (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
 - (e) While the alcohol concentration in his blood or breath is 0.02 or more based on the definition of alcohol concentration in KRS 189A.005 if the person is under the age of twenty-one (21).
- (2) In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood, or breath shall give rise to the following presumptions:
 - (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
 - (b) If there was an alcohol concentration of 0.05 or greater but less than 0.10 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

- (3) The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- (4) Any person who violates the provisions of paragraphs (a), (b), (c) or (d) of subsection (1) of this section shall:
 - (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both.
 - (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months.
 - (c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months.
 - (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony.
 - (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- (5) Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection (4) of this section or any other penalty established pursuant to KRS Chapter 189A.
- (6) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.10 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (4) of this section.
- (7) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
- (8) When sentencing persons under subsection (4)(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
- (9) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (10) ***Any person who violates the provisions of subsection (1) of this section shall be assessed twenty dollars (\$20) in addition to the fines imposed by subsections (4) and (5) of this section. Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to Section 4 of this Act, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in Sections 1 to 5 of this Act.***

Section 9. KRS 186.574 is amended to read as follows:

- (1) The Transportation Cabinet shall establish a state traffic school for new drivers and for traffic offenders. The school shall be composed of uniform education and training elements designed to create a lasting influence on new drivers and a corrective influence on traffic offenders. District Courts may in lieu of assessing penalties for traffic offenses, other than for KRS 189A.010, sentence offenders to state traffic school and no other. The Transportation Cabinet shall enroll a person in state traffic school who fails to complete a driver's education course pursuant to KRS 186.410(5).
- (2) If a District Court stipulates in its judgment of conviction that a person attend state traffic school, the court shall indicate this in the space provided on the abstract of conviction filed with the Transportation Cabinet. Upon receipt of an abstract, the Transportation Cabinet, or its representative, shall schedule the person to attend state traffic school. Failure of the person to attend and satisfactorily complete state traffic school in compliance with the court order, may be punished as contempt of the sentencing court.
- (3) The Transportation Cabinet shall supervise, operate, and administer state traffic school, and shall promulgate administrative regulations pursuant to KRS Chapter 13A governing facilities, equipment, courses of instruction, instructors, and records of the program. In the event a person sentenced under subsection (1) of this section does not attend or satisfactorily complete state traffic school, the Transportation Cabinet may deny that person a license or suspend the license of that person until he reschedules attendance or completes state traffic school, at which time a denial or suspension shall be rescinded.
- (4) Persons participating in the state traffic school as provided in this section shall pay a fee of fifteen dollars (\$15) to defray the cost of operating the school, except that if enrollment in state traffic school is to satisfy the requirement of KRS 186.410(4)(c), a fee shall not be assessed. Any funds collected pursuant to KRS 186.535(1) that are dedicated to the road fund for use in the state driver education program may be used for the purposes of state traffic school.
- (5) The following procedures shall govern persons attending state traffic school pursuant to this section:
 - (a) A person convicted of any violation of traffic codes set forth in KRS Chapters 177, 186, or 189, and who is otherwise eligible, may in the sole discretion of the trial judge, be sentenced to attend state traffic school. Upon payment of the fee required by subsection (4) of this section, and upon successful completion of state traffic school, the sentence to state traffic school shall be the person's penalty in lieu of any other penalty, except for the payment of court costs;
 - (b) Except as provided in KRS 189.990(28)~~(27)~~, a person shall not be eligible to attend state traffic school who has been cited for a violation of KRS Chapters 177, 186, or 189 that has a penalty of mandatory revocation or suspension of an offender's driver's license;
 - (c) Except as provided in KRS 189.990(28)~~(27)~~, a person shall not be eligible to attend state traffic school for any violation if, at the time of the violation, the person did not have a valid driver's license or the person's driver's license was suspended or revoked by the cabinet;
 - (d) Except as provided in KRS 189.990(28)~~(27)~~, a person shall not be eligible to attend state traffic school more than once in any two (2) year period, unless the person wants to attend state traffic school to comply with the driver education requirements of KRS 186.410; and
 - (e) The cabinet shall notify the sentencing court regarding any person who was sentenced to attend state traffic school who was ineligible to attend state traffic school. A court notified by the cabinet pursuant to this paragraph shall return the person's case to an active calendar for a hearing on the matter. The court shall issue a summons for the person to appear and the person shall demonstrate to the court why an alternative sentence should not be imposed.

Approved March 26, 1998

CHAPTER 125

(HB 433)

AN ACT relating to sales and use tax.

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

Section 1. KRS 139.480 is amended to read as follows:

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Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

- (16) Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:
 - (a) "Gasoline" is defined as in KRS 138.210(4);
 - (b) "Special fuels" is defined as in KRS 138.560(3);
 - (c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and
 - (d) "Agricultural purposes" is defined as in KRS 138.343(4);
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000;{~~and~~}
- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

- (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000; *and*

(27) *Water sold to a person regularly engaged in the business of farming and used in the:*

- (a) *Production of crops;*
 (b) *Production of milk for sale; or*
 (c) *Raising and feeding of:*
1. *Livestock or poultry, the products of which ordinarily constitute food for human consumption; or*
 2. *Ratites, llamas, alpacas, buffalo, or aquatic organisms.*

Section 2. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
 - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
 - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to twenty-five cents (\$0.25) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall

include, but not be limited to, natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;

- (b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
 2. Classified as "residential" by a municipally-owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
 3. Classified as "residential" by the governing body of a municipally-owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the seller and the seller maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale are not subject to the sales or use tax. The property shall be regarded as having been purchased for resale. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
1. Materials which enter into and become an ingredient or component part of the manufactured product.
 2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
 - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.

- c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
- 3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
 - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170; ~~and~~
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority; *and*
- (13) *Gross receipts from the sale of water used in the raising of equine as a business.*

Approved March 26, 1998

CHAPTER 126

(HB 31)

AN ACT relating to animal euthanasia.

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

Section 1. KRS 321.181 is amended to read as follows:

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

- (1) "Board" means the Kentucky Board of Veterinary Examiners;
- (2) "Animal" means any animal, except human beings;
- (3) "Compensation" includes any gift, bonus, fee, money, credit, or other thing of value;
- (4) "Veterinarian" means a practitioner of veterinary medicine who is duly licensed in the Commonwealth of Kentucky;
- (5) "Practice of veterinary medicine" means:
 - (a) To diagnose, treat, correct, change, relieve, or prevent: animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above;
 - (b) To engage in veterinary surgery, obstetrics, embryo transfer, dentistry, acupuncture, manipulation, and all other branches or specialties of veterinary medicine and the prescribing, administering, or dispensing of drugs and medications for veterinary purposes, in accordance with the applicable federal statutes and regulations governing controlled prescription and legend drugs; and
 - (c) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraphs (a) and (b) of this subsection.
- (6) "Embryo transfer" means to remove any embryo from any animal for the purpose of transplanting the embryo into another female animal or for the purpose of cryopreserving the embryo, or to implant the embryo into any animal, including food and companion animals;

- (7) "Chemical restraint" means the use of any prescription or legend drug that restrains or tranquilizes the animal;
- (8) "Direct supervision" means the veterinarian is on the premises, and is quickly and easily available, and the animal has been examined by a veterinarian at the times acceptable veterinary medical practice requires, consistent with the particular delegated animal health care tasks;
- (9) "Indirect supervision" means the veterinarian does not have to be on the premises as long as a valid veterinary/client/patient relationship has been established and the veterinary technologist, veterinary technician, or veterinary assistant has been instructed on the applicable animal health care tasks in accordance with KRS 321.441 and 321.443.
- (10) "Emergency" means the animal has been placed in a life threatening condition and immediate treatment is necessary to sustain life;
- (11) "Impaired veterinarian program" means the Kentucky Veterinary Medical Association sponsored program for the identification, intervention, and monitoring of veterinarians impaired as a result of alcoholism, chemical dependence, or drug abuse;
- (12) "Veterinary medical impairment committee" means a committee of the Kentucky Veterinary Medical Association, comprised of individuals who have expertise in the areas of alcoholism, chemical dependence, drug abuse, or physical or mental illness, that has been designated by the Kentucky Veterinary Medical Association to perform activities related to the impaired veterinarian program.
- (13) "Veterinary technologist" means a person who has successfully completed an accredited program of veterinary technology approved by the board and who is registered in accordance with KRS 321.441;
- (14) "Veterinary technician" means a person who has an associate degree related to veterinary sciences, or its equivalent as approved by the board, and who is registered in accordance with KRS 321.441;
- (15) "Veterinary assistant" means a lay person employed by a licensed veterinarian in accordance with KRS 321.443.
- (16) *"Certified animal control agency" means a county or municipal animal shelter, dog pound, or animal control agency; private humane society; state, county, or municipal law enforcement agency; or any combination thereof that temporarily houses stray, unwanted, or injured animals and that is certified under the provisions of Section 2 of this Act.*
- (17) *"Certified animal euthanasia specialist" means a person employed by a certified animal control agency who is authorized by the board, under Section 2 of this Act, to humanely euthanize animals by administering drugs designated by the board for euthanasia.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 321 IS CREATED TO READ AS FOLLOWS:

- (1) *The Board of Veterinary Examiners, upon submission of a complete application and payment of a fee established by the board, shall issue to any animal control agency that it determines to be qualified, authorization to apply to the federal Drug Enforcement Agency, including any successor entity, for a restricted controlled substance registration certificate for the purchase, possession, and use of sodium pentobarbital or other drugs as authorized by the board for administration by a certified animal euthanasia specialist to euthanize injured, sick, or abandoned animals.*
- (2) *To satisfy the board's authorization, the applicant shall comply with administrative regulations promulgated by the board which contain standards for proper storage and handling of the drugs the board has authorized for use, and any other provisions as may be necessary to ensure that the drugs are used safely and solely for the purpose set forth in this section.*
- (3) *If the registration certificate is granted by the federal Drug Enforcement Agency, and the applicant otherwise satisfies the requirements of the Board of Veterinary Examiners, the board shall certify the animal control agency to euthanize animals.*
- (4) *Upon submission of a complete application, payment of a fee established by the board, and successful completion of a board-approved animal euthanasia specialist training course by the applicant, the Board of Veterinary Examiners shall issue to any person whom it determines to be qualified, a certificate for the person to function as a certified animal euthanasia specialist.*

- (5) *Euthanasia of animals in a certified animal control agency shall be performed by a licensed veterinarian, including a registered veterinary technician or technologist employed by and functioning under the direct supervision of a licensed veterinarian, or a certified animal euthanasia specialist as provided for in subsection (4) of this section. A certified animal control agency that employs a certified animal euthanasia specialist may purchase, possess, and administer sodium pentobarbital or other drugs that the board approves for the euthanasia of animals. Sodium pentobarbital and other drugs approved by the board shall be the only drugs used for the euthanasia of animals in a certified animal control agency.*
- (6) *Certified animal control agencies and certified animal euthanasia specialists shall be required to renew their certificates at intervals, upon conditions, and upon the payment of fees established by the board.*

Section 3. KRS 321.235 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure *and certification*.
- (2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter.
- (3) The board may promulgate administrative regulations pursuant to Chapter 13A and this chapter to carry out the provisions of this chapter.
- (4) The board may conduct hearings and keep records and minutes necessary to carry out the function of this chapter.
- (5) The board may evaluate the qualifications and authorize the issuance of licenses, ~~or~~ registration, *or certification* to qualified candidates.
- (6) The board may renew licenses, ~~and~~ registrations, *and certifications* and require continuing education as a condition for renewal.
- (7) The board may suspend, or revoke licenses *or certifications*, or impose supervisory or probationary conditions upon licensees *or certificate holders*, or impose administrative disciplinary fines, issue written reprimands, or any combination thereof.
- (8) The board may seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of veterinary medicine by unlicensed persons.

Section 4. KRS 321.990 is amended to read as follows:

Any person who shall violate or aid in the violation of any of the provisions of KRS 321.175, 321.181, 321.185, 321.190, 321.193, 321.195, 321.200, 321.201, 321.205, 321.211, 321.221, 321.230, 321.235, 321.237, 321.240, 321.320, 321.351, 321.360, 321.441, ~~and~~ 321.443, *and Section 2 of this Act* shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500), or sentenced to jail for not less than ten (10) nor more than ninety (90) days, or both so fined and imprisoned in the discretion of the jury.

Approved March 26, 1998

CHAPTER 127

(HB 86)

AN ACT relating to parent and child education.

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

Section 1. KRS 158.360 is amended to read as follows:

- (1) The State Board for Adult and Technical Education shall *approve grants and* authorize *the Department for Adult Education and Literacy to disburse funds*~~(grants)~~ to selected local *educational agencies, public or private nonprofit agencies, postsecondary educational institutions, and other institutions that have the ability to provide model family- literacy services to adults and families. The programs shall be known as Parent and Child Education for Family Independence programs. The Department for Adult Education and Literacy shall annually report to the State Board for Adult and Technical Education, and the Legislative Research Commission for each grantee, the total funds expended, the number of parents and children*

served, the number of participants receiving public assistance at the time they enter the program, and the number of participants who have been removed from public assistance because of participation in the program~~[school districts in areas of greatest educational and economic need, for developing and providing model programs of instruction for preschool children and their parents].~~

(2) *The programs shall:*

- (a) *Provide parents with instruction in basic academic skills, life skills which include parenting skills, and employability skills;*
- (b) *Provide the children with developmentally appropriate educational activities;*
- (c) *Provide planned high-quality educational experiences requiring interaction between parents and their children;*
- (d) *Be of sufficient intensity and duration to help move families to self-sufficiency and break the cycle of undereducation and poverty; and*
- (e) *Be designed to reduce duplication with other educational providers to ensure high quality and efficient services;*

The programs may operate on a year round basis. The programs may also be blended with other programs as long as all criteria in this subsection are met~~[Parents participating shall be instructed in basic academic skills, while their preschoolers work with an early childhood specialist on developmental skills].~~

(3) *Eligible participants shall be*~~[Parenting skills and other planned, structured activities involving parents and children shall be a part of the curriculum.~~

~~(4)~~ *Only* those parents who *are sixteen (16)*~~[have a preschool child three (3)]~~ years of age or older,~~[who is]~~ not enrolled in a *regular secondary*~~[public]~~ school program, and who do not possess a high school *credential*,~~[diploma or its equivalent]~~ or who *have a high school credential but function below a twelfth grade level and their children, age zero (0) to eight (8) years*~~[test below an eleventh grade level shall be eligible].~~

~~(4)~~~~(5)~~ *Priority in the selection of*~~[Local education agencies shall be given first priority for funds if the percentage of adults not graduating from high school exceeds fifty percent (50%) in the county or district. Selection for]~~ grant awards shall be based on the *county's low level of literacy in*~~[educational need of]~~ the adult population, *high numbers*~~[the incidence]~~ of *unemployed*~~[unemployment]~~, and *high levels of poverty*~~[the percentage of elementary school children eligible for free or reduced priced meals in the county or district. Priority shall also be given to local education agencies implementing family resource centers pursuant to KRS 156.497 and located in counties implementing the job opportunities and basic skills program as established by the federal Family Support Act of 1988].~~

(5) *A minimum of five percent (5%) of the funds appropriated to support the Parent and Child Education for Family Independence statewide effort shall be retained by the Department for Adult Education and Literacy to provide a statewide professional staff development program*~~]~~

~~(6)~~ Each grant proposal shall include a plan for providing the following:

- ~~(a)~~ Identification and recruitment of eligible participants;
- ~~(b)~~ Screening and preparation of parents and children for participation to include testing, referral to necessary counseling, and related services;
- ~~(c)~~ Transportation, lunch, and free general education development testing for program participants;
- ~~(d)~~ Instructional programs that promote adult basic academic skills, equip parents to provide the needed support for the education and growth of their children, and prepare children for success in regular programs;
- ~~(e)~~ Certification of the eligibility and enrollment of a minimum of ten (10) with a maximum of fifteen (15) parents with their children;
- ~~(f)~~ Coordination with family resource centers pursuant to KRS 156.497, preschool programs for children at risk of educational failure pursuant to KRS 157.3175, and preschool programs for children with disabilities pursuant to KRS 157.226; and

- ~~(g) Coordination with the job opportunities and basic skills program established pursuant to the federal Family Support Act of 1988.~~
- ~~(7) Local education agencies may blend this program with other programs if the grant proposal meets all criteria set out in subsection (6) and if funds from the blended programs are not allocated for duplicative services and enrollment numbers are not duplicated in the blended programs.~~

Approved March 26, 1998

CHAPTER 128

(HB 311)

AN ACT relating to motor vehicles.

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

Section 1. KRS 186A.020 is amended to read as follows:

The Transportation Cabinet shall have any and all necessary power and authority, subject to appropriate provision of the statutes, to promulgate *administrative* regulations and institute such programs as are reasonably necessary to carry out the provisions of this chapter.

Section 2. KRS 186A.050 is amended to read as follows:

The certificate of title *and computer generated forms* ~~(blanks)~~ required by this chapter shall be designed and printed to make difficult and to facilitate detection of counterfeit likenesses or fraudulent alteration of genuine documents. The bid specifications for the acquisition of the certificate of title blanks shall require, as a minimum:

- (1) That bidders have a demonstrable reputation in the printing of currency or securities, and guarantee with an appropriate cash bond that, in addition to any other requirements, the document blanks to be supplied are printed in a secure printing facility, utilizing a combination of the printing process, unique printing plates, paper, and inks to produce high quality documents designed to:
 - (a) Be readily recognizable as genuine by a layman and by extra visual techniques;
 - (b) Make extremely difficult the manufacture of counterfeit likenesses by direct engraving, photographic, or color xerographic means;
 - (c) Visually reveal actual or attempted alteration or erasure by chemical or mechanical means.
- (2) That bidders guarantee production of a specific number of uniquely numbered documents with guaranteed accounting for spoilage and a guaranteed list of document numbers supplied and those deleted.
- (3) That the documents will be shipped to the Commonwealth by an agreed means to assure minimal risk of theft, loss, or destruction.
- (4) That the plates utilized in printing of the blanks will not be utilized for the printing of certificate of title blanks by other than the bidder pursuant to a lawful contract with the Commonwealth.
- (5) *The department, by administrative regulation, may provide for the production of a certificate of title by electronic means.*

Section 3. KRS 186A.060 is amended to read as follows:

The Department of Vehicle Regulation is directed to develop, in cooperation with county clerks, auto dealers, and the Revenue Cabinet, and Departments of Insurance and State Police, the forms required to record all information pertinent to the initial registration, or titling and taxation, or transfer of registration or title of a vehicle. The Department of Vehicle Regulation shall make every effort to minimize and reduce the amount of paperwork required to apply for, or transfer, a vehicle title. When possible, the title document itself shall be used as the primary form used to effect a transfer of vehicle ownership. When no in-state title exists, then forms shall be designed by the department that require only the appropriate and essential information to effect the application for title. The department shall constantly review the information needs of government agencies and other organizations with the goal of reducing, or eliminating, unnecessary documentation. *Information being sought for application for title relevant to, but not limited to, vehicle identification, owner, buyer, usage tax, county clerk or inspector shall be set forth by the cabinet in such a way as to promote flexibility in reaching this goal, except that an applicant for a motor vehicle title shall*

not be required to provide his or her social security number as part of the application process. The use of an electronic medium shall be employed so that forms can be printed by the automated system. Existing statutory language in this chapter and KRS Chapter 186 pertaining to application, signature, forms, or application transfer record may be construed to be electronic in nature at the discretion of the cabinet as provided for by administrative regulation.

Any person who knowingly enters, or attests to the entry of, false or erroneous information in pursuit of a certificate of title shall be guilty of forgery in the second degree [The application for title, which may consist of one (1) or more forms, shall require the following:

- (1) ~~An appropriate heading or title;~~
- (2) ~~A statement that the information required by the first or original of the form must be legibly printed in dark blue or black, permanent photoreproducing ink or indelible pencil, or typed in black, except as to signatures, which shall be originally signed in dark blue or black photoreproducing ink;~~
- (3) ~~A statement, prominently printed in boldface type, that any person who knowingly enters, or attests to the entry of, false or erroneous information upon the form shall be subject to the penalties of forgery in the second degree;~~
- (4) ~~A seller or transferor section containing space for the seller or transferor's full legal name, mailing address and telephone number, including telephone area code, and if the seller or transferor is a motor vehicle dealer licensed in this state, a space for recording the dealer license number;~~
- (5) ~~An owner or buyer section, containing space for the owner or buyer's full legal name, mailing address, social security account number, or, if the owner is other than a person, its state or federal employer identification number, telephone number including telephone area code, and owner's birth month;~~
- (6) ~~A vehicle description section with space for the vehicle identification number, and if the vehicle is a motorcycle, a motor number; the make; model name; model number; year model; number of cylinders; style of body; and spaces for designating two (2) colors, single or upper, and lower; and, if the vehicle is a truck, its gross weight;~~
- (7) ~~A section with spaces for recording prior registration and title information to include the previous owner's name, the state in which a vehicle was last registered or titled, and the title number, registration number, and year;~~
- (8) ~~An odometer disclosure section containing all information elements required by applicable federal law, except that, the language of the section shall incorporate by reference the transferor's address, the vehicle description, date of the statement and the transferee's name, address and acknowledgment, which shall appear on the same form, although not necessarily within the same section. Such section shall be imprinted with the warning that knowingly giving false or erroneous information is subject to the penalty of forgery in the second degree;~~
- (9) ~~A transferor's lien declaration section, containing the necessary means to obtain the following information: I — — warrant that the vehicle described above is not subject to an unterminated lien in the name of a prior owner;~~
- (10) ~~A tax computation section for both new and used cars, consistent with requirements of the Revenue Cabinet;~~
- (11) ~~A section for the seller or transferor's certificate of truth and accuracy of the information. The section shall be printed in boldface type and shall read: I — (typed or printed name) hereby certify under penalty of forgery in the second degree and applicable federal and state law and regulations that the foregoing information upon this form is true and correct to the best of my knowledge and belief. — (signature);~~
- (12) ~~This language shall be followed by the words and spaces required for a notarial certificate;~~
- (13) ~~An owner or transferee's lien declaration section, containing the necessary means to obtain the following information: I, —, (owner, transferee), have not applied for a loan in connection with the vehicle described above, and do not expect to do so within thirty (30) days of submission of this application to the county clerk;~~
- (14) ~~A lien information section containing the necessary elements to obtain the following information:~~
 - (a) ~~This vehicle shall be subject to lien or liens, not exceeding two (2), in the name of the applicant, owner, or transferee;~~

- (b) ~~Spaces for recording as to a first and second lien, the lienholder's name and mailing address, including zip code; and county in which the financing statement is to be filed; and~~
- (c) ~~A statement as to whether a loan has been or will be applied for in connection with the vehicle, and whether a financing statement is expected to be filed within thirty (30) days of submission of this application to the county clerk;~~
- (15) ~~A section for an owner's request for issuance of a regular or special or accessible parking plate;~~
- (16) ~~A section for an owner's request for registration of a vehicle under a special fee classification;~~
- (17) ~~A section for the owner's statement of application for registration or a certificate of title. The section shall state: I _____ (typed or printed name) hereby apply for registration of the vehicle described above, for a license plate of the type indicated, or a certificate of title. If I have requested that the vehicle be registered under a special use classification provided by statute, I certify that the vehicle will be operated consistent with the registration classification I have indicated. I certify under penalty of forgery in the second degree that the information I have supplied is true and correct to the best of my knowledge and belief, followed by a space for the owner's signature. This language and space shall be followed by the words and spaces required for a notarial certificate;~~
- (18) ~~A section for the certified vehicle inspector's certificate of inspection of a vehicle which shall include words and spaces as indicated: I _____ (printed or typed name and title) of _____ (printed or typed county) _____ (telephone area code and telephone number), do hereby certify under penalty of forgery in the second degree that I have personally and physically inspected the vehicle described above, together with this application and its supporting documents, and the vehicle is as described hereon; the documents supporting this application are consistent with the vehicle description, including the vehicle identification numbers appearing upon this application, and that the vehicle identification number displayed upon the vehicle and supporting documents appear to be in order. The odometer reading at the time of my inspection was _____ miles/kilometers (circle one). The driver's license number of the owner is _____, state of _____. I hereby certify under penalty of forgery in the second degree that the information I have given is true and correct to the best of my knowledge and belief. _____ (signature) _____ (date);~~
- (19) ~~County clerk's section with words and spaces as appropriate, requiring the county clerk to:

 - (a) ~~Enter the type, name of the issuer, identifying number and date of issue, of the document supporting the application, together with its document control number (as distinguished from title number) and the taxes and fees to be collected, including the number of months of registration sold, the month and year of expiration, and such decal numbers as may be required to permit audit of fee collections; and~~
 - (b) ~~Words requiring, and spaces for entry of, the name of the county in which the application was received together with the date and time of receipt, and space for the signature of the clerk or deputy, which shall be preceded by the words "I certify under penalty of forgery in the second degree that I have reviewed this application and the documents supporting it; all supporting documents indicated hereon are present and consistent in pertinent part with this application, that I received the application on the date and at the time indicated hereon, and that I collected the fees as indicated." _____ (signature of clerk or deputy clerk, date, county);~~~~
- (20) ~~A statement that "I certify under penalty of forgery in the second degree that this record was entered with due diligence into the automated system by me at or about _____ (time) _____ (date) _____ (signature) _____ (title);"~~
- (21) ~~Spaces for stamping the date and time of receipt of the application by the Department of Vehicle Regulation and for the signature or prescribed symbol of the receipt clerk and for endorsements by processing clerks;~~
- (22) ~~A space for endorsement that title issuance was recommended to the Department of Vehicle Regulation _____ (date, time) by _____ (signature) which shall be preceded by the words "I certify under penalty of forgery in the second degree that due diligence has been exercised in recommending issuance of title No. _____ in the name of the applicant for the vehicle described above" _____ (signature, date); and~~
- (23) ~~The application may contain or require any other information deemed appropriate by the Department of Vehicle Regulation in cooperation with the Revenue Cabinet and Departments of Insurance and State Police, and may be organized as efficiency dictates].~~

Section 4. KRS 186A.125 is amended to read as follows:

- (1) Application for a first certificate of registration, or title, in the name of an owner shall be made on forms prescribed by the Department of Vehicle Regulation consistent with this chapter, which shall be available from any county clerk.
- (2) Application forms shall be completed, except as to required signatures, by legibly printing in ink, or typing all required information. ~~When a signature is required, such signature shall be given attesting under penalty of forgery in the second degree to the truth and accuracy of the information supplied.~~
- (3) The application, when presented to the county clerk, shall contain all required information and be fully executed with all ~~required signatures present, and be accompanied by all~~ required supporting documentation and fees.
- (4) The county clerk shall reject any application upon which the information provided is not legibly printed or typed, the required information is not supplied, not accompanied by required supporting documents, not properly executed with ~~required~~ signatures *when required*, or when the clerk determines that the application is improper or that the applicant is not entitled to registration or title of the vehicle for which registration or title is sought, or in the absence of the required fees.

Section 5. KRS 186A.145 is amended to read as follows:

- ~~(1) Upon receiving an application of an owner for a first certificate of registration or title in his name, the county clerk or deputy clerk shall review the form, and each copy thereof, for legibility, completeness, and consistency of information. The clerk shall ensure that all documents required in support of the application accompany the application and that they are consistent in pertinent part with the statements upon the application.~~
- ~~(2) Upon determining that an application is in proper form, the county clerk or his deputy shall complete those elements of the form reserved to the county clerk, endorse the application in the manner directed upon the form, and then enter designated information from the application into the automated system, in the manner required by administrative regulations of the Department of Vehicle Regulation consistent with this chapter.~~
- ~~(3) No~~ A county clerk shall *not* process an application for Kentucky title and registration from or to any Kentucky resident who has a delinquent motor vehicle ad valorem property tax account. This provision shall not apply to transactions involving licensed Kentucky motor vehicle dealers.

Section 6. KRS 186A.175 is amended to read as follows:

- (1) *The certificate of title issued by the Department of Vehicle Regulation may be used as the application for in-state transfer of vehicle ownership* ~~Each certificate of title issued by the Department of Vehicle Regulation shall contain:~~
 - ~~(a) The date of its issue;~~
 - ~~(b) The name, Social Security account number or federal employer identification number and current mailing address of the owner, to include zip code;~~
 - ~~(c) The names and addresses of any lienholders, not exceeding two (2);~~
 - ~~(d) The title number;~~
 - ~~(e) A description of the vehicle including the following data: year, make, model name, model number, vehicle identification number, type of body, number of cylinders, color or colors not exceeding one (1) upper and one (1) lower color, and if the vehicle is a truck, its gross weight;~~
 - ~~(f) If last titled in another state, the name of the state and the title number;~~
 - ~~(g) Forms for assignment and warranty of title by the owner, and for assignments and warranty of title by dealers; and~~
 - ~~(h) Any other information the department requires.~~
- (2) *The form of the certificate of title shall be determined by the Department of Vehicle Regulation and a certificate of title issued by the department is prima facie evidence of the facts appearing on it.*

Section 7. KRS 186A.220 is amended to read as follows:

- (1) Except as otherwise provided in this chapter, when any motor vehicle dealer licensed in this state buys or accepts such a vehicle in trade, which has been previously registered or titled for use in this or another state, and which he holds for resale, he shall not be required to obtain a certificate of title for it, but shall, within fifteen (15) days after acquiring such vehicle, notify the county clerk of the assignment of the motor vehicle to his dealership and pay the required transferor fee.
- (2) Upon purchasing such a vehicle or accepting it in trade, the dealer shall obtain from his transferor, properly executed, all documents required by KRS 186A.215, to include the odometer disclosure statement thereon, together with a properly assigned certificate of title.
- (3) The dealer shall execute his application for assignment upon documents designated by the Department of Vehicle Regulation, to the county clerk of the county in which he maintains his principal place of business. Such clerk shall enter the assignment upon the automated system.
- (4) The dealer shall retain the properly assigned certificate of title received from his transferor, and may make any reassignments thereon until the forms for dealer assignment on the certificate of title are exhausted. The Department of Vehicle Regulation may, if it deems it warranted, provide a special document to allow for additional dealer assignments without requiring system generated documents.
- (5) When he assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and other documents if appropriate, to such purchaser, who shall make application for registration and a certificate of title thereon. The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and other appropriate documents of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle. Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215, and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession until the certificate of title is obtained.
- (6) ***The department may make available, upon proper application from a licensed motor vehicle dealer, electronic means by which the dealer can interface directly with AVIS and the department. If the department grants this access, all fees currently required for the issuance of a certificate of title shall continue to be charged and remitted to the appropriate parties as provided by statute.***
- (7) The Department of Vehicle Regulation shall assure that the automated system is capable of accepting instructions from the county clerk that a certificate of title shall not be produced under a dealer registration situation.

Section 8. KRS 186A.530 is amended to read as follows:

- (1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in KRS 186A.520(1) and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115. The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.
- (2) Upon receipt of a salvage certificate of title issued pursuant to KRS 186A.520 or subsection (5) of this section, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.
- (3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.
- (4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in KRS 186A.520. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.
- (5) A Kentucky salvage certificate of title may be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk," "unrebuildable," or other similar classification with the following provisions:

- (a) The out-of-state junking certificate of title or other ownership certificate shall be an original, secure document.
 - (b) The applicant shall submit a minimum of two (2) photographs of the motor vehicle showing the damage to the motor vehicle. The photographs shall be included in the application for a salvage certificate of title.
 - (c) The applicant shall submit a minimum of two (2) ~~notarized~~ estimates of damage verifying that the condition of the vehicle which has been issued the junking certificate constitutes less than seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Auto Dealers' Association N.A.D.A. price guide.
- (6) (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and recovered, if the vehicle meets the definition of a salvage vehicle as set forth in KRS 186A.520, the company shall apply for a salvage certificate of title as provided for in KRS 186A.520. Upon receipt of this information, the cabinet shall issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.
- (b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in KRS 186A.520. The owner shall apply for a salvage certificate of title within three (3) working days of the agreed settlement.
- (c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt title pursuant to the provisions of this section.
- (7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:
- (a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt vehicle and may include any other information the cabinet deems necessary.
 - (b) Nondealer disclosure shall be made in accordance with the procedures provided for in KRS 186A.060. The Department of Vehicle Regulation shall ensure that disclosure information appears near the beginning of the application for title and informs the buyer that the vehicle is a rebuilt vehicle.
- (8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.
- (9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.
- (10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from July 15, 1994. The administrative regulations may include designation of additional brands which provide significant information to the owner.

Section 9. KRS 186.045 is amended to read as follows:

- (1) Whenever a perfected security interest is assigned, the assignor shall immediately give a statement of assignment to the assignee and at the same time deliver another copy of the statement to the debtor. The assignee shall, within thirty (30) days thereafter, present a copy of the statement of assignment to the county clerk in whose office the security interest was noted on the certificate of title. Upon receipt of the assignment, the county clerk shall mark the same as provided in subsection (2) of KRS 355.9-405 and attach it to the ~~title~~~~motor vehicle~~ lien statement. The county clerk shall enter the assignment of the perfected security interest into the automated vehicle information system. For this service the county clerk shall collect a fee pursuant to KRS 64.012.
- (2) Whenever a security interest has been discharged, other than by proceedings under KRS 355.9-501 to 355.9-507 or similar proceedings, the secured party shall, within ten (10) days thereafter, deliver a termination statement in the manner required by KRS 355.9-404 to the county clerk of the county in which the ~~title~~~~motor vehicle~~ lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Within five (5) days after the receipt of such documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed. Upon presentation of the owner's title showing such security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on such title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the ~~title~~~~motor vehicle~~ lien statement was removed. Termination statements must be retained in the clerk's files for a period of two (2) years subsequent to the date of filing such statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.
- (3) Upon presentation of the owner's title showing such security interest to the county clerk of a county where the termination statement was not delivered, the county clerk of that county shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If such record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered, shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If such record of termination has not been entered into the automated system, in no case shall the county clerk of the county other than where the termination statement was delivered, make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the ~~title~~~~motor vehicle~~ lien statement was submitted.
- (4) Whenever any secured party repossesses a vehicle titled in this state, for which a security interest is in existence at the time of repossession, and disposes of such vehicle pursuant to the provisions of KRS Chapter 355, he must present, within fifteen (15) days after such disposition, an affidavit in form prescribed by the department and a termination statement or proof that such termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of such documents, the county clerk who issued the lien shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by such title which is superior to the one under which the vehicle was repossessed, must be shown on the title issued by the clerk unless the prior secured party has discharged such security interest in such clerk's office or proof of termination is submitted in case such prior security interest was discharged in another clerk's office.
- (5) Whenever any vehicle brought into this state is required to be titled in this state and such vehicle is then subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk is prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or ~~title~~~~motor vehicle~~ lien statement and presents same to the clerk along with the fees required in KRS 186A.190. The clerk shall note the out-of-state security interest on the certificate of title. This provision does not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.
- (6) The fees provided for in this section are in addition to any state fee provided for by law.

- (7) Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.
- (8) The county clerk is prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner must see to it that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 must be obtained from the clerk by the owner of the vehicle.
- (9) Security interests in vehicles sold to or owned by residents of other states must be perfected in the state of such nonresident and repossession of the vehicle must be taken pursuant to the laws of such state, unless the vehicle is principally operated in Kentucky and is properly titled herein under KRS Chapter 186A and the security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Section 10. KRS 186.170 is amended to read as follows:

- (1) Except as provided in this subsection and in KRS 186.045, the owner shall have the receipt issued by the cabinet through the county clerk constantly in his possession, and shall display the registration plate conspicuously upon the rear of the motor vehicle, except that the registration plate upon a semitrailer-tractor shall be displayed upon the front of the tractor. The owner's copy, or a reproduced copy thereof, of the registration receipt of every motor vehicle, except motorcycles, licensed under KRS 186.050 shall be kept in the vehicle at all times and shall be available for inspection. Plates shall be kept legible at all times and the rear plate shall be illuminated when being operated during the hours designated in KRS 189.030. No rim, frame, or other covering around the plate shall in any way obscure or cover any lettering or decal on the plate; except that, any owner who objects to the display of a trademark of a private corporation which appears on the registration plate shall be entitled to receive a set of decals from the county clerk in his county of residence to cover the trademark of the private corporation. The owner may apply for the decal by presenting his certificate of registration either at the time of registration renewal or later. The county clerk shall charge a three dollar (\$3) clerk's fee for issuing the decal set if it is applied for a time other than at registration renewal. If the cabinet has prescribed that plates shall continue in use, it shall each year, in addition to the registration receipt, select and give to the owner as further evidence of registration some insignia which may conveniently be attached permanently and conspicuously to the motor vehicle during each registration year. It shall be the duty of the owner to attach the insignia in the prescribed manner and no person may operate a motor vehicle unless the insignia is affixed upon it. The cabinet shall have placed on the insignia either figures, letters, writing, marks, or a combination thereof, which indicate that the motor vehicle has been registered and which in conjunction with the records of the cabinet make identity of the registrant readily ascertainable.
- (2) The registration year for commercial vehicles, trailers, semitrailers, mobile homes, and recreational vehicles shall be from April 1 to March 31.
- (3) ***At the discretion of the vehicle owner, the title to a motor vehicle may be held in the system and subsequently printed and mailed to the owner at the owners request.***

Section 11. KRS 186.190 is amended to read as follows:

- (1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.
- (2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the current ***hard copy or electronic version of the*** registration receipt issued on the motor vehicle ~~and the bill of sale~~. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative regulations promulgated by the Department of Insurance pursuant to KRS Chapter 13A.
- (3) Upon delivery of the ***motor vehicle*** registration receipt ~~and the bill of sale~~ to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of one dollar (\$1), which shall be remitted to the Transportation Cabinet. The county clerk shall issue to the purchaser a transfer of

registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of three dollars (\$3) for his services.

- (4) When a county clerk issues to a purchaser a transfer of registration in a county other than the one (1) in which the motor vehicle was originally registered, the clerk shall immediately ~~forward~~~~mail~~ one (1) copy of the transfer of registration to the clerk of the county of original registration.
- (5) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and *motor vehicle registration* receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar (\$1) for his services.
- (6) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.
- (7) The *motor vehicle* registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

Section 12. KRS 186A.196 is amended to read as follows:

Any lien noted on a Kentucky certificate of title which evidences a security interest perfected after July 1, 1987, but before March 31, 1988, shall be valid whether the security interest was perfected by filing a ~~title~~~~motor vehicle~~ lien statement under this chapter or by filing a financing statement under Article 9 of KRS Chapter 355. Such security interests shall be considered perfected as of the date of tender of the ~~title~~~~motor vehicle~~ lien statement or financing statement as the case may be. A security interest evidenced by a lien noted on a Kentucky certificate of title, which was perfected by filing a financing statement under Article 9 KRS Chapter 355, remains perfected without the requirement of filing a continuation statement under KRS 355.9-403.

Section 13. KRS 186A.200 is amended to read as follows:

- (1) With respect to a vehicle previously titled in the name of its debtor, the secured party shall, within fifteen (15) days after execution of the security agreement, obtain the current certificate of title in the name of the debtor, with no more than one (1) prior lien indicated thereon, and present to the county clerk the certificate of title, which the secured party shall have the right to obtain from the debtor, together with the ~~title~~~~motor vehicle~~ lien statement and the required fees in KRS 186A.190 to the county clerk.
- (2) For failure to present both the title and ~~title~~~~motor vehicle~~ lien statement within the time prescribed by subsection (1) of this section, the secured party shall pay a penalty of two dollars (\$2) to the county clerk as a prerequisite for noting the security interest on the title.
- (3) The county clerk shall enter the information required by KRS 186A.190(6) into the automated system.
- (4) The county clerk shall record upon the title in the appropriate section the information designated by KRS 186A.190(6).

Section 14. The following KRS sections are repealed:

- 186A.075 Motor vehicle titles -- When to be effective -- Governor may extend effective date by executive order.
- 186A.135 Issuance of documents processed by system.
- 186A.140 Issuance of documents in county not equipped with operable automated system.
- 186A.150 Procedures for receiving application in event of outage of automated system.
- 186A.155 Duties of county clerk after system becomes operational.
- 186A.160 County clerk to distribute copies of certificate of registration.
- 186A.175 Form of certificate of title issued by department.

Approved March 26, 1998

CHAPTER 129**(SB 105)**

AN ACT relating to insurance.

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

Section 1. KRS 304.47-080 is amended to read as follows:

- (1) Every insurer admitted to do business in the Commonwealth shall maintain a unit to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds. ***For the purpose of this section, "insurer" does not include reinsurers or reinsurance as defined in KRS 304.5-130.***
- (2) Insurers may maintain the unit required by subsection (1) of this section, using its employees or by contracting with others for that purpose.
- (3) Insurers shall establish the unit required by this section no later than July 15, 1995.
- (4) The unit may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit, hires additional employees, or contracts with another entity to fulfill the requirements of this article, the additional cost incurred shall be included as an administrative expense.

Section 2. KRS 304.47-030 is amended to read as follows:

- (1) All applications shall contain a statement in a form approved by the Department of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."
- (2) All claim forms shall contain a statement in a form approved by the Department of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."
- (3) ***Fraud warning statements shall not be required on applications or claim forms used by reinsurers.***

Approved March 26, 1998

CHAPTER 130**(SB 101)**

AN ACT relating to speed limits.

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

Section 1. KRS 189.390 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Business district" means the territory contiguous to and including a highway if, within six hundred (600) feet along the highway, there are buildings in use for business or industrial purposes that occupy three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway;
 - (b) "Residential district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred (300) feet or more is improved with residences or residences and buildings in use for business; ***and***

- (c) "State highway" means a highway or street maintained by the Kentucky Department of Highways~~}; and~~
- ~~(d) "Non urbanized area" means an area located outside of the federal aid urban boundary designated for urbanized areas of fifty thousand (50,000) population or more as defined by the United States Bureau of Census}.~~
- (2) An operator of a vehicle upon a highway shall not drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.
- (3) If conditions exist that require lower speed for compliance with subsection (2) of this section, the speed of any vehicle in excess of the limits specified in this section shall be unlawful:
- (a) For vehicles other than motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any business or residential district, except as provided in subsection (5) of this section, and fifty-five (55) miles per hour in other locations, except where the speed limit has been posted at sixty-five (65) miles per hour;
- (b) For motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any location except as provided in subsection (5) of this section;
- (c) Vehicles using off-street parking facilities offered for public use whether publicly or privately owned, fifteen (15) miles per hour.
- (4) (a) If the secretary of transportation determines, upon the basis of an engineering and traffic investigation, that any speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, or upon any part of a state highway, the secretary of transportation may establish by official order a reasonable and safe speed limit at the location. The secretary shall not increase any speed limit established by subsection (3) of this section in excess of fifty-five (55) miles per hour.
- (b) In a highway work zone, the Transportation Cabinet may temporarily reduce established speed limits without an engineering or traffic investigation. A speed limit established under this paragraph shall become effective when and where posted. The Transportation Cabinet shall post signs notifying the traveling public of the temporary highway work zone maximum speed limit. Nothing in this paragraph shall be construed to prevent the Transportation Cabinet from using moveable or portable speed limit signs in highway work zones.
- (5) (a) A city or a county may by ordinance establish speed limits within its own jurisdiction, except as provided in paragraph (b) of this subsection.
- (b) The alteration of speed limits on state highways within a city or a county shall not be effective until the alteration has been approved by the secretary of transportation. The secretary shall not approve any alteration that could increase any speed limit established by subsection (3) of this section in excess of fifty-five (55) miles per hour.
- (c) If a county determines, upon the basis of an engineering and traffic investigation and study, that it is unsafe to park motor vehicles on or along any highway, other than a state highway, within the unincorporated areas of the county, or that in any business district the congestion of traffic justifies a reasonable limitation on the length of time any one (1) motor vehicle is permitted to park in such district so as to reduce the congestion, the fiscal court may by ordinance establish "no parking" areas on the highway, or limit the length of time any motor vehicle may be parked in any business district.
- (d) Notwithstanding the other limitations in this subsection, the secretary of transportation may establish, by official order, reasonable and safe speed limits on interstate highways and divided highways with four (4) or more lanes and fully controlled access~~}; and located in a nonurbanized area}, a speed limit not to exceed sixty-five (65) miles per hour.~~
- (6) A person shall not drive a motor vehicle at a speed that will impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.
- (7) In every charge for a violation of any speed limit specified in this section, the warrant or citation shall specify the speed at which the defendant is alleged to have driven, and the lawful speed limit applicable at the location where the violation is charged to have occurred.

CHAPTER 131**(SB 85)**

AN ACT relating to limited access facilities.

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

Section 1. KRS 177.250 is amended to read as follows:

- (1) For the purposes of KRS 177.220 to 177.310, the highway authorities of the state, county or city may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdiction. ***Except as provided in subsection (2) of this section***, all property rights acquired under the provisions of KRS 177.220 to 177.310 shall be in fee simple. In connection with the acquisition of property or property rights for any limited access facility or portion thereof, or service road in connection therewith, the state, county or city highway authority may, in its discretion, acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.
- (2) ***A city, county, or urban-county independently, or any combination of a city, county, or urban-county that have entered into an interlocal cooperative agreement under KRS 65.210 to 65.300, may purchase options to acquire property or property rights on highways or streets within their respective jurisdictions if the property or property rights to be acquired are for highway projects included in:***
 - (a) ***The most recent twenty (20) year statewide transportation plan adopted by the Transportation Cabinet and submitted to the Federal Highway Administration;***
 - (b) ***The most recent six (6) year highway plan enacted by the General Assembly;***
 - (c) ***The most recent long-range transportation plan adopted by a metropolitan planning organization and submitted to the Transportation Cabinet; or***
 - (d) ***The most recent recommendations of an area development district transportation committee that have been submitted to the Transportation Cabinet.***
- (3) ***The secretary of the Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish guidelines governing the purchase of options under subsection (2) of this section.***

Approved March 26, 1998

CHAPTER 132**(SB 5)**

AN ACT relating to the Kentucky Higher Educational Savings Plan Trust and declaring an emergency.

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

Section 1. KRS 164A.300 is amended to read as follows:

- (1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.
- (2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which citizens and others may invest money in a public trust

for future application to the payment of higher education costs in the Commonwealth and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries with certain public assistance, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use. It is further necessary to establish and create an endowment trust, which may be funded with public funds, among other sources, the income from which will be made available to participants in the savings plan trust to enhance their savings invested for future higher education costs.

- (3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust with a separate endowment trust to enhance the investment return of the savings plan trust. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS 164A.310 to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.
- (4) ***It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on contributions expended by the trust for the higher education costs of a beneficiary.***

Section 2. KRS 164A.310 is amended to read as follows:

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educational Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

- (1) Sue and be sued;
- (2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;
- (3) Adopt a corporate seal and to change and amend it from time to time;
- (4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;
- (5) Enter into agreements with any institution of higher education, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;
- (6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;
- (7) Enter into participation agreements with participants;
- (8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;
- (9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;
- (10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;
- (11) Make provision for the payment of costs of administration and operation of the savings plan trust;~~{and}~~
- (12) Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; ***and***
- (13) ***Promulgate administrative regulations to implement the provisions of KRS 164A.300 to 164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.***

Section 3. KRS 164A.305 is amended to read as follows:

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

- (1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;
- (2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;
- (3) "Beneficiary" means:
 - (a) Any person designated *at the commencement of participation* by a participation agreement to benefit from payments for higher education costs at an institution of higher education;
 - (b) *The new beneficiary, in the case of a change of beneficiaries pursuant to subsection (7) of Section 4 of this Act; or*
 - (c) *The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. section 501(c)(3), that is exempt from federal income taxation pursuant to section 501(a) of that code;*
- (4) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an institution of higher education;
- (5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;
- (6) "Endowment trust" means the endowment fund established pursuant to KRS 164A.337 which shall be administered as a separate trust;
- (7) "Higher education costs" means the ~~certified~~ costs *specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended* for attendance at an institution of higher education as *determined and certified by the institution of higher education in the same manner as prescribed* ~~those costs are defined~~ in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 10871l, as amended, ~~including tuition and fees, room and board, transportation, books and supplies, and miscellaneous personal expenses~~;
- (8) "Institution of higher education" means *an institution as defined in section 529(e)(5) of the Internal Revenue Code of 1986, as amended* ~~a two (2) year or four (4) year public or regionally accredited private or nonprofit college, university, or vocational technical school~~;
- (9) "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;
- (10) "Participant" means *an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. section 501(c)(3), that is exempt from federal income taxation pursuant to section 501(a) of that code*, an individual, firm, corporation, *a state or local government organization*, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of higher education costs on behalf of a beneficiary;
- (11) "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;
- (12) "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;
- (13) "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;
- (14) "Tuition" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment;
- (15) "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

Section 4. KRS 164A.330 is amended to read as follows:

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

- (1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of ~~contributions~~~~payments~~ based upon changed circumstances or changes in educational plans and may contain penalties for failure to make ~~contributions~~~~payments~~ when scheduled;
- (2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum ~~contribution~~~~payment~~ participation agreement in connection with which a single, lump-sum ~~contribution~~~~payment~~ is made by the participant for the benefit of a beneficiary;
- (3) The participation agreement shall specify the minimum rate of interest which shall be borne by the investment made by the participant;
- (4) Beneficiaries designated in participation agreements may be designated from date of birth through age fourteen (14);
- (5) Payment of benefits provided under participation agreements must begin not later than the first full academic semester at an institution of higher education following the eighteenth birthday of the subject beneficiary unless the participant notifies the program administrator to delay payment of benefits for a designated period of time. At the end of that designated period of time, the payment of benefits shall begin unless the participant again notifies the program administrator to delay payment of benefits;
- (6) The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:
 - (a) Be admitted to an institution of higher education;
 - (b) If admitted, be determined a resident for tuition purposes by the institution of higher education, unless the participation agreement is vested;
 - (c) Be allowed to continue attendance at the institution of higher education following admission; or
 - (d) Graduate from the institution of higher education;
- (7) Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant prior to the date of admission of any beneficiary under a participation agreement by an institution of higher education provided, however, that the substitute beneficiary shall be eligible;
- (8) Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;
- (9) Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution; and
- (10) Each participation agreement shall provide that ~~if the participation agreement~~ may be canceled ~~under~~~~upon~~ the terms and conditions, ~~including~~~~and upon~~ payment of the fees and costs, set forth ~~and contained~~ in the rules and regulations promulgated by the board.
- (11) ***The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary.***
- (12) ***The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions.***
- (13) ***Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter are confidential and shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:***

- (a) *Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;*
- (b) *Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;*
- (c) *Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and*
- (d) *Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.*

Section 5. KRS 164A.335 is amended to read as follows:

The board shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. ***Contributions shall be accounted for separately for each beneficiary.*** Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education. However, no rights to any moneys derived from the endowment trust shall exist if moneys payable under the participation agreement are paid to an education institution which is not an institution of higher education in Kentucky, as defined by KRS 164A.300 to 164A.380.

Section 6. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

- (1) The participant shall retain ownership of all ***contributions***~~[payments]~~ made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the ***contributions***~~[payments]~~ made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;
- (2) ***Any participant may cancel a participation agreement.*** In the event the participation agreement is terminated~~[prior to payment of higher education costs for the beneficiary]~~, the participant shall retain ownership of all ***contributions***~~[payments]~~ made under the participation agreement ***not previously expended for the higher education costs of the beneficiary*** and a reversionary right to receive interest on all the ***contributions***~~[payments]~~ at the rate of interest at which the ***contributions***~~[payments]~~ were invested, except that ***the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section***~~[no right to receive interest shall exist in cases of voluntary participant termination except as provided in KRS 164A.345(1)]~~;
- (3) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, ***except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section***;
- (4) The institution of higher education shall obtain ownership of the ***contributions***~~[payments]~~ made for the higher education costs paid to the institution at the time each payment is made to the institution;
- (5) Any amounts which may be paid pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section, shall be owned by the trust; and
- (6) A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement.

- (7) *Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:*
- (a) *The death, permanent disability, or mental incapacity of the beneficiary; or*
- (b) *The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of section 102(a) of the Internal Revenue Code, 20 U.S.C. section 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment.*
- (8) *Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.*

Section 7. The following KRS section is repealed:

164A.345 Cancellation of participation agreements.

Section 8. Whereas Public Law 104-188 requires that its provisions be retroactively applied to a qualified state tuition program if the amendments necessary to meet the federal requirements are made to the state program by the first day of the calendar quarter after the close of the first regular session of the General Assembly that begins after August 20, 1996, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 26, 1998

CHAPTER 133

(HB 344)

AN ACT relating to reorganization.

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

Section 1. KRS 154.12-223 is amended to read as follows:

- (1) There is created within the Cabinet for Economic Development the Department of Community Development, which shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall work with each Kentucky county in:
- (a) Determining a long-range plan for economic development which best meets the individual county's needs; and
- (b) Developing cooperative interaction with existing industries and small and minority businesses and assisting export development.
- (2) The Department of Community Development shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:
- (a) The Division of Business and Entrepreneurship Development, which shall be responsible for procurement assistance, business information clearinghouse services, and business and technology functions of the cabinet, including, without being limited to:
1. Providing comprehensive information on all state business licenses and requirements;
 2. Developing and administering a master application and licensure program for grocery stores;
 3. Coordinating and monitoring the various activities being carried out by state agencies that relate to adapting advanced technologies to the workplace; and
 4. Reviewing and analyzing the possibility of establishing research and technology centers in the Commonwealth;

- (b) The Small and Minority Business Division, which shall be responsible for the cabinet's functions relating to small and minority business enterprise, as provided in KRS 154.12-215. The Small Business Advisory Council established by KRS 154.12-218 shall advise the division;
 - (c) The Western Kentucky Economic Development Division;
 - (d) The Eastern Kentucky Economic Development Division;~~and~~
 - (e) The Central Kentucky Economic Development Division; *and*
 - (f) *The International Trade Division, which shall promote the development of international markets for Kentucky goods, products, and services for the purpose of identifying and analyzing national and international market developments and opportunities, and gathering and disseminating vital information to Kentucky manufacturers, service providers, and other industries regarding international trade opportunities.*
- (3) The following programs and commission shall be attached to the Department of Community Development:
- (a) The Kentucky port and river development program created by KRS 65.510 to 65.530, KRS 139.483, and KRS 154.80-100 to 154.80-130;
 - (b) The Waterway Marina Development Program established by KRS 154.80-310; and
 - (c) The Kentucky Investment Capital Network established by KRS 154.12-2333.

Section 2. The General Assembly confirms Resolution 96-1 of the Kentucky Economic Development Partnership, dated July 11, 1996, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 26, 1998

CHAPTER 134

(HB 387)

AN ACT relating to tax administration.

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

Section 1. KRS 131.020 is amended to read as follows:

- (1) The Revenue Cabinet shall be organized into the following functional units:
- (a) Office of the Secretary. The Office of the Secretary shall include principal assistants and personnel appointed by the secretary pursuant to KRS Chapter 12 as are necessary to enable the secretary to perform functions of the office;
 - (b) Office of General Counsel. The Office of General Counsel shall be headed by an executive director. The functions and duties of the office shall include establishing Revenue Cabinet tax policies, conducting tax research, conducting conferences, administering taxpayer protests, issuing final rulings, and representing the cabinet in legal and administrative actions. For administrative and budgetary purposes, the Office of General Counsel shall be attached to the Office of the Secretary of Revenue. The Office of General Counsel shall consist of the divisions of legal services, protest resolution, and tax policy and research;
 - (c) Department of Property Taxation. The Department of Property Taxation shall be headed by a commissioner. The functions and duties of the department shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuing the property of public service companies, valuing unmined coal and other mineral resources, and administering tangible and intangible personal property taxes. The Department of Property Taxation shall consist of the Divisions of Local Valuation, State Valuation, and Technical Support;
 - (d) Department of Compliance and Taxpayer Assistance. The Department of Compliance and Taxpayer Assistance shall be headed by a commissioner. The functions and duties of the department shall include conducting audits, reviewing audits, rendering taxpayer assistance, collecting delinquent taxes, administering all activities relating to assessments issued pursuant to KRS 139.185, 139.680, 141.340,

and 143.085, enforcing the criminal laws of the state involving revenue and taxation, and representing the cabinet in legal and administrative actions involving the collection of delinquent taxes. The Department of Compliance and Taxpayer Assistance shall consist of the Divisions of Collections, Field Operations, and Tax Administration; and

- (e) Department of Administrative Services. The Department of Administrative Services shall be headed by a commissioner. The functions and duties of the department shall include recordkeeping, providing data services, providing liaison with federal and state agencies, preparing publications, and providing personnel, fiscal and financial management services. The Department of Administrative Services shall consist of the Divisions of Financial and Administrative Services, Information Systems Resources, and Revenue Operations.
- (2) The functions and duties of the Cabinet shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the Cabinet shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the Department of Compliance and Taxpayer Assistance and the Department of Administrative Services, and to attempt to fairly and equitably resolve tax controversies at the administrative level.
- (3) ***Except as provided in subsection (4) of Section 3 of this Act***, the Cabinet shall fully cooperate with and make tax information available ***as prescribed under subsection (2) of Section 3 of this Act*** to the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.

Section 2. KRS 131.081 is amended to read as follows:

The following rules, principles, or requirements shall apply in the administration of all taxes subject to the jurisdiction of the Revenue Cabinet.

- (1) The cabinet shall develop and implement a Kentucky tax education and information program directed at new taxpayers, taxpayer and industry groups, and cabinet employees to enhance the understanding of and compliance with Kentucky tax laws, including the application of new tax legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.
- (2) The cabinet shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the cabinet. ~~These~~^{Such} statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the cabinet distributed to the public.
- (3) Taxpayers shall have the right to be assisted or represented by an attorney, accountant, or other person in any conference, hearing, or other matter before the cabinet. The taxpayer shall be informed of ~~this~~^{such} right prior to conduct of any conference or hearing.
- (4) The cabinet shall perform audits and conduct conferences and hearings only at reasonable times and places.
- (5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the cabinet. The cabinet may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of ~~this~~^{such} cabinet recording or a transcript ~~thereof~~ as provided in KRS 61.874.
- (6) If any taxpayer's failure to submit a timely return or payment to the cabinet is due to the taxpayer's reasonable reliance on written advice from the cabinet, the taxpayer shall be relieved of any penalty or interest with respect thereto provided the taxpayer requested ~~the~~^{such} advice in writing from the cabinet and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the cabinet did not subsequently rescind or modify the advice in writing and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the cabinet's earlier written advice no longer valid.
- (7) Taxpayers shall have the right to receive a copy of any audit of the cabinet by the Auditor of Public Accounts relating to the cabinet's compliance with the provisions of KRS 131.041 to 131.081.
- (8) The cabinet shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit workpapers and the

agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.

- (9) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed provided the taxpayer requests the agreement in writing clearly demonstrating his inability to pay in full and that the agreement will facilitate collection by the cabinet of the amounts owed. The cabinet may modify or terminate an installment payment agreement if it determines the taxpayer has not complied with the terms of the agreement; the taxpayers' financial condition has sufficiently changed; the taxpayer fails to provide any requested financial condition update information; the taxpayer gave false or misleading information in securing the agreement; or the taxpayer fails to timely report and pay any other tax due the Commonwealth. The cabinet shall give written notice to the taxpayer at least thirty (30) days prior to modifying or terminating an installment payment agreement unless the cabinet has reason to believe that collection of the amounts owed will be jeopardized in whole or in part by delay.
- (10) The cabinet shall not knowingly authorize, require, or conduct any investigation or surveillance of any person for nontax administration related purposes, except internal security related investigations involving Revenue Cabinet personnel.
- (11) In addition to the circumstances under which an extension of time for filing reports or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to the same extension of the due date of any comparable Kentucky tax report or return for which the taxpayer has secured a written extension from the Internal Revenue Service provided the taxpayer notifies the cabinet ~~thereof~~ in writing and provides a copy of ~~the~~~~such~~ extension at the time and in the manner which the cabinet may require.
- (12) The cabinet shall bear the cost or, if paid by the taxpayer, reimburse the taxpayer for recording or bank charges as the direct result of any erroneous lien or levy by the cabinet, provided the erroneous lien or levy was caused by cabinet error and, prior to issuance of the erroneous lien or levy, the taxpayer timely responded to all contacts by the cabinet and provided information or documentation sufficient to establish his or her position. When the cabinet releases any ~~such~~ erroneous lien or levy, notice of the fact shall be mailed to the taxpayer and, if requested by the taxpayer, a copy of the release, together with an explanation ~~thereof~~, shall be mailed to the major credit reporting companies located in the county where it was filed.
- (13) The cabinet shall not evaluate individual officers or employees on the basis of taxes assessed or collected or impose or suggest tax assessment or collection quotas or goals.
- (14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the Board of Claims for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, and intentional disregard by cabinet employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the cabinet. In the awarding of damages pursuant to this subsection, the board shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any ~~such~~ proceeding brought by a taxpayer is ruled frivolous by the board, the cabinet shall be reimbursed by the taxpayer for its costs in defending the action.
- (15) Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any *attached* information or documents ~~attached thereto~~. Except as provided by KRS 131.190, no information pertaining to ~~the~~~~such~~ returns, reports, or the affairs of a person's business shall be divulged by the cabinet ~~or the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis~~ to any person.

Section 3. KRS 131.190 is amended to read as follows:

- (1) No present or former secretary or employee of the Revenue Cabinet, ~~or employee in the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis,~~ member of a county board of assessment appeals, property valuation administrator or employee ~~thereof~~, or any other person, shall divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns or reports required to be filed with the cabinet or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return.

Further, this prohibition does not preclude the secretary or any employee of the Revenue Cabinet~~[or any employee of the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis,]~~ from testifying in any court, or from introducing as evidence returns or reports filed with the cabinet, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. *The secretary or the secretary's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.*

- (2) The secretary shall make available any information for official use only and on a confidential basis to the proper officer, *agency*, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal *agreements*~~[arrangements]~~ whereby the cabinet shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Revenue Cabinet~~[by any licensee]~~ under the gasoline excise tax law may be made public by the cabinet.
- (4) Notwithstanding the *provisions of this section to the contrary*~~[above]~~, information received from the Internal Revenue Service shall not be made available to any other agency~~[or office within any agency]~~ of state government, *or*~~[that does not perform a tax administrative function,]~~ any county,~~[any]~~ city, or~~[any]~~ other state.
- (5) Statistics of crude oil as reported to the Revenue Cabinet under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Revenue Cabinet under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the cabinet by release to the Department of Mines and Minerals.

Approved March 26, 1998

CHAPTER 135

(HB 459)

AN ACT relating to alcoholic beverage wholesalers' licenses.

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

Section 1. The following KRS sections are repealed:

- 243.105 Residence requirements for individual wholesaler.
- 243.106 Residence requirements for joint enterprise wholesaler.
- 243.107 Grandfather provisions as to wholesaler residence requirements.

Approved March 26, 1998

CHAPTER 136

(HCR 23)

A CONCURRENT RESOLUTION confirming the appointment of Ronald Greenberg to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Ronald Greenberg as a member of the Council on Postsecondary Education for a term expiring December 31, 2000; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Ronald Greenberg's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Ronald Greenberg meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Ronald Greenberg as a member of the Council on Postsecondary Education for a term expiring December 31, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Ronald Greenberg, 1416 Willow Avenue, Louisville, Kentucky 40204, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 137

(HCR 22)

A CONCURRENT RESOLUTION confirming the appointment of Marlene M. Helm to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Marlene M. Helm as a member of the Council on Postsecondary Education for a term ending December 31, 2000; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Marlene M. Helm's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Marlene M. Helm meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Marlene M. Helm to the Council on Postsecondary Education for a term ending December 31, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Marlene M. Helm, 193 Old Coach Road, Nicholasville, Kentucky 40356, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 138

(HCR 21)

A CONCURRENT RESOLUTION confirming the appointment of Leonard V. Hardin to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Leonard V. Hardin as a member of the Council on Postsecondary Education for a term expiring December 31, 1999; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Leonard V. Hardin's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Leonard V. Hardin meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Leonard V. Hardin as a member of the Council on Postsecondary Education for a term expiring December 31, 1999.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Leonard V. Hardin, 6300 Glen Hill Road, Louisville, Kentucky 40222, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 139

(HCR 12)

A CONCURRENT RESOLUTION confirming the appointment of Walter A. Baker to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Walter A. Baker as a member of the Council on Postsecondary Education for a term expiring December 31, 2001; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has submitted Walter A. Baker's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Walter A. Baker. meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and Senate hereby confirm the appointment of Walter A. Baker to the Council on Postsecondary Education for a term ending December 31, 2001.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and Walter A. Baker, 917 South Green Street, Glasgow, Kentucky 42141, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 140

(HCR 8)

A CONCURRENT RESOLUTION confirming the appointment of Lee T. Todd, Jr. to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Lee T. Todd, Jr. as a member of the Council on Postsecondary Education for a term expiring December 31, 2002; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has submitted the name of Lee T. Todd, Jr. for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Lee T. Todd, Jr. meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and Senate hereby confirm the appointment of Lee T. Todd, Jr. to the Council on Postsecondary Education for a term ending December 31, 2002.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and Lee T. Todd, Jr., 2101 Hawksbury Way, Lexington, Kentucky 40515, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 141

(HB 440)

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 97-1609, dated December 10, 1997, which creates and establishes the Consumer Protection and Education Division within the Department of Insurance.

Approved March 26, 1998

CHAPTER 142

(SB 165)

AN ACT relating to reorganization.

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

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following *offices and* divisions:

- (1) *Office of Management and Administration, containing the:*
 - (a) *Division of Administrative Services;*
 - (b) *Division of Facilities;*
 - (c) *Bluegrass Station Division; and*
 - (d) *Division of Air Transport*~~[Administrative divisions];~~
- (2) *Division of Disaster and Emergency Services*~~[Facilities division];~~
- (3) *Office of the Chief of Staff for Federal Army Guard*~~[Active militia division];~~
- (4) *Office of the Chief of Staff for Federal Air Guard; and*~~[Army National Guard division];~~
- (5)~~—Air National Guard division;~~
- (6)~~—Kentucky Civil Air Patrol; and~~
- (7)~~—Division of air transport and capital city airport.~~

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12.

Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. (1) To the extent that it is not otherwise confirmed by subsection (1) of Section 1 of this Act, the General Assembly confirms Executive Order 96-838, dated June 27, 1996, which creates the Office of Management and Administration within the Department of Military Affairs; creates and places the Bluegrass Station Division within the Office of Management and Administration; and places the following existing divisions within the Office of Management and Administration: the Division of Administrative Services, the Division of Facilities, and the Division of Air Transport. The Office of Management and Administration shall provide policy, management, and administrative support to all areas of the Department of Military Affairs. The Bluegrass Station Division shall manage, maintain, and lease the former Lexington Bluegrass Army Depot.

(2) The General Assembly confirms the remaining organizational structure of the Department of Military Affairs as set forth in subsections (2) to (5) of Section 1 of this Act.

Approved March 26, 1998

CHAPTER 143

(HJR 72)

A JOINT RESOLUTION authorizing and directing a comprehensive study of the aquacultural industry in Kentucky, and making an appropriation therefor.

WHEREAS, agricultural diversification is necessary for Kentucky's small farmers to thrive; and

WHEREAS, aquaculture is an industry ideally suited for small farmers; and

WHEREAS, the demand for aquacultural products raised in Kentucky far exceeds the supply; and

WHEREAS, Kentucky's climate and many sources of fresh water make the state suitable to promote the aquacultural industry;

NOW, THEREFORE,

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

Section 1. The Kentucky Aquaculture Task Force is created and is attached to the Department of Agriculture for administrative purposes. The membership of the task force shall consist of thirteen (13) members as follows:

- (1) The Speaker of the House of Representatives;
- (2) The President of the Senate;
- (3) The Chair of the Senate Agriculture and Natural Resources Committee;
- (4) The Chair of the House Agriculture and Small Business Committee;
- (5) The Commissioner of the Department of Agriculture;
- (6) The Commissioner of the Department of Fish and Wildlife Resources; and
- (7) Seven (7) members appointed by the Governor, with one (1) member representing each of the following interests:
 - (a) Kentucky Aquaculture Association;
 - (b) Kentucky State University aquaculture program;
 - (c) Kentucky Farm Bureau;
 - (d) Agriculture liaison, Office of the Governor;
 - (e) Retailers of aquacultural products;
 - (f) Wholesalers of aquacultural products; and
 - (g) Producers of aquacultural products.

Section 2. A majority of the members shall constitute a quorum. The members shall elect one (1) member to serve as chair.

Section 3. The task force shall meet quarterly and may meet more often upon the call of the chair or by a majority of the members. Except as provided in KRS 18A.200, members of the task force shall receive actual traveling expenses while attending meetings of the task force. Staff services for the task force shall be provided by the Department of Agriculture.

Section 4. The task force shall develop a State Aquaculture Plan by September 1, 1999, and shall report on the plan to the Governor and to the Legislative Research Commission with respect to aquacultural policies and practices that result in the proper management, use, and marketing of the state's aquacultural industry. These policies and practices shall, at a minimum, address the following:

- (1) Regulatory constraints and environmental awareness;
- (2) Support for and promotion of the aquaculture industry and its products;
- (3) Research, extension, and education; and
- (4) Financial aspects of aquaculture.

Section 5. There is hereby appropriated from the general fund the sum of \$20,000 to accomplish the study. Any amount remaining following the completion of the study shall revert to the general fund. The study shall begin not later than August 1, 1998, and the report and recommendations shall be submitted to the Governor and to the Legislative Research Commission no later than September 1, 1999.

Approved March 26, 1998

CHAPTER 144

(HB 451)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1072, dated August 20, 1997, which designates the Council on Postsecondary Education as the state agency which shall have the responsibility and authority to direct and annually report on equal opportunities in postsecondary education, and that requires the council to establish the Committee on Equal Opportunities in Postsecondary Education to advise the council on strategies for achieving the equal opportunity and institutional performance objectives contained in "The 1997-2002 Kentucky Plan for Equal Opportunities in Higher Education," and that abolishes the Committee on Equal Opportunities, which was established under the former Kentucky Higher Education Desegregation Plan.

Approved March 26, 1998

CHAPTER 145

(HB 362)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1040, dated August 15, 1997, which abolishes the Environmental Engineer Chief position and the Lock and Dam Section in the Department of Natural Resources of the Natural Resources and Environmental Protection Cabinet and transfers the Section's duties, functions, responsibilities, files, and inventory to the Kentucky River Authority.

Approved March 26, 1998

CHAPTER 146**(HB 358)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-891, dated July 17, 1997, which creates the Division of Detention Programs and the Division of Educational Services in the Department of Juvenile Justice within the Justice Cabinet and which changes the names of certain Department of Juvenile Justice facilities from: Central Kentucky Treatment Center to Central Kentucky Youth Development Center; Green River Treatment Center to Green River Youth Development Center; Johnson-Breckinridge Treatment Center to Johnson-Breckinridge Youth Development Center; Lake Cumberland Treatment Center to Lake Cumberland Youth Development Center; Lincoln Village Treatment Center to Lincoln Village Youth Development Center; Mayfield Treatment Center to Mayfield Youth Development Center; Morehead Treatment Center to Morehead Youth Development Center; Northern Kentucky Treatment Center to Northern Kentucky Youth Development Center; Rice-Audobon Treatment Center to Rice-Audobon Youth Development Center; and Woodsbend Treatment Center to Woodsbend Youth Development Center.

Approved March 26, 1998

CHAPTER 147**(HB 355)**

AN ACT relating to reorganization.

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

Section 1. KRS 287.011 is amended to read as follows:

- (1) There is created a Department of Financial Institutions, which constitutes a department of the state government within the meaning of KRS Chapter 12. The department shall be headed by a commissioner of financial institutions, who shall be the executive head of the department and shall be charged with the administration of the department.
- (2) The Department of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.
- (3) There is established within the Department of Financial Institutions the following divisions *and offices*: ~~each of which shall be headed by a director appointed by the commissioner, subject to the prior approval of the Governor, pursuant to KRS 12.050.~~
 - (a) The Division of *Financial Institutions, which shall be headed by a director appointed by the commissioner, subject to prior written approval of the Governor in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner*~~[Law and Regulatory Compliance which shall be composed of the Applications and Registration Branch, the Investigations Branch, the Law Branch, and the Public Affairs Branch];~~
 - (b) The Division of *Securities, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner*; ~~[Planning and Management which shall be composed of the Human/Fiscal Resources Branch and the Technology Branch; and]~~
 - (c) The Division of *Administrative Services, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall be composed of organizational entities deemed appropriate by the commissioner*; ~~[Supervision which shall be composed of the Western Kentucky Examination Branch, Districts 1 through 3 Supervision Sections; the Eastern Kentucky Examination Branch, Districts 4 through 6 Supervision Sections; and the Analysis and Remedial Supervision Branch.]~~

- (d) *The Office of the Commissioner, which shall be composed of organizational entities deemed appropriate by the commissioner; and*
- (e) *The Office of General Counsel, which shall be headed by a general counsel appointed by the commissioner in accordance with KRS 12.050. The office shall be composed of organizational entities as deemed appropriate by the commissioner.*

Section 2. The General Assembly confirms Executive Order 97-723, dated June 12, 1997, to the extent it is not otherwise confirmed by this Act.

Approved March 26, 1998

CHAPTER 148

(HB 354)

AN ACT relating to reorganization.

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

Section 1. KRS 350.990 is amended to read as follows:

- (1) Any permittee, person, or operator who violates any of the provisions of this chapter or regulations adopted pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order promulgated pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars (\$5,000) for the violation, and an additional civil penalty of not more than five thousand dollars (\$5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. Any person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each violation cited in the underlying notice of noncompliance issued therewith. No separate civil penalty shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the cabinet's Office of Legal Services. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars (\$800,000) in any fiscal year shall be deposited in the bond pool fund for purposes set forth in KRS 350.595 and 350.700 to 350.755. All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the bond pool fund.
- (2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand

dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred ~~and~~ fifty dollars (\$750) for each day during which the violation continues. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.

- (3) The cabinet's Office of Legal Services shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination promulgated pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.
- (4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order promulgated pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.
- (5)
 - (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.
 - (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- (6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars (\$25,000). Each day of continuing violation shall be deemed a separate violation.
- (7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.
- (8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.
- (9) When a corporate permittee violates any provision of this chapter or administrative regulation issued pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.
- (10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the commissioner of the Kentucky Department of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.
- (11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed

penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet's Division of Abandoned *Mine* Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

Section 2. The General Assembly hereby confirms Executive Order 97-714, dated June 11, 1997, which changes the name of the Division of Abandoned Lands within the Department for Surface Mining Reclamation and Enforcement to the Division of Abandoned Mine Lands, to the extent it is not otherwise confirmed by this Act.

Approved March 26, 1998

CHAPTER 149

(HB 351)

AN ACT relating to government reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 96-1438, dated October 24, 1996, to the extent that it transfers the Emergency Food Assistance Program to the Department of Agriculture. Section 4 of the order is construed to mean that this transfer is permanent and that the order shall expire upon confirmation of the order by the General Assembly.

Approved March 26, 1998

CHAPTER 150

(HB 350)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 96-1576, dated November 27, 1996, which transfers certain programs, personnel, and funding pertaining to public offenders, youthful offenders, and mentally ill youth from the Cabinet for Families and Children to the Department of Juvenile Justice, Justice Cabinet, and which abolishes the Division of Children's Residential Services within the Department for Social Services, Cabinet for Families and Children.

Approved March 26, 1998

CHAPTER 151

(HB 346)

AN ACT relating to government reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 97-1374, dated October 17, 1997, which attaches the Animal Diagnostic Laboratory Advisory Committee to the Department of Agriculture for administrative purposes and which specifies the functions of the Advisory Committee.

Approved March 26, 1998

CHAPTER 152

(HB 205)

AN ACT relating to reorganization.

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

Section 1. KRS 164A.050 is amended to read as follows:

- (1) There is hereby created and established an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a body corporate and politic to be known and identified as the Kentucky Higher Education Student Loan Corporation.
- (2) The Kentucky Higher Education Student Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential governmental and public functions and purposes in improving and otherwise promoting the educational opportunities of the citizens and inhabitants of the Commonwealth of Kentucky and other qualified students by a program of financing, making, and purchasing of insured student loans.
- (3) The corporation shall be governed by a board of directors consisting of *eleven (11)*~~seven (7)~~ members, *eight (8)*~~four (4)~~ of whom shall be chosen from the general public residing in the Commonwealth of Kentucky and three (3) of whom shall be the chairman of the Council on Postsecondary Education, the secretary of the Finance and Administration Cabinet, and the chairman of the Kentucky Higher Education Assistance Authority.
- (4) The Governor shall appoint the *eight (8)*~~four (4)~~ directors from *nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005*~~the general public~~ to take office and to exercise all powers thereof immediately. ~~The~~~~Of the new members of the corporation so appointed, two (2) shall continue in office for a term of four (4) years, and two (2) shall continue in office for a term of three (3) years. All succeeding~~ terms *shall be staggered and* shall be for a period of four (4) years each. Each director shall serve for the appointed term and until a successor has been appointed and has duly qualified.
- (5) In the event of a vacancy, the Governor may appoint a replacement director *from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005* who shall hold office during the remainder of the term so vacated.
- (6) The Governor may remove any director from the general public in case of incompetency, neglect of duties, gross immorality, or malfeasance in office; and may thereupon declare such office vacant and may appoint a person to fill such vacancy as provided in other cases of vacancy.
- (7) The board shall elect from its voting membership a chairman, secretary, and treasurer. The executive director of the Kentucky Higher Education Assistance Authority shall serve as executive director of the corporation.
- (8) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary may copy all minutes and other records and documents of the corporation and give certificates under the official seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.
- (9) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies in respect of the board of directors.
- (10) Official actions may be taken by the corporation at meetings duly called by the chairman upon three (3) days' written notice to each director or upon the concurrence of at least a majority of the directors.

- (11) Directors shall receive no compensation for their services but shall be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under this chapter.
- (12) The Kentucky Higher Education Assistance Authority, the "guarantee agency", shall provide technical, clerical, and administrative assistance to the corporation, together with necessary office space and personnel, and shall assist the corporation in all ways by the performance of any and all actions which may be useful or beneficial to the corporation in the performance of its public functions as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky charged with the responsibility of financing, making, and purchasing of insured student loans. The corporation shall enter into such contracts with the guarantee agency as shall be proper and appropriate in respect of such services which may include, but not by way of limitation, servicing and collection of insured student loans.

Section 2. The General Assembly confirms Executive Orders 96-917 and 96-1138, relating to the increase in membership of the Kentucky Higher Education Student Loan Corporation, to the extent they are not otherwise confirmed by this Act.

Approved March 26, 1998

CHAPTER 153

(SB 141)

AN ACT relating to motor vehicles.

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

Section 1. KRS 186.020 is amended to read as follows:

- (1) Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with *administrative* regulations ~~promulgated~~~~issued~~ by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days. The bill of sale or assigned title must be in the motor vehicle during this fifteen (15) day period. If the owner of a motor vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides. If the owner of a motor vehicle does not reside in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which the motor vehicle is principally operated. If the owner of a motor vehicle is other than an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of either county. The application when presented to the county clerk for registration shall be accompanied by:
 - (a) A bill of sale and a manufacturer's certificate of origin if the application is for the registration of a new motor vehicle;
 - (b) The owner's registration receipt, if the motor vehicle was last registered in this state;
 - (c) A bill of sale and the previous registration receipt, if last registered in another state where the law of that state does not require the owner of a motor vehicle to obtain a certificate of title or ownership;
 - (d) A certificate of title, if last registered in another state where the law of that state requires the owner of a motor vehicle to obtain a certificate of title or ownership;
 - (e) An affidavit from an officer of a local government saying that the motor vehicle has been abandoned and that the provisions of KRS 82.630 have been complied with, for local governments which elect to use the provisions of KRS 82.600 to 82.640; and
 - (f) The application from a person who has brought a motor vehicle into the Commonwealth from another state shall be accompanied by proof that the motor vehicle is insured in compliance with KRS 304.39-080.
- (2) After that, the owner of any motor vehicle registered under KRS 186.050(1) or (2) shall register his motor vehicle on or before the date on which his certificate of registration expires. If, before operating the motor vehicle in this state, the owner registers it at some later date and pays the fee for the full year, he will be

deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet.

- (3) After that, the owner of any commercial vehicle registered under KRS 186.050(3) to (14) shall register his commercial vehicle on or before April 1 of each year. If, before operating a commercial vehicle in this state, the owner registers it at some later date and pays the required fee, he will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet. ***Except, the owner of any commercial motor vehicle to be registered pursuant to the International Registration Plan under KRS 186.050(13) shall register his commercial motor vehicles on or before the last day of the month of registration established pursuant to subsection (3) of Section 2 of this Act.***
- (4) The application and documents presented therewith, including the sheriff's certificate of inspection, shall be affixed to the Transportation Cabinet copy of the certificate of title or registration and sent to the Transportation Cabinet by the clerk.
- (5) At least thirty (30) days prior to the expiration of registration of any motor vehicle previously registered in the Commonwealth as provided by KRS 186A.035, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. In addition, the department shall provide appropriate forms and information to permit renewal of motor vehicle registration to be completed by mail. Any registration renewal by mail shall require payment of an additional two dollar (\$2) fee which shall be received by the county clerk. Nonreceipt of the notice herein shall not constitute a defense to any registration related offense.

Section 2. KRS 186.051 is amended to read as follows:

- (1) Notwithstanding the provisions of this chapter, the cabinet shall by January 1, 1978, establish a year-round system for the registration of vehicles under the provisions of KRS 186.050(1). The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county clerks, as well as the cabinet, on a year-round basis. In implementing a year-round registration system, the cabinet may establish separate and distinct registration years. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive months and registration fees shall be computed at a rate of one-twelfth (1/12) of the appropriate annual registration fee per month in each registration period. The cabinet may establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. The cabinet may promulgate reasonable administrative regulations to carry out the orderly implementation and administration of the year-round registration system. Any transaction relating to registration or registration renewal which would cause an unexpired Kentucky motor vehicle license plate to be surrendered shall have that unexpired fee prorated or credited against any additional fee required by a subsequent registration.
- (2) Notwithstanding the provisions of this chapter, the cabinet shall by April 1, 1980, establish a year-round system for the registration of vehicles under the provisions of KRS 186.050(3)(a). The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county clerks, as well as the cabinet, on a year-round basis. In implementing a year-round registration system, the cabinet may establish separate and distinct registration years. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive months and registration fees shall be computed at a rate of one-twelfth (1/12) of the appropriate annual registration fee per month in each registration period. The cabinet may establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. The cabinet may promulgate reasonable administrative regulations to carry out the orderly implementation and administration of the year-round registration system.
- (3) ***The Transportation Cabinet shall promulgate administrative regulations to establish a staggered registration system for those commercial motor vehicles registered pursuant to KRS 186.050(13).***

Approved March 26, 1998

CHAPTER 154**(SB 139)**

AN ACT relating to reorganization.

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

Section 1. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice Cabinet, the Education, Arts, and Humanities Cabinet, the Natural Resources and Environmental Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Public Protection and Regulation Cabinet, the Cabinet for Human Resources, the Finance and Administration Cabinet, the Revenue Cabinet, the Tourism Cabinet, the Labor Cabinet, the ~~commissioner of the Department of~~ Personnel **Cabinet**, ~~the secretary of~~ the Governor's Executive Cabinet, the State Budget Director, the Governor's Chief of Staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 2. KRS 12.020 is amended to read as follows:

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

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

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
4. Department of Law.
 - (a) Attorney General.
5. Department of the Treasury.
 - (a) Treasurer.

6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 7. Superintendent of Public Instruction.
 8. Auditor of Public Accounts.
 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.

- (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.

7. Cabinet for Human Resources:
 - (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
 - (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:

- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.

- (i) The Foundation for Adult Education.
- (j) The Kentucky Job Training Coordinating Council.
- (k) Office of General Counsel.
- (l) Office of Communication Services.
- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

13. Personnel Cabinet:

- (a) *Office of Administrative and Legal Services.*
- (b) *Department for Personnel Administration.*
- (c) *Department for Employee Relations.*
- (d) *Kentucky Public Employees Deferred Compensation Authority.*
- (e) *Kentucky Kare.*
- (f) *Division of Performance Management.*
- (g) *Division of Employee Records.*
- (h) *Division of Staffing Services.*
- (i) *Division of Classification and Compensation.*
- (j) *Division of Employee Benefits.*
- (k) *Division of Communications and Recognition.*

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. ~~Department of Personnel.~~
- 3. ~~Council on Postsecondary Education.~~
 - (a) Kentucky Community Service Commission.
- 3. ~~4. Department of Local Government.~~
- 4. ~~5. Kentucky Commission on Human Rights.~~
- 5. ~~6. Kentucky Commission on Women.~~
- 6. ~~7. Department of Veterans' Affairs.~~
- 7. ~~8. Kentucky Commission on Military Affairs.~~

Section 3. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice Cabinet.
- (2) Education, Arts, and Humanities Cabinet.
- (3) Natural Resources and Environmental Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Public Protection and Regulation Cabinet.

- (7) Cabinet for Human Resources.
- (8) Finance and Administration Cabinet.
- (9) Tourism Cabinet.
- (10) Revenue Cabinet.
- (11) Labor Cabinet.
- (12) Cabinet for Workforce Development.
- (13) ***Personnel Cabinet.***

Section 4. KRS 13B.030 is amended to read as follows:

- (1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).
- (2) (a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:
 - 1. Employ hearing officers;
 - 2. Contract with another agency for hearing officers; or
 - 3. Contract with private attorneys through personal service contract.
- (b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:
 - 1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.
 - 2. The expenses to be paid to the Attorney General's Office shall be calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.
- (3) A hearing officer shall possess and meet qualifications as the ~~Department of~~ ***Personnel Cabinet*** and the employing agency, with the advice of the division, may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.
- (4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The division shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Required training shall not exceed eighteen (18)

classroom hours for initial training and six (6) classroom hours per year for continuing training. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the division as meeting minimum standards.

Section 5. KRS 15.111 is amended to read as follows:

- (1) The Division of Administrative Hearings is created in the Office of Attorney General.
- (2) This division shall have the following responsibilities:
 - (a) Employing and maintaining a pool of hearing officers for assignment to the individual agencies at their request, for the conduct of administrative hearings. The Attorney General's office may also employ other staff as necessary to carry out functions and responsibilities assigned by KRS Chapter 13B;
 - (b) Reviewing and approving or disapproving requests from agencies for waivers from provisions of KRS Chapter 13B;
 - (c) Providing training in administrative hearing procedures for hearing officers as required in KRS 13B.030, either by developing and offering the training, or by contracting with appropriate organizations for the provision of training, or by approving training developed and submitted by the agencies;
 - (d) Consulting with the ~~Department of~~ Personnel *Cabinet* and employing agencies in the establishment of relevant and appropriate qualifications for classes of hearing officers;
 - (e) Establishing, in cooperation with the Division of Consumer Protection, a clearinghouse for complaints concerning the administrative hearing process in Kentucky. Each complaint received shall be referred to the agency that is the subject of the complaint, and the action of the agency to resolve the complaint shall be noted and reported to the division;
 - (f) Reporting to the Legislative Research Commission by July 1 of each odd-numbered year, the status of the administrative hearing process in Kentucky. The report shall include a compilation of statistical data and other information necessary to assess the effectiveness and efficiency of hearing procedures and recommendations for making improvements to the system. Agencies shall provide the information requested by the Division of Administrative Hearings necessary to complete the report.

Section 6. KRS 15.760 is amended to read as follows:

- (1) Each Commonwealth's attorney shall, during the calendar year 1977 and through June 30, 1978, be entitled to at least the number of assistant Commonwealth's attorney positions, stenographic, secretarial and clerical staff positions, investigative and other personnel positions, which he had or was entitled to at the number and salary level in effect on December 1, 1976.
- (2) The number of assistant Commonwealth's attorney positions, stenographic, secretarial and clerical staff positions, investigative and other personnel positions, shall be based on real need to be determined with the advice and consent of the Prosecutors Advisory Council.
- (3) All assistant Commonwealth's attorneys shall be licensed practicing attorneys. The full-time assistant Commonwealth's attorneys shall not be allowed to engage in the private practice of law.
- (4) All salaries paid to personnel appointed hereunder shall be paid from the State Treasury. The salaries shall be commensurate with the appointee's education, experience, training and responsibility, and be based upon the guidelines established by the Prosecutors Advisory Council, which guidelines shall be comparable with the classification and compensation plan for comparable positions maintained by the state ~~Department of~~ Personnel *Cabinet*, pursuant to KRS 64.640.
- (5) The fiscal court or urban-county government in the county or counties that comprise the judicial circuit shall be responsible for providing the office of the Commonwealth's attorney with an adequate grand jury room and witness rooms.
- (6)
 - (a) Each Commonwealth's attorney shall be authorized to employ individually or jointly with one or more other Commonwealth's attorneys at least one (1) victim advocate to counsel and assist crime victims as defined in KRS 421.500.
 - (b) An individual employed as a victim advocate shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position.

The victim advocate shall be an individual at least eighteen (18) years of age, of good moral character, with at least two (2) years of experience working in the human services field or court system in a position requiring professional contact with children or adults, who has:

1. Received a baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or
 2. Received a high school diploma or equivalency certificate, and, in addition to the experience required in this subsection, has at least four (4) years' experience working in the human services field or court system.
- (c) Each Commonwealth's attorney who employs an individual to serve as a victim advocate shall develop a written job description which describes the duties of the position and shall ensure the victim advocate completes training relating to the appropriate intervention with crime victims, including victims of domestic violence. Each victim advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. No victim advocate shall engage in political activities while in the course of performing his duties as victim advocate or the practice of law as defined in KRS 524.130. The creation and funding of any new personnel position shall be reviewed and approved by the Prosecutors Advisory Council.

Section 7. KRS 15.770 is amended to read as follows:

- (1) Each county attorney, with the approval of the Prosecutors Advisory Council, may appoint one (1) assistant county attorney for each District Judge in excess of one (1) in his judicial district unless prior approval is obtained from the Prosecutors Advisory Council for additional appointments; except no assistant county attorney may be appointed in multicounty judicial districts in which there are fewer District Judges than county attorneys unless prior approval is obtained from the Prosecutors Advisory Council for additional appointments.
- (2) The number of assistant county attorney positions, stenographic, secretarial and clerical positions and other personnel positions shall be based on real need to be determined with the advice and consent of the Prosecutors Advisory Council.
- (3) Assistant county attorneys shall not be prohibited from engaging in the private practice of law.
- (4) Any personnel appointed by the county attorney, under this section, who assist in the prosecutorial duties of District Court, shall be appointed for the duration of the unexpired part of the term of the county attorney, and subject to removal at the discretion of the county attorney.
- (5) All salaries paid to personnel appointed under this section shall be paid from the State Treasury to the extent such personnel assist in prosecutorial duties. Such salaries shall be commensurate with the appointee's education, experience, training and responsibility, and be based upon the guidelines established by the Prosecutors Advisory Council, which guidelines shall be comparable with the classification and compensation plan for comparable positions maintained by the State ~~Department of~~ Personnel **Cabinet**, pursuant to KRS 64.640.

Section 8. KRS 16.050 is amended to read as follows:

- (1) The commissioner shall appoint or promote to the ranks and grades and positions of the department such officers as are considered by him to be necessary for the efficient administration of the department. Notwithstanding the provisions of KRS 64.640, the commissioner of the State Police and the ~~secretary~~ ~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet** shall biennially conduct a salary survey, by rank, of State Police/highway patrol officers in those states adjoining Kentucky. The salaries of such officers of equal rank in those states surveyed shall be averaged, and such averages where the average for that rank exceeds the salary paid to Kentucky officers of that rank in the preceding biennium, shall be included in the department's budget request submitted to the Kentucky General Assembly.
- (2) All initial appointments of officers to the department shall be made for merit and fitness after a competitive examination.
- (3) There is created a State Police Personnel Board consisting of the commissioner and four (4) other members to be appointed by the Governor, two (2) to be appointed from each of the two (2) major political parties.

- (4) The initial appointment of members of the board shall be for terms of one (1), two (2), three (3), and four (4) years. Thereafter each appointment shall be for a term of four (4) years, except that a person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed for the remainder of that term.
- (5) Members of the board may be removed by the Governor only for cause, after being given a copy of charges against them and an opportunity to be heard publicly on such charges before the Governor.
- (6) The board shall elect one (1) of its members chairman. It shall meet at such time and place as shall be specified by call of the commissioner. Three (3) members shall constitute a quorum for the transaction of business. Members of the board other than the commissioner shall receive compensation of fifty dollars (\$50) and reimbursement of travel expenses for each meeting of the board which they attend.
- (7) The board shall make administrative regulations to carry out the purposes herein, which shall include provisions for:
 - (a) Open competitive examination as to fitness of applicants for employment as officers; and
 - (b) Establishment of eligible lists as a result of such competitive examinations, from which lists vacancies shall be filled.
- (8) The board shall hear appeals from applicants for employment for which examinations are being given or have been conducted and from eligibles on examination registers subject to the procedural rules which the board may adopt pursuant to the provisions of this section.

Section 9. KRS 16.543 is amended to read as follows:

- (1) Employee contributions shall be deducted from the creditable compensation of each member of the retirement system in the active employment of the Department of State Police of the Justice Cabinet as an officer as defined in KRS 16.520. After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 16.545(4). Service credit shall be allowed for each month such member receives creditable compensation for an average of one hundred (100) hours or more of work per month. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.
- (2) Contributions shall not be made and no service will be earned while on authorized leave except:
 - (a) A member shall be entitled to service credit in accordance with KRS 61.555; and
 - (b) A member on educational leave, approved by the ~~Department of~~ Personnel **Cabinet**, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions or such contributions shall be picked up in accordance with KRS 16.545 and his employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.
- (3) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 16.560.

Section 10. KRS 18A.005 is amended to read as follows:

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

- (1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the ~~secretary~~~~commissioner~~;
- (2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;
- (3) "Board" means the Personnel Board created by KRS 18A.045;
- (4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;

- (5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the ~~secretary~~~~commissioner~~ on request of an appointing officer for consideration in filling a position in the classified service;
- (6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;
- (7) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;
- (8) "~~Secretary~~~~Commissioner~~" means the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel *Cabinet* as provided for in KRS 18A.015;
- (9) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;
- (10) "~~Cabinet~~~~Department~~" means the ~~Department of~~ Personnel *Cabinet* provided for in KRS 18A.015, unless the context indicates otherwise;
- (11) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;
- (12) "Emergency employee" means an employee appointed without regard to the examination requirements of KRS 18A.010 to 18A.200 to any position by reason of a governmental emergency. An emergency appointment shall not exceed thirty (30) working days in duration and is nonrenewable;
- (13) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time or part-time basis;
- (14) "Federally funded time-limited employee" means an employee appointed to a federally funded time-limited position and, except as provided in KRS 18A.115, may in all other respects be entitled to the benefits provided permanent, full-time regular employees as defined in this chapter;
- (15) "Federally funded time-limited position" means a position created for the specific purpose of providing public service employment or one (1) time special or research project services for a limited period of time and shall not exceed the period of time for which that specific federal funding is provided;
- (16) "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence. "Initial probation" does not include a probationary period served by a laid-off employee who accepts a bona fide written offer of appointment;
- (17) "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;
- (18) "Position" means an office or employment in an agency (whether part-time, full-time, permanent, temporary, seasonal, federally funded time-limited, or emergency, occupied, or vacant) involving duties requiring the services of one (1) person;
- (19) "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;
- (20) "Promotional probation" means the six (6) month period of service following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;

- (21) "Provisional employee" means any employee appointed on a temporary or interim basis to a permanent position under KRS 18A.010 to 18A.200 without examination, such appointment being made necessary by the absence of a register for the position involved and by the time limitations and prohibition on renewal as defined in KRS 18A.110(7)(h);
- (22) "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;
- (23) "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;
- (24) "Reemployment" shall mean the rehiring of an employee with status who has been laid off;
- (25) "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;
- (26) "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;
- (27) "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;
- (28) "Seasonal employee" means an employee appointed to a seasonal position;
- (29) "Seasonal position" means a position that is temporary, coincides with a particular season or seasons of the year, and does not exceed eleven (11) months' duration;
- (30) "Seniority" means the total number of months of state service;
- (31) "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service;
- (32) "Temporary employee" means an employee appointed to a temporary position;
- (33) "Temporary position" means a position that is created for a definite period of time not to exceed six (6) months and not renewable;
- (34) "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

Section 11. KRS 18A.015 is amended to read as follows:

- (1) There shall be created by KRS 18A.005 to 18A.200 a ~~Department of~~ Personnel **Cabinet** headed by a **secretary**~~commissioner~~ who shall be appointed by the Governor.
- (2) Appropriations shall be made from the general expenditure fund to the department to meet the estimated pro rata share of the cost of administering the provisions of this chapter for departments, commissions, boards or agencies which receive their sole support from the general expenditure fund.
- (3) The **secretary**~~commissioner~~ shall maintain accurate records reflecting the cost of administering the provisions of this chapter. At the close of each quarter year period he shall summarize the cost and shall bill each department, commission, board or agency which receives support from sources other than the general expenditure fund, except the Department of Fish and Wildlife Resources, for a pro rata share of the administrative cost based on the relationship between the quarterly average number of employees in the service of such department, commission, board or agency and the quarterly average number of employees in the service of all the departments, commissions, boards and agencies for the appropriate calendar quarter.
- (4) All departments, commissions, boards or agencies which receive support from other than the general expenditure fund, except the Department of Fish and Wildlife Resources, shall include in their budgets sufficient amounts to meet their pro rata shares of the cost of administering KRS 18A.005 to 18A.200 and shall remit such shares quarterly to the department in the manner provided by law.

- (5) The ~~*cabinet*~~~~[department]~~ is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purposes of KRS 18A.005 to 18A.200.

Section 12. KRS 18A.020 is amended to read as follows:

- (1) The records of the ~~*cabinet*~~~~[department]~~ shall be public records and shall be open to public inspection, as provided in KRS 61.870 to 61.884.
- (2) (a) A personnel file shall be maintained by the ~~*cabinet*~~~~[department]~~ and the appointing authority for each employee. The file maintained by the ~~*cabinet*~~~~[department]~~ shall be the official personnel file for the employee. Upon transfer, the personnel file maintained by the appointing authority from which the employee transfers shall be forwarded to the new appointing authority;
- (b) Each file shall include, but not be limited to, for each employee, his name, address, title of positions held, classification, rates of compensation, all changes in status including evaluations, promotions, demotions, layoffs, transfers, disciplinary actions, commendations, awards, and preliminary and other supporting documentation for each action. Each file shall contain the complete record and supporting documentation for each personnel action;
- (c) Whenever an employee is reprimanded for misconduct, other infraction, or failure to perform his duties in a proper or adequate manner, the supervising employee taking such action shall document such action in detail, and shall provide the employee with a copy of such documentation. The supervising employee shall inform the employee that he has the right to prepare a written response to the action taken after he has reviewed the written documentation prepared by the supervising employee. Such response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response provided for herein in the employee's personnel file and shall transmit a copy to the ~~*cabinet*~~~~[department]~~ to be placed in the official personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for herein have been placed in his personnel files.
- (3) Upon written request, an employee shall have the right to examine his personnel file. An employee may comment in writing on any item in his file. Such comments shall be made a part of his file and shall be attached to the specific record or document to which they pertain.
- (4) Upon written request a state employee, an applicant for employment, and an eligible on a register shall have the right to inspect and to copy any record and preliminary documentation and other supporting documentation that relates to him, except that an applicant, an eligible or a state employee shall not have the right to inspect or to copy any examination materials.
- (5) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge or impede the exercise of the rights granted in any manner by this section and by KRS 61.878.

Section 13. KRS 18A.025 is amended to read as follows:

- (1) The Governor shall appoint the ~~*secretary*~~~~[commissioner]~~ of personnel as provided in KRS 18A.015, who shall be considered an employee of the state. He shall be a graduate of an accredited college or university and have at least five (5) years' experience in personnel administration or in related fields, have known sympathies with the merit principle in government and shall be dedicated to the preservation of this principle. Additional education may be substituted for the required experience and additional experience may be substituted for the required education.
- (2) The ~~*secretary of the*~~~~[Department of]~~ Personnel ~~*Cabinet*~~~~[shall be attached to the Office of the Secretary of the Governor's Executive Cabinet, and the commissioner shall have the duties and responsibilities assigned by the secretary of the executive cabinet, and shall be responsible to and report to the secretary. In addition, the commissioner,]~~ or his designee, shall be responsible for the coordination of the state's affirmative action plan, established by KRS 18A.138.
- (3) There is established within the~~[Department of]~~ Personnel *Cabinet* the following *offices and departments*~~[divisions]~~, each of which shall be headed by a ~~*commissioner*~~~~[director]~~ appointed by the ~~*secretary*~~~~[commissioner]~~, subject to the prior approval of the Governor, pursuant to KRS 12.050, *except that*

the Kentucky Employees Deferred Compensation Authority shall be headed by an executive director who shall be appointed by the authority's board of directors:

- (a) *Office of the Secretary, composed of the:*
 - 1. *Office of Administrative and Legal Services, which shall:*
 - a. *Provide all administrative information systems management, and legal services to the Cabinet; and*
 - b. *Coordinate the state's affirmative action plan established in KRS 18A.138;*
 - 2. *Kentucky Public Employees Deferred Compensation Authority which shall be attached to the Office of the secretary for administrative purposes only. The authority shall be governed by a board of trustees composed of seven (7) members including the secretary of Finance and Administration, ex officio; the secretary of Personnel, ex officio; the state controller, ex officio; and four (4) at large members appointed by the Governor, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall represent a non-state employer. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A; and*
 - 3. *Kentucky Kare;*
- (b) *Department for Personnel Administration, composed of the:*
 - 1. *Division of Performance Management, which shall coordinate and implement the employee performance evaluation systems throughout state government:*
 - 2. *Division of Employee Records, which shall:*
 - a. *Maintain the central personnel files mandated by KRS 18A.020;*
 - b. *Process personnel documents and position actions;*
 - c. *Operate and maintain a uniform payroll system;*
 - d. *Implement lay-off plans mandated by KRS 18A.113 to KRS 18A.1132;*
 - e. *Certify payrolls as required by KRS 18A.125; and*
 - f. *Monitor and assist state agencies in complying with the provisions of the Federal Fair Labor Standards Act (FLSA);*
 - 3. *Division of Staffing Services, which shall:*
 - a. *Operate a centralized applicant and employee counseling program;*
 - b. *Operate the examination program for State employment;*
 - c. *Prepare registers of candidate employment;*
 - d. *Coordinate outreach programs, such as recruitment and the Administrative Intern Program; and*
 - e. *Construct merit examinations; and*
 - 4. *Division of Classification and Compensation, which shall:*
 - a. *Maintain plans of classification and compensation for the State Service; and*
 - b. *Review and evaluate the plans; and*
- (c) *Department for Employee Relations, composed of the:*
 - 1. *Division of Employee Benefits, which shall be responsible for administering and assisting state employees with the following benefits and programs:*
 - a. *Workers' Compensation (KRS 18A.375);*
 - b. *Life Insurance (KRS 18A.205 to KRS 18A.220);*

- c. *Health Insurance (KRS 18A.225);*
- d. *Flexible Benefit Plan (KRS 18A.227);*
- e. *Employee Benefit Plan (KRS 18A.2281);*
- f. *Sick leave Sharing Program (KRS 18A.197);*
- g. *Health and Safety Programs (OSHA); and*
- h. *Assessment and referral services provided to state employees;*
- 2. *Division of Communications and Recognition, which shall:*
 - a. *Communicate with state employees about personnel issues and other relevant issues through publications;*
 - b. *Administer the employee incentive programs established by KRS 18A.202; and*
 - c. *Provide dispute resolution assistance to state employees and agencies.*

~~[(The Division of Administration and Processing, which shall be responsible for:~~

- ~~1. Maintaining the central personnel files mandated by KRS 18A.020;~~
- ~~2. Processing personnel documents and position actions;~~
- ~~3. Operating and maintaining a uniform payroll system;~~
- ~~4. Implementing lay off plans mandated by KRS 18A.113 to 18A.1132;~~
- ~~5. Certifying payrolls as required by KRS 18A.125; and~~
- ~~6. Monitoring and assisting state agency compliance with the provisions of the Federal Fair Labor Standards Act (FLSA) which sets minimum wage requirements, governs the payment of overtime compensation, regulates child labor laws, and requires equal pay for equal work.~~

~~(b) The Division of Applicant Counseling and Examinations, which shall be responsible for the:~~

- ~~1. Operation of a centralized applicant and employee counseling program;~~
- ~~2. Operation of an examination program for state employment;~~
- ~~3. Preparation of registers of candidates for state employment; and~~
- ~~4. Coordination of outreach programs, such as the administrative intern program.~~

~~(c) The Division of Benefits Administration, which shall be responsible for the administration of the state employee's benefit package established by:~~

- ~~1. KRS 18A.205 to 18A.220 (Life insurance);~~
- ~~2. KRS 18A.225 (Health insurance);~~
- ~~3. KRS 18A.227 (Flexible benefit plan);~~
- ~~4. KRS 18A.2281 (Employee benefit plan);~~
- ~~5. KRS 18A.250 (Kentucky state employee's deferred compensation plan); and~~
- ~~6. KRS 18A.375 (State employee workers' compensation fund).~~

~~(d) The Division of Classification and Compensation, which shall be responsible for the:~~

- ~~1. Maintenance of plans of classification and compensation for the state service; and~~
- ~~2. Review and evaluation of these plans.~~

~~(e) The Division of Employee Services, which shall be responsible for designing and administering programs governed, authorized, or established by:~~

- ~~1. KRS 18A.112 (Performance evaluations);~~

- ~~2. KRS 18A.197 (Sick leave sharing program);~~
- ~~3. KRS 18A.202 (Work related employee incentive programs);~~
- ~~4. Health and safety programs mandated by the Federal Occupational, Safety, and Health Act (OSHA); and~~
- ~~5. Assessment and referral services provided to state employees in need.]~~

- (4) The ~~*cabinet*~~~~[department]~~ shall include principal assistants appointed by the ~~*secretary*~~~~[commissioner]~~, pursuant to KRS 12.050, as necessary for the development and implementation of policy. The ~~*secretary*~~~~[commissioner]~~ may employ, pursuant to the provisions of this chapter, personnel necessary to execute the functions and duties of the department.

Section 14. KRS 18A.030 is amended to read as follows:

- (1) The ~~*secretary*~~~~[commissioner]~~ shall be the executive and administrative head of the ~~*cabinet*~~~~[department]~~ and shall supervise and control all examinations and work of the ~~*cabinet*~~~~[department]~~. He shall advise the board on matters pertaining to the classified service of this state. Within the limitations of the budget, the ~~*secretary*~~~~[commissioner]~~ shall appoint and supervise the staff needed in the ~~*cabinet*~~~~[department]~~ to carry out the purposes of KRS 18A.005 to 18A.200 except employees of the board who shall be appointed as provided in KRS 18A.090.
- (2) Subject to the provisions of this chapter and KRS Chapter 13A, the ~~*secretary*~~~~[commissioner]~~ shall, with the aid of his staff:
 - (a) Attend all meetings of the board;
 - (b) As provided by this chapter, promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and with federal standards for the administration of a personnel system in the agencies of the state government receiving federal grants;
 - (c) Establish general procedures for personnel recruitment, for certification, and for improving the efficiency of employed personnel;
 - (d) Appoint the examiners and technicians necessary for the conduct of the personnel program, whether on a permanent or temporary basis;
 - (e) Prepare and maintain a record of all employees, showing for each employee his name, address, title of position held, rate of compensation, changes in status, compensation, or title, transfer, and to make the data and the class specifications for all positions available to the press and public;
 - (f) Prepare, in accordance with the provisions of KRS 18A.005 to 18A.200 and the administrative regulations adopted thereunder, examinations, eligible lists, and ratings of candidates for appointment;
 - (g) Make certification for appointment or promotion within the classified service, in accordance with the provisions of KRS 18A.005 to 18A.200;
 - (h) Make investigations concerning all matters touching the enforcement and effect of the provisions of KRS 18A.005 to 18A.200 and administrative regulations prescribed thereunder;
 - (i) Prepare, in cooperation with appointing authorities and others, programs for employee training, safety, morale, work motivation, health, counseling, and welfare, and exercise leadership in the development of effective personnel administration within the several departments of the Commonwealth, and make available the facilities of the department to this end;
 - (j) Provide personnel services to unclassified employees in agreement with the agencies involved not otherwise provided for herein;
 - (k) Present, in accordance with the provisions of KRS Chapter 48, budget requests for the support of the personnel system created by KRS 18A.005 to 18A.200, excluding the board, which shall present its own budget estimates;
 - (l) Make a report and submit the same to the board, the Legislative Research Commission and the Governor not later than October first of each year;
 - (m) Discharge the other duties imposed upon him by KRS 18A.005 to 18A.200.

- (3) The ~~secretary~~~~commissioner~~ on behalf of the ~~cabinet~~~~department~~ may join or subscribe to any association or service having as its purpose the interchange of information relating to the improvement of the public service and especially improvement of personnel administration.
- (4) The ~~secretary~~~~commissioner~~ shall keep records relative to employee turnover and report to the board, the Governor and the Legislative Research Commission quarterly. The report shall reflect employee turnover rates by cabinet, department, bureau, division, and section. If any cabinet, department, bureau, division, or section has a turnover rate of fifteen percent (15%) or more in any twelve (12) month period, the ~~secretary~~~~commissioner~~ shall conduct an investigation into the reasons for the turnover and report the findings to the board, the Governor and the Legislative Research Commission.
- (5) The ~~secretary~~~~commissioner~~ shall provide to each new state employee and to each *existing* state employee, classified or otherwise, on an annual basis an informational pamphlet about human immunodeficiency virus infection and acquired immunodeficiency syndrome. The pamphlet shall be approved by the Cabinet for Human Resources and shall contain information about the nature and extent of these diseases, methods of transmission, preventive measures and referral services.

Section 15. KRS 18A.032 is amended to read as follows:

- (1) Except as provided by the provisions of this chapter, the ~~secretary~~~~commissioner~~ may refuse to examine an applicant; or, after examination, may disqualify an applicant, remove his name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed if:
 - (a) It is found that he does not meet any one (1) of the preliminary requirements established for the examination for the class of position;
 - (b) He is unable to perform the duties of the class;
 - (c) He has made a false statement of material fact in his application;
 - (d) He has used or attempted to use political pressure or bribery to secure an advantage in the examination;
 - (e) He has directly or indirectly obtained information regarding the examination to which, as an applicant, he was not entitled;
 - (f) He has failed to submit his application correctly or within the prescribed time limits;
 - (g) He has taken part in the compilation, administration, or correction of the examination for which he is an applicant;
 - (h) He has previously been dismissed from a position in the state service for cause or has resigned while charges for dismissal for cause of which he had knowledge were pending;
 - (i) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;
 - (j) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or
 - (k) He has otherwise willfully violated the provisions of this chapter.
- (2) An eligible may be removed from a register:
 - (a) If the eligible cannot be located by postal authorities at the last address provided by the eligible;
 - (b) If the eligible responds in writing that he no longer desires consideration for position in that class;
 - (c) If the eligible declines an offer of probationary appointment to the class for which the register was established;
 - (d) If it is shown that the eligible is not qualified or is unsuitable for appointment to the class for which the register is established;
 - (e) If the eligible fails to reply within a period of ten (10) calendar days of the receipt of the written request of the appointing authority for an interview, or fails to appear for an interview which he has scheduled with the appointing authority without good cause;

- (f) If the eligible accepts an appointment and fails to present himself for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority; or
 - (g) If the eligible states in writing that he is not available for appointment or does not wish to be considered for appointment.
- (3) When an eligible notifies the *cabinet*~~{department}~~ in writing that he is unavailable for employment or employment consideration, the *cabinet*~~{department}~~ may remove the name of that eligible from the appropriate register without further notification to the person.
 - (4) When the *cabinet*~~{department}~~ is notified in writing by an appointing authority that an eligible has accepted a bona fide offer of probationary appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same or less than that of the class to which he has been appointed.

Section 16. KRS 18A.035 is amended to read as follows:

- (1) The *secretary*~~{commissioner}~~ may from time to time designate in writing an employee of the *cabinet*~~{department}~~ to act for him in case of his absence or inability from any cause to discharge the powers and duties of his position. In this case, the powers and duties of the *secretary*~~{commissioner}~~ shall devolve upon his designee.
- (2) The *secretary*~~{commissioner}~~ may request appropriate persons, including officers and employees in the state service, to assist in the preparation and rating of tests. Department heads shall cooperate to the fullest extent possible in making the services of their employees available for such work.
- (3)
 - (a) The *secretary*~~{commissioner}~~ may enter into written agreements with an appointing authority which would provide for the delegation of his authority and power to the appointing authority. The *secretary*~~{commissioner}~~ is prohibited from delegating any powers or authority pertaining to disciplinary actions, layoffs, or registers.
 - (b) All written agreements delegating the *secretary's*~~{commissioner's}~~ power and authority as provided in paragraph (a) of this subsection shall be specific in nature and renewed annually.
 - (c) A copy of the written agreements shall be forwarded to the Personnel Board.
- (4) The *secretary*~~{commissioner}~~ shall serve ex officio as a member of the board of trustees of the Kentucky Employees Retirement System.

Section 17. KRS 18A.043 is amended to read as follows:

~~{(1)—}~~The *secretary*~~{commissioner}~~ of *the Personnel Cabinet*~~{personnel}~~ shall promulgate administrative regulations in accordance with KRS Chapter 13A, to implement the provisions of the Federal Drug-Free Workplace Act of 1988, Subtitle D of Public Law 100-690, so that the Commonwealth of Kentucky can certify that it has met the requirements designed to promote a drug-free workplace for all state employees.

~~{(2)—The commissioner of personnel shall promulgate the administrative regulations referred to in subsection (1) of this section by January 1, 1991.}~~

Section 18. KRS 18A.0551 is amended to read as follows:

- (1)
 - (a) Elections to the board shall be scheduled every four (4) years on or before July 1. The *cabinet*~~{department}~~ shall provide written notification of the date of the election to all classified employees on or before May 1; and
 - (b) Upon receipt of the notification provided for by paragraph (a) of this subsection, an employee wishing to serve on the board shall notify the *cabinet*~~{department}~~, in writing, no later than June 1. This notification shall be notarized and shall include the candidate's name, address, Social Security number, job classification, and length of state employment. It shall also include the name and address of his current employer.
- (2) On the last working day of May, the *cabinet*~~{department}~~ shall certify a payroll that is current on such day and that contains the name, Social Security number and home address of every classified employee.

- (3) At least fifteen (15) working days prior to the election provided for in subsection (1) of this section, the **cabinet**~~{department}~~ shall mail to each classified employee whose name appeared on the payroll certified by the department at his home address:
- (a) A list of candidates for election to the board, in alphabetical order, with a brief biography following the name of each candidate;
 - (b) Instructions for voting;
 - (c) A ballot listing the names of all candidates for election to the board in alphabetical order and providing a blank space next to each name; and
 - (d) Two (2) envelopes for returning the ballot. Prior to mailing the envelopes to a state employee, one (1) envelope shall be addressed by the **cabinet**~~{department}~~ to the impartial third party selected by the **cabinet**~~{department}~~ to receive, validate and tabulate the ballots at a post office box rented by the **cabinet**~~{department}~~ for the election. The upper left corner of the preaddressed or outer envelope shall contain a sufficient number of blank lines and spaces to permit an employee to print his name and address. The upper left corner of the second or inner envelope shall contain a sufficient number of blank lines and spaces to permit an employee to print his name, address, Social Security number, the date and to affix his signature.
- (4) Upon receipt of his ballot, a classified employee wishing to participate in the election provided for in subsection (1) of this section shall:
- (a) Vote for no more than two (2) candidates;
 - (b) Mark his ballot by placing a mark in the blank space next to the name of the candidate for whom he is casting his vote;
 - (c) Print his name and address in the upper left corner of the preaddressed or outer envelope provided by the **cabinet**~~{department}~~;
 - (d) Print his name, address, Social Security number, the date, and affix his signature in the upper left corner of the second or inner envelope provided by the **cabinet**~~{department}~~;
 - (e) Seal his ballot in the second or inner envelope; and
 - (f) Seal the second or inner envelope in the preaddressed or outer envelope, affix a stamp to it, and post it.
- (5) The **cabinet**~~{department}~~ shall:
- (a) Select an impartial third party to receive, validate, and tabulate all returned ballots as provided by this subsection and subsection (6) of this section;
 - (b) Acquire a post office box to which all ballots shall be mailed; and
 - (c) Provide the impartial third party with a computer generated list of the names and Social Security numbers of eligible voters, with the names of the eligible voters in numerical sequence as determined by their Social Security numbers. The names and Social Security numbers listed on the list shall correspond to those appearing on the payroll certified by the **cabinet**~~{department}~~ under subsection (2) of this section.
- (6) The impartial third party selected by the **cabinet**~~{department}~~ shall collect all ballots, unopened, from the post office box. It shall:
- (a) Examine the postmark on each envelope;
 - (b) Set aside, unopened, any preaddressed or outer envelope postmarked with a date subsequent to the deadline provided for by this section;
 - (c) Remove the second or inner envelope from the preaddressed or outer envelope;
 - (d) Verify the name and Social Security number on the second or inner envelope by comparing them to the computer generated list of names and Social Security numbers of eligible voters provided by the **cabinet**~~{department}~~;

- (e) Set aside, unopened, any second or inner envelope containing a name and Social Security number that does not match the name and Social Security number appearing next to the name on the computer generated list;
- (f) Tabulate the ballots by electronic data entry in duplicate, provided that ballots in envelopes specified in paragraphs (b) and (e) of this subsection shall not be counted;
- (g) Compare the total tabulated vote with the total number of eligible employees appearing on the computer generated list provided by the *cabinet*~~{department}~~;
- (h) Return the ballots; envelopes, including envelopes that have not been opened; and other election material to the *cabinet*~~{department}~~; and
- (i) Certify to the *cabinet*~~{department}~~:
 1. That the tabulation does not include two (2) or more ballots with the same Social Security number;
 2. The total number of ballots received;
 3. The total number of ballots not included in the tabulation, and the reason each such ballot was not included in the tabulation;
 4. The total number of ballots included in the tabulation; and
 5. The total vote for each candidate.
- (7) For at least sixty (60) days after the completion of the tabulation provided for by subsection (6) of this section, the ballots, envelopes and other election materials provided for by this section shall be public record and open to inspection.
- (8) The two (2) candidates receiving the greatest number of votes shall be declared the successful candidates. In the event of a tie vote, the tie shall be broken by a coin toss in the presence of the candidates receiving the tie vote.
- (9) Successful candidates shall be notified by the *cabinet*~~{department}~~ no later than five (5) working days after the election. Successful candidates shall take office immediately upon notification.
- (10) State employees shall not use state materials or equipment for any purpose related to the election of classified employees to the board, nor shall any activity related to the election of a classified employee to the board be conducted during working hours.

Section 19. KRS 18A.060 is amended to read as follows:

- (1) If an elected member of the board vacates his seat for any reason other than the normal expiration of his term, the *cabinet*~~{department}~~ shall provide written notification of the vacancy to all classified employees within fifteen (15) days of the vacancy.
- (2) Classified employees wishing to fill the vacancy shall notify the *cabinet*~~{department}~~ within ten (10) days of the *cabinet's*~~{department's}~~ notification of the vacancy.
- (3) A majority of the remaining members of the board shall make the appointment to fill the vacancy from the list of those employees who have notified the board under subsection (2) of this section.

Section 20. KRS 18A.065 is amended to read as follows:

The board, each member of the board, the executive director and any hearing officer of the board and the *secretary*~~{commissioner}~~ shall have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by KRS 18A.005 to 18A.200. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be subject to the provisions of KRS 18A.990.

Section 21. KRS 18A.075 is amended to read as follows:

Subject to the provisions of this chapter and KRS Chapter 13A, it shall be the duty of the board to:

- (1) As provided by this chapter, promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200, and with federal standards for the administration of a personnel

system in the agencies of the state government receiving federal grants for the purpose of carrying out the provisions of this chapter;

- (2) Make investigations, either on petition of a citizen, taxpayer, interested party, or on its own motion, concerning the enforcement and effect of KRS 18A.005 to 18A.200, and to require observance of its provisions and the administrative regulations promulgated pursuant to the provisions of this chapter and KRS Chapter 13A; and to make such investigation as may be requested by the General Assembly or the Governor and to report thereon;
- (3) Hear appeals from applicants for positions for which examinations are being or have been conducted, from eligibles on examination registers, from unclassified employees who have been dismissed, demoted, suspended, or otherwise penalized for cause, and from officers or employees serving under the personnel systems created by this chapter, as provided by 1986 Acts Ch. 494;
- (4) In cooperation with the ~~secretary~~~~commissioner~~, promote public understanding of merit principles in government service;
- (5) Present, in accordance with the provisions of KRS Chapter 48, budget requests for the support of the personnel board;
- (6) Make annual reports to the Governor, the Legislative Research Commission, and the ~~secretary~~~~commissioner~~, and biennial reports to the General Assembly, which reports shall be a public record freely available to those persons interested in obtaining a copy;
- (7) Advise the Governor and the ~~secretary~~~~commissioner~~ with respect to the administration of the personnel system created by this chapter;
- (8) Consider and act on such matters as may be referred to the board by the ~~secretary~~~~commissioner~~; and
- (9) Represent the public interest in the improvement of personnel administration in the state service, and advise and assist the ~~secretary~~~~commissioner~~ in fostering the interest of institutions of learning and of civic, professional, and employee organizations in the improvement of personnel standards in the state service.

Section 22. KRS 18A.0751 is amended to read as follows:

- (1) The board shall promulgate comprehensive administrative regulations for the classified service governing:
 - (a) Appeals by state employees;
 - (b) Demotion;
 - (c) Dismissal;
 - (d) Fines, suspensions, and other disciplinary measures;
 - (e) Probation, provided that the board may not require an initial probationary period in excess of six (6) months except as provided in subsection (4)(e) of this section and KRS 18A.005;
 - (f) Promotion;
 - (g) Reinstatement;
 - (h) Transfer; and
 - (i) Employee grievances and complaints.
- (2)
 - (a) These administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law, when approved by the board, after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;
 - (b) Administrative regulations promulgated by the board shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
 - (c) No administrative body, other than the personnel board, shall promulgate administrative regulations governing the subject matters specified in this section.
- (3) Prior to filing an administrative regulation with the Legislative Research Commission, the board shall submit the administrative regulation to the ~~secretary~~~~commissioner~~ for review:

- (a) The ~~secretary~~~~commissioner~~ shall review the administrative regulation proposed by the board not less than twenty (20) days after its submission to him;
 - (b) Not less than five (5) days after his review, the ~~secretary~~~~commissioner~~ shall submit his recommendations in writing to the board;
 - (c) The board shall review the recommendations of the ~~secretary~~~~commissioner~~ and may revise the proposed administrative regulation as it deems necessary; and
 - (d) After the board has completed the review provided for in this section, it may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (4) These administrative regulations shall provide:
- (a) For the procedures to be utilized by the board in the conduct of hearings by the board, consistent with the provisions of KRS Chapter 13B;
 - (b) For reduction in rank or grade as provided by this chapter;
 - (c) For discharge, as provided by this section;
 - (d) For imposition, as disciplinary measures, of a fine of not more than ten (10) working days' pay, or for suspension from the service without pay for no longer than thirty (30) working days and, in accordance with the provisions of KRS 18A.095, for the manner of notification of the employee of the discipline and his right of appeal;
 - (e) No probationary period may exceed twelve (12) months, except as provided in KRS 18A.005. The ~~secretary~~~~commissioner~~ may recommend an initial probationary period in excess of six (6) months for specific job classifications to the board. This recommendation shall take the form of a proposed administrative regulation that shall be submitted to the board for approval. The subject of the administrative regulation shall be limited to job classifications for which an initial probationary period in excess of six (6) months is required and shall specify:
 1. The job classification for which an initial probationary period in excess of six (6) months is required; and
 2. The specific number of months constituting the initial probationary period for the job classification. No other administrative regulation shall include any provision prescribing an initial probationary period in excess of six (6) months, except as provided in KRS 18A.005. Upon approval by the board of the proposed administrative regulation provided for in this paragraph, the board shall file the regulation with the Legislative Research Commission as provided by KRS Chapter 13A;
 - (f) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority. Except as provided by this chapter, vacancies shall be filled by promotion whenever practicable and in the best interest of the service;
 - (g) For reemployment of laid-off employees in accordance with the provisions of this chapter;
 - (h) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges as provided by the provisions of KRS 18A.1131(3)(a);
 - (i) For establishment of a plan for resolving employee grievances and complaints. This plan shall not restrict rights granted employees by the provisions of this chapter;
 - (j) For promotion of career employees to positions in the unclassified service without loss of status to the individual employees so promoted, as provided by this chapter; and
 - (k) For any other administrative regulations not inconsistent with this chapter and KRS Chapter 13A as may be proper and necessary for its enforcement.

Section 23. KRS 18A.095 is amended to read as follows:

- (1) (a) The provisions of this section shall not apply to employees commissioned pursuant to the provisions of KRS 281.770.

- (b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of KRS 281.771 and 281.772.
- (2) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the intent to dismiss is based;
 - 3. The date, time, and place of such action or activity; and
 - 4. The name of the parties involved; and
 - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (4) The **Personnel Cabinet**~~(department)~~ shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (5) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (6) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (7) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
 - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (8) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
 - (a) The effective date of his dismissal or other penalization;
 - (b) The specific reason for this action, including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the dismissal or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved;
 - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (9) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
 - (a) The demotion, suspension, or other penalization;

- (b) The effective date of the demotion, suspension, or other penalization;
 - (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
 - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.
- (10) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (11) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
- 1. The reallocation; and
 - 2. His right to request reconsideration by the *secretary*~~{commissioner}~~ within ten (10) working days of receipt of the notice, excluding the day he receives notification;
- (b) He shall be provided with a form prescribed by the *secretary*~~{commissioner}~~ on which to request reconsideration; and
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the *secretary*~~{commissioner}~~ in a manner and form prescribed by the *secretary*~~{commissioner}~~ and shall be given a reasonable opportunity to be heard thereon by the *secretary*~~{commissioner}~~. The *secretary*~~{commissioner}~~ shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the *secretary*~~{commissioner}~~, the employee may appeal to the board.
- (12) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (13) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (14) When an eligible's name is removed from a register, the *secretary*~~{commissioner}~~ shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the *secretary*~~{commissioner}~~ or in accordance with the decision of the board.
- (15) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board;
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the *secretary*~~{commissioner}~~ pending reconsideration by the board;

- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly;
 - (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- (16) An evaluation may be appealed to the board if an employee has complied with the review procedure established under KRS 18A.112.
- (17) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The *Personnel Cabinet*~~[department]~~ shall be responsible for the distribution of these forms;
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney;
- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal; and
- (d) Upon receipt of the appeal by the board, the appointing authority and the ~~[Department of]~~ *Personnel Cabinet* shall be notified and the board shall schedule a hearing.
- (18) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (19) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100;
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
 - (b) Conduct test representative cases.
- (21) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (22) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (23) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;

- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
 - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action;
 - (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (25) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (27) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (28) For the purposes of subsections (3), (4), (5), (6), (7), and (8) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.

Section 24. KRS 18A.105 is amended to read as follows:

- (1) (a) When a classified or unclassified employee has been finally ordered reinstated by the board without loss of pay, pursuant to the provisions of KRS 18A.095, the executive director of the board shall forward a certified copy of said order to the ~~Department of~~ Personnel **Cabinet** and the Finance and Administration Cabinet, which shall process proper payment to the employee for the period of suspension, said payment to be made out of the agency's appropriations. If no funds or insufficient funds are available in the agency's appropriations, then payment shall be made out of the "judgments" section of the general fund of the biennial state budget.
 - (b) Gross moneys which were earned by the employee from other sources during the period of suspension shall be set-off against the gross sum due the employee, to the extent that the moneys were earned in a number of hours comparable to the length of time the employee would have worked in the job from which he was dismissed. The Finance and Administration Cabinet shall by regulation provide an administrative procedure for determining reasonable earnings to be so set off.
 - (c) All other deductions shall be deducted as required by law or by Finance and Administration Cabinet regulation.
- (2) (a) Both the employee's and employer's contributions to the Kentucky Employees Retirement System shall be based upon the gross amount due the employee, before set off or deduction, except for set-off caused by earnings on which employee and employer contributions to the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, or Kentucky Teachers' Retirement System have been paid.
- (b) Member and employer contributions paid into the system in which the employee participated after dismissal shall be transferred to the system in which he participated prior to his illegal dismissal. In the event of a difference in member or employer contribution rates between the retirement system under which the member was covered prior to dismissal and the retirement system in which he participated before reinstatement by the board, the member and employer shall pay or receive a refund in order to adjust their respective contribution to the appropriate rate for the system under which he would have participated had he not been dismissed.

Section 25. KRS 18A.110 is amended to read as follows:

- (1) The **secretary**~~[commissioner]~~ shall promulgate comprehensive administrative regulations for the classified service governing:
 - (a) Applications and examinations;
 - (b) Certification and selection of eligibles;
 - (c) Classification and compensation plans;
 - (d) Incentive programs;
 - (e) Layoffs;
 - (f) Registers;
 - (g) Types of appointments;
 - (h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, and special leaves of absence, provided that the **secretary**~~[commissioner]~~ shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985.
- (2) The **secretary**~~[commissioner]~~ shall promulgate comprehensive administrative regulations for the unclassified service.
- (3)
 - (a) Except as provided by KRS 18A.355, the **secretary**~~[commissioner]~~ shall not promulgate administrative regulations that would reduce an employee's salary; and
 - (b) As provided by KRS 18A.0751(4)(e), the **secretary**~~[commissioner]~~ may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.
- (4) The **secretary**~~[commissioner]~~ may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.
- (5)
 - (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;
 - (b) Administrative regulations promulgated by the **secretary**~~[commissioner]~~ shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
 - (c) No administrative body other than the ~~[Department of]~~ Personnel **Cabinet** shall promulgate administrative regulations governing the subject matters specified in this section.
- (6) Prior to filing an administrative regulation with the Legislative Research Commission, the **secretary**~~[commissioner]~~ shall submit the administrative regulation to the board for review.
 - (a) The board shall review the administrative regulation proposed by the **secretary**~~[commissioner]~~ not less than twenty (20) days after its submission to it;
 - (b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the **secretary**~~[commissioner]~~;
 - (c) The **secretary**~~[commissioner]~~ shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and
 - (d) After the **secretary**~~[commissioner]~~ has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (7) The administrative regulations shall provide:
 - (a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the

same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class;

1. The ~~secretary~~~~commissioner~~ shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The ~~secretary~~~~commissioner~~ shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;
 2. The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments on the basis of the availability of funds. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the department of any review and approval conducted under the provisions of this section;
- (b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the secretary of the Finance and Administration Cabinet. The plan shall take into account such factors as:
1. The relative levels of duties and responsibilities of various classes of positions;
 2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
 3. The state's financial resources.

Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;

- (c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly at least fifteen (15) days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio, and other media. The ~~secretary~~~~commissioner~~ shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The ~~secretary~~~~commissioner~~ shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;
- (d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the ~~secretary~~~~commissioner~~ for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;
- (e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the ~~secretary~~~~commissioner~~ in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;
- (f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;
- (g) For emergency employment for not more than thirty (30) working days with or without examination, with the consent of the ~~secretary~~~~commissioner~~;

- (h) For provisional employment without competitive examination when there is no appropriate eligible list available. No provisional employment shall continue longer than six (6) months, nor shall successive provisional appointment be allowed to the same position;
- (i) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);
- (j) For layoffs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;
- (k) For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility; and
- (l) For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.

Section 26. KRS 18A.111 is amended to read as follows:

- (1) Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. If the employee is separated from his position, he shall be notified in writing at least ten (10) working days prior to separation. A copy of the notification shall be forwarded to the ~~secretary~~~~commissioner~~. The employee shall be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.
- (2) An employee who satisfactorily completes the initial probationary period for the position to which he was initially appointed to the classified service shall be granted status and may not be demoted, disciplined, dismissed, or otherwise penalized, except as provided by the provisions of this chapter.
- (3) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise, as provided in KRS 18A.095.
- (4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period. Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.
- (5) An employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period.
- (6) A laid-off employee who accepts a bona fide written offer of appointment to a position shall not be required to serve an initial probationary period. Such an employee shall serve a promotional probationary period. He shall be an employee with status and shall have all rights and privileges granted employees with status under the provisions of this chapter.

Section 27. KRS 18A.112 is amended to read as follows:

- (1) Evaluations of employees shall comply with the provisions of this section.
- (2) Salary advancements, promotions, and demotions shall be determined by an employee's performance evaluation along with appropriate consideration to the factors contained in KRS 18A.0751(4)(f).
- (3) Evaluations shall be in writing. An evaluator shall present and explain all documentation affecting an employee's evaluation and shall discuss every aspect of his performance with the employee at each evaluation. The evaluator shall elicit the employee's opinions and suggestions and shall advise the employee of the measures needed to improve his performance.

- (4) Each full-time employee who has completed his initial probationary period, each part-time employee who works over one hundred (100) hours each month and who has completed his initial probationary period, and each federally funded time-limited employee who has completed six (6) months service shall be evaluated.
- (5)
 - (a) The first-line supervisor of an employee shall be his evaluator, providing he has supervised the employee for a period of at least ninety (90) calendar days;
 - (b) If the evaluator has supervised an employee for at least ninety (90) calendar days, and if he ceases to be the employee's first-line supervisor after such period of time, he shall evaluate the employee at least five (5) working days prior to the day he ceases to be the employee's supervisor;
 - (c) If the first-line supervisor ceases to be the supervisor of an employee due to the suspension, demotion, or dismissal of the first-line supervisor, paragraph (b) of this subsection shall not apply; and
 - (d) If the first-line supervisor ceases to be an employee's supervisor because the employee transfers, the first-line supervisor shall evaluate the employee prior to his transfer, provided he has supervised the employee no less than ninety (90) calendar days prior to notification of his transfer.
- (6) An employee's performance shall be evaluated in each of the following categories:
 - (a) Job knowledge and skills;
 - (b) Quality of work;
 - (c) Productivity;
 - (d) Employee conduct, provided that the requirements of KRS 18A.020 have been met; and
 - (e) Improvement in performance provided that the requirements of KRS 18A.020 have been met.
- (7) For each category, one (1) of the following ratings shall be given:
 - (a) Exceeds performance requirements;
 - (b) Meets performance requirements; or
 - (c) Fails to meet performance requirements.
- (8) The ratings provided for in subsection (7) of this section shall be determined as follows:
 - (a) "Exceeds performance requirements" means that an employee's performance exceeds the performance requirements established for the employee's job in all categories;
 - (b) "Meets performance requirements" means that an employee's performance neither exceeds performance requirements in all categories nor fails to meet performance requirements in all categories established for the employee's job; and
 - (c) "Fails to meet performance requirements" means that an employee has failed to meet the performance requirements established for the employee's job in all categories.
- (9) An employee who "exceeds performance requirements" shall be awarded a lump-sum payment of an amount to be determined by the ~~secretary~~~~commissioner~~ based upon the appropriation for performance increments provided by the General Assembly. The lump-sum payment shall not increase the base salary or wages of the employee.
- (10) Upon appointment to a position for which an evaluation is required by this section, and prior to the evaluation period, an evaluator shall:
 - (a) Identify the specific performance requirements established for an employee's job;
 - (b) Meet with the employee to inform him of these requirements and to discuss them with the employee; and
 - (c) Provide the employee with a written job description in sufficient detail to convey to the employee the specific performance requirements of his job, including, but not limited to, specific duties, time limits, reporting requirements, and required procedures.
- (11)
 - (a) At intervals of six (6) months and twelve (12) months after the procedure provided for in subsection (10) of this section, the evaluator shall:

1. Evaluate the employee's performance in writing;
 2. Assign a rating to each category and an overall rating to the employee's performance; and
 3. Discuss this evaluation with the employee; and
- (b) The final rating of the employee's performance shall be made after the two (2) evaluations provided for in paragraph (a) of this subsection.
- (12) (a) Within five (5) working days of an evaluation, an employee may request reconsideration of the evaluation by the evaluator.
- (b) Within five (5) working days of reconsideration, an employee may:
1. Submit a written response to any evaluation. The response shall be attached to the evaluation; and
 2. Submit a written request for reconsideration of any evaluation to his second-line supervisor.
- (c) No later than fifteen (15) working days after receipt of a request, the second-line supervisor shall inform the employee and the evaluator in writing of his decision after he has:
1. Obtained written statements from both the employee and the evaluator; or
 2. Met with the employee and the evaluator.
- (13) Within sixty (60) days after the employee has received the written decision of his second-line supervisor, he may appeal an evaluation to the board.
- (14) If an employee receives a "fails to meet performance requirements" rating in all categories on two (2) successive evaluations, he shall be:
- (a) Demoted to a position commensurate with his abilities; or
 - (b) Terminated.

Section 28. KRS 18A.113 is amended to read as follows:

- (1) It shall be unlawful to coerce employees who may be or who are subject to layoff to resign or retire in lieu of layoff. Dismissals shall comply with statutes relating thereto, and layoffs shall not be utilized as a method of dismissal.
- (2) In the same cabinet, county and job classification, provisional, temporary, emergency, federally funded time-limited, and probationary employees shall be laid off before permanent full-time or permanent part-time employees with status. For purposes of layoff, "probationary employee" does not include an employee with status serving a promotional probation. A cabinet shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.
- (3) If two (2) or more employees subject to layoff in a lay-off plan submitted to the ~~secretary~~~~[commissioner]~~ have the same qualifications, the employee with the lesser seniority shall be laid off first.
- (4) An employee who is laid off shall be placed on a reemployment register for the class of position from which he was laid off and for any class for which he is qualified. He shall have the right to test for any class of position for which he is qualified to take an examination. If he passes the examination, he shall be placed on the register for the class.
- (5) For a period of five (5) years, laid-off employees shall be hired before any applicant or eligible except another laid-off employee with greater seniority who is already on such register.
- (6) For a period of five (5) years, a laid-off employee shall not be removed from any register unless:
 - (a) He notifies the ~~cabinet~~~~[department]~~ in writing that he no longer desires consideration for a position on such register;
 - (b) He declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county, as the position from which he was laid off;

- (c) Without good cause, he fails to report for an interview after he has been notified in writing at least ten (10) calendar days prior to the date of the interview;
 - (d) He is unqualified for appointment;
 - (e) He is unable to perform the duties of the class;
 - (f) He has made a false statement of a material fact in his application;
 - (g) He has used or attempted to use political influence or bribery to secure an advantage in connection with his placement on the register;
 - (h) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;
 - (i) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;
 - (j) He cannot be located by postal authorities at the last address provided by him; or
 - (k) He has otherwise willfully violated the provisions of this chapter.
- (7) When the ~~*cabinet*~~ ~~(department)~~ is notified by an appointing authority that a laid-off employee has accepted a bona fide offer of appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same as or less than that of the class to which he has been appointed.
- (8) When a laid-off employee is removed from a register he shall be notified in writing and shall be notified of his right to appeal to the board under the provisions of KRS 18A.095.

Section 29. KRS 18A.1131 is amended to read as follows:

- (1) A layoff of a state employee with status in the executive branch due to the abolition of a position, lack of work or a material change in duties or organization shall comply with the provisions of this section.
- (2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a lay-off plan to the *secretary of the Personnel Cabinet* ~~(commissioner)~~ and *to* the secretary of the Finance and Administration Cabinet for their approval. Such plan shall contain the name of the employee and the reasons, in detail, for such layoff. Upon approval of the plan by *both secretaries* ~~(the commissioner and the secretary)~~, the employee shall be notified that he is subject to layoff, and of:
 - (a) The reason for the layoff;
 - (b) The procedures established by the provisions of KRS 18A.113 and this section for the layoff of employees; and
 - (c) The rights granted employees subject to layoff and to laid-off employees.
- (3)
 - (a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which he is qualified within the cabinet. Such position shall be located in the same county as the position from which the employee is subject to layoff;
 - (b) If such a vacancy does not exist, the employee shall be transferred to a vacant position within the cabinet for which he is qualified. Such position shall be located in the same county as the position from which the employee is subject to layoff; and
 - (c) If such a position is not available, the employee shall be notified of all vacant positions within the cabinet for which he is qualified to take an examination. The employee shall have the right to take an examination for any vacant position within the cabinet for which he is qualified. If he passes the examination, he shall be appointed to that position before any applicant or eligible on a register, except another laid-off employee with greater seniority already on such register.
- (4)
 - (a) If no position is available to an employee subject to layoff under the procedure established by subsection (3) of this section, the appointing authority shall notify the employee and the department; and
 - (b) The *Personnel Cabinet* ~~(department)~~ shall coordinate efforts to transfer an employee subject to layoff to another agency. It shall have the authority to transfer an employee subject to layoff under this section, with the approval of the appointing authority of the agency to which the employee is to be transferred.

- (5) If no position is available, the employee shall have the right to take an examination for any position for which he is qualified. If he passes the examination, he shall be hired before any applicant or eligible on a register, except a laid-off employee with greater seniority already on such register.
- (6) If no position is available to an employee subject to layoff under the procedure established by subsections (3) and (4) of this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

Section 30. KRS 18A.1132 is amended to read as follows:

- (1) Prior to a layoff of state employees in the executive branch, required by a projected or actual reduction in tax receipts contemplated under the provisions of subsections (1) and (6) of KRS 48.130, each cabinet shall prepare a lay-off plan that complies with the provisions of KRS 18A.113 and this section.
- (2) Each lay-off plan shall provide that a layoff of state employees shall occur only after all other cost saving measures are taken and have failed to alleviate the projected or actual deficit. These measures shall be specified in the plan, in detail, and shall include but not be limited to:
 - (a) A hiring freeze of all types of appointments;
 - (b) A reduction or delay of expenditures that would not prevent the provision of services required by law;
 - (c) Consolidation of offices and job duties that would not prevent the provision of services required by law;
 - (d) Transfer of funds as provided by the budget reduction plan enacted pursuant to KRS Chapter 48;
 - (e) Transfer of funds appropriated for or allotted to vacant positions as provided by the budget reduction plan provided for by KRS 48.130, unless it is certified that the positions are essential and cannot be filled in the period during which layoffs are to occur by transfer of existing employees of the appointing authority;
 - (f) The filling of vacancies and promotions from within the cabinet; and
 - (g) Transfers of employees within the cabinet as provided by KRS 18A.1131(3) and (4).
- (3) Each cabinet shall submit:
 - (a) Its lay-off plan; and
 - (b) A list of employees who would remain subject to layoff after the implementation of cost-saving measures;

to the *secretary of the Personnel Cabinet*~~commissioner~~ and to the secretary of the Finance and Administration Cabinet for review. Upon approval by the secretary *of the Finance and Administration Cabinet*, the lay-off plans shall be submitted to the Governor for approval.

- (4) Upon approval of the plan by the Governor, the *secretary*~~commissioner~~ shall attempt to transfer employees as provided by KRS 18A.1131(4)(b). Employees who cannot be so transferred may be laid off.
- (5) If no position is available to an employee subject to layoff under the procedures established by this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.
- (6) When the hiring freeze is ended, laid-off employees shall be hired before any applicant or eligible except laid-off employees already on such registers.

Section 31. KRS 18A.120 is amended to read as follows:

- (1) Except as hereinafter provided, all hiring for the classified service shall be on the basis of competitive examinations and certification by the *cabinet*~~department~~ in accordance with the provisions of KRS 18A.005 to 18A.200.
- (2) As of February 29, 1976, when an entity and its employees, either initially or subsequently, is brought into the state service, all employees of that entity required to be covered under the classified service shall be required to meet the minimum qualifications for the positions to which they are assigned and to satisfactorily complete a probationary period, except that in the discretion of the *secretary*~~commissioner~~ they shall not be required to take an examination. The *secretary*~~commissioner~~ shall equitably assign such employees within the salary

range of an appropriate pay grade. Upon the recommendation of the appointing authority, the ~~secretary~~~~[commissioner of personnel]~~ may authorize the credit of the amount of sick leave the employee had prior to being brought into state service. After completion of the initial probationary period employees employed under this statute shall be credited with the amount of service they had with this previous entity for accumulation of annual leave and other purposes of this chapter.

Section 32. KRS 18A.125 is amended to read as follows:

- (1) No disbursing or auditing officer of the Commonwealth shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified or unclassified service unless the payroll voucher or account of such pay bears the certification of the ~~secretary~~~~[commissioner]~~, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of KRS 18A.005 to 18A.200 and the rules, regulations, and orders thereunder. The ~~secretary~~~~[commissioner]~~ may for proper cause or upon order of the board withhold certification from an entire payroll or from any specific item or items thereon. The ~~secretary~~~~[commissioner]~~ may, however, provide that certification of payrolls may be made once every six (6) months, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without the further certification of the ~~secretary~~~~[commissioner]~~.
- (2) Any citizen, including public officers, may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of KRS 18A.005 to 18A.200, or of any rule, regulation or order thereunder. Any sum paid contrary to any provision of KRS 18A.005 to 18A.200 or of any rule, regulation, or order thereunder may be recovered in an action maintained by any citizen, from any officer who made, approved, or authorized such payment or who signed or countersigned a voucher, payroll check or warrant for such payment, or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the Treasury.
- (3) Any person appointed or employed in contravention of any provision of KRS 18A.005 to 18A.200 or of any rule, regulation, or order thereunder, who performs service for which he is not paid, may maintain an action against the officer or officers, employee or employees, who purported so to appoint or employ him, to recover the agreed pay for such services, or the reasonable value thereof if no pay was agreed upon. No such officer or employee shall be reimbursed by the Commonwealth at any time for any sum paid to such person on account of such services.
- (4) If the ~~secretary~~~~[commissioner]~~ wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in the Circuit Court in the county in which he resides to compel the ~~secretary~~~~[commissioner]~~ to certify such payroll voucher or account.

Section 33. KRS 18A.135 is amended to read as follows:

- (1) Any career employee who has been laid off or dismissed, other than for cause, and, in the case of an unclassified management employee, resignation other than resignation in lieu of dismissal for cause, shall automatically be placed on the reemployment list for the class from which he was terminated. If a career employee wishes to be on the reemployment list for other classes of positions for which he is qualified and passes the appropriate selection method, he shall notify the ~~cabinet~~~~[department]~~ in writing.
- (2) If more than one (1) career employee requests to be placed on the reemployment list for any job classification, the ~~cabinet~~~~[department]~~ shall list the names of such career employees in the order of their seniority.
- (3) No vacancy may be filled from a competitive register until all career employees on the reemployment list for that class of position have denied employment in that class. An appointing authority may refuse to reemploy a qualified employee on the reemployment list only for cause. The ~~secretary~~~~[commissioner]~~ and the employee shall be furnished with a written statement of the specific reasons for the refusal within ten (10) days following the appointing authority's refusal. The employee may appeal the appointing authority's action in accordance with KRS 18A.095 and 18A.100.

Section 34. KRS 18A.138 is amended to read as follows:

- (1) To ensure equal employment opportunity for all Kentuckians regardless of race, color, religion, national origin, disability, sex, or age, the affirmative action plan dated July 1, 1984, confirmed as part of Executive Order 84-549 continued in force by Executive Order 88-100, and incorporated herein by reference, shall be the official affirmative action plan for Kentucky state government. Copies of the plan, as well as the plans developed by

individual agencies pursuant to the state plan, shall be maintained on file and made available for inspection in the Office of the ~~Secretary~~~~Commissioner~~ of Personnel.

- (2) Every program cabinet, department, and agency of state government shall comply with the provisions of the affirmative action plan.
- (3) Equal employment opportunities shall be an integral part of each cabinet, department, and agency program, and any program evaluation shall include an assessment of equal opportunity performance.
- (4) The ~~secretary~~~~commissioner~~ of personnel shall be responsible for the implementation of the plan. In fulfilling his duties, he shall:
 - (a) Require all cabinets, departments, and agencies of state government to develop programs consistent with the plan;
 - (b) Provide any technical assistance he may deem appropriate to accomplish the purposes of the plan;
 - (c) Provide, through the ~~Department of~~ Personnel *Cabinet*, an annual analysis to ensure that persons protected by antidiscrimination laws are not adversely affected by examination and selection procedures;
 - (d) Provide for validation of examination procedures;
 - (e) Provide for procedures to monitor appointments and salary adjustments to ensure that standards are uniformly applied so as to prevent salary disparity;
 - (f) Report to the Governor semiannually on actions taken pursuant to the plan; and
 - (g) Review the plan on an annual basis and recommend necessary changes in consultation with the appropriate agencies.
- (5) The ~~secretary~~~~commissioner~~ of personnel may also:
 - (a) Promulgate administrative regulations in accordance with this chapter and KRS Chapter 13A to implement the affirmative action plan;
 - (b) Implement programs to ensure that reasonable accommodations exist for persons with disabilities to allow them better access to all employment opportunities in state government; and
 - (c) Appoint an affirmative action advisory committee to assist him in implementation of the affirmative action plan.

Section 35. KRS 18A.140 is amended to read as follows:

- (1) No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions or affiliations or ethnic origin or sex or disability. No person over the age of forty (40) shall be discriminated against because of age.
- (2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.
- (3) No employee in the classified service or member of the board or its executive director or ~~secretary~~~~commissioner~~ shall, directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any employee in the classified service.
- (4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may

be candidates for and occupy a town or school district office if the office is one for which no compensation, other than a per diem payment, is provided and the election is on a nonpartisan basis.

Section 36. KRS 18A.145 is amended to read as follows:

- (1) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under any provision of KRS 18A.005 to 18A.200 or in any manner commit or attempt to commit any fraud preventing the impartial execution of KRS 18A.005 to 18A.200 and the rules, regulations or orders thereunder.
- (2) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.
- (3) No employee of the ~~cabinet~~~~department~~, examiner, or other person shall defeat, deceive, or obstruct any person in his right to examination, eligibility, certification, or appointment under KRS 18A.005 to 18A.200, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.
- (4) No person shall make any false statement, record or report regarding hours, days, or other time worked by any employee. No person shall falsely prepare any payroll document or record relating to the pay for any employee.

Section 37. KRS 18A.150 is amended to read as follows:

- (1) Any honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment, shall have five (5) points added to his entrance examination score for classified positions. Any Kentucky National Guard member, or a former member of the Kentucky National Guard who has been honorably discharged, shall be entitled to the same number of points.
- (2) Any honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment, whom the Veterans Administration or any branch of the Armed Forces of the United States determines has service-connected disabilities, shall have ten (10) points added to his entrance examination score for a classified position.
- (3) The spouse of an honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment who would be eligible for a ten (10) point preference, and whose service-connected disability disqualifies him for positions along the general line of his usual occupation shall have ten (10) preference points added to his entrance examination score for a classified position. In such a case, the spouse loses the right to preference if the disabled war veteran recovers.
- (4) Until remarriage, the surviving spouse of an honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment, shall have ten (10) preference points added to his entrance examination score for a classified position. This includes the surviving spouse of any military personnel who died while in the Armed Forces, unless circumstances surrounding the death would have been cause for other than honorable discharge separation.
- (5) A parent totally or partially dependent on a soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment, and who lost his life under honorable conditions while on active duty or active duty for training purposes, or who became permanently and totally disabled as a result of a service-connected disability, shall have ten (10) preference points added to his examination score for a classified position.
- (6) The preference points granted by subsections (1) through (5) of this section shall be added to entrance examination scores for classified positions only if the score is determined by the ~~secretary~~~~commissioner~~ to be a passing score and after verification of the required service. The total of the entrance examination score and the preference points shall not exceed one hundred (100).

Section 38. KRS 18A.155 is amended to read as follows:

- (1) The ~~secretary~~~~commissioner~~ shall prepare and submit proposed administrative regulations to the Governor for employees in unclassified positions enumerated in paragraphs (g), (h), (i), (j), (k), (p), (u), and (v) of subsection (1) of KRS 18A.115. Such administrative regulations shall become effective after approval by the Governor and promulgation in accordance with KRS Chapters 12 and 13A. The administrative regulations shall provide:
- (a) For the preparation, maintenance and revision of a position classification plan for all aforementioned positions in the unclassified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. After such classification plan has been approved by the Governor, the ~~secretary~~~~commissioner~~ shall allocate the positions of every employee in the unclassified service to one (1) of the classes of the plan. Any employee affected by the allocation of a position to a class shall, after filing with the ~~secretary~~~~commissioner~~ a written request for reconsideration thereof in such manner and form as the ~~secretary~~~~commissioner~~ may prescribe, be given a reasonable opportunity to be heard thereon by the ~~secretary~~~~commissioner~~;
 - (b) For a pay plan for all aforementioned employees in the unclassified service, after consultation with appointing authorities and the secretary of Finance and Administration, and taking into account such factors as:
 1. The relative levels of duties and responsibilities of various classes of positions;
 2. Rates paid for comparable positions elsewhere; and
 3. The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the ~~secretary~~~~commissioner~~ through the secretary of Finance and Administration. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed;

- (c) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;
 - (d) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided in subsection (1) of this section;
 - (e) For the development and operation of programs to improve the work effectiveness and morale of employees in the unclassified service, including training, safety, health, welfare, counseling, recreation, and employee relations; and
 - (f) For such other rules and administrative regulations, not inconsistent with KRS 18A.005 to 18A.200, as may be proper and necessary for its enforcement.
- (2) Nothing herein shall be construed to preclude the optional use of administrative regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.115 and on behalf of members of state boards and commissions who work on a full-time, salaried basis.

Section 39. KRS 18A.160 is amended to read as follows:

- (1) All office space, property and equipment including, but not limited to, desks, office supplies, typewriters, machinery and implements utilized at hearings and in recording and processing transcripts and other work of the board, heretofore used by the board, shall become the property of the board.
- (2) All officers and employees of the Commonwealth and of all its municipalities and political subdivisions shall allow the ~~cabinet~~~~department~~ and the board the reasonable use of public buildings under their control, and furnish heat, light and furniture for any examination, hearing, or investigation authorized by KRS 18A.005 to 18A.200. The ~~cabinet~~~~department~~ and the board as appropriate shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

Section 40. KRS 18A.165 is amended to read as follows:

- (1) All officers and employees of the Commonwealth shall comply with, and aid in all proper ways in carrying out, the provisions of KRS 18A.005 to 18A.200 and the rules, regulations, and orders of the board thereunder. All

officers and employees shall furnish any records or information pertaining to the administration of KRS 18A.005 to 18A.200 which the ~~secretary~~~~commissioner~~ or the board may request. The ~~secretary~~~~commissioner~~ or the board may require the Attorney General to institute and maintain such legal action as the ~~secretary~~~~commissioner~~ or the board may consider necessary or appropriate to secure compliance with KRS 18A.005 to 18A.200 and the rules and orders thereunder.

- (2) The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the ~~cabinet~~~~department~~ and the board of any review and approval conducted under the provisions of this section.

Section 41. KRS 18A.180 is amended to read as follows:

- (1) Subject to the approval of the board, the ~~secretary~~~~commissioner~~ may enter into agreements with any municipality or other political subdivision of the Commonwealth to furnish services and facilities of the ~~cabinet~~~~department~~ to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the ~~cabinet~~~~department~~, under contract, of the reasonable cost of the services and facilities furnished, as determined by the ~~secretary~~~~commissioner~~. All municipalities and political subdivisions of the Commonwealth are hereby authorized to enter into such agreements.
- (2) The ~~secretary~~~~commissioner~~ may cooperate with the governmental agencies of other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of KRS 18A.005 to 18A.200.
- (3) The ~~secretary~~~~commissioner~~ may, upon the request of the secretary of the Cabinet for Human Resources and upon the approval of the board, furnish merit system services to "local" departments of health.

Section 42. KRS 18A.197 is amended to read as follows:

- (1) The Commonwealth of Kentucky leave sharing program is created. An employee who has accrued a sick leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his sick leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his sick leave balance to less than seventy-five (75) hours.
- (2) An appointing authority, with the approval of the ~~secretary~~~~commissioner~~ of personnel, may permit an employee of the agency to receive leave under this section if:
 - (a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;
 - (b) The employee's need for absence and use of leave are certified by a licensed practicing physician;
 - (c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances; and
 - (d) The employee has complied with administrative regulations governing the use of sick leave.
- (3) The appointing authority, with the approval of the ~~secretary~~~~commissioner~~ of personnel, shall determine the amount of leave, if any, which an employee within his agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.
- (4) Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the ~~secretary~~~~commissioner~~ of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The ~~Department of~~ Personnel **Cabinet** shall maintain records of leave transferred between employees and the utilization of transferred leave.
- (5) While an employee is on leave transferred under this section, he shall be deemed a state employee and shall receive the same treatment with respect to salary, wages and employee benefits.

- (6) All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.
- (7) Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.
- (8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.
- (9) The ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet** shall promulgate procedural administrative regulations to implement the provisions of this section.

Section 43. KRS 18A.202 is amended to read as follows:

The ~~secretary~~~~commissioner~~ is authorized to install and implement by administrative regulation work-related incentive programs for state employees. Such programs may include, but need not be limited to, an employee suggestion system whereby employees in the classified service may be recognized and rewarded for submitting suggestions that result in the improvement of state service or in the realization of financial savings by the state. Such programs may provide that when an employee suggestion has been adopted and resulted in a financial savings to the state, the employee who submitted the suggestion may be compensated for his service through a cash bonus in an amount to the lesser of ten percent (10%) of the amount saved or two thousand five hundred dollars (\$2,500).

Section 44. KRS 18A.205 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the ~~secretary~~~~commissioner~~, may procure from one (1) or more life insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all or any class or classes of state employees. The policy or policies shall be approved by the commissioner of insurance and may contain such provisions as he approves whether or not otherwise permitted by the insurance laws. It is intended that life insurance may be made available for state employees, except that the procuring is permissive.
- (2) The term "state employee," for purposes of KRS 18A.205 to 18A.215, shall mean a person who is regularly employed by any department, board, agency, or branch of state government, and who is also a contributing member of any one (1) of the retirement systems administered by the state; provided, however, that any federally funded time-limited employee may receive insurance coverage.
- (3) The term "premiums," for the purposes of KRS 18A.205 to 18A.225, shall mean premiums to be paid on any type of insurance authorized under KRS 18A.205 to 18A.225.

Section 45. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and
 - (b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state and including any federally-funded time-limited employee. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who

either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287.

- (2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the ~~secretary~~~~commissioner~~ of ~~the~~ Personnel **Cabinet**, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the insurance or health maintenance organization coverage is provided or made available shall annually be given an option to elect either standard insurance coverage or coverage by a health maintenance organization; if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either insurance or health maintenance organization coverage may be made available for state employees, except that the procuring of each is permissive.
- (3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the **secretary of the Personnel Cabinet**~~commissioner of personnel~~, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.
- (4) The premiums may be paid by the policyholder:
 - (a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or
 - (c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other insurance coverage shall be paid by the employee.
- (5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer.

- (6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.
- (7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.
- (8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.
- (9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.
- (10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.
- (12) The ~~secretary~~~~commissioner of personnel~~ shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the ~~secretary~~~~commissioner~~ or his designee regarding the state health insurance program for state employees. The ~~secretary~~~~commissioner~~ shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The ~~secretary~~~~commissioner~~ shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.
- (13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.

Section 46. KRS 18A.227 is amended to read as follows:

- (1) For purposes of this section, the following definitions shall apply:
 - (a) "Cafeteria plan" shall mean a flexible benefits plan which meets the requirements of Section 125 of the federal Internal Revenue Code;
 - (b) "Employee" shall mean a person, including an elected public official, who is regularly employed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government, and who is a contributing member to any one (1) of the retirement systems administered by the state, and including a federally funded time-limited employee;
 - (c) "~~Cabinet~~~~Department~~" shall mean the ~~Department of~~ Personnel **Cabinet**;
 - (d) "Change in family status" shall have the same meaning as used in Section 125 of the Internal Revenue Code and regulations promulgated thereunder; and

- (e) "Salary reduction contribution" means all employer contributions that are excludable from gross income under the Internal Revenue Code.
- (2) As part of the employee benefits provided to state employees under this chapter, the ~~cabinet~~~~department~~ may develop and make available to eligible employees a flexible benefits plan which meets the requirements for treatment as a cafeteria plan under Section 125 of the Internal Revenue Code. The plan shall be in writing and shall be available on an equal basis to all eligible employees within each county.
- (3) Options available under the plan may include, but are not limited:
 - (a) Health care coverage;
 - (b) Health maintenance organization coverage;
 - (c) Catastrophic illness coverage;
 - (d) Dental insurance;
 - (e) Term life insurance-accidental, death, or dismemberment;
 - (f) Vision insurance;
 - (g) Long term disability insurance;
 - (h) Long term medical care; and
 - (i) Any other benefits which may be offered under the provisions of the Internal Revenue Code and which the ~~cabinet~~~~department~~ determines to be in the best interests of state employees.
- (4) Any employee who desires to participate in options offered under the plan, may direct that any options elected shall be funded through payroll deduction. The election shall be made in writing; and once an option is chosen, it shall not be changed until the end of the period for which election is made unless the employee experiences a change in family status which necessitates a revision of his benefit election.
- (5) Any employee contributions required toward the purchase of the selected options shall be made by a salary reduction contribution, to the extent the benefits would be considered to be tax-free under Chapter 1 of the Internal Revenue Code, and by after-tax salary deduction where the elected option is not tax-free.

Section 47. KRS 18A.2281 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 18A.225, the ~~Department of~~ Personnel **Cabinet** may establish a state employee benefit fund to provide for self-insurance of all risk in the provision of benefits comparable to those that may be paid under a policy or contract procured by the secretary of the Finance and Administration Cabinet as provided in KRS 18A.225(2) or 18A.2251. All moneys remaining in this fund at the end of the fiscal year, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account, shall not lapse, and shall be continuously appropriated only for the purposes specified in this section.
- (2) Benefits provided under this section include, but are not limited to, hospitalization, surgical care, and major medical care for state employees and their dependents.
- (3) The contributions made to the benefit fund may be paid:
 - (a) Wholly from funds contributed by the covered employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by the state or department, board, or agency; or
 - (c) Partly from each, except that any amount due over that contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for coverage shall be paid by the employee.
- (4) No contribution by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for purposes of any statute fixing or limiting the compensation of such employee. Any expense incurred by the state or department, board, or agency shall be considered a proper cost of administration.
- (5) The self-funded plan may contain provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of

eligibility, continuation of insurance or coverage after retirement, and other provisions as the ~~Department of~~ Personnel **Cabinet** may approve.

- (6) Group rates under the health care coverage provided under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

Section 48. KRS 18A.2282 is amended to read as follows:

- (1) The state employee benefit fund shall be under the custody and supervision of the ~~Department of~~ Personnel **Cabinet**. The ~~cabinet~~ ~~department~~ shall be responsible for all moneys coming into, and paid out of, the fund in accordance with this section, and shall ensure that the fund is actuarially sound.
- (2) In carrying out its duties and responsibilities, the ~~Department of~~ Personnel **Cabinet** shall:
- (a) Adopt rules with regard to the administration of the state employee benefit fund;
 - (b) Adopt rules governing the conditions under which an employee may participate in or withdraw from the fund, and the procedure by which an employee is to contribute to the fund;
 - (c) Adopt rules to ensure that the fund is actuarially sound;
 - (d) Adopt rules to ensure the integrity of the fund, and to ensure that the fund be used solely for the purposes specified in this section;
 - (e) Purchase conversion insurance, reinsurance or excess insurance as deemed appropriate; and
 - (f) Contract, when advisable, with health providers for services as may best serve the interest of the fund.
- (3) Amounts withheld from employees, amounts contributed by the state or from federal funds, and all amounts contributed by any state authority, shall be credited to and constitute a part of the state employee benefit fund. All other income, including the income derived from any dividends and distributions, and interest earned, shall also be credited to and constitute part of the fund. Any amounts remaining in the fund after all the premiums or subscription charges, and other expenses have been paid, shall be retained in the fund as a special reserve for adverse fluctuation.
- (4) (a) The State Treasurer, with approval of every investment by the Finance and Administration Cabinet, may invest the state employee benefit fund in:
1. Obligations of the United States government, its agencies, and Kentucky cities of the first, second, third and fourth classes;
 2. Warrants issued on the State Treasurer;
 3. State bonds, including bridge revenue bonds issued under KRS 180.010 to 180.250;
 4. Bonds or other evidences of indebtedness of any domestic corporation that is an agent or instrumentality of the state or of any city, county or school district of the state, secured by a mortgage on real estate in Kentucky that has been conveyed to the corporation by any city, county, school district or state educational institution, and which the corporation has leased and given the option to lease to the city, county, school district, or state educational institution, with option in the lessee to purchase the property, or an interest therein, on the payment of the aggregate sum of the bond issue, plus the expenses incident to the issuance of the bonds and the formation and dissolution of the corporation, subject to credit of the amounts paid as rental for such property; and
 5. School bonds issued by cities under KRS 162.120 to 162.290.
- (b) The Finance and Administration Cabinet shall not approve investments on which there has ever been a default in payment of principal or interest preceding the date of acceptance by the State Treasurer.
 - (c) All income derived from the investments shall accrue to the fund.
 - (d) Any necessary and reasonable cost incurred by the State Treasurer in administering this program shall be charged against the fund.

- (5) (a) The ~~Department of~~ Personnel **Cabinet** shall file annually, by the first day of October, a complete report of its operations for the preceding calendar year conducted pursuant to this section, with the Governor, the General Assembly, and the State Auditor of Public Accounts. The financial information required by this section shall be verified by the auditor of public accounts as provided in KRS 43.050.
- (b) The report shall include a detailed financial statement of the fund and the expenses incurred pursuant to this section so that the cost of the fund established under this section can be determined and identified. The report shall include, but not be limited to, the following information concerning the fund:
1. Assets and liabilities;
 2. Income and expenditures;
 3. Benefits paid and reserves for losses incurred but not yet paid, including potential losses and unreported losses;
 4. Cost of any excess insurance, conversion coverage, reinsurance, or of any other kind of insurance obtained to cover potential losses, or provide supplemental benefits;
 5. Direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.
- (c) The report shall also contain the following information:
1. The actuarial report for the preceding calendar year and any other studies or evaluations prepared in the preceding year pursuant to subsection (6) of this section;
 2. A description of the benefits provided by the fund and the number of state employees covered under the fund;
 3. The rights of state employees who terminate their employment and the extent of benefits or coverages thereafter available to those persons and their dependents; and
 4. Any other information which is relevant in order to make full, fair, and effective disclosure of the operations of the fund conducted pursuant to this section.
- (6) The ~~Department of~~ Personnel **Cabinet** shall have prepared every year, by a competent actuary familiar with health insurance, a report showing a complete actuarial evaluation of the fund and the adequacy of the rates of contribution, which report shall contain such recommendations as the actuary considers advisable. The department may at any time request the actuary to make any studies or evaluations to determine the adequacy of the rates of contribution, and such rates may be adjusted by the department, as recommended by the actuary, effective as of the first of any fiscal year thereafter.

Section 49. KRS 18A.2284 is amended to read as follows:

The ~~Department of~~ Personnel **Cabinet** shall determine the date on which the self-funded health plan option shall be made available to state employees. The date of the initial enrollment period shall be within a reasonable time after July 15, 1988.

Section 50. KRS 18A.245 is amended to read as follows:

- (1) The ~~authority system~~ shall be administered by a board of trustees composed of ~~seven (7)~~ **four (4)** members, who shall be as follows:
- (a) Secretary, Finance and Administration Cabinet, ex officio;
 - (b) ~~Secretary~~ **Commissioner** of personnel, ex officio;
 - (c) **The state controller, ex officio; and**
 - (d) **Four (4) at-large members appointed by the Governor, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall be a representative of a non-state government employer** ~~Two (2) members appointed by the Governor of the Commonwealth. Of these two (2) members, it is recommended that one (1) be the general manager of Kentucky retirement systems~~.
- (2) The members of the board appointed by the Governor shall serve for a period of four (4) years and the ex officio members of the board shall serve only for the period of their term of office.

- (3) Any vacancy which may occur shall be filled in the same manner provided for the selection of the particular member for a full term. Vacancies shall be filled for the unexpired term only.
- (4) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony, or of a misdemeanor involving moral turpitude.
- (5) Board members who do not otherwise receive a salary or compensation from the State Treasury shall receive a per diem of forty-five dollars (\$45) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards applicable to state employees.
- (6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chairman. It shall elect a chairman and a vice chairman. A majority of the members shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the members present.
- (7) The ~~Department of~~ Personnel **Cabinet** shall perform the administrative functions of the board, which shall be attached to the ~~cabinet~~ ~~department~~ for purposes of administration **only**. The board may, but is not limited to the following actions:
 - (a) Appoint such employees as it deems necessary and fix the compensation for all employees of the board, subject to the approval of the *secretary*. ***The executive director of the authority and employees appointed by the board shall serve at its will and pleasure. All other staff of the authority shall be employed under KRS 18A.005 to 18A.200***~~commissioner~~;
 - (b) Require such employees as it thinks proper to execute bonds for the faithful performance of their duties;
 - (c) Establish a system of accounting;
 - (d) Contract for such services as may be necessary for the operation or administration of deferred compensation plans authorized in KRS 18A.230 to 18A.275, including annual audits;
 - (e) Do all things, take all actions, ***and adopt plans for participation consistent with federal requirements*** and ~~make all rules and administrative regulations, not inconsistent~~ with the provisions of KRS 18A.230 to 18A.275.
- ~~(8) All employees of said board shall serve during its will and pleasure.~~
- ~~(9)~~ The Attorney General, or an assistant designated by him, may act as legal adviser and attorney for the board. The board may also appoint legal counsel in accordance with KRS Chapter 12.
- ~~(9)~~~~(10)~~ The board shall prepare an annual financial report showing all receipts, disbursements, assets, and liabilities and shall submit a copy to the Governor and the Legislative Research Commission. All board meetings and records shall be open for inspection by the public.

Section 51. KRS 18A.250 is amended to read as follows:

- (1) ***The authority***~~Subject to the approval of the board of trustees of the Kentucky State Public Employees Deferred Compensation System, the Department of Personnel~~ shall establish and maintain a deferred compensation plan for the employees of the State of Kentucky. Participation in such plan shall be by a specific written agreement between such employees and the ***authority***~~state~~ and shall provide for the deferral of such amount of compensation as requested by the employee. Participating employees must authorize that such deductions be made from their wages for the purpose of participation in such program. Amounts so deducted shall be deposited in the State Treasury to the credit of the trust fund.
- (2) The board is directed to develop and obtain, for the benefit of employees, a qualified employee plan that includes a qualified cash or deferred arrangement as described in Section 401(K)(2) of the Internal Revenue Code. The board is directed to develop a program for participants to borrow from their account or accounts in the plan. The plan shall be in addition to other plans offered by the board, and shall be offered to employees upon receipt of appropriate approval of the Internal Revenue Service or on January 1, 1985, whichever occurs later.

Section 52. KRS 18A.375 is amended to read as follows:

- (1) There is hereby established a state employee workers' compensation fund which shall be administered by the *Personnel Cabinet's Division of Employee Benefits* ~~[Department of Personnel's Division of Benefits Administration]~~. The purpose of this fund shall be to self-insure workers' compensation benefits for state employees.
- (2) All moneys contributed by participants of the fund, or derived from federal funds, shall be credited to and constitute a part of the state employee workers' compensation fund.
- (3) The State Treasurer, with the approval of the Finance and Administration Cabinet, may invest the state employee benefit workers' compensation fund. Any income derived from these investments, or dividends, shall be credited to and become a part of the general fund. Any moneys remaining in the fund after all claims, premiums or subscription charges, and other expenses have been paid, shall be retained in the fund. All moneys remaining in the state employee workers' compensation fund on July 1, or deposited thereafter, shall be deemed a trust and agency account and shall not lapse, but shall be continuously appropriated only for the purposes specified in KRS 18A.375 to 18A.385.

Section 53. KRS 18A.380 is amended to read as follows:

The ~~[Department of]~~ Personnel *Cabinet* shall promulgate administrative regulations necessary for the administration of the state employee workers' compensation fund established by KRS 18A.375, the actuarial soundness of the fund, the integrity of the fund, the purchase of reinsurance or excess insurance, and the expenditure of moneys from the fund.

Section 54. KRS 18A.385 is amended to read as follows:

At least every two (2) years, the ~~[Department of]~~ Personnel *Cabinet* shall have an actuary familiar with workers' compensation insurance prepare an actuarial analysis of the state employee workers' compensation fund established by KRS 18A.375 and make any recommendation that he deems appropriate. The department may, at any time, request an actuary to evaluate the adequacy of the rates of contribution. These rates may be adjusted if the adjustment is recommended by the actuary.

Section 55. KRS 18A.405 is amended to read as follows:

- (1) There is created a Personnel Steering Committee which shall be attached to the Finance and Administration Cabinet for administrative purposes. The ~~[Department of]~~ Personnel *Cabinet* shall provide technical assistance and support services to the committee.
- (2) The membership of the Personnel Steering Committee shall be appointed by the Governor and shall consist of:
 - (a) Two (2) members from the Governor's Commission on Quality and Efficiency established by Executive Order 93-282. At least one (1) of these members shall also be a member of the Career Service System Task Force created by Executive Order 93-1139;
 - (b) Two (2) members from private industry, at least one of whom shall also be a member of Career Service System Task Force;
 - (c) One (1) employee with status who has at least ten (10) years of experience in an Executive Department agency other than the ~~[Department of]~~ Personnel *Cabinet*;
 - (d) One (1) employee with status in a management classification in an Executive Department agency other than the ~~[Department of]~~ Personnel *Cabinet*;
 - (e) Two (2) ~~[Department of]~~ Personnel *Cabinet* employees with status who have personnel system experience; and
 - (f) One (1) member who is either a member of the Personnel Board, or a member of its staff.
- (3) No less than four (4) nor more than six (6) of the persons appointed to serve on the Personnel Steering Committee shall be employees with status under this chapter.
- (4) The employees with status under this chapter who are appointed to the Personnel Steering Committee shall be appointed by the Governor from lists provided by state employee organizations as set forth in this subsection. Any state employee organization having at least two hundred fifty (250) members as of January 1, 1994, may submit the names of two (2) employees with status to the Governor on or before fifteen (15) days after July 15, 1994. The Governor shall select the appointees from a list that is comprised of names of employees submitted

by all of the state employee organizations as provided by this subsection which have been compiled into a single list.

- (5) The committee's chairman shall be elected by and from the members of the committee for a one (1) year term at the first meeting of the committee and annually thereafter.
- (6) If they are not reimbursed by a state agency in which they are employed, Personnel Steering Committee members shall be reimbursed for travel to meetings at the established state rate for travel expenses from the budget of the Finance and Administration Cabinet.

Section 56. KRS 18A.420 is amended to read as follows:

Within thirty (30) days of July 15, 1994, the Personnel Steering Committee shall begin accepting applications for pilot personnel programs from organization units within eligible Executive Department agencies. Prior to final approval of a pilot program, the committee shall consult with the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet**. After consulting with the ~~secretary~~~~commissioner~~, the committee shall make its final selections and report them to the Career Service System Task Force. Upon notification by the steering committee, the ~~secretary~~~~commissioner of the Department of Personnel~~ shall take any administrative action deemed necessary to accomplish the implementation of the selected programs.

Section 57. KRS 18A.435 is amended to read as follows:

An employee in a pilot program may submit a request to the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet** for transfer to another state position if a vacancy in that position exists. The ~~secretary~~~~commissioner~~ shall make every effort to accommodate this request.

Section 58. KRS 32.031 is amended to read as follows:

Each Circuit Judge may employ a secretary. The secretary shall be appointed by and shall hold office at the pleasure of the judge. The salary for the secretary, payable out of the State Treasury, shall be commensurate with the secretary's education, training and experience based upon the guidelines established by the classification and compensation plan for comparable positions maintained by the state ~~Department of~~ Personnel **Cabinet** pursuant to KRS 64.640. Persons employed as secretaries to Circuit Judges shall be members of the Kentucky Employees Retirement System in accordance with the provisions of KRS 61.510 to 61.692.

Section 59. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:
 - (a) The **secretary of the Personnel Cabinet**~~commissioner of personnel~~ shall serve as trustee for as long as he occupies the position of ~~secretary~~~~commissioner~~ under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
 - (b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
 - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
 - (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
 - (e) Three (3) trustees, appointed by the Governor of the Commonwealth, one (1) of whom shall be knowledgeable about the impact of pension requirements on local governments.
- (2) The board is hereby granted the powers and privileges of a corporation, including, but not limited to, the following powers:
 - (a) To sue and be sued in its corporate name;
 - (b) To make bylaws not inconsistent with the law;
 - (c) To conduct the business and promote the purposes for which it was formed;

- (d) To contract for investment counseling, actuarial, auditing, and other professional services as its statutory purpose may require;
 - (e) To purchase fiduciary liability insurance;
 - (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage any such property as its purpose may require, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
 - (g) The board shall reimburse any trustee or officer for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3) (a) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board;
- (b) The trustee to be elected by the members of the County Employees Retirement System who replaces the Attorney General on the board shall have an initial term expiring on March 31, 1977, and nominations for this position and the election process shall take place within ninety (90) days after March 26, 1974, with the Attorney General serving until the elected member has been duly qualified and administered the oath of office;
- (c) The term of office of the trustee elected by the membership of the Kentucky Employees Retirement System which now expires on December 10, 1975, shall be succeeded by a term expiring on March 31, 1978.
- (4) (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board shall nominate, not less than six (6) months before a term of office of a trustee is due to expire, at least three (3) constitutionally-eligible individuals;
- (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the general manager, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members;
- (c) Within three (3) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the general manager shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes;
- (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address;
- (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected;
- (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall record his Social Security number, sign, and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot;
- (g) The board's contracted auditing firm shall report in writing the outcome to the chairman of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the *secretary of the Personnel Cabinet*~~commissioner of personnel~~ resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on

- the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of sixty dollars (\$60) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chairman or the general manager. It shall elect a chairman and a vice chairman. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) The board shall:
- (a) Appoint or contract for the services of a general manager and fix his compensation without limitation by the provisions of KRS Chapter 18A and KRS 64.640. The general manager shall be the chief administrative officer of the board;
- (b) Authorize the general manager to appoint the employees he deems necessary. Appointees deemed to be in a policy making position shall be unclassified and their salaries shall be determined by the board. Other appointees shall be subject to the personnel classification system and salaries shall be subject to the *secretary of the Personnel Cabinet*~~{commissioner of personnel}~~;
- (c) Require the general manager and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62;
- (d) Establish a system of accounting;
- (e) Expend funds for goods and services pursuant to the provisions of KRS Chapter 45A as they apply to state agencies, but if the board designates an emergency by letter to the secretary of the Finance and Administration Cabinet, the secretary shall within thirty (30) days of submission approve or reject a proposed personal service contract submitted to him by the board pursuant to KRS 45A.045. If the secretary rejects the proposed contract, he shall provide a detailed written statement of his reasons therefor. If the secretary fails or refuses to act within the thirty (30) day period, the proposed contract shall be deemed approved without further action pursuant to KRS 45A.045; and
- (f) Do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852, necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 conform with federal statute or regulation. Provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 which conflict with federal statute or regulation shall not be available to the member. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation.
- (10) All employees of the board shall serve during its will and pleasure.
- (11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and shall receive the agenda, board minutes, and other information distributed to trustees of the board. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12.
- (12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member,

retiree, or beneficiary in the office of the general manager of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.

- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system, including investment related expenditures, shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.
- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15) (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
1. In good faith;
 2. On an informed basis; and
 3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.
- (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
 2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
 3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
- (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (c) of this section unwarranted.
- (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
 2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraphs (e)1. and (e)2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
- (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.

Section 60. KRS 41.165 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 337.010 through 337.070 and 41.160, the Treasurer shall pay, by electronic fund transfer, the wages of any state employee who makes a prior written request to the Department of the Treasury to be paid by electronic fund transfer. The Treasurer may refuse to comply with the request of an employee if the financial institution designated by the employee does not have the capability of receiving electronic transfers of funds.
- (2) The ~~Department of~~ Personnel **Cabinet** shall provide forms on which to request wage payments by electronic transfer of funds. The ~~Department of~~ Personnel **Cabinet** may, by regulations promulgated pursuant to KRS Chapter 13A, require information on the request forms for wage payment by electronic transfer of funds that sufficiently identifies the employee and the designated financial institution of the employee.
- (3) Any state agencies which employ persons who have exercised the option authorized by subsection (1) of this section shall retain the forms described in subsection (2) of this section.

Section 61. KRS 41.360 is amended to read as follows:

- (1) Where any officer or employee of the state government or of any agency of the state government has authorized the State Treasurer to deduct from his compensation as such officer or employee a sum or sums for the purchase of United States Series E savings bonds, and thereafter, for any cause, has departed from such office or employment leaving unclaimed in the hands of the State Treasurer a sum arising from such deduction not equal to the amount for which such a bond may be purchased, the State Treasurer shall, within ninety (90) days after the date of the last deduction, mail to such officer or employee, at his last-known address as shown on the records of the ~~Department of~~ Personnel **Cabinet**, a notice stating the sum held by the State Treasurer for such officer or employee, and requesting that he make claim for the same within six (6) months thereafter. A duplicate of such notice, addressed to the officer or employee, shall at the same time be delivered to the state agency of which the person was an officer or employee. If, at the expiration of six (6) months from the date of mailing the letter, the officer or employee has not made claim for the sum due him, the sum shall, as of July 1 following the expiration of such six-months' period, be presumed abandoned.
- (2) On or before September 1 of each year the State Treasurer shall report to the Revenue Cabinet, in duplicate, a list of the sums presumed to be abandoned as of the preceding July 1, giving the name of the officer or employee and his last-known address. The Revenue Cabinet shall cause the report to be posted and published as provided in KRS 393.110. If, by November 15 following such posting and publication, the sums involved have not been claimed, the State Treasurer shall place the sums to the credit of the general fund in the State Treasury and shall report that fact to the Revenue Cabinet. Thereafter such sums shall have the same status as other property turned over to the Revenue Cabinet as provided in KRS 393.110, and the rights of any person to make claim for the same shall rest upon the same principles as the rights of other claimants of property presumed to be abandoned under the provisions of KRS Chapter 393.

Section 62. KRS 42.0245 is amended to read as follows:

- (1) There is established within the Department for Administration in the Finance and Administration Cabinet the Division of Risk Management. The division shall be headed by a director who shall be appointed by the secretary of the Finance and Administration Cabinet subject to the approval of the Governor.
- (2) The Division of Risk Management shall:
 - (a) Oversee and assist the management of the state fire and tornado insurance fund established in KRS Chapter 56;
 - (b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the state fire and tornado insurance fund;
 - (c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees, including, but not limited to, assisting and monitoring the development of a program of health care self-insurance for state employees as authorized under KRS 18A.2281 and 18A.2282;
 - (d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;
 - (e) Develop financing techniques for risk protection; and

- (f) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the office to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.
- (3) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Division of *Employee* Benefits~~Administration~~ within the ~~Department of~~ Personnel *Cabinet* and of the State Risk and Insurance Services programs administered by the Department of Insurance. However, both of those departments shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the Division of Risk Management.
- (4) All cabinets, departments, boards, commissions, and other state agencies shall provide to the Division of Risk Management the technical advice and other assistance the Division of Risk Management or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the division as described in this section.
- (5) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management program for the executive branch of state government. Any administrative regulations promulgated by the secretary shall be administered by the Division of Risk Management.

Section 63. KRS 43.030 is amended to read as follows:

- (1) The Auditor shall appoint for the duration of his own term, subject to removal by him at any time, one (1) assistant auditor of public accounts, who shall be a certified public accountant and who has been a citizen and resident of the state for at least two (2) years. The assistant auditor shall have direct supervision over all technical work and technical assistants, and shall otherwise aid the Auditor in the performance of his duties. If the Auditor is absent or is rendered incapable of performing his duties, or if a vacancy in the office occurs, the assistant auditor shall perform the duties of Auditor until the necessity therefor ceases to exist. He shall take the constitutional oath.
- (2) The Auditor may employ other subordinate personnel subject to the provisions of KRS 12.060. All employees engaged in auditing or investigations shall possess a minimum of a four (4) year college degree and no less than ninety percent (90%) of the professional staff shall have twenty (20) semester hours or thirty (30) quarter hours of accounting, or alternately, shall be a certified public accountant. Not more than two (2) persons charged with the conduct of audits and investigations may substitute year-for-year responsible experience acceptable to the ~~Department of~~ Personnel *Cabinet* for the required college education and accounting hours.
- (3) The Auditor and his sureties are liable on his official bond for the acts of the assistant auditor and clerks.
- (4) Nothing in this section shall be deemed to affect the provisions of KRS 11.090 or other legislation authorizing audits.

Section 64. KRS 61.012 is amended to read as follows:

No person shall be qualified to hold any appointive state office or position, made by gubernatorial appointment, until the person provides the *secretary*~~commissioner~~ of the ~~Department of~~ Personnel *Cabinet* with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that his appointment to a state office or position will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Section 65. KRS 61.526 is amended to read as follows:

- (1) Each employee on becoming a member of the Kentucky Employees Retirement System shall have on file in the retirement office, in the form as the board may prescribe, a statement of facts pertaining to the member. The statement shall include a record of military service, previous employment with the employer, and such other information as the system may require.

- (2) If the records of the ~~Department of~~ Personnel *Cabinet* or the department employing the member during the time the service was rendered do not substantiate the statement of service, the member shall be notified of any discrepancy. The member shall be advised that he has the responsibility of supplying verification of any unsubstantiated service.
- (3) At the request of the member, or the beneficiary if the member is deceased, the general manager shall arrange a time and place to receive additional information in regard to the unverified service. After filing the request, the member or the beneficiary if the member is deceased, shall have a reasonable time but no more than six (6) months to present the additional information to substantiate the unverified service.
- (4) The system may at any time conduct an audit of the employing department pursuant to KRS 61.675.

Section 66. KRS 61.543 is amended to read as follows:

- (1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the retirement system while he is classified as regular full-time as defined in KRS 61.510 unless the employee did not elect to become a member as provided by subsection (2) of KRS 61.525, or unless the employee did not elect membership pursuant to KRS 61.545(3). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4). Service credit will be allowed for each month the contributions are deducted or picked up during a fiscal or calendar year, if the member receives creditable compensation for an average of one hundred (100) hours or more of work per month. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.
- (2) Employee contributions shall not be deducted from the creditable compensation of an employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit will be earned.
- (3) Contributions shall not be made or picked up by the employer and no service credit will be earned by a member while on leave except:
 - (a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555;
 - (b) A member on educational leave, approved by the ~~Department of~~ Personnel *Cabinet*, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay employee contributions, or the contributions shall be picked up in accordance with KRS 61.560 and his employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded; and
 - (c) An employee on educational leave, approved by the appointing authority, not to exceed one (1) year, or with additional approval of one (1) additional year, and not to exceed two (2) years within a five (5) year period, who is receiving a salary of less than seventy-five percent (75%) of full salary, may elect to retain membership in the system during the period of leave. If the employee elects to retain membership in the system, he shall receive service credit by having employee contributions picked up in accordance with KRS 61.560. His employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the employee and employer contributions paid or picked up during the period of educational leave shall be refunded to the contributor and no service credit shall be earned for the period of leave.
- (4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 61.575.
- (5) Notwithstanding the provisions of this section and KRS 61.560, employees engaged pursuant to KRS 148.026 and 56.491 in a regular full-time position as defined in KRS 61.510(21) prior to January 1, 1993, shall be allowed service credit for each month the employee received creditable compensation for an average of one hundred (100) or more hours of work, if the employee pays to the retirement system the contributions that would have been deducted for the period of employment. The contributions shall be credited to the member's contribution account and shall not be picked up pursuant to KRS 61.560(4). The employer contributions for the period, plus interest calculated at the actuarial rate, shall be due within thirty (30) days of notice of receipt of payment from the employee.

Section 67. KRS 61.596 is amended to read as follows:

- (1) Any employee hired on or before January 1, 1988, who is a participating member of the Kentucky Employees Retirement System and who has service credit in the retirement system as prescribed in KRS 61.559(2)(a), (b), (c), or (d), or any employee hired on or before January 1, 1988, who is participating in the State Police Retirement System and who meets the requirements of KRS 16.505(15) or (20) may receive additional service credit equal to ten percent (10%) of his actual service credit prior to the addition of service credit for accrued sick leave as provided in KRS 61.546. Any employee of a parted employer hired on or before January 1, 1988, who meets the requirements of KRS 61.559(2)(e) may also receive additional service credit equal to ten percent (10%) of his actual service credit earned while actually participating in the system, prior to the addition of service credit for accrued sick leave as provided in KRS 61.546.
- (2) The additional service credit provided in subsection (1) of this section shall be used in determining the member's monthly retirement allowance. The additional service credit shall not be used in determining the member's eligibility for medical insurance under KRS 61.702 or in determining the reduction in benefits under KRS 61.595(2).
- (3) The employee shall submit a notification of retirement as prescribed in KRS 16.576(1) or 61.590(1) no earlier than July 15, 1988, and no later than September 30, 1988, except that the provisions of this section shall not apply in the case of disability or in the event the employee dies prior to filing a notification of retirement within the prescribed time period. The employee shall also notify the agency or department in which he is employed and the ~~Department of~~ Personnel **Cabinet** of his intent to retire under the provisions of this section. The effective date of retirement under this section shall be the first of the month following termination of employment, except that the retirement date shall not be earlier than August 1, 1988, and not later than November 1, 1988. The employee may void his decision to retire under the provisions of this section if he does so in writing to retirement systems, the ~~Department of~~ Personnel **Cabinet** and his agency or department no later than September 30, 1988.
- (4) The retirement system's actuary shall determine the actuarial cost of the additional service provided in subsection (1) of this section for each employee and the cost shall be paid by the agency or department from which he terminates employment. The money paid by the agency or department shall be added to the retirement allowance account of the retirement system from which the member draws his retirement allowance and shall not be considered accumulated contributions of the member. The agency or department shall submit payment for the cost of such service upon the last day of the month in which the member terminates or in two (2) installments. If the agency or department elects to pay the cost in two (2) installments, the agency shall pay an amount equal to fifty and four hundred and eighty-one thousandths percent (50.481%) of the total cost upon the member's termination date and within ninety (90) days of that date.
- (5) Any employee retiring under the provisions of this section shall forfeit the additional service provided in subsection (1) of this section if he is reemployed, earning more than the Federal Social Security Act maximum for a retired person with an agency participating in the retirement system from which he retired, within a period of time equal to the amount of additional service he received under subsection (1) of this section.
- (6) The Kentucky Retirement Systems shall notify all employees eligible for the provisions of this section, the ~~Department of~~ Personnel **Cabinet** and each eligible employee's agency of the provisions of this section by May 1, 1988. The Kentucky Retirement Systems shall conduct regional seminars between June 1 and July 31, 1988, to explain the provisions of this section and shall, upon the request of the eligible employee, provide an estimate of his benefits under this section.
- (7) The purpose of this section is to bring expenditures in line with general fund revenues. No discrimination is intended by this section against any present or future employees. It is the intent of this section to encourage those employees nearing retirement to elect retirement as a voluntary service to the Commonwealth.

Section 68. KRS 61.640 is amended to read as follows:

- (1) If an employee who is of normal retirement age or greater is in the active employment of a participating agency, or on official leave from the agency, if the leave has been granted in accordance with the policy of the State ~~Department of~~ Personnel **Cabinet**, with service credit of forty-eight (48) months or more, at least twelve (12) of which are current service, or if an employee of less than normal retirement age is in the active employment of a participating agency or on official leave from the agency, if the leave has been granted in accordance with the policy of the State ~~Department of~~ Personnel **Cabinet**, with service credit of sixty (60) months, at least twelve (12) of which are current service, dies at any time before the first retirement allowance payment has been issued by the State Treasurer and has on file at the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly

commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had the member been eligible for retirement and had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.

- (2) If a member not in the active employment of a participating agency, nor on official leave from the agency, with the service and age prescribed in KRS 61.559(2), dies before the first retirement allowance payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.
- (3) If a member, not in the active employment of a participating agency nor on official leave from the agency, with twelve (12) or more years of service credit at least one (1) of which is current service, dies at any time before the first retirement allowance payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had the member been eligible for retirement and had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.
- (4) An alternative calculation of benefits payable to the beneficiary under subsection (1), (2), or (3) of this section shall be determined by computing an annual benefit payable commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive based on his years of service and final compensation at the date of his death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4) then reduced by fifty percent (50%), and the actuarial equivalent payable for sixty (60) months certain and one hundred twenty (120) months certain and the actuarial equivalent refund shall be determined.
- (5) If the member, subject to subsection (1), (2), (3), or (4) of this section had on file in the retirement office a written designation of multiple beneficiaries, his estate, trust, or trustee, the multiple beneficiaries by consensus, the administrator, or executor of the estate, or trustee may elect to receive the actuarial equivalent to the benefit allowable under subsections (1), (2), (3), or (4) of this section given the assumptions that the beneficiary's age is the same as the member's, and that the member had chosen benefits payable monthly for sixty (60) months certain, or one hundred and twenty (120) months certain, or an actuarial equivalent refund.
- (6) Actuarial equivalent refund. The beneficiary may elect to receive a one (1) time lump-sum payment which shall be the actuarial equivalent to the amount payable under KRS 61.635(2) for a period of sixty (60) months. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the multiple beneficiaries by consensus, trustee, executor, or administrator of the estate may elect to receive a one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2), assuming the beneficiary's age to be the same as the member's for a period of sixty (60) months.
- (7) In the case of a single beneficiary, who is a person, the highest monthly benefit determined under subsection (1), (2), (3), (4), or (6) of this section for a life annuity or for payments for sixty (60) months certain or for payments for one hundred twenty (120) months certain or for the actuarial equivalent refund or for the beneficiary Social Security payment shall be tendered to the beneficiary. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the highest monthly benefit determined under subsection (1), (2), (3), (4), (5), or (6) of this section for payments for sixty (60) months certain or one hundred and twenty (120) months certain or the actuarial equivalent refund shall be tendered to the multiple beneficiaries, trustee, administrator, or executor of the estate.

- (8) Payments of taxable distributions made pursuant to this section shall be subject to state and federal income tax as appropriate.

Section 69. KRS 61.950 is amended to read as follows:

- (1) The commission shall meet at least four (4) times each year and report its findings no less than semiannually to the Legislative Research Commission and the Governor. All reports of the commission shall be made available to the general public. In addition, the commission, upon the call of its officers, may hold meetings at any time it deems necessary.
- (2) The commission's roles and duties shall include the following:
- (a) Providing overall leadership, policy direction, strategic planning, and coordination of information resources management for the executive branch of state government and public universities;
 - (b) Formulation of a five (5) year statewide information resources management plan, to be updated every two (2) years, from long-range information resources management plans submitted by agencies of the executive branch, including the public universities, as the commission may require;
 - (c) Defining, maintaining, and publishing a timely information resources management architecture relating to the management of information resources by executive branch state agencies, and implementing processes and procedures to ensure compliance with the information resources management architecture;
 - (d) Coordinating, through policy and interagency agreements and monitoring, an appropriate program of training and education for executive branch state and local agencies regarding strategic information systems planning, and the selection and use of information technologies to facilitate effective information resources management, appropriate employee skill building, and career development;
 - (e) Promoting executive level awareness, support, and involvement with information resources management throughout the executive branch of government;
 - (f) Reviewing and approving or disapproving, in whole or part, executive branch agency five (5) year strategic information resources plans, and forwarding those plans with findings and recommendations to the agency head, the Governor's Office for Policy and Management, and the Legislative Research Commission for use during the preparation and enactment of the biennial budget. Commission review shall be based upon the extent to which the plan is compliant with statewide information resources standards, policies and guidelines; is suited to supporting the mission of the agency; and furthers implementation of statewide initiatives identified in the statewide plan. As part of the review process, the commission shall monitor and evaluate the progress of the current plan and the executive branch agency's use of information technologies and shall include its assessment of these activities in the findings and recommendations;
 - (g) Identifying and assessing opportunities for multiagency development and use of information resources, or the development of executive branch agency projects which would improve the quality and availability of information. When identifying these opportunities the commission may require executive branch agencies to evaluate the opportunities as alternatives to their own plans, and may forward these findings as provided in paragraph (f) of this subsection;
 - (h) Maintaining supportive relationship and coordinating activities with the adjunct Communications Advisory Council provided for in KRS 61.955 and 61.957, and the Geographic Information Advisory Council established by Executive Order 92-1049, October 1, 1992, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, information technology;
 - (i) Establishing and maintaining relationships with other planning organizations as necessary to ensure coordination and implementation of comprehensive statewide strategies involved with, or affected by, information technology;
 - (j) Reviewing and recommending to the ~~Department of~~ Personnel **Cabinet** and other associated agencies appropriate job classifications related to information resources management, to include both technical and managerial positions;
 - (k) Establishing and maintaining an information dissemination service or clearinghouse for:

1. Current practices of state agencies regarding information resources management;
 2. Emerging and advancing information resources technologies;
 3. Information resources vendor performance in the public sector;
 4. Technical resources in the Commonwealth; and
 5. Elements of the information resources management architecture;
- (l) Establishing and maintaining research and development capacity for beneficial applications of information resources technology for the state's public sector, which includes:
 1. Conducting research on current and emerging information resources technologies and their potential to enhance governmental services; and
 2. Sponsoring and evaluating pilot projects to assist with the successful adoption by other state agencies;
 - (m) Fostering and encouraging the interest and cooperation of the state information resources technology community for improvement and enhancement of public services delivery;
 - (n) Serving as catalyst for information technology advancements in the public sector;
 - (o) Recommending procedures and legislation to improve the accessibility of machine readable public records by state agencies, citizens, and businesses; and
 - (p) Recommending procedures and legislation to ensure the privacy of individuals, with particular emphasis on the potential for invasion of individual privacy.
- (3) Nothing in KRS 61.940, 61.945, or this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.
 - (4) The commission may promulgate necessary administrative regulations for the furtherance of this section.
 - (5) The commission may establish committees or work groups composed of commission and noncommission members as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Persons connected with the automated information and communications resources industries, as specified in KRS 61.945, may participate on committees or work groups, but shall not have a vote.
 - (6) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.

Section 70. KRS 62.170 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees or deputies of the Commonwealth of Kentucky, including all judges, clerks and employees of the Court of Justice, including all other members of boards or commissions or employees of such boards or commissions, and including all superintendents, receivers or employees of penal or eleemosynary institutions managed or directed by the Justice Cabinet, Cabinet for Human Resources or any other department or agency of the Commonwealth of Kentucky. Nothing in this paragraph shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency or institutional basis.
- (2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the ~~Department of~~ Personnel **Cabinet** and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.
- (3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the Department of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. Such bonds may be written with or without cosureties. Further, such bonds are

to be a percentage of the total risks, the Department of Insurance to approve the amount of the risk written by any one (1) company.

- (4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the ~~Department of~~ Personnel **Cabinet** and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

Section 71. KRS 64.640 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, and excepting officers elected by popular vote, employees of the General Assembly, including employees of the Legislative Research Commission, members of boards and commissions, those officers and employees of Kentucky Educational Television exempt from classified service as provided in KRS 18A.115, presidents and employees of the state universities and the state colleges, and persons employed by the commissioner of parks on a temporary basis under KRS 148.026, the ~~Department of~~ Personnel **Cabinet** shall prepare a schedule of compensation, payable out of the State Treasury, with a minimum and maximum salary rate, and such intermediate salary rates as are deemed necessary or advisable, for the office or position of employment of every state officer and employee, including specifically the offices and positions of employment in every constitutional administrative department, statutory administrative department, independent agency, or other unit of state government. Such schedules shall be based upon studies of the duties and responsibilities of the offices and positions and upon a comparison with rates being paid for similar or comparable services elsewhere, and in the preparation of such schedules, the ~~Department of~~ Personnel **Cabinet** shall ascertain and record the duties, responsibilities and authority pertaining to the various offices and positions in the state service, and classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110, 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become effective until it has been approved by the Governor.
- (2) The Governor shall set the compensation payable out of the State Treasury to each officer or position in the state service, which officer or position heads a statutory administrative department, independent agency, or other unit of state government except for those excluded under subsection (1) of this section. Such compensation shall be based upon studies of the duties and responsibilities and classification of the positions by the Governor and upon a comparison with compensation being paid for similar or comparable services elsewhere, provided, however, such compensation shall not exceed the amount provided for compensation to the Governor in KRS 64.480, the provisions of KRS 64.660 to the contrary notwithstanding.
- (3) The compensation payable out of the State Treasury to officers and employees subordinate to any office or position covered by subsection (2) of this section shall not exceed the maximum rate established pursuant to subsection (2) of this section for such office or position, except with respect to physicians as provided in KRS 64.655 and employees of the Public Service Commission of Kentucky whose compensation shall be fixed, within constitutional limits, by the ~~Department of~~ Personnel **Cabinet** with the approval of the Governor as provided in subsection (1) of this section.
- (4) Nothing in this section shall preclude the allowance of maintenance to officers and employees of the state.

Section 72. KRS 64.655 is amended to read as follows:

- (1) As used in this section, unless the context clearly requires otherwise:

"Physician" means a person authorized by law to practice medicine in this state.

- (2) Notwithstanding the provisions of KRS 64.640, the ~~Department of~~ Personnel **Cabinet** may, upon the recommendation of the hiring authority and with the approval of the Governor, establish rates of compensation and maintenance within the constitutional limit for each position requiring the services of a qualified physician in any department, agency, or other unit of state government. Such rates shall be based upon studies of the duties and responsibilities of the positions and upon a comparison with rates being paid for similar or comparable services elsewhere.

Section 73. KRS 78.615 is amended to read as follows:

- (1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS

78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

- (a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.
- (b) For noncertified employees of school boards, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee.
 1. If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.
 2. If the employee works fewer than the number of contracted days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.
 3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.
- (2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.
- (3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:
 - (a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and
 - (b) A member on educational leave who meets the criteria established by the state ~~Department of~~ *Cabinet* for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.
- (4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

Section 74. KRS 117.015 is amended to read as follows:

- (1) There shall be a State Board of Elections which shall administer the election laws of the state and supervise registration and purgation of voters within the state. The board may adopt administrative regulations necessary to properly carry out its duties.
- (2) The board shall consist of the Secretary of State and six (6) members to be appointed by the Governor as provided in this subsection. The Secretary of State shall serve as the chairman of the state board and the chief election official for the Commonwealth. The members shall serve for a term of four (4) years or until their successors are appointed. Members shall be at least twenty-five (25) years of age and qualified voters of this state. No appointed member shall be a candidate for public office, have been a candidate for public office for two (2) years prior to his appointment, or have been convicted of any election law offense. Two (2) members shall be appointed by the Governor from a separate list of at least five (5) names submitted by the state central executive committee of each of the two (2) political parties that polled the largest vote in the last preceding election for state officials. The list shall be submitted to the Governor by February 15 of 1992, and the appointments of the Governor shall be made by April 1 of the same year. Two (2) separate lists shall be

submitted to the Governor by August 15 of 1990 and every four (4) years thereafter, and two (2) appointments shall be made from these lists by September 15 of each year in which the lists are received. Vacancies shall be filled in the same manner as provided for original appointments, and the person appointed to fill the vacancy shall be of the same political party as his predecessor.

- (3) The board shall meet as often as necessary to carry out its duties and shall keep a record of its acts, orders, findings, and proceedings. A majority of the board shall constitute a quorum. The Secretary of State shall preside at the meetings and may vote.
- (4) The members of the board shall be paid a reasonable sum to be fixed by the *secretary of the Personnel Cabinet*~~commissioner of personnel~~, with the approval of the secretary of the Finance and Administration Cabinet, and in addition, their expenses in attending board meetings. The compensation shall be paid out of the State Treasury upon requisition signed by the chairman of the board and approved by the secretary of the Finance and Administration Cabinet.

Section 75. KRS 121.120 is amended to read as follows:

- (1) The registry may:
 - (a) Require by special or general orders, any person to submit, under oath, any written reports and answers to questions as the registry may prescribe;
 - (b) Administer oaths or affirmations;
 - (c) Require by subpoena, signed by the chairman, the attendance and testimony of witnesses and the production of all documentary evidence, excluding individual and business income tax records, relating to the execution of its duties;
 - (d) In any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the registry and has the power to administer oaths and, in those instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (c);
 - (e) Initiate, through civil actions for injunctive, declaratory, or other appropriate relief, defend, or appeal any civil action in the name of the registry to enforce the provisions of this chapter through its legal counsel;
 - (f) Render advisory opinions under KRS 121.135;
 - (g) Promulgate administrative regulations necessary to carry out the provisions of this chapter;
 - (h) Conduct investigations and hearings expeditiously, to encourage voluntary compliance, and report apparent campaign finance law violations to the appropriate law enforcement authorities;
 - (i) Petition any court of competent jurisdiction to issue an order requiring compliance with an order or subpoena issued by the registry. Any failure to obey the order of the court may be punished by the court as contempt; and
 - (j) Conduct random audits of receipts and expenditures of committees which have filed registration papers with the registry pursuant to KRS 121.170.
- (2) No person shall be subject to civil liability to any person other than the registry or the Commonwealth for disclosing information at the request of the registry.
- (3) The registry may appoint a full-time executive director, legal counsel, and an accountant for auditing purposes, all of whom shall serve at the pleasure of the registry. The registry may also appoint such other employees as are necessary to carry out the purposes of this chapter. All requests for personnel appointments shall be forwarded by the registry directly to the *secretary*~~commissioner~~ of the ~~Department of~~ Personnel *Cabinet* and shall be subject to his review and certification only.
- (4) The registry shall adopt official forms and perform other duties necessary to implement the provisions of this chapter and KRS Chapter 121A. The registry shall not require the listing of a person's Social Security number on any form developed by the registry. Without limiting the generality of the foregoing, the registry shall:
 - (a) Develop prescribed forms for the making of the required reports;
 - (b) Prepare and publish a manual for all candidates, slates of candidates, and committees, describing the requirements of the law, including uniform methods of bookkeeping and reporting, requirements as to

reporting dates, and the length of time that candidates, slates of candidates, and committees are required to keep any records pursuant to the provisions of this chapter and KRS Chapter 121A;

- (c) Develop a filing, coding, and cross-indexing system;
- (d) Make each report filed available for public inspection and copying during regular office hours at the expense of any person requesting copies of them;
- (e) Preserve all reports for at least six (6) years from the date of receipt. Duly certified reports shall be admissible as evidence in any court in the Commonwealth;
- (f) Prepare and make available for public inspection a summary of all reports grouped according to candidates, slates of candidates, committees, contributing organizations, parties, and exploratory committees as defined in KRS 121A.010(9)(e) containing the total receipts and expenditures; and
 1. For each contribution made by a permanent committee of any amount to a candidate, slate of candidates, or exploratory committee, the date, name, and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, or to an exploratory committee, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically; and
 3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2., the date, name, address, occupation, and employer of each other contributor or, if the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically;
- (g) Prepare and publish an annual report with cumulative compilations named in paragraph (f) of this subsection;
- (h) Distribute upon request, for a nominal fee, copies of all summaries and reports;
- (i) Determine whether the required reports have been filed and if so, whether they conform with the requirements of this chapter and KRS Chapter 121A; give notice to delinquents to correct or explain defections; issue an order, if appropriate, as provided in KRS 121.140; and make public the fact that a violation has occurred and the nature thereof;
- (j) Conduct random audits of receipts and expenditures of candidates running for city, county, urban-county government, charter county government, and district offices. When the registry audits the records of any selected candidate, it shall also audit the records of all other candidates running for the same office in the selected city, county, urban-county government, charter county government, or district office;
- (k) Conduct audits of receipts and expenditures of all candidates or slates of candidates running for statewide office;
- (l) Require that candidates and slates of candidates shall maintain their records for a period of six (6) years from the date of the regular election in their respective political races;
- (m) Initiate investigations and make investigations with respect to reports upon complaint by any person and initiate proceedings on its own motion;
- (n) Forward to the Attorney General or the appropriate Commonwealth's or county attorney any violations of this chapter and KRS Chapter 121A which may become the subject of civil or criminal prosecution; and
- (o) Direct and administer the provisions of KRS Chapter 121A.

- (5) All policy and enforcement decisions concerning the regulation of campaign finance shall be the ultimate responsibility of the registry. No appointed or elected state officeholder or any other person shall, directly or indirectly, attempt to secure or create privileges, exemptions, or advantages for himself or others in derogation of the public interest at large in a manner that seeks to leave any registry member or employee charged with the enforcement of the campaign finance laws no alternative but to comply with the wishes of the officeholder or person. Registry members and employees shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations. It shall not be considered a violation of this subsection for an officeholder or other person to seek remedies in a court of law to any policy or enforcement decision he considers to be an abridgement of his legal rights.

Section 76. KRS 132.590 is amended to read as follows:

- (1) The compensation of the property valuation administrator shall be based on (1) the area, (2) the population, and (3) the assessed value of property in the county in accordance with the provisions of the following scale, with one (1) point per each ten (10) square miles or fraction thereof of the area of the county; one (1) point per one thousand (1,000) population of the county; one (1) point per million dollars (\$1,000,000) of assessment on the first one hundred million (\$100,000,000) and one-half (1/2) point per million dollars (\$1,000,000) of assessment over one hundred million (\$100,000,000):

Number of Points		Grade
At Least	But Less Than	Classification
5,000	---	15
1,000	5,000	14
350	1,000	13
300	350	12
225	300	11
150	225	10
125	150	9
100	125	8
---	100	7

Should a property valuation administrator for any reason vacate the office in any year during his term of office, he shall be paid only for the calendar days actually served during the year.

- (2) The grade classification system provided in subsection (1) of this section shall in all respects be equivalent to the grade classification for state employees as established by the ~~Department of~~ Personnel **Cabinet** and subject to the provisions of subsection (4) of this section and be determined on the basis of the total area of the county as determined from information provided by the Kentucky agricultural statistics or other reliable data, the United States Bureau of the Census and the assessment of property subject to state tax as certified by the Revenue Cabinet, including the amount of assessment on which taxes are deferred under the provisions of the Agricultural and Horticultural Land Act, except that the amount of assessment of livestock and farm machinery shall be excluded in determining the grade classification.
- (3) The provisions of this section shall be computed on the 1978 assessment and on each annual assessment thereafter.
- (4) Each property valuation administrator shall upon taking office for the first time be placed in the first step in grade and shall annually, effective January 1 after serving no less than twelve (12) months, be advanced one (1) step in grade; except that any person appointed or elected to fill a vacancy in the office of property valuation administrator shall be eligible for advancement one (1) step in grade effective January 1 following completion of at least six (6) months' service. The Revenue Cabinet is authorized to make grade classification changes corresponding to any approved for cabinet employees in comparable positions so long as such changes do not violate the integrity of the classification system and, except further, subject to availability of funds, that the cabinet may extend cost-of-living increases approved for cabinet employees to the property valuation administrators by advancement in grade.

- (5) Deputy property valuation administrators and other authorized personnel likewise may be advanced one (1) step in grade upon completion of twelve (12) months' continuous service and given such other benefits relating to reclassification of position or cost-of-living adjustments as are provided in subsection (4) of this section for property valuation administrators.
- (6) Beginning with the 1990-1992 biennium, the Revenue Cabinet shall prepare a biennial budget request for the staffing of property valuation administrators' offices. An equitable allocation of employee positions to each property valuation administrator's office in the state shall be made on the basis of comparative assessment work units. Assessment work units shall be determined from the most current objective information available from the United States Bureau of the Census and other similar sources of unbiased information. Beginning with the 1996-1998 biennium, assessment work units shall be based on parcel count per employee. Until that time the property valuation administrator's office shall be allowed by the state as compensation for deputies, other authorized personnel, and for other authorized expenditures, one and one-quarter cents (\$0.0125) on each one hundred dollars (\$100) of the property assessed, including motor vehicles and the amount of assessment on which taxes are deferred under the agricultural and horticultural land act but exclusive of livestock and farm machinery, on the first two hundred fifty million dollars (\$250,000,000) and one cent (\$0.01) on each one hundred dollars (\$100) of the property assessed over two hundred fifty million dollars (\$250,000,000); but the total sum allowed by the state to any property valuation administrator's office as compensation for deputies, other authorized personnel, and for other authorized expenditures shall not exceed the amount fixed by the Revenue Cabinet. However, each property valuation administrator's office shall be allowed as a minimum such funds that are required to meet the federal minimum wage requirements for two (2) full-time deputies.
- (7) Beginning with the 1990-1992 biennium each property valuation administrator shall submit by June 1 of each year for the following fiscal year to the Revenue Cabinet a budget request for his office which shall be based upon the number of employee positions allocated to his office under subsection (6) of this section and upon the county and city funds available to his office and show the amount to be expended for deputy and other authorized personnel including employer's share of FICA and state retirement, and other authorized expenses of the office. The Revenue Cabinet shall return to each property valuation administrator, no later than July 1, an approved budget for the fiscal year.
- (8) Each property valuation administrator may appoint any persons approved by the Revenue Cabinet to assist him in the discharge of his duties. Each deputy shall be more than twenty-one (21) years of age and may be removed at the pleasure of the property valuation administrator. The salaries of deputies and other authorized personnel shall be fixed by the property valuation administrator in accordance with the grade classification system established by the Revenue Cabinet and shall be subject to the approval of the Revenue Cabinet. The ~~Department of~~ Personnel *Cabinet* shall provide advice and technical assistance to the Revenue Cabinet in the revision and updating of the personnel classification system, which shall be equitable in all respects to the personnel classification systems maintained for other state employees. Any deputy property valuation administrator employed or promoted to a higher position may be examined by the Revenue Cabinet in accordance with standards of the ~~Department of~~ Personnel *Cabinet*, for the position to which he is being appointed or promoted. No state funds available to any property valuation administrator's office as compensation for deputies and other authorized personnel or for other authorized expenditures shall be paid without authorization of the Revenue Cabinet prior to the employment by the property valuation administrator of deputies or other authorized personnel or the incurring of other authorized expenditures.
- (9) Each county fiscal court shall annually appropriate and pay each fiscal year to the office of the property valuation administrator as its cost for use of the assessment, as required by KRS 132.280, an amount determined as follows:

Assessment Subject to

County Tax of:

At Least	But Less Than	Amount
---- \$100,000,000		\$0.005 for each \$100 of the first \$50,000,000 and \$0.002 for each \$100 over \$50,000,000.

\$100,000,000	150,000,000	\$0.004 for each \$100 of the first \$100,000,000 and \$0.002 for each \$100 over \$100,000,000.
150,000,000	300,000,000	\$0.004 for each \$100 of the first \$150,000,000 and \$0.003 for each \$100 over \$150,000,000.
300,000,000	----	\$0.004 for each \$100.

(10) The total sum to be paid by the fiscal court to any property valuation administrator's office under the provisions of subsection (9) of this section shall not exceed the limits set forth in the following table:

Assessed Value of Property Subject to

County Tax of:

At Least	But Less Than	Limit
----	\$ 700,000,000	\$ 25,000
\$ 700,000,000	1,000,000,000	35,000
1,000,000,000	2,000,000,000	50,000
2,000,000,000	2,500,000,000	75,000
2,500,000,000	5,000,000,000	100,000
5,000,000,000	----	175,000

This allowance shall be based on the assessment as of the previous January 1 and shall be used for deputy and other personnel allowance, supplies, maps and equipment, travel allowance for the property valuation administrator and his deputies and other authorized personnel, and other authorized expenses of the office.

- (11) Annually, after appropriation by the county of funds required of it by subsection (9) of this section, and no later than August 1, the property valuation administrator shall file a claim with the county for that amount of the appropriation specified in his approved budget for compensation of deputies and assistants, including employer's shares of FICA and state retirement, for the fiscal year. The amount so requested shall be paid by the county into the State Treasury by September 1, or paid to the property valuation administrator and be submitted to the State Treasury by September 1. These funds shall be expended by the Revenue Cabinet only for compensation of approved deputies and assistants and the employer's share of FICA and state retirement in the appropriating county. Any funds paid into the State Treasury in accordance with this provision but unexpended by the close of the fiscal year for which they were appropriated shall be returned to the county from which they were received.
- (12) After submission to the State Treasury or to the property valuation administrator of the county funds budgeted for personnel compensation under subsection (11) of this section, the fiscal court shall pay the remainder of the county appropriation to the office of the property valuation administrator on a quarterly basis. Four (4) equal payments shall be made on or before September 1, December 1, March 1, and June 1 respectively. Any unexpended county funds at the close of each fiscal year shall be retained by the property valuation administrator, except as provided in KRS 132.601(2). During county election years the property valuation administrator shall not expend in excess of forty percent (40%) of the allowances available to his office from county funds during the first five (5) months of the fiscal year in which the general election is held.
- (13) The provisions of this section shall apply to urban-county governments. In an urban-county government, all the rights and obligations conferred on fiscal courts by the provisions of this section shall be exercised by the urban-county government.
- (14) When an urban-county form of government is established through merger of existing city and county governments as provided in KRS Chapter 67A, the annual county assessment shall be presumed to have been

adopted as if the city had exercised the option to adopt as provided in KRS 132.285, and the annual amount to be appropriated to the property valuation administrator's office shall be the combined amount that is required of the county under this section and that required of the city under KRS 132.285, except that the total shall not exceed one hundred thousand dollars (\$100,000) for any urban-county government with an assessment subject to countywide tax of less than three billion dollars (\$3,000,000,000), one hundred twenty-five thousand dollars (\$125,000) for an urban-county government with an assessment subject to countywide tax between three billion dollars (\$3,000,000,000) and five billion dollars (\$5,000,000,000), and two hundred thousand dollars (\$200,000) for an urban-county government with an assessment subject to countywide tax in excess of five billion dollars (\$5,000,000,000). For purposes of this subsection, the amount to be considered as the assessment for purposes of KRS 132.285 shall be the amount subject to taxation for full urban services.

- (15) Notwithstanding the provisions of subsection (1) of this section, any property valuation administrator whose county classification would be reduced from that existing as of June 17, 1978, shall not have his compensation reduced but shall continue to be compensated at his then current salary until such time as an increase in points earned by his county or a cabinet adjustment, under subsection (4) of this section, qualify him for an increase in compensation.
- (16) The county classification system provided in subsections (1) and (2) of this section shall in no way affect reclassification approved prior to this enactment nor shall they be construed to affect any future reclassifications provided under subsection (4) of this section.
- (17) Notwithstanding the provisions of subsection (1) of this section, the points awarded for the assessed value of property in the county for the calculation of the compensation of the property valuation administrator for 1996 and subsequent years shall be equal to the number of points awarded for the assessed value of property for 1995, or the number of points required by the provisions of subsection (1) of this section, whichever is greater.
- (18) Notwithstanding the provisions of subsection (9) of this section, the amount appropriated and paid by each county fiscal court to the office of the property valuation administrator for 1996 and subsequent years shall be equal to the amount paid to the office of the property valuation administrator for 1995, or the amount required by the provisions of subsections (9) and (10) of this section, whichever is greater.

Section 77. KRS 148.815 is amended to read as follows:

- (1) The State Parks Commission is hereby created in order to provide oversight and advice on the parks capital maintenance and renovation fund, capital construction, parks mission, and management. For administrative purposes, this commission is attached to the Department of Parks, which shall provide necessary support staff and services.
- (2) The State Parks Commission shall consist of the following members: the commissioner of the Department of Parks; the deputy commissioner of support services; the commissioner of the Department of Fish and Wildlife Resources; the secretary of the Tourism Cabinet; the director of the Kentucky Nature Preserves Commission; the executive director of the Kentucky Heritage Council; the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet**; and six (6) other members appointed by the Governor, including a resort park manager, and five (5) citizen members including a certified public accountant, a registered architect, an individual who is experienced in tourism promotion, an individual who is experienced in hotel or motel operations, and an individual who is experienced in restaurant operations. The citizen members and resort park manager shall serve four (4) year terms, unless sooner removed for cause; all other members shall serve during their terms of office. The commissioner of the Department of Parks shall act as chairman of the commission. Each citizen member shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties on the commission.

Section 78. KRS 151B.035 is amended to read as follows:

- (1) The State Board for Adult and Technical Education shall promulgate, by administrative regulations, personnel policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Department for Adult Education and Literacy and the Department for Technical Education central offices, state-operated vocational facilities, and regional staffs. All other staff shall remain under the authority of the Kentucky ~~Department of~~ Personnel **Cabinet** and KRS Chapter 18A. Employees who transfer to or from the KRS Chapter 18A personnel system shall transfer accrued annual, compensatory, and sick leave.

- (2) As provided in this chapter, the State Board for Adult and Technical Education shall promulgate comprehensive administrative regulations for the administration of a personnel system in the Department for Adult Education and Literacy and the Department for Technical Education which are consistent with the provisions of this chapter and with federal standards for state government agencies receiving federal grants.
- (3) The board shall promulgate comprehensive administrative regulations for full-time and part-time certified and equivalent staff governing:
 - (a) Establishment and abolishment of positions;
 - (b) Applications;
 - (c) Certification;
 - (d) Classification and compensation plans;
 - (e) Incentive programs;
 - (f) Selection of employees;
 - (g) Types of appointments;
 - (h) Attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence;
 - (i) Preparation, maintenance, and revision of a position classification plan and an equitable salary schedule for certified and equivalent staff based on qualifications, experience, and responsibilities;
 - (j) Extent and duration of the state-operated area vocational education and technology centers' school term, use of school days, and extended employment;
 - (k) Employee evaluations;
 - (l) Programs to improve the work effectiveness of employees including staff development;
 - (m) Demotion;
 - (n) Dismissal;
 - (o) Layoffs;
 - (p) Suspensions and other disciplinary measures;
 - (q) Probationary periods, limited employment status, and continuing employment status;
 - (r) Promotion;
 - (s) Transfer;
 - (t) Appeals; and
 - (u) Employee grievances and complaints.
- (4)
 - (a) Administrative regulations promulgated by the board shall comply with the provisions of this chapter and KRS Chapter 13A and shall have the force and effect of law, when approved by the board and after compliance with the provisions of KRS Chapter 13A.
 - (b) Administrative regulations promulgated by the board shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter.
 - (c) No administrative body other than the State Board for Adult and Technical Education shall promulgate administrative regulations governing the subject matters specified in this section.
 - (d) Policies and procedures for the implementation of administrative regulations shall be developed by the Department for Adult Education and Literacy and the Department for Technical Education.
- (5) The commissioner for Adult Education and Literacy and the commissioner for Technical Education shall be the appointing authorities with respect to all personnel actions for their respective departments. Each commissioner may authorize a designee to act on behalf of his agency with respect to employee appointments, position establishments, payroll documents, reemployment lists, waiver requests, or other position actions. Such designation shall be in writing. Authority to employ personnel may be delegated to the vocational school

management by state board policy and procedure. Any recommendation for employment from the local level shall be based on guidelines promulgated by the state board and shall be contingent upon confirmation by the commissioner and the board.

- (6) The board shall promulgate other administrative regulations to govern its proceedings which relate to certified and equivalent employees and which shall provide for:
 - (a) The procedures to be utilized by the board in the conduct of hearings, consistent with KRS Chapter 13B;
 - (b) Discharge, as provided by this section;
 - (c) Imposition, as a disciplinary measure, of a suspension from service without pay for up to thirty (30) working days and, in accordance with the provisions of KRS 151B.055, for the manner of notification of the employee of the discipline and right of appeal;
 - (d) Promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct;
 - (e) Supplementary information for the salary schedule for certified and equivalent staff including teachers, counselors, administrators, managers, and educational consultants in state-operated vocational technical facilities, field offices, and central office in the Department for Adult Education and Literacy and the Department for Technical Education that shall provide uniformity, recognition of education, teaching, and supervisory experience and use as a base the average salary paid to beginning classroom teachers by all public schools in the state for personnel with comparable qualifications and experience. Indexes may be incorporated in the compensation plan for administrative responsibilities. The salary schedule shall be computed annually, and shall be submitted to and approved by the Governor;
 - (f) Reemployment of laid-off employees in accordance with the provisions of this chapter;
 - (g) Establishment of a plan for resolving employee grievances and complaints. The plan shall not restrict rights granted employees by the provisions of this chapter; and
 - (h) Any other administrative regulations not inconsistent with this chapter and KRS Chapter 13A proper and necessary for its enforcement.
- (7) The board shall make investigations, either on petition of a citizen, taxpayer, interested party, or on its own motion, concerning the enforcement and effect of KRS 151B.035 to 151B.090, shall require observance of its provisions and the administrative regulations promulgated pursuant to the provisions of this chapter and KRS Chapter 13A, and shall make investigation as requested by the General Assembly or the Governor and to report thereon.
- (8) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, for an appeal system for aggrieved certified or equivalent employees.
- (9) The board shall hear appeals from applicants for positions or from certified, equivalent, and unclassified employees who have been dismissed, demoted, suspended, or otherwise penalized for cause.
- (10) The board may, any statute to the contrary notwithstanding, delegate the conduct of the hearing and the rendition of a recommended order to the full board, to a panel of the board, or to a hearing officer, relative to any hearing appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by this or any other chapter, to conduct, hear, or make; provided, however, that the full board as provided by statute, makes the final order, based upon the evidence submitted.
- (11) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the unclassified service including the preparation and maintenance of a salary schedule and other administrative regulations authorized by this chapter.
- (12) The annual percentage salary increment for all certified and equivalent employees subject to the personnel system established under this chapter shall be at least equal to that funded and provided for other elementary and secondary teachers.
- (13) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees who are transferred, effective July

1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted toward years of experience for calculating benefits and compensation.

Section 79. KRS 156.026 is amended to read as follows:

- (1) For purposes of this section, full-time service in a local school for not less than one hundred forty (140) days during the school year entitles an employee who transfers to the Department of Education to a full year of experience credit on the ~~Department of~~ Personnel **Cabinet** pay schedule and a full year for the purpose of accumulation of annual leave and sick leave in the Department of Education.
- (2) An employee of a local school district who transfers to become an employee of the Department of Education after June 30, 1983, shall be allowed to transfer accrued sick leave up to the maximum allowed for transfers for teachers between school districts as provided by KRS 161.155(3). The employee shall be allowed credit for each year of experience in the local school system for the purposes of determining salary in accordance with the current ~~Department of~~ Personnel **Cabinet** pay schedule, and the rate of accumulation of annual and sick leave in the Department of Education.
- (3) For purposes of determining eligibility for additional leave or other benefits based on longevity of service, an employee transferring from a school district to the Department of Education after June 30, 1983, shall be given credit for each year of service in the school district, as determined under subsection (1) of this section.

Section 80. KRS 163.032 is amended to read as follows:

- (1) The Kentucky Department of Education, with assistance from the Kentucky ~~Department of~~ Personnel **Cabinet**, shall adopt a salary schedule for teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind. The salary schedule shall be the same as salary schedules in effect in local school districts in counties containing a city of the first class and shall conform to the requirements for a single salary schedule as defined in KRS 157.320.
- (2) Certified teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind shall have the same statutory employment status and benefits as certified teachers in the public schools.
- (3) The Kentucky Department of Education, with assistance from the Kentucky ~~Department of~~ Personnel **Cabinet**, shall adopt a salary schedule for administrators at the Kentucky School for the Deaf and the Kentucky School for the Blind which will provide for equitable salaries between teachers and administrators. The salary schedule, which shall be computed prior to July 1 of each year, shall be based on two hundred sixty (260) days per year.

Section 81. KRS 164.357 is amended to read as follows:

- (1) There is established as a separate administrative body of state government the Governmental Services Center at Kentucky State University which shall be attached to the Finance and Administration Cabinet for administrative purposes. The center shall be governed by the Governmental Services Center Authority.
- (2) The authority shall consist of the president of Kentucky State University, who shall be chairman, the secretary of the Finance and Administration Cabinet, the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet**, two (2) members appointed by the Governor, each of whom shall serve as ex officio voting members of the authority, and two (2) other voting members to be appointed by the chairman of the authority. Appointed members shall be citizens and residents of the Commonwealth of Kentucky. The initial term of one (1) of the members appointed by the chairman shall be for two (2) years, and the initial term of the other appointed member shall be for a term of four (4) years; thereafter, all appointments shall be for terms of four (4) years, but appointed members shall be removable at will by the chairman of the authority.
- (3) The Governmental Services Center at Kentucky State University, under direction of the authority, shall be responsible for the development, coordination, content, approval and implementation of all training, employee development, and related programs conducted for and on behalf of all program cabinets, departments, administrative bodies and program managers of the state government. The center shall conduct, or cause to be conducted, ongoing management training programs for all program managers and supervisors within the executive branch of state government. The organizational units whose supervisors and managers received training at the center shall share the cost of the training on a pro rata basis. The center shall encourage the

enrollment of state employees in academic courses and programs at Kentucky State University. If desired academic courses are not available at the university, and cannot feasibly be developed by the university, other universities and community colleges within the Commonwealth shall be utilized. The authority shall determine the appropriateness of all such programs.

- (4) The authority may employ an executive director and other employees necessary to perform the functions of the center in accordance with the provisions of KRS Chapter 18A. The executive director or any staff member of the center may hold concurrently with their employment by the center, and subject to the provisions of KRS 164.360 and 164.365, faculty appointments of appropriate rank at Kentucky State University.
- (5) Members of the authority who are not either state or university employees shall be reimbursed for their actual expenses in attending meetings for the authority.

Section 82. KRS 171.311 is amended to read as follows:

The Kentucky Historical Society created by Acts 1880, ch. 244, shall have all the powers and liabilities of a corporation and there is hereby granted to the society the following charter:

I

The Kentucky Historical Society shall collect, maintain and preserve authentic records, information, facts and relics connected with the history of the Commonwealth and the genealogy of her peoples; and promote a wider appreciation of the American heritage, with particular emphasis on the advancement and dissemination of knowledge of the history of Kentucky. The society may receive and hold by donation or devise, real or personal property to any extent and may, by gift, loan, purchase or otherwise hold books, papers, documents, historical memorials, and any other articles suited to promote the objects of the society in the Old State Capitol Building but all such property shall be held in trust for the Commonwealth of Kentucky according to the terms of acceptance.

II

All American citizens, partnerships, corporations or associations who shall evidence their dedication to the promotion of the objects and purposes of the society may become active members thereof upon their approval under regulations prescribed by the executive committee, and the payment of annual dues in a sum determined by the executive committee. Any person possessing the qualifications for membership may become a life member on the payment of a sum determined by the executive committee. The executive committee may determine classes of memberships and establish respective rates of dues. Every member in good standing, including the authorized representative of an institutional member, shall have the right to vote in person or by proxy, hold office, and otherwise take part in the proceedings of the society. Membership may be terminated by resignation or nonpayment of dues.

III

The officers of the society shall be a chancellor, who shall be the Governor of the Commonwealth of Kentucky, a president, first, second and third vice presidents, who shall be ex officio members of the executive committee. All officers, except the chancellor, shall be elected for a term of one (1) year at the annual meeting of the society in a manner provided by law, and the president shall be ineligible to succeed himself if he has been elected for two (2) successive terms.

IV

There is hereby created an executive committee which shall consist of sixteen (16) members, the officers of the society and one (1) person designated annually by the State Archives and Records Commission. The sixteen (16) members of the executive committee shall be divided into four (4) equal classes, so arranged that the terms of one (1) class shall expire at each annual meeting of the society. The class whose term expires shall be ineligible to succeed itself.

V

The executive committee shall execute all the powers and duties conferred on the society, except those expressly delegated to the officers. It shall adopt bylaws at any regular or special meeting. It shall supervise and direct the financial concerns of the society, approve an annual budget and provide for and fix the salaries of employees, subject to the approval of the ~~Department of~~ Personnel **Cabinet**. It shall provide for reimbursement of travel expenses of employees and may provide for reimbursement of expenses of officers and members of the executive committee incurred in performing specific duties assigned to them. It shall appoint a director, who shall be the management officer of the society under the direction of the president and policies established by the executive

committee, and an assistant director, who shall assume the duties of the director in his absence and perform such other duties as may be assigned to him by the director. It shall establish and prescribe the duties of such other positions as are necessary to operate the society, and all persons engaged to fill such positions shall be employed by the director, subject to the approval of the executive committee, which approval shall constitute exemption from KRS 18A.005 to 18A.200, and their work shall be under the director's supervision.

The committee shall provide for the publication or preservation of historical documents and manuscripts; publish an edition to be known as the "Register"; provide by contract, subject to the approval of the Finance and Administration Cabinet, for all the printing, publication and distribution of reports, books and other publications calculated to promote and advance the historical interest of Kentucky and augment the society's various collections at all times. It shall supervise and direct the ordinary affairs of the society; appoint a nominating committee; and determine other necessary committees of which the president and the director of the society shall be ex officio members. The committee shall cooperate with, provide assistance to and coordinate its functions with those of the state Archives and Records Commission. It may designate honorary members of the society and it shall have the power to fill any vacancies until the next annual meeting, including those occurring within its own membership.

VI

The executive committee shall hold regular meetings in January, April, July and October. Matters to be determined and discussed at such meetings shall be furnished the director at least ten (10) days prior to such meetings in order that he may prepare and distribute an agenda to each member of the committee at least three (3) days before the meeting. Special meetings shall be held at the request of the president or any three (3) members of the committee, in which case the director shall give written notice together with the agenda of such meeting at least ten (10) days in advance. In an emergency, nine (9) members of the committee may waive the provision of notice.

VII

The regular annual meeting of the society shall be held in the Old State Capitol Building on the first Friday after the first Monday in November. The meeting shall be open to all members. Special meetings may be called in Frankfort or elsewhere by the president or a majority of the executive committee or by the director upon the written request of twenty (20) members of the society. Members shall have fifteen (15) days written notice of the time, place and object of the meeting.

VIII

Twenty-five (25) members shall constitute a quorum for the transaction of all business at any meeting of the society, and one-third (1/3) of the membership of the executive committee shall constitute a quorum at their respective meetings.

IX

The Chancellor of the Society, at his discretion, may preside at any meeting of the society or the executive committee, or he may participate otherwise in any meetings.

X

The president of the society shall be the chief executive officer of the society and shall preside over meetings of the society or the executive committee in the absence of the chancellor or at his request. He shall recommend the appointment of all necessary or desirable committees and he shall name persons to comprise such committees, except the nominating committee.

XI

The vice presidents of the society shall preside in the absence of their successive superiors in office at all meetings of the society and the executive committee. They shall attend all regular and special meetings of the society and the executive committee and endeavor to familiarize themselves with the conduct and operations of the affairs of the society. They shall aid and assist the president in the performance of his duties, counsel and advise the executive committee and endeavor at all times to advance and promote the public interest in the history of Kentucky and her people.

XII

Nominations to membership on the executive committee and to the offices of president, first vice president, second vice president and third vice president shall be made by a nominating committee or by any member present at the regular annual meeting. The nominating committee shall consist of five (5) members, shall be appointed at the

first regular meeting of the executive committee after the annual meeting of the society and shall consider candidates to fill vacancies in the executive committee and offices which will occur at the subsequent annual meeting. The nominating committee shall meet in the office of the society forty-five (45) days prior to the annual meeting and nominate candidates to fill vacancies on the executive committee and at least one (1) candidate for the office of president, first vice president, second vice president, and third vice president, and file same with the president. Upon the call for the election of officers the president shall promptly report the nomination by the nominating committee together with all other nominations. When more than the required number of candidates have been nominated for membership on the executive committee or more than one (1) candidate for the offices to be filled, the president shall call for an election by the vote of those present, together with the number of votes cast by proxy, and a plurality of all votes cast shall be sufficient to elect. Where no vote count is required the president shall cast one (1) vote for each candidate and he or she shall be declared elected.

XIII

This charter may be amended by a two-thirds (2/3) vote of the members present and voting at any regular meeting or at any special meeting of the society called for the purpose, provided that written notice containing the substance of the proposed amendments shall have been mailed to members not less than thirty (30) days in advance of such meeting and the same approved as an amendment by the first General Assembly, meeting after the action of the society.

Section 83. KRS 168.080 is amended to read as follows:

Subject only to availability of funds from any source, the authority may employ and prescribe the qualifications and duties of such persons as it may deem necessary to the proper performance of its purposes and functions, including an executive director to serve as the principal executive of the authority, and a chief engineer to supervise its engineering staff. Compensation shall be such as may be fixed in accordance with the standards established by the State ~~secretary~~~~Commissioner~~ of *the Personnel Cabinet*, except that the compensation for those officers and employees exempt from classified services as provided in KRS 18A.115 shall be determined by the authority not to exceed the maximum established by KRS 64.640(2).

Section 84. KRS 175.430 is amended to read as follows:

- (1) The Governor, the Lieutenant Governor, the secretary of finance and administration, the State Highway Engineer, the secretary of economic development, the secretary of transportation, and the Attorney General, and their respective successors in office, shall be a body corporate and politic constituting a public corporation and governmental agency and instrumentality of the Commonwealth by the name of "The Turnpike Authority of Kentucky," with perpetual succession and with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers.
- (2) The members of the authority shall receive no compensation for their services in that capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.
- (3) Four (4) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. Each member may designate in writing a proxy for the transaction of business. Within ninety (90) days from March 25, 1960, the authority shall convene and organize. The Governor shall, by virtue of his office, be the chairman of the authority and the Lieutenant Governor shall in like manner be the vice chairman. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive such compensation as may be determined by the authority with approval of the *secretary of the Personnel Cabinet*~~commissioner of personnel~~ to be paid from the budgeted funds of the cabinet. The Treasurer shall give bond to the authority and the Commonwealth conditioned upon his faithful accounting for all funds coming into his custody from time to time, the same to be in such amount as the authority may prescribe, with corporate surety given by a surety company qualified to do business in the Commonwealth, premium therefor to be paid by the authority. The authority shall establish and maintain an office in premises which shall be provided for that purpose by the Finance and Administration Cabinet without cost to the authority; and the secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings, which shall constitute public records open to inspection at reasonable times.

Section 85. KRS 195.105 is amended to read as follows:

- (1) The secretary for human resources in coordination with the ~~Department of~~ Personnel **Cabinet** is authorized to establish formal training programs within the Cabinet for Human Resources or within any of the departments, divisions, or sections of the cabinet for the training of necessary personnel for the administration of the programs of the cabinet. When courses of study, applicable to the program processes of the cabinet, are not available through instruction within the cabinet, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose and such training shall be deemed to be a part of the cabinet's training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, such assignments to relate directly to the work assignment of the employee. After consulting with the ~~Department of~~ Personnel **Cabinet**, position classifications in the research series shall be established for employees on such work study assignments, and funds of the cabinet may be used to pay salaries commensurate with the appropriate classification while the employee is receiving such training.
- (2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of such training, the state will hold a claim against him for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

Section 86. KRS 199.900 is amended to read as follows:

- (1) The secretary for human resources in coordination with the ~~Department of~~ Personnel **Cabinet** is authorized to establish formal training programs within the Cabinet for Human Resources or within any of the divisions or sections of the cabinet for the training of necessary personnel for the administration of the programs of the cabinet. When courses of study, applicable to the program processes of the cabinet, are not available through cabinet instruction, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose and such training shall be deemed to be a part of the cabinet training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, such assignments to relate directly to the work assignment of the employee. After consulting with the ~~Department of~~ Personnel **Cabinet**, position classifications in the research series shall be established for employees on such work study assignments, and funds of the cabinet may be used to pay salaries commensurate with the appropriate classification while the employee is receiving such training.
- (2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of such training, the state will hold a claim against him for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

Section 87. KRS 238.510 is amended to read as follows:

- (1) The Division of Charitable Gaming is created as a division within the Justice Cabinet. The division shall license and regulate the conduct of charitable gaming and license and regulate charitable organizations that desire to engage in charitable gaming, charitable gaming facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.
- (2) The secretary of justice shall employ a division director, an assistant director, and other staff as may be necessary to administer and enforce the provisions of this chapter.
- (3) All division staff shall be classified and employed in accordance with applicable personnel requirements of the ~~Department of~~ Personnel **Cabinet**. The division director shall be a nonmerit employee and all other staff shall be merit employees with all rights and privileges afforded under KRS Chapter 18A.
- (4) No employee of the division during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the division during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility, or have a financial interest in any business that is licensed as a manufacturer, distributor, or charitable gaming facility.

Section 88. KRS 293.080 is amended to read as follows:

The commissioners of the authority shall be compensated upon a per diem basis to be fixed by the *secretary of the Personnel Cabinet*~~commissioner of personnel~~ upon the basis of a reasonable classification established under state personnel statutes, and the authority shall reimburse them for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding any other statutory provision, an officer or employee of the state shall not be deemed to forfeit his office or employment or any benefits thereof by reason of his acceptance of the office of commissioner of the authority.

Section 89. KRS 315.160 is amended to read as follows:

- (1) The board shall elect annually from its membership a president and such other officers as it deems necessary. These officers shall serve for a term of one (1) year and perform the duties prescribed by the board. No officer shall serve more than two (2) consecutive full terms in each office to which he is elected.
- (2) The board shall employ a pharmacist to serve as a full time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The board may employ, upon recommendation of the executive director, such additional assistance as necessary for the proper conduct of board business and in accordance with the rules and regulations of the Kentucky~~Department of~~ Personnel *Cabinet*.
- (3) The board shall meet at least four (4) times a year to transact business, at such place as it may determine. The board may also meet at the call of the president or a majority of the board members. Each board member shall be given adequate prior notice of any board meeting.

Section 90. KRS 317.470 is amended to read as follows:

- (1) The barber board may employ such personnel as may be reasonably necessary to carry out the provisions of this chapter, whose compensation shall be established by the~~Department of~~ Personnel *Cabinet*. The board shall by appropriate order employ an administrator who shall be charged with responsibility of administering the provisions of this chapter, and the policies of the board relating to barbering. The administrator may receive a salary of \$12,000 per annum, or such compensation as may be established by classification of the position by the~~Department of~~ Personnel *Cabinet*.
- (2) The barber board shall prescribe the duties of such personnel employed by it.
- (3) The barber board shall publish and distribute copies of its rules and regulations and revisions thereof to all persons licensed by it and to such other persons, places, or agencies as may be required by law or deemed by it reasonably necessary in the administration of the provisions of this chapter, but such publications shall be clearly stamped, marked, or printed "informational copy."

Section 91. KRS 317A.040 is amended to read as follows:

- (1) The cosmetology board may employ inspectors and such other personnel as may be reasonably necessary to carry out the provisions of this chapter, whose compensations shall be established within budgetary limits by the~~Department of~~ Personnel *Cabinet*;
- (2) The cosmetology board shall by appropriate order employ an administrator who shall be charged with the responsibility of administering the provisions of this chapter, and the policies and regulations of the board relating to hairdressing and cosmetology;
- (3) No person shall be employed as an administrator unless he is a licensed cosmetologist;
- (4) The administrator may receive a salary of \$7,500 per annum, or such compensation as may be established by classification of the position by the~~Department of~~ Personnel *Cabinet*;
- (5) The cosmetology board shall publish and distribute copies of its rules and regulations and revisions thereof to all persons licensed by it and to such other persons, places or agencies as may be required by law or deemed by it reasonably necessary to the administration of the provisions of this chapter, but such publications shall be clearly marked, stamped or printed "Informational Copy."

Section 92. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:

- (a) "Commissioner" means commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;
 - (b) "Department" means Department of Workplace Standards in the Labor Cabinet;
 - (c) "Wages" include any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
 - (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
 - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
 1. Any individual employed in agriculture;
 2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
 3. Any individual employed by the United States;
 4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
 5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
 6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;
 7. Any individual employed as a babysitter in employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
 8. Any individual engaged in the delivery of newspapers to the consumer;
 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel *Cabinet* shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
 10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year; or
 11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and

abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Human Resources under KRS 199.640 to 199.670.

- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
 - (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
 - (d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
 - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
 - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
 - (c) 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but, if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
 - 2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;
 - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly-owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works; and
 - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

Section 93. KRS 339.230 is amended to read as follows:

A minor who has passed his fourteenth birthday but is under eighteen (18) years of age may be employed, permitted or suffered to work in, about or in connection with any gainful occupation, except:

- (1) If he is under sixteen (16) years of age, he may not be employed during regular school hours, unless:
 - (a) The school authorities have made arrangements for him to attend school at other than the regular hours, in which event he may be employed subject to regulations of the commissioner of workplace standards during such of the regular school hours as he is not required to be in attendance under the arrangement; or,
 - (b) He has graduated from high school.
- (2) A minor who has passed his fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted or suffered to work:
 - (a) In any place of employment or at any occupation, that the commissioner of workplace standards shall determine to be hazardous or injurious to the life, health, safety or welfare of such minor;
 - (b) More than the number of days per week, nor more than the number of hours per day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he make them less restrictive;
 - (c) During the hours of the day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he make them less restrictive; and
 - (d) In, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except he may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.
- (3) The commissioner of workplace standards shall promulgate regulations to properly protect the life, health, safety or welfare of minors. He may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment and other pertinent factors. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the commissioner with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for Human Resources, the Department of Education, the Kentucky Commission on Human Rights and the ~~Department of~~ **Personnel Cabinet**. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the commissioner of workplace standards.

Section 94. KRS 342.809 is amended to read as follows:

- (1) The board shall elect a chair and other officers it deems necessary from its members. The Governor shall make the initial appointments to the board as follows: three (3) members shall be appointed to terms that expire December 31, 1995, and four (4) members shall be appointed to terms that expire December 31, 1997. Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.
- (2) Senate confirmation of the Governor's appointees is required in accordance with the provisions of KRS 11.160. If a member is not confirmed by the Senate, the Governor, within thirty (30) days of the rejection, shall make another appointment. That member shall serve the remainder of the term in question and shall also be subject to confirmation should the term extend until the next regular session, or a special session which includes this subject on the call, whichever occurs earlier.
- (3) Four (4) voting members shall constitute a quorum. The board shall meet at least quarterly.

- (4) Each voting member shall be compensated five thousand dollars (\$5,000) annually, except the chair, who shall be paid seven thousand five hundred dollars (\$7,500). In addition, the voting members of the board shall be reimbursed for necessary travel and lodging expenses in accordance with administrative regulations promulgated by the Cabinet for Finance and Administration for state employees.
- (5) The ex officio nonvoting members of the board shall be: the secretary of the Finance and Administration Cabinet, the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Personnel **Cabinet**, and the commissioner of the Department of Insurance.
- (6) A voting board member may be removed for cause by the board. Cause shall include, but not be limited to, incompetence or misconduct defined in policies or bylaws formulated by the board and adopted by the policyholders.

Section 95. KRS 344.160 is amended to read as follows:

- (1) The members of the Commission on Human Rights established by KRS 344.150 shall be appointed on a bipartisan basis and shall be broadly representative of employers, proprietors, trade unions, religious groups, human rights groups, and the general public.
- (2) Each member is entitled to reimbursement of expenses incurred in the performance of his duties and when serving as a hearing examiner shall be compensated at a per diem rate to be established by the **secretary of the Personnel Cabinet**~~commissioner of personnel~~.
- (3) Each member shall receive sixty-five dollars (\$65) per day for attending meetings of the commission in addition to the reimbursement of expenses authorized in subsection (2) of this section.

Section 96. Executive Order 96-909, issued on July 11, 1996, is confirmed to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 26, 1998

CHAPTER 155

(HCR 41)

A CONCURRENT RESOLUTION confirming the appointment of Phillip Irl Huddleston to the Council on Postsecondary Education.

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Phillip Irl Huddleston as a member of the Council on Postsecondary Education for a term expiring December 31, 2003; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Phillip Irl Huddleston's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Phillip Irl Huddleston meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Phillip Irl Huddleston as a member of the Council on Postsecondary Education for a term expiring December 31, 2003.

Section 2. The Clerk of the House of Representatives, in accordance with KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Phillip Irl Huddleston, 1288 Hayes Court, Bowling Green, Kentucky 42103, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 156**(HCR 30)**

A CONCURRENT RESOLUTION confirming the appointment of Lois Combs Weinberg to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen (13) citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Ms. Weinberg as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 1998; and

WHEREAS, the Senate and the House of Representatives find that Ms. Weinberg meets the requirements of KRS 164.011;

NOW, THEREFORE,

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

Section 1. The House and Senate, in accordance with KRS 164.011, confirm the appointment of Ms. Lois Combs Weinberg to the Council on Postsecondary Education for a term expiring December 31, 1998.

Section 2. The Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Lois Combs Weinberg, 727 Main Street, Hindman, Kentucky 41822, and to Governor Paul Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 26, 1998

CHAPTER 157**(HCR 29)**

A CONCURRENT RESOLUTION confirming the appointment of Norma B. Adams to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen (13) citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Ms. Adams as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2003; and

WHEREAS, the Senate and the House of Representatives find that Ms. Adams meets the requirements of KRS 164.011;

NOW, THEREFORE,

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

Section 1. The House and Senate, in accordance with KRS 164.011, confirm the appointment of Ms. Norma B. Adams to the Council on Postsecondary Education for a term expiring December 31, 2003.

Section 2. The Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Norma B. Adams, 3507 Lakeside Ct., Somerset, Kentucky 42503, and to Governor Paul Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 26, 1998

CHAPTER 158**(HCR 28)**

A CONCURRENT RESOLUTION confirming the appointment of Steve Barger to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen (13) citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Mr. Barger as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 1998; and

WHEREAS, the Senate and the House of Representatives find that Mr. Barger meets the requirements of KRS 164.011;

NOW, THEREFORE,

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

Section 1. The House and Senate, in accordance with KRS 164.011, confirm the appointment of Mr. Steve Barger to the Council on Postsecondary Education for a term expiring December 31, 1998.

Section 2. The Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Mr. Steve Barger, 2623 Byron Avenue, Louisville, Kentucky 40205, and to Governor Paul Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 26, 1998

CHAPTER 159**(HCR 27)**

A CONCURRENT RESOLUTION confirming the appointment of Charles Whitehead to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Charles Whitehead as a member of the Council on Postsecondary Education for a term expiring December 31, 1998; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Charles Whitehead's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Charles Whitehead meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Charles Whitehead as a member of the Council on Postsecondary Education for a term expiring December 31, 1998.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Mr. Charles Whitehead, 4877 Richardson Road, Ashland, Kentucky 41101, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 160**(HCR 26)**

A CONCURRENT RESOLUTION confirming the appointment of Peggy M. Bertelsman to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Peggy M. Bertelsman as a member of the Council on Postsecondary Education for a term ending December 31, 2002; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Peggy M. Bertelsman's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Peggy M. Bertelsman meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Peggy M. Bertelsman to the Council on Postsecondary Education for a term ending December 31, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Peggy M. Bertelsman, 25 Mt. Pleasant Lane, Fort Thomas, Kentucky 41075, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 161**(HCR 25)**

A CONCURRENT RESOLUTION confirming the appointment of Marcia Milby Ridings to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Marcia Milby Ridings as a member of the Council on Postsecondary Education for a term ending December 31, 1999; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Marcia Milby Ridings' name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Marcia Milby Ridings meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Marcia Milby Ridings to the Council on Postsecondary Education for a term ending December 31, 1999.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Marcia Milby Ridings, 120 North Main Street, London, Kentucky 40741, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 162**(HCR 24)**

A CONCURRENT RESOLUTION confirming the appointment of Shirley Ann Menendez to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Shirley Ann Menendez as a member of the Council on Postsecondary Education for a term ending December 31, 2001; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Shirley Ann Menendez's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Shirley Ann Menendez meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Shirley Ann Menendez to the Council on Postsecondary Education for a term ending December 31, 2001.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Shirley Ann Menendez, 3901 Primrose Place, Paducah, Kentucky 42001, in writing, of the General Assembly's action.

Approved March 26, 1998

CHAPTER 163**(HB 531)**

AN ACT relating to guide dogs.

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

Section 1. KRS 258.500 is amended to read as follows:

- (1) When a blind person is accompanied by a guide dog, neither the blind person nor the dog shall be denied admittance to any hotel, motel, restaurant, or eating establishment, nor shall the blind person be denied full and equal accommodations, facilities, and privileges of all public places of amusement, theater, or resort when accompanied by a guide dog.
- (2) Any blind person accompanied by a guide dog shall be entitled to full and equal accommodations on all public transportation, if the guide dog shall not occupy a seat in any public conveyance, nor endanger the public safety.
- (3) The blind person shall not be required to pay additional charges or fare for the transportation of any accompanying guide dog.
- (4) Any blind person accompanied by a guide dog shall not be denied admittance and use of any public building, nor denied the use of any elevator operated for public use.
- (5) Any blind person accompanied by a guide dog may keep the animal in his or her immediate custody while a tenant in any apartment, or building used as a public lodging.
- (6) The provisions of this section shall not apply unless the guide dog has been trained by a recognized training agency or school, and is properly harnessed.

- (7) All blind persons accompanied by a trained guide dog shall have in their personal possession a certificate issued by the guide dog training agency or school establishing that their dogs have been so trained.
- (8) The provisions of this section shall not apply unless the blind master complies with the legal limitations applicable to sighted persons and unless all requirements of KRS 258.015, 258.135 and 258.145 have been complied with.
- (9) The provisions of this section shall also apply to any deaf person accompanied by a dog trained to aid the deaf. As used in this section, "deaf person" means a person described in KRS 30A.410(1)(a).
- (10) The provisions of this section shall also apply to any mobility-impaired person accompanied by a dog trained to provide support or assistance for a mobility-impaired person. As used in this section, "mobility-impaired person" means any person, regardless of age, who is subject to a physiological defect or deficiency, regardless of its cause, nature or extent, that renders the person unable to move about without the aid of crutches, a wheelchair, or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or to perform any related function.
- (11) *No person, firm, or corporation, or agent thereof, shall willfully or maliciously interfere with a guide dog or guide dog user.*
- (12) *Guide dogs are exempt from all state and local licensing fees.*
- (13) *Licensing authorities shall accept that the dog for which the license is sought is a guide dog, when a copy of the certificate, as required under subsection (7) of this section, is attached to the animal licensing form.*

Section 2. KRS 258.991 is amended to read as follows:

Any person, *firm, or corporation, or agent thereof*, violating KRS 258.500 shall be punished by a fine of not less than *two hundred and fifty dollars (\$250)* ~~twenty five dollars (\$25)~~, nor more than one *thousand* ~~hundred~~ dollars ~~(\$1,000)~~ ~~(\$100)~~, or by imprisonment in the county jail for not less than 10 nor more than 30 days, or both.

Section 3. KRS 258.135 is amended to read as follows:

- (1) On or before July 1, 1954, and on or before July 1 of each year thereafter, the owner of any dog six (6) months old or over shall apply to the dog warden of the county in which he resides for a license for each dog owned or kept by him. The application shall be accompanied by a license fee of one dollar and fifty cents (\$1.50) for each dog, *except as provided in Section 1 of this Act*. Any license issued for the year of 1954 before July 1, 1954, shall be effective until July 1, 1955. Dog wardens shall be agents of the Commonwealth in the collection of the license fees provided for herein, unless the department determines, with the approval of the Governor, to issue all licenses either directly or through other agents. For services rendered in collecting and paying over the fee, dog wardens shall be allowed to retain the sum of twenty-five cents (\$0.25) for each license. The balance of the license fee collected shall be paid to the department on or before the fifteenth day of each next succeeding month and shall be credited to the livestock fund. If the committee finds it to be in the interest of maximum enforcement of this chapter to permit certain other portions of the license fee to be retained by the respective counties for use in enforcement, the department may allow these portions of the license fee to be so retained by the counties.
- (2) Any county may choose to issue the license in conjunction with effective dates of a valid rabies vaccination, provided the dog shall be licensed each fiscal year.

Approved March 27, 1998

CHAPTER 164

(SB 182)

AN ACT relating to sheriffs.

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

Section 1. KRS 64.121 is amended to read as follows:

- (1) *"Incapacity" means a condition under which a sheriff or his or her personal representative may apply to the Circuit or District Court Judge that presides over the sheriff's county for an order to determine that the sheriff is physically or mentally unable to discharge the duties of his or her office. The application to the*

Circuit or District Court Judge shall include and be supported by an affidavit by the sheriff's physician documenting the sheriff's incapacitating condition.

- (2) ***If a***~~When any~~ sheriff in ***a county***~~counties~~ containing a population of less than seventy thousand (70,000) dies ***or is incapacitated*** during his ***or her*** term of office, the fiscal court of ~~that~~~~any such~~ county shall on or before the first day of March of the year following the death ***or date of incapacity*** of ~~the~~~~such~~ sheriff pay to the ***sheriff or to the*** personal representative of the ~~deceased~~ sheriff sufficient money to reimburse ***the sheriff*** ~~or his or her~~ estate for the salaries of his deputies and assistants and other necessary expenses of his ***or her*** office ~~that were paid~~~~incurred~~ by the ~~deceased~~ sheriff during the year of his ***or her*** death ***or incapacity***. ***Additionally, for each month that the sheriff or his or her personal representative performed the duties of sheriff during the year of his or her death or incapacity, the fiscal court shall pay to the sheriff or to the sheriff's personal representative a sum of money equal to one-twelfth (1/12) of the total salary received by the county's sheriff in the year prior to the year of the death or incapacity.*** The ~~sheriff's salary~~~~fiscal court~~ shall also pay to the ~~deceased sheriff's~~ personal representative a sum of money equal to a salary rate of six hundred dollars (\$600) per month for the actual number of months which he performed the duties of sheriff during the year of his death. The total of all such sums of money in no event shall exceed one twelfth (1/12) of the aggregate fees collected by the ~~deceased sheriff and his successor during the year of his death~~ and all fees and commissions ***paid to*** the sheriff~~earned~~ during the year of his ***or her*** death ***or incapacity*** shall be deducted from the amount ***that the sheriff or his or her*** personal representative is to receive by this section.

Approved March 27, 1998

CHAPTER 165

(HB 399)

AN ACT relating to electric cooperatives.

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

Section 1. KRS 279.170 is amended to read as follows:

- (1) Any two (2) or more corporations created under this chapter may enter into an agreement for their consolidation~~to provide service in a continuous territory~~. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, which shall be not less than five (5), the time of the annual meetings of the consolidated corporation and the names of the directors who are to serve until the first annual meeting. If the agreement is approved by a majority vote of ~~those~~~~the~~ members ***voting at***~~of~~ each corporation, ***with the votes cast as authorized by KRS 279.070***~~present and voting at the meeting at which the proposed consolidation is voted upon~~, the directors named in the agreement shall subscribe and acknowledge articles in triplicate originals conforming substantially to the original articles of incorporation, and entitled and indorsed "Articles of Consolidation of"
- (2) The articles of consolidation shall state:
- (a) The names of the corporations being consolidated.
 - (b) The name of the consolidated corporation.
 - (c) Such other items as are required or permitted to be set forth in the original articles of incorporation.
- (3) The articles of consolidation shall be filed, recorded and approved in the same manner, and shall take effect upon approval, as is provided in KRS 279.040 for original articles of incorporation.
- (4) The articles of consolidation may be amended in the same manner as articles of incorporation may be amended under KRS 279.050.

Approved March 27, 1998

CHAPTER 166

(HB 656)

AN ACT relating to motor vehicles.

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

SECTION 1. A NEW SECTION OF KRS 138.455 TO 138.470 IS CREATED TO READ AS FOLLOWS:

- (1) *A motor vehicle dealer who operates a service or repair component in his dealership may register a motor vehicle to be used exclusively as a loaner motor vehicle to the customers of this service or repair department. The dealer may pay usage tax on the loaner motor vehicle as provided in KRS 138.460, or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the fair market lease value of the vehicle as established by the Transportation Cabinet in accordance with subsection (9) of Section 4 of this Act.*
- (2) *A dealer shall pay the usage tax on a loaner motor vehicle in the manner provided by KRS 138.460 unless the dealer shows to the satisfaction of the cabinet that he is regularly engaged in the servicing or repair of motor vehicles and loans the loaner motor vehicle, for no consideration or monetary value except as allowed in subsection (4) of this section, to a retail customer while the customer's motor vehicle is at the dealership for repair or service.*
- (3) *For a dealer to be eligible to pay the usage tax on a loaner motor vehicle under this section, the dealer shall identify the motor vehicle as a loaner motor vehicle to the Transportation Cabinet and shall maintain records, as required by the Transportation Cabinet, which show all uses of the loaner motor vehicle.*
- (4) *The tax authorized by subsection (1) of this section shall be the direct obligation of the dealer. However, the customer shall not be required to pay any additional costs for the use of the loaner motor vehicle.*
- (5) *The tax due under subsection (1) of this section shall be remitted to the cabinet monthly on forms prescribed by and in accordance with administrative regulations promulgated by the cabinet.*
- (6)
 - (a) *The cabinet shall audit each return as soon as practicable after it is received. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (b) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of assessment shall be mailed to the taxpayer. The time provided in this paragraph may be extended by agreement between the taxpayer and the cabinet.*
 - (b) *Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.*
 - (c) *For the purposes of paragraphs (a) and (b) of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.*
- (7) *Failure of a motor vehicle dealer to remit the taxes applicable to a loaner motor vehicle under this subsection shall be sufficient cause for the Transportation Cabinet to revoke the authority to use that motor vehicle as a loaner motor vehicle and cause the usage tax on that motor vehicle to be due and payable in accordance with KRS 138.460 on the retail price of that motor vehicle when it was first purchased by the dealer.*

Section 2. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

- (1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year if, the same model and make is being offered for sale by local dealers;
- (2) "Dealer" means *"motor vehicle dealer" as defined in KRS 190.010*~~any person engaged in the sale of motor vehicles at retail~~;

- (3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;
- (4) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;
- (5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- (6) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;
- (7) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;
- (8) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;
- (9) Except as provided in subsection (10) of this section, "retail price" shall be determined as follows:
 - (a) For new motor vehicles, "retail price" shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;
 - (b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;
 - (c) For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:

Number of Years Removed From Manual	Retail Price
1	75% of value of same make vehicle last appearing in manual
2	50% of value of same make vehicle last appearing in manual
3	25% of value of same make vehicle last appearing in manual
All Others	10% of value of same make vehicle last appearing in manual;

- (d) In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.
 - (e) If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of the vehicle shall be the same as the retail price determined in subsection (9)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of paragraph (d) of this subsection shall not apply.
 - (f) For dealer demonstrator motor vehicles and previous model year vehicles, "retail price" shall be eighty-five percent (85%) of the retail price as determined in paragraph (a) of this subsection or the actual sales price, exclusive of any trade-in allowance, whichever is greater. In no case shall the retail price determined under this paragraph exceed the retail price determined in paragraph (a) of this subsection or be less than the retail price determined under paragraph (b) of this subsection.
 - (g) *If a dealer transfers a motor vehicle which he has registered as a loaner motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (b) or (c) of this subsection computed as of the date on which the vehicle is transferred, except that the provisions of paragraph (d) of this subsection shall not apply.*
- (10) "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. The retail price of a wrecked motor vehicle shall be the retail price as determined under subsection (9) of this section minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector.
- (11) *"Loaner motor vehicle" means a motor vehicle owned or registered by a dealer and which is loaned to customers of the service or repair component of the dealership.*

Section 3. KRS 138.4631 is amended to read as follows:

- (1) If any holder of a permit under KRS 138.463(2) fails or refuses to file a return or furnish any information requested in writing, the cabinet may, from any information in its possession, make an estimate of the permit holder's gross rental or lease charges and issue an assessment against the permit holder based on the estimated gross rental or lease charges and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties provided by law.
- (2) *If a dealer under Section 1 of this Act fails or refuses to file a return or furnish any information requested in writing, the cabinet may, from any information in its possession, make an estimate of the tax owed by the dealer on his loaner motor vehicles and issue an assessment against the dealer after adding a penalty of ten percent (10%) of the amount of the assessment so determined. The penalty shall be in addition to all other applicable penalties provided by law.*
- (3) If any holder of a permit under KRS 138.463(2) *or a dealer under Section 1 of this Act* fails to make and file a return required by KRS 138.463 *or Section 1 of this Act* on or before the due date of the return or the due date as extended by the cabinet, *or if the tax, or any installment or portion of the tax imposed by KRS 138.463 or Section 1 of this Act, is not paid on or before the date prescribed for its payment*, then, unless it is shown to the satisfaction of the cabinet that the failure is due to a reasonable cause, five percent (5%) of the tax found to be due shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than ten dollars (\$10).
- (4)~~(3)~~ If the tax imposed by KRS 138.463 *or Section 1 of this Act*, whether assessed by the cabinet, *the dealer*, or the permit holder, or any installment or portion of the tax is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the tax, interest upon the unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made.

Section 4. KRS 138.463 is amended to read as follows:

- (1) A holder of a permit as required under KRS 281.615 to operate as a U-Drive-It as defined in KRS 281.014 may pay the usage tax as provided in KRS 138.460 or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the amount of the gross rental or lease charges paid by a customer or lessee renting or leasing a motor vehicle from such holder of the permit.
- (2) The provisions of KRS 138.462 and this section shall apply to all rental and leasehold contracts entered into after March 9, 1990.
- (3) A holder of a permit shall pay the usage tax as provided in KRS 138.460 unless he shows to the satisfaction of the cabinet that he is regularly engaged in the renting or leasing of motor vehicles to retail customers as a part of an established business. The issuance of a U-Drive-It permit under the provisions of KRS Chapter 281 shall create a rebuttable presumption that the holder of a permit is regularly engaged in renting or leasing. Persons first engaging in the renting or leasing of motor vehicles to retail customers shall, in addition to obtaining a permit required under KRS 281.615, demonstrate to the satisfaction of the cabinet that they are prepared to qualify under the standards set forth in this subsection.
- (4) In the event the holder of such permit qualifies under subsection (3) of this section and elects to pay the usage tax by the alternate method as provided in subsection (1) of this section, or is required by subsection (8) of this section to pay by the alternate method, he shall pay the seat tax imposed by KRS 186.281(3) and in addition shall pay the monthly tax authorized by subsection (1) of this section. ~~[- The cabinet shall provide the holder with evidence that he has been qualified to pay the monthly tax. The holder shall present such evidence to the county clerk at the time the motor vehicle is offered for registration in Kentucky and the following provisions shall be applicable.]~~
- (5) The tax authorized by subsection (1) of this section shall be the direct obligation of the holder of the permit but it may be charged to and collected from the customer in addition to the rental or lease charges. The tax due shall be remitted to the cabinet each month on forms and pursuant to regulations promulgated by the cabinet.
- (6)
 - (a) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (c) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of such assessment shall be mailed to the taxpayer. The time herein provided may be extended by agreement between the taxpayer and the cabinet.
 - (b) For the purpose of paragraphs (a) and (c) of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
 - (c) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.
- (7) Failure of the holder of the permit to remit the taxes applicable to the rental charges as provided herein shall be sufficient cause for the Department of Vehicle Regulation to void the permit issued to such holder and the usage tax on each of the motor vehicles which had been registered by the holder under the permit shall be due and payable on the retail price of each such motor vehicle when it was first purchased by the holder.
- (8) Notwithstanding the provisions of KRS 138.460 and subsection (1) of this section, a holder of a permit operating a fleet of rental passenger cars which has been registered pursuant to an allocation formula approved by the cabinet shall pay the tax by the method provided in this section. The provisions of this section shall apply to all vehicles rented by the holder in this state.
- (9) The usage tax reported and paid on every rental or lease of a vehicle registered pursuant to this section shall be based on the fair market rental or lease value of the vehicle. Fair market rental or lease value shall be based on standards established by administrative regulation promulgated by the cabinet. The cabinet may remove a vehicle from the U-Drive-It program without a hearing if it is determined by the cabinet that no taxes have been remitted on that vehicle during the registration period. However, the tax reported and paid to the Transportation Cabinet shall not be less than the amount due based on the actual terms of a rental or lease

agreement. The burden of proving that the consideration charged by the holder satisfies this subsection is on the holder.

Approved March 27, 1998

CHAPTER 167

(SB 296)

AN ACT relating to unemployment insurance.

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

Section 1. KRS 341.270 is amended to read as follows:

- (1) Except as otherwise provided in this section, each employer's contribution rate shall be three percent (3%). ***Effective for employers who become subject to this chapter on or after January 1, 1999, except as otherwise provided in this section, each employer's contribution rate shall be two and seven-tenths percent (2.7%).***
- (2) ***Except as otherwise provided in this section, no subject employer's contribution rate shall be less than two and seven-tenths percent (2.7%)***~~three percent (3%)~~, unless he has been an employer subject to the provisions of this chapter for twelve (12) consecutive calendar quarters ended as of the computation date. ***In any calendar year in which the rate schedule prescribed in paragraph (3)(a) of this section is in effect, no subject employer who was assigned an entry rate of three percent (3.0%) under the provisions of subsection (1) of this section prior to January 1, 1999, shall have a contribution rate less than two and eight hundred fifty-seven thousandths percent (2.857%), unless subject to this chapter for the minimum time period specified above.***
- (3) For the calendar year ~~1999~~~~1982~~ and each calendar year thereafter, employer contribution rates shall be determined in accordance with "Table A" set out in subsection (4) of this section. For each calendar year, the secretary shall determine the rate schedule to be in effect based upon the "trust fund balance" as of December 31 of the preceding year. If such "trust fund balance":
 - (a) ***Equals or exceeds one and eighteen hundredths percent (1.18%) of the total wages paid in covered employment in the state during the state fiscal year ended as of June 30 of that year, the rates listed in the "Trust Fund Adequacy Rates" schedule of "Table A" shall be in effect.***
 - (b) ***Equals or exceeds three hundred fifty million dollars (\$350,000,000) but is less than the amount required to effectuate the "Trust Fund Adequacy Rates" schedule as provided in paragraph (a) of this subsection, the rates listed in "Schedule A" of "Table A" shall be in effect.***
 - (c)~~(b)~~ ***Equals or exceeds two hundred seventy-five million dollars (\$275,000,000) but is less than three hundred fifty million dollars (\$350,000,000), the rates listed in "Schedule B" of "Table A" shall be in effect.***
 - (d)~~(c)~~ ***Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less than two hundred seventy-five million dollars (\$275,000,000), the rates listed in "Schedule C" of "Table A" shall be in effect.***
 - (e)~~(d)~~ ***Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the rates listed in "Schedule D" of "Table A" shall be in effect.***
 - (f)~~(e)~~ ***Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in "Schedule E" of "Table A" shall be in effect.***
- (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall be determined upon the basis of an individual employer's reserve ratio as of the computation date and the schedule of rates established under subsection (3) of this section. Except as otherwise provided in this section, the contribution rate for each subject employer for the calendar year immediately following the computation date shall be the rate in that "Schedule" of "Table A," as set out below, effective with respect to such calendar year, which appears on the same line as his reserve ratio as shown in the "Employer Reserve Ratio" column of the same table.

TABLE A

Rate Schedule

Employer	Reserve	<i>Trust</i>					
Ratio	<i>Fund</i>		A	B	C	D	E
	<i>Adequacy</i>						
	<i>Rates</i>						
8.0% and over	0.157%	0.30%	0.40%	0.50%	0.60%	1.00%	
7.0% but under 8.0%	0.257%	0.40%	0.50%	0.60%	0.80%	1.05%	
6.0% but under 7.0%	0.357%	0.50%	0.60%	0.70%	0.90%	1.10%	
5.0% but under 6.0%	0.557%	0.70%	0.80%	1.00%	1.20%	1.40%	
4.6% but under 5.0%	0.857%	1.00%	1.20%	1.40%	1.60%	1.80%	
4.2% but under 4.6%	1.157%	1.30%	1.50%	1.80%	2.10%	2.30%	
3.9% but under 4.2%	1.357%	1.50%	1.70%	2.20%	2.40%	2.70%	
3.6% but under 3.9%	1.657%	1.80%	1.80%	2.40%	2.60%	3.00%	
3.2% but under 3.6%	1.857%	2.00%	2.10%	2.50%	2.70%	3.10%	
2.7% but under 3.2%	1.957%	2.10%	2.30%	2.60%	2.80%	3.20%	
2.0% but under 2.7%	2.057%	2.20%	2.50%	2.70%	2.90%	3.30%	
1.3% but under 2.0%	2.157%	2.30%	2.60%	2.80%	3.00%	3.40%	
0.0% but under 1.3%	2.257%	2.40%	2.70%	2.90%	3.10%	3.50%	
-0.5% but under -0.0%	6.500%		6.50%	6.75%	7.00%	7.25%	7.50%
-1.0% but under -0.5%	6.750%		6.75%	7.00%	7.25%	7.50%	7.75%
-1.5% but under -1.0%	7.000%		7.00%	7.25%	7.50%	7.75%	8.00%
-2.0% but							

under -1.5%	7.250%	7.25%	7.50%	7.75%	8.00%	8.25%
-3.0% but						
under -2.0%	7.500%	7.50%	7.75%	8.00%	8.25%	8.50%
-4.0% but						
under -3.0%	7.750%	7.75%	8.00%	8.25%	8.50%	8.75%
-6.0% but						
under -4.0%	8.250%	8.25%	8.50%	8.75%	9.00%	9.25%
-8.0% but						
under -6.0%	8.500%	8.50%	8.75%	9.00%	9.25%	9.50%
Less						
than -8.0%	9.000%	9.00%	9.25%	9.50%	9.75%	10.00%

(5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:

- (a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201 of the Social Security Act. In determining the amount in the fund as of a given date all money received by the department as of such date shall be considered as being in the fund on such date.
- (b) "Total wages" means all remuneration for services, as defined in subsections (1) to (7) of KRS 341.030, paid by subject employers.
- (c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of September 30 immediately preceding the computation date.
- (d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through September 30 immediately preceding the computation date. If benefits charged to an account exceed contributions credited to such account, such account shall be considered as having a debit balance and a reserve ratio of "less than zero."
- (e) "Computation date" is October 31 of each calendar year prior to the effective date of new rates of contributions.

Section 2. KRS 341.330 is amended to read as follows:

- (1) Not later than five (5) years after the date on which any contributions, interest or penalties were paid, an employing unit which has paid such contributions, interest or penalties may make application for an adjustment in connection with subsequent contribution payments, or for a refund thereof ~~because such adjustment cannot be made~~; except that no such application may be made in connection with any payment made as a result of any administrative determination affecting that employing unit's liability, contribution rate, or amount of contributions where no application for review by the commission was made as provided in subsection (2) of KRS 341.430, or where such review was made but no such adjustment was determined by the commission to be due.
- (2) If such contributions, interest or penalties or any portion thereof were erroneously collected, the employing unit shall be allowed to make an adjustment thereof, without interest, in connection with subsequent contribution payments by it; **or, if the amount erroneously collected exceeds fifty dollars (\$50), the amount may be refunded, without interest, upon written request by the employing unit;** or, if ~~an~~^{such} adjustment cannot be made **because the employing unit will have no subsequent liability, the**~~such~~ amount shall be refunded, without interest, from the funds into which such contributions, interest or penalties were paid.
- (3) For like cause and within the same period, adjustment or refund may be so made by the secretary on his own initiative.

Section 3. KRS 341.380 is amended to read as follows:

- (1) All benefits shall be paid through employment offices, or such other agencies as may be designated by regulations of the secretary. Claims for all payments of benefits shall be made in accordance with regulations of the secretary.
- (2) The weekly benefit rate payable to an eligible worker for weeks of unemployment shall, except as provided in KRS 341.390, be an amount equal to one and one hundred eighty-five one-thousandths ~~of one~~ percent (1.185%) of his total base-period wages, except that no worker's weekly benefit amount shall be less than ~~thirty-nine~~ ~~twenty-two~~ dollars ~~(\$39)~~ ~~(\$22)~~, nor more than the maximum rate as determined in accordance with subsection (3) of this section. ***For claims effective on or after January 1, 1999, the weekly benefit rate shall, except as provided in Section 4 of this Act, be one and two hundred thirty-five thousandths percent (1.235%) of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39) nor more than the maximum rate as determined in accordance with subsection (3) of this section; provided, however, that the tax rate schedule prescribed in subsection (3)(a) of Section 1 of this Act is in effect in that year. If that rate schedule is not in effect in calendar year 1999 but takes effect in a subsequent calendar year, the increase in the weekly benefit rate calculation shall apply to claims effective on or after January 1 of the year in which that rate schedule is in effect.***
- (3) Prior to the first day of July of each year the secretary shall determine the average weekly wage for insured employment by dividing the average monthly employment, as obtained by dividing the total monthly employment reported by subject employers for the preceding calendar year by twelve (12), into the total wages reported by such employers for such calendar year and dividing by fifty-two (52). Fifty-five percent (55%) of the amount thus obtained, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of such year and prior to the first day of July of the next following year; ***beginning in calendar year 1999, or any subsequent year in which the increase in the weekly benefit rate calculation set forth in subsection (2) of this section should take effect, sixty-two percent (62%) of the average weekly wage, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of that year and prior to the first day of July of the next following year;*** except that for the benefit years beginning on or after July 1, 1982, if the "trust fund balance" as of December 31 immediately preceding the benefit year is less than one hundred twenty million dollars (\$120,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate. If such "trust fund balance" as of December 31 immediately preceding the benefit year:
 - (a) Equals or exceeds one hundred twenty million dollars (\$120,000,000), but is less than one hundred fifty million dollars (\$150,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than six percent (6%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
 - (b) Equals or exceeds one hundred fifty million dollars (\$150,000,000), but is less than two hundred fifty million dollars (\$250,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than eight percent (8%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
 - (c) Equals or exceeds two hundred fifty million dollars (\$250,000,000), but is less than two hundred seventy-five million dollars (\$275,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than ten percent (10%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1).
 - (d) Equals or exceeds two hundred seventy-five million dollars (\$275,000,000), but is less than three hundred fifty million dollars (\$350,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than twelve percent (12%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1); and
 - (e) Is such that it resulted in the establishment of an employer contribution rate schedule, as provided for in KRS 341.270, for the current calendar year which has a higher minimum rate ~~and a higher maximum rate~~ than the schedule in effect for the immediately preceding calendar year, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate.
- (4) The maximum amount of benefits payable to any worker within any benefit year shall be the amount equal to whichever is the lesser of:

- (a) Twenty-six (26) times his weekly benefit rate; or
- (b) One-third (1/3) of his base-period wages, except that no worker's maximum amount shall be less than fifteen (15) times his weekly benefit rate. Such maximum amount, if not a multiple of one dollar (\$1), shall be adjusted to the nearest multiple of one dollar (\$1).

Section 4. KRS 341.390 is amended to read as follows:

There shall be deducted from the benefit rate determined for a worker in accordance with subsection (2) of KRS 341.380:

- (1) Eighty percent (80%), adjusted to the nearest multiple of one dollar (\$1), of the amount of wages earned by such worker during the week of unemployment with respect to which he claims benefits. For the purpose of this subsection, wages shall also include amounts earned by benefit claimants in self employment provided such earnings otherwise meet the definition of wages as contained in KRS 341.030;
- (2) The amount of remuneration which the worker has received or is receiving with respect to such week of unemployment (adjusted to the nearest multiple of one dollar (\$1) in the form of remuneration in lieu of notice; and
- (3)
 - (a) The amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment under a plan maintained or contributed to a chargeable or base-period employer, shall be reduced (but not below zero (0)) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week; except that the secretary may provide for limitations on the amount of any such deduction to take into account contributions made by the worker for the pension, retirement or retired pay, annuity, or other similar periodic payment. ***The weekly benefit amount payable to a claimant for a week shall be reduced, but not below zero, by no part of a Social Security retirement pension if fifty percent (50%) or more of the contributions to the plan were provided by the claimant during the claimant's base period.***
 - (b) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the worker during the base period (or remuneration received for such services) for such employer did not affect the worker's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment. The conditions specified by this subsection shall not apply to pensions paid under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law). Payments made under such acts shall be treated solely in the manner specified by paragraph (a) of this subsection.
 - (c) If Public Law 94-566, Public Law 96-364 or the federal act which amends either for any cause shall become inoperative in its application, or stayed pendente lite, as to deductions of such compensation, then, subsection (3) of this section, by virtue of that fact, shall likewise and to the same extent, become inoperative as to such deductions.

Section 5. KRS 341.392 is amended to read as follows:

- (1) A worker filing a new claim for unemployment benefits shall, at the time of filing such claim, disclose whether or not he owes child support obligations as defined under this section. If any such worker discloses that he owes child support obligations, and is determined to be eligible for unemployment benefits, the secretary shall notify the state or local child support enforcement agency enforcing such obligation that the worker has been determined to be eligible for unemployment benefits.
- (2) The secretary shall deduct and withhold from any unemployment benefits payable to a worker that owes child support obligations:
 - (a) The amount specified by the worker to the secretary to be deducted and withheld under this subsection, if neither (b) nor (c) applies;
 - (b) The amount, if any, determined pursuant to an agreement submitted to the secretary under 42 U.S.C. 654 (Section 454(20)(b)(i) of the Social Security Act) by the state or local child support enforcement agency if (c) is not applicable; or

- (c) Any amount required to be so deducted and withheld from such unemployment benefits pursuant to legal process as that term is defined in ~~42 U.S.C. 662(e) (Section 462(e) of~~ the Social Security Act~~)~~ properly served upon the secretary.
- (3) (a) Any amount deducted and withheld under this section shall be paid by the secretary to the appropriate state or local child support enforcement agency.
- (b) Any amount deducted and withheld under this section shall for all purposes be treated as if it were paid to the worker as unemployment benefits and paid by such worker to the state or local child support enforcement agency in satisfaction of the worker's child support obligations.
- (4) For purposes of this section, the term "unemployment benefits" shall mean any compensation payable under this chapter (including amounts payable by the secretary pursuant to an agreement under any federal law providing compensation, assistance, or allowances with respect to unemployment).
- (5) The provisions set forth in this section apply only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the secretary under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.
- (6) The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan prescribed in 42 U.S.C. 654 (Section 454 of the Social Security Act) which has been approved by the Secretary of Health and Human Services under 42 U.S.C. 651-662 (Part D of Title IV of the Social Security Act).
- (7) The term "state or local child support enforcement agency" as used in these provisions means any agency of a state or a political subdivision thereof operating pursuant to a plan described in this section.

Section 6. KRS 341.415 is amended to read as follows:

- (1) Any person who has received any sum as benefits under this chapter or any other state's unemployment insurance statutes or any United States Department of Labor unemployment insurance benefit program providing the secretary has signed a reciprocal agreement with such other state or the United States Department of Labor as provided in KRS 341.145, while any condition for the receipt of such benefits was not fulfilled in his case, or while he was disqualified from receiving benefits, or if he has received benefits in weeks for which he later receives a back pay award, shall, in the discretion of the secretary, either have such sum deducted from any future benefits payable to him under this chapter or repay the department for the fund a sum equal to the amount so received by him. If after due notice the recipient of such sum fails to remit or arrange for remittance of the sum, the sum may be collected in the manner provided in subsection (2) of KRS 341.300 for collection of past-due contributions and any sums so collected shall be credited to the pooled account or the appropriate reimbursing employer account. **However, if the benefit was paid as a result of departmental error as defined by administrative regulation**~~Unless there has been a false statement, misrepresentation, concealment of material information, or an award of back pay, by a recipient of benefits~~, there shall be no recoupment or recovery of an improperly paid benefit, except by deduction from any future benefits payable to him under this chapter~~, if the benefit was paid as a result of departmental error~~. For purposes of this section, overpayments as a result of a reversal of entitlement to benefits in the appeal or review process shall not be construed to be the result of departmental error.
- (2) At or after the commencement of an action under subsection (1) of this section, attachment may be had against property of the recipient of improperly paid benefits in the manner provided in subsection (3) of KRS 341.300.
- (3) A lien on a parity with state, county, and municipal ad valorem tax liens, is hereby created in favor of the department upon all property of any recipient of improperly paid benefits. This lien shall be for a sum equal to the amount of the overpayment finally determined **and shall continue until the amount of the overpayment plus any subsequent assessment of additional improperly paid benefits, interest, and fees are fully paid**. The lien shall commence from such time as the recipient has exhausted or abandoned the appeal procedure set forth in this chapter and the amount of the overpayment is finally fixed. A notice of lien may be filed in the same manner as that provided for in KRS 341.310.
- (4) Any amount paid to a person as benefits, which he has been found liable to repay or to have deducted from future benefits under subsections (1), (2), and (3) of this section, which has neither been repaid nor so deducted within a period of five (5) years following the last day of the benefit year within which it was paid, may be

deemed to be uncollectible and shall be permanently charged to the pooled account, except that if such payment was made by reason of fraudulent representations, no future benefits shall be paid such person within a period of ten (10) years of the last day of the benefit year within which such payments were made at which time these amounts may be declared uncollectible. Nothing in this subsection shall be deemed to affect collection of improperly paid benefits pursuant to a judgment or other legal remedy.

- (5) In the event benefits have been paid as a result of false statement, misrepresentation, or concealment of material information by a recipient of benefits and have not been repaid by the recipient within one (1) calendar year from the date of the first notice, interest at the rate of one and five-tenths percent (1.5%) per month or any part thereof, shall be imposed on and added to the unpaid balance each successive month, providing due notice has been given to the recipient. Such interest shall be paid into the unemployment compensation administration account.
- (6) The deduction from future benefits specified in subsection (1) of this section shall be limited to twenty-five percent (25%) of the benefit amount otherwise payable under this chapter unless the overpayment resulted from a backpay award, ***false statement, misrepresentation, or concealment of material information by a recipient of benefits. In these instances, the rate of deduction shall be one hundred percent (100%).*** The rate of deduction from benefits payable by another state or the United States of America shall be determined by the applicable state or federal statute.

Section 7. KRS 341.470 is amended to read as follows:

- (1) No agreement by a worker to waive, release, or commute his rights to benefits or any other rights under this chapter shall be valid. No agreement by any worker to pay any portion of a subject employer's contributions, required under this chapter from such subject employer, shall be valid. No subject employer shall directly or indirectly make or require or accept any deductions from wages to finance the subject employer's contributions required of him. In cases involving awards to a worker by an arbitrator, ~~the National Labor Relations Board,~~ court, ***or*** other administrative body or mediator, the secretary may require the employer to withhold benefits paid under this chapter from the award and pay the amount withheld into the unemployment insurance trust fund. All subject employers are required to notify the Department for Employment Services, Cabinet for Workforce Development prior to paying any back pay award.
- (2) No worker claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission, the secretary, or his representatives. Any worker claiming benefits in any proceeding before ***a referee or*** the commission may represent himself or may be represented by counsel or other agent duly authorized by such worker and shall be afforded the opportunity to participate in the proceeding without restriction; but no counsel or agent shall either charge or receive for such service more than an amount approved by the commission.
- (3)
 - (a) Any employer in any proceeding before ***a referee or*** the commission may represent himself or may be represented by counsel or other agent duly authorized by such employer; and
 - (b) Any person appearing in any proceeding before ***a referee or*** the commission who is an officer of, or who regularly performs in a managerial capacity for, a corporation or partnership which is a party to the proceeding in which the appearance is made shall be permitted to represent such corporation or partnership and shall be afforded the opportunity to participate in the proceeding without restriction.
- (4) No assignment, pledge, or encumbrance of any right to benefits due or payable under this chapter shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy for the collection of debt. Benefits received by any worker, as long as they are not mingled with other funds of the recipient, shall be exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to such worker or his spouse or dependents during the time such worker was unemployed. No waiver of any exemption provided for in this subsection shall be valid.
- (5) The provisions of this section shall not be applicable to child support deductions made in accordance with KRS 341.392 and withholding for federal and state income tax in accordance with KRS 341.395.

Section 8. KRS 341.490 is amended to read as follows:

- (1) There shall be a special fund known as the unemployment insurance fund which shall be administered separate and apart from all public money or funds of this state. This fund shall consist of:

- (a) All contributions, payments in lieu of contributions, and money collected under this chapter, except fines, penalties, and interest on delinquent contributions collected under KRS 341.300 *and service capacity upgrade payments collected under Section 11 of this Act*;
 - (b) Interest earned upon any money in the fund;
 - (c) Any property or securities acquired through use of money belonging to the fund;
 - (d) All earnings of such property or securities;
 - (e) All money received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
 - (f) All money credited to the account of this state in the unemployment trust fund in accordance with Section 903 of the Social Security Act as amended; and
 - (g) All money received from the federal government as reimbursement, pursuant to Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970.
- (2) All moneys in the fund shall be commingled and undivided.
 - (3) Subject to the provisions of this chapter, the secretary may have full power, authority, and jurisdiction over the fund, including all money and property or securities belonging thereto, and may perform any act necessary or convenient in the administration thereof consistent with this chapter.

Section 9. KRS 341.530 is amended to read as follows:

- (1) The department shall maintain a reserve account for each subject employer making contributions to the fund and a reimbursing employer account for each subject employer making payment in lieu of contributions, and shall, except as provided in KRS 341.590, credit to such account the total amount of all contributions or benefit reimbursement paid by the employer on his own behalf. Nothing in this section or elsewhere in this chapter shall be construed to grant any employer or individual who is or was in his employ prior claims or rights to the amounts paid by him into the fund.
- (2) Except as provided in subsection (3) of this section, all regular benefits paid to an eligible worker in accordance with KRS 341.380 plus the extended benefits paid in accordance with KRS 341.700 to 341.740, subject to the provisions of paragraphs (a) and (b) below, shall be charged against the reserve account or reimbursing employer account of his most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for such employer in each of ten (10) weeks whether or not consecutive ***back to the beginning of the worker's base period***.
 - (a) Subject employers, which are not governmental entities as defined in KRS 341.069, shall be charged one-half (1/2) of the extended benefits paid in accordance with KRS 341.700 to 341.740; and
 - (b) Subject employers which are governmental entities, as defined in KRS 341.069, shall be charged for all extended benefits paid in accordance with KRS 341.700 to 341.740 for compensable weeks occurring on or after January 1, 1979, and for one-half (1/2) of the extended benefits paid for compensable weeks occurring prior to such date.
- (3) Notwithstanding the provisions of subsection (2) of this section, benefits paid to an eligible worker and chargeable to a contributing employer's reserve account under such subsection shall be charged against the pooled account if such worker was discharged by such employer for misconduct connected with his most recent work for such employer, voluntarily left his most recent work with such employer without good cause attributable to the employment, or ***the employer has continued to provide part-time employment and wages, without interruption, to the same extent that was provided from the date of hire*** ~~such employer has continuously employed the worker without significant interruption since the end of the worker's base period and in the week with respect to which benefits are paid, wages and employment are provided to the worker by such employer to the same extent as during the base period~~, and the employer within a reasonable time, as prescribed by regulation of the secretary, notifies the department, in writing, of the alleged voluntary quitting, discharge for misconduct or continuing ***part-time*** employment; provided, however, that no employer making payments to the fund in lieu of contributions shall be relieved of charges by reason of this subsection.
- (4) Each subject employer's reserve account or reimbursing account shall, unless terminated as of the computation date (as defined in subsection (5) of KRS 341.270), be charged with all benefits paid to eligible workers which

are chargeable to such reserve account or reimbursing account under subsection (2) of this section. A subject employer's reserve account or reimbursing account shall be deemed to be terminated if he has ceased to be subject to this chapter, and his account has been closed and any balance remaining therein has been transferred to the fund's pooled account or to a successor's account as provided in KRS 341.540 or has been refunded if the employer is a reimbursing employer.

- (5) Notwithstanding subsection (1) of this section, two (2) or more nonprofit (Internal Revenue Code sec. 501(c)(3)) organizations may jointly request the secretary to establish a group reserve account or reimbursing account for such nonprofit organizations. Two (2) or more governmental entities may jointly request the secretary to establish a group reserve account or reimbursing account, and once established, such account shall remain in effect at least two (2) calendar years and thereafter until either dissolved at the discretion of the secretary or upon filing application for dissolution by the group members. Each member of a group shall be jointly and severally liable for all payments due under this chapter from each or all of such group members. The secretary shall prescribe such procedures as he deems necessary for the establishment, maintenance, and dissolution of a group reserve account or reimbursing account.
- (6) Any subject contributing employer may at any time make voluntary payments to the fund, additional to the contributions required under KRS 341.260 and 341.270. Notwithstanding any other provision of this chapter, contributions paid on or before the computation date and voluntary payments made within twenty (20) days following the mailing of notices of new rates shall be credited to an employer's reserve account as of the computation date, provided no voluntary payments shall be used in computing an employer's rate unless the payment is made prior to the expiration of one hundred and twenty (120) days after the beginning of the year for which the rate is effective. Voluntary contributions by any employer subject to a minimum rate as provided in KRS 341.270(2) or KRS 341.272(1) shall not exceed any negative balance they may have in their reserve account as of the computation date. Any employer who is delinquent in the payment of contributions, penalties, or interest as of the computation date shall be entitled to make voluntary payments only after the amount of the delinquency is paid in full.

Section 10. KRS 341.540 is amended to read as follows:

- (1) Any employing unit which succeeds to or acquires the organization, trade or business of a subject employer shall assume the resources and liabilities of the predecessor's reserve account, including interest, and shall continue the payment of all contributions and interest due under this chapter, except that the successor or acquirer shall not be required to assume the liability of any delinquent contributions and interest of a predecessor or predecessors unless the cabinet notifies the successor or acquirer of such delinquency within six (6) months after the department has notice of the succession or acquisition.
- (2) The liability for delinquent contributions and interest imposed upon the successor or acquirer by subsection (1) of this section shall be secondary to the liability of the predecessor or predecessors, and if the delinquency has been reduced to judgment, the order of execution on such judgment shall be as follows:
 - (a) Against the assets, both real and personal, of the predecessor or predecessors;
 - (b) Against the assets, both real and personal, of the business acquired; and
 - (c) Against the assets, both real and personal, of the successor or acquirer.
- (3) Notwithstanding the provisions of subsection (1), any employing unit which succeeds to or acquires a *segregable and identifiable* portion of the organization, trade or business from a subject employer, and who is, or by reason of such succession or acquisition becomes, a subject employer, shall assume the position of such employer with respect to the resources and liabilities of such reserve account in proportion to the *percentage of the payroll or employees assignable to the transferred portion as determined by the secretary* ~~[extent of such succession or acquisition as proposed by the parties in interest to the secretary for his approval or disapproval]~~, and the taxable payroll, benefit charges and the potential benefit charges shall likewise be assumed by the successors or acquirers in interest in a like proportion ~~[In the absence of an approved agreement, the secretary may, not sooner than three (3) calendar months following the date of succession or acquisition, establish the extent of succession based upon the proportion of gross payroll reported by the predecessor in the most recently completed calendar quarter preceding the date of succession or acquisition for workers employed by the successor subsequent to that date; or upon such other basis as may be set forth in regulation]~~.
- (4) (a) The contribution rate of a successor or acquirer employing unit, whether in whole or in part, which was a subject employer prior to such succession or acquisition, shall not be affected by the transfer of the reserve account for the remainder of the rate year in which such succession or acquisition occurred.

- (b) The contribution rate of a successor or acquirer employing unit, either in whole or in part, which was not a subject employer prior to such succession or acquisition, shall be, for the calendar year in which such succession or acquisition occurred, the same rate as that of its predecessor.
- (c) The contribution rate for a successor or acquirer employing unit, which was not a subject employer prior to the simultaneous succession to or acquisition of two (2) or more predecessor reserve accounts, either in whole or in part, shall be the rate determined in accordance with the provisions of KRS 341.270, by combining the reserve accounts succeeded to or acquired as they existed as of the computation date for determining rates for the calendar year in which such succession or acquisition occurred.
- (d) The contribution rate of a successor or acquirer employing unit which succeeds to or acquires, either in whole or in part, a predecessor's reserve account after a computation date but prior to the beginning of the calendar year immediately following such computation date shall be the rate determined, in accordance with KRS 341.270, by effecting the transfer of such reserve account as of the computation date immediately preceding the date of such succession or acquisition.

SECTION 11. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created within the State Treasury a special fund known as the service capacity upgrade fund that shall be administered separate and apart from all public money or funds of the state.*
- (2) *The service capacity upgrade fund shall be used solely for acquisition and upgrading of the technology base, program integrity functions, and service delivery capacity in support of the programs administered by the Department for Employment Services. The secretary shall have full power, authority, and jurisdiction over the fund, including all money, property, and securities belonging thereto, and shall perform any act necessary or convenient in the administration of the fund consistent with this section. The secretary shall provide an annual report to the Interim Joint Committee on Labor and Industry detailing all receipts and expenditures of the fund.*
- (3) *Any money collected under the provisions of this section shall be invested at interest in banks or other interest-bearing obligations of the United States. Investments shall at all times be made so that all the assets of the service capacity upgrade fund shall be convertible into cash when needed for the payment of expenses incurred in upgrading the service capacity of the Department for Employment Services. All interest income received under this section shall be credited to the fund. The State Treasurer shall dispose of securities or other property belonging to the fund only under the direction of the secretary and the secretary of the Finance and Administration Cabinet.*
- (4) *Effective January 1, 1999, all rates otherwise established under Section 1 of this Act and KRS 341.272 shall be reduced by subtracting seventy-five thousandths percent (0.075%) from each rate, but only if the trust fund balance as of December 31 of the preceding year is equal to or greater than one and eighteen hundredths percent (1.18%) of the total wages paid in the state during the state fiscal year ended as of June 30 of that year.*
 - (a) *If the trust fund balance as of December 31, 1999, is less than the trust fund balance as of December 31, 1998, the amount of the rate reduction for calendar year 2000 shall be reduced by forty percent (40%) to the level of forty-five thousandths percent (0.045%).*
 - (b) *If the trust fund balance as of December 31, 2000, is less than the trust fund balance as of December 31, 1999, the amount of the rate reduction for calendar year 2001 shall be forty percent (40%) less than the amount of the rate reduction which was in effect in calendar year 2000.*
- (5) *For any calendar year in which all rates have been reduced in accordance with subsection (4) of this section, all contributory employers shall pay into the service capacity upgrade fund an amount equal to the percentage by which rates were reduced multiplied by their taxable wages paid during that calendar year. Payments shall be made at the same time and in the same manner as prescribed for payment of contributions under KRS 341.260 and all regulations prescribed by the secretary in support of that section. The restrictions in subsection (1) of Section 7 of this Act apply equally to the provisions of this section. Failure to make these payments shall be subject to interest and all other collection actions provided for failure to make contributions under KRS 341.300.*
- (6) *All payments required under subsection (5) of this section, along with any interest due to late payment of these assessments, shall be deposited in the service capacity upgrade fund.*

- (7) *The provisions of this section shall expire with regard to rates assigned for calendar years beginning after December 31, 2001, and any balance of moneys or property in the fund not expended or obligated for purposes consistent with this section by June 30, 2002, shall be deposited in the unemployment insurance trust fund.*

Section 12. The following KRS section is repealed:

341.285 Transition provision.

Approved March 27, 1998

CHAPTER 168

(HB 394)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 134.810 is amended to read as follows:

- (1) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes shall be due and payable on or before the earlier of the last day of the month in which registration renewal is required by law for a motor vehicle renewed or the last day of the month in which a vehicle is transferred.
- (2) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on motor vehicles shall become delinquent following the earlier of the end of the month in which registration renewal is required by law or the last day of the second calendar month following the month in which a vehicle was transferred.
- (3) Any taxes which are paid within thirty (30) days of becoming delinquent shall be subject to a penalty of three percent (3%) on the taxes due. However, this penalty shall be waived if the tax bill is paid within five (5) days of the tax bill being declared delinquent. Any taxes which are not paid within thirty (30) days of becoming delinquent shall be subject to a penalty of ten percent (10%) on the taxes due. In addition, interest at an annual rate of fifteen percent (15%) shall accrue on said taxes and penalty from the date of delinquency. No penalty or interest shall accrue on a motor vehicle under dealer assignment pursuant to KRS 186A.220.
- (4) When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner of record on January 1 of any year shall be liable for the taxes on the motor vehicle, except as hereinafter provided.
- (5) If an owner obtains a certificate of registration for a motor vehicle valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration, all state, county, city, urban-county government, school, and special tax district ad valorem tax liabilities arising from the assessment date following initial registration shall be due and payable on or before the last day of the first birth month following the assessment date or date of transfer, whichever is earlier. Any taxes due under the provisions of this subsection and not paid as set forth above shall be considered delinquent and subject to the same interest and penalties found in subsection (3) of this section.
- (6) For purposes of the state ad valorem tax only, all motor vehicles held for sale by a licensed Kentucky dealer **and all motor vehicles with a salvage title held by an insurance company** on January 1 of any year shall not be taxed as a motor vehicle pursuant to KRS 132.485(3) but shall be subject to ad valorem tax as goods held for sale in the regular course of business under the provisions of KRS 132.020(10)~~(9)~~ and 132.220.
- (7) Any provision to the contrary notwithstanding, when any ad valorem tax on a motor vehicle becomes delinquent, the state and each county, city, urban-county government, or other taxing district shall have a lien on all motor vehicles owned or acquired by the person who owned the motor vehicle at the time the tax liability arose. A lien for delinquent ad valorem taxes shall not attach to any motor vehicle transferred while the taxes are due on that vehicle. For the purpose of delinquent ad valorem taxes on leased vehicles only, a lien on a leased vehicle shall not be attached to another vehicle owned by the lessor.
- (8) The lien required by subsection (7) of this section shall be filed and released by the automatic entry of appropriate information in the AVIS database. For the filing and release of each lien or set of liens arising from

motor vehicle ad valorem property tax delinquency, a fee of one dollar (\$1) shall be added to the delinquent tax account. The fee shall be collected and retained by the county clerk who collects the delinquent tax.

- (9) The implementation of the automated lien system provided in this section shall not affect the manner in which commercial liens are recorded or released.

Section 2. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture. Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
- (8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;
- (13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460 based on the vehicle's fair market value at the time of sale;
- (14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

- (15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, **and all motor vehicles with a salvage title held by an insurance company;**
- (16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; and
- (17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800.

Section 3. The amendments contained in this Act shall apply to taxable years beginning after December 31, 1998.

Approved March 27, 1998

CHAPTER 169

(HB 488)

AN ACT relating to forest fire prevention.

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

Section 1. KRS 149.370 is amended to read as follows:

No person shall:

- (1) Within or adjacent to timberland, dispose of a lighted match, cigarette, cigar, ashes, or other flaming or glowing substance, or any other substance or thing in such condition that it is likely to ignite a forest, brush, grass, or woods fire, or throw or drop any of the aforesaid objects or substances from a moving vehicle or drop or leave any of the aforesaid objects or substances within the limits of the right-of-way of any road or highway in such timberland. The driver of a moving vehicle shall be deemed prima facie liable where it cannot be determined which of the occupants of the moving vehicle threw or dropped any of the aforesaid objects or substances.
- (2) Smoke in timberland during an emergency period of fire danger as proclaimed in KRS 149.405.
- ~~(3) Set fire or cause or procure the setting on fire of any flammable material on timberland of another without the consent of the owner.~~
- ~~(4) Set fire or cause or procure the setting on fire of any flammable material on timberland, without notifying adjacent landowners and without taking reasonable precautions both before and after lighting the fire and at all times thereafter to prevent escape thereof.~~
- ~~(5) Deposit or leave unattended on any railroad or highway right of way within or adjacent to timberland, any fire or live coals, or set or maintain thereon any fire for the purpose of cooking, heating, or providing light or warmth unless such fire is enclosed within a stove, drum, fireplace or other properly prepared location.~~
- ~~(6)~~ Within or adjacent to timberland, set a backfire or cause a backfire to be set, except under the direct supervision of the Natural Resources and Environmental Protection Cabinet, or unless it can be established that the setting of such backfire is necessary for the purpose of saving life or valuable property.
- ~~(4)~~~~(7)~~ Without authority, destroy, deface, or remove any notice, sign, or poster of the Natural Resources and Environmental Protection Cabinet, posted for the better protection of wood lots, forests, or wild lands from fire or trespass.
- ~~(5)~~~~(8)~~ Use or operate within or adjacent to timberland a welding torch, tarpot, or other device which may cause a fire, without clearing flammable material surrounding the operation or without taking such other reasonable precautions necessary to ensure against the starting and spreading of fire.
- ~~(9) Light, maintain or use a fire for cooking, heating or providing light or warmth upon lands not his own and within or adjacent to timberland, without first obtaining permission from the owner, lessee or agent thereof.~~
- ~~(10) Light or maintain within or adjacent to timberland a bonfire within one hundred fifty feet (150') of any house or building.~~

- (6)~~((11))~~ Discharge or cause to be discharged a gun firing incendiary or tracer bullets or tracer charge or combustible gun wadding onto or across any timberland.
- (7)~~((12))~~ Have in his possession on timberland any incendiary or tracer bullet or tracer charge, except in the course of transporting the same in conformity with law.
- (8)~~((13))~~ ***In or adjacent to timberland, set fire or direct another to set fire to any flammable material for debris removal, cooking, heating, or to provide light without first obtaining permission from the landowner and taking necessary precautions to prevent the fire from spreading to adjacent lands. All burning materials shall be attended until extinguished***~~[Light or maintain within or adjacent to timberland an open fire or campfire without clearing flammable material surrounding such fire as necessary to ensure against the escape or spread thereof, or leave such fire before it is extinguished.]~~
- (14) ~~Kindle or start, or direct another to kindle or start, any fire in or near a public or private road within or adjacent to timberland unless it is under control at all times, and properly extinguished before left.~~

Section 2. KRS 149.375 is amended to read as follows:

It shall be unlawful, within or adjacent to timberland, for any person to set fire to, or to procure another to set fire to, any flammable material upon land owned or leased by him unless he previously shall have taken all reasonable care and precaution, by ***carefully clearing around the flammable material as necessary to prevent the escape or spread of fire***~~[having the flammable material cut and piled or carefully cleared around the same, to prevent the spread of such fires]~~ to lands other than those owned or leased by him. It shall also be unlawful for any employee of any such owner or lessee of land to set fire to any flammable material, upon such land unless he shall have taken similar precautions to prevent the spread of such fire to any other land. All fires shall be attended until extinguished.

Section 3. KRS 149.400 is amended to read as follows:

- (1) The periods commencing on ***February 15***~~[March 1]~~ and ending on ***April 30***~~[May 15]~~ and commencing on October 1 and ending on December 15 of each year are hereby declared to be and established as the fire hazard seasons. During the fire hazard seasons, even though the precautions required by KRS 149.375 shall have been taken, it shall be unlawful for any person to set fire to, or to procure another to set fire to, any flammable material capable of spreading fire, located in or within one hundred fifty feet (150') of any woodland or brushland, except between the hours of ***6:00***~~[4:30]~~ p.m. and ***6:00 a.m.***~~[twelve (12) o'clock midnight]~~, prevailing local time, or when the ground is covered with snow.
- (2) This section shall not apply to fires which may be set for the purpose of burning plant beds.
- (3) This section shall not apply to fires which may be set by competent and qualified employees of railroad, utility, or pipeline companies in connection with the construction, operation, or maintenance of railroads, pipelines, powerlines, or other projects in the public interest on rights-of-way used for such railroads, pipelines, powerlines, or other projects, and such fires shall be attended at all times and be extinguished before the employees of such railroad, utility, or pipeline companies leave the vicinity of the fire.
- (4) ***This section shall not apply to fires set by trained and qualified employees of a state government agency on land owned or leased by the state, and set for the specific purpose of wildlife or plant habitat improvement, ecological site restoration, site preparation for natural or artificial regeneration or fuel reduction. Nongovernmental organizations may apply to the Division of Forestry for written approval to set fires under this subsection. Fires set under this subsection shall be in accordance with Section 2 of this Act. Persons who set such fires shall give written notification of the burn to the local Division of Forestry district office at least twenty-four (24) hours in advance and obtain the approval of the district office.***

Section 4. KRS 149.093 is amended to read as follows:

If the violation of any section of this chapter is a misdemeanor and is committed in the presence of a forest warden or other law enforcement officer, and there are reasonable grounds to believe that the person being cited will appear to answer the charge, the warden or officer may, in lieu of a physical arrest directed by KRS 149.090, issue a citation as authorized by KRS 431.015, 431.450, 431.451, 431.452, and 431.455. ***The warden or officer may issue a warning without a penalty in lieu of a citation if the suspected offense is one cited in Sections 1, 2, and 3 of this Act, KRS 149.385, 149.390, 149.395, 149.401, or 149.405.***

Section 5. KRS 149.180 is amended to read as follows:

Whenever possible, the secretary for natural resources and environmental protection shall collect the costs of firefighting done and approved as provided in KRS 149.160, from the person responsible for the origin of the fire by his negligence or intent. ***The recovered costs shall be deposited in*** ~~and shall return any costs so collected to~~ a special fund in the Natural Resources and Environmental Protection Cabinet. ***The recovered costs*** ~~and such amounts~~ shall be repaid to the county in which the costs were incurred, if such county has fully paid its annual assessment to the statewide system as provided for in KRS 149.540 ***for the year in which the fire suppression costs were incurred. If a county is not eligible to receive the recovered costs, the money shall be used by the Division of Forestry to improve fire protection services.*** The funds so repaid to the county shall be placed in the county forest fire protection fund provided for in KRS 149.590. ***Any money in the Natural Resources and Environmental Protection Cabinet's special fund upon the effective date of Sections 1 to 6 of this Act, that were not repaid to a county for having failed to fully pay its annual assessment, shall be used by the Division of Forestry to improve fire protection services.*** In the event the suppression cost is not collected, the Commonwealth's attorney of the county in which the fire occurred shall institute and prosecute the necessary proceedings.

Section 6. KRS 149.160 is amended to read as follows:

When ***the Natural Resources and Environmental Protection Cabinet determines that a danger of forest fire exists*** ~~any forest warden sees or there is reported to him a forest fire,~~ in a county in which the statewide system of forest fire protection has been established under KRS 149.510 to 149.600, ***the cabinet shall respond to the forest fire danger*** ~~he shall repair immediately to the scene of the fire~~ and employ ***those*** ~~such~~ persons and means as, in ***its*** ~~his~~ judgment, are expedient and necessary to ***respond to the forest fire danger or to*** extinguish the fire, within the limits of the expense ***that it*** ~~he~~ has been authorized to incur in ***its*** ~~his~~ instructions from the secretary for natural resources and environmental protection. ***The cabinet*** ~~He~~ shall keep an itemized account of all expenses thus incurred and immediately send the account verified by affidavit to the secretary for natural resources and environmental protection for examination. Upon approval by the secretary for natural resources and environmental protection, the account shall be paid from such fund or funds as are available to the ***cabinet*** ~~department~~ for such purpose. No such payment shall be made to any person who has intentionally started the fire or to any person whose negligence caused or contributed to the setting of the fire.

Approved March 27, 1998

CHAPTER 170

(HB 382)

AN ACT relating to economic development.

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

Section 1. KRS 103.286 is amended to read as follows:

- (1) The Kentucky Private Activity Bond Allocation Committee is established. The purpose of the committee shall be to ensure compliance by the Commonwealth, its political subdivisions, and other authorized issuers within the Commonwealth of Kentucky, of private activity bonds, as defined in the Internal Revenue Code of the United States, with the state ceiling on the issuance of the bonds imposed by the Tax Reform Act of 1986, 26 U.S.C. sec. 146. The committee shall be attached to the Finance and Administration Cabinet for administrative purposes and staff services. The committee shall be composed of the secretary of the Finance and Administration Cabinet, who shall be chairman of the committee; the secretary of the Cabinet for Economic Development; the state budget director; the state controller, Finance and Administration Cabinet; and the secretary of the Governor's Cabinet, or their respective designees.
- (2) The committee shall attempt to allocate the state ceiling of Kentucky in order to best effectuate the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth.
 - (a) For each calendar year, during the period in which the issuance of private activity bonds is authorized by the federal government, the first ~~fifty~~ ~~seventy five~~ percent ~~(50%)~~ ~~(75%)~~ of the term shall be designated as a period in which the committee shall provide that no less than sixty percent (60%) of the private activity cap be reserved for ~~state~~ ~~local~~ bond issuance authorities.
 - (b) For each calendar year, during the period in which the issuance of private activity bonds is authorized by the federal government, the last ~~fifty~~ ~~twenty five~~ percent ~~(50%)~~ ~~(25%)~~ of the term shall be

designated by the committee as the period in which the remaining unallocated cap shall revert to a single pool to be allocated *in accordance with subsection (3) of this section* ~~[on a first come, first serve basis to state and local governments].~~

- (3) The secretary of the Finance and Administration Cabinet shall promulgate regulations in accordance with KRS Chapter 13A, to provide for the allocation of the state ceiling on private activity bonds among all issuers of the bonds within the Commonwealth of Kentucky.
- (4) No bonds governed by this section shall be issued that are not in compliance with the state ceiling, subsections (2)(a) and (b) of this section, or with the allocation, application, or review procedures established by the secretary of the Finance and Administration Cabinet.

Section 2. KRS 42.4588 is amended to read as follows:

- (1) There is established within the Kentucky Economic Development Finance Authority a Local Government Economic Development Program to consist of a system of grants to counties to attract new industry.
- (2) Grants obtained under this program shall be used for:
 - (a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky Economic Development Finance Authority, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development; and
 - (b) Industrial development projects if the secretary of the Cabinet for Economic Development finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development.
 - (c) Debt service for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development under the provisions of subsection (3) of this section.
- (3) The secretary of the Cabinet for Economic Development may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the secretary finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary may also approve privately-owned facilities for transient lodging and recreation where the secretary finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in paragraphs (a), (b), and (c) of subsection (9) of this section shall be paramount in the case of lodging and recreational facilities.
- (4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the local government economic development fund. No grant shall be awarded without application for a grant.
- (5) A grant may be awarded for an industrial development project located in a county that does not have an account in the local government economic development fund, if the secretary of the Cabinet for Economic Development finds that the industrial development project may be reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund.
- (6) Grants awarded from funds provided for in KRS 42.4592(1)(a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.
- (7) Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed the current biennium of the Commonwealth, and shall be limited to an amount not to exceed the amount estimated to be allocated to the applicant county or counties for the current biennium under the provisions of KRS 42.4592(1)(a) and (b).

- (8) Approval of grant applications shall be by the secretary of the Cabinet for Economic Development. Award of grants shall be by the Kentucky Economic Development Finance Authority.
- (9) Criteria for approval of applications and the award of grants to be considered, if applicable, shall include:
- (a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;
 - (b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;
 - (c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;
 - (d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;
 - (e) The needs of any industrial firm benefiting from the industrial development project;
 - (f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;
 - (g) The amount of capital made available to the facility by lenders and by the industrial firm; and
 - (h) The economic feasibility of the facility.
- (10) For purposes of this section:
- (a) "Industrial development project" includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing, processing, or assembling purposes, including surveys; site tests and inspections; subsurface site work; excavation, removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage; storm water retention; installation of utilities, such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation on the real estate of the industrial firm of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs; and other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; workforce training; *job development incentive grants*; ~~and~~
 - (b) "Industrial firm" means any corporation, limited liability company, limited liability partnership, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section; ~~and~~
 - (c) *"Job development incentive grant" means an award to a county of funds from its account administered by the Kentucky Economic Development Finance Authority pursuant to KRS 42.4592(1)(a) and (b) for the use by the county to encourage job development for those industrial development projects located in that county which create at least twenty-five (25) new full-time jobs held by Kentucky residents who receive a minimum wage of at least one hundred thirty percent (130%) of the federal minimum wage. Each job development incentive grant is limited to five thousand dollars (\$5,000) for each job created which fulfills the requirements of this subsection. The industrial firm receiving the job development incentive grant shall pay its employees at the project site an average wage equal to or greater than one hundred fifty percent (150%) of the federal minimum wage and shall invest at least ten thousand dollars (\$10,000) per new job created. After a fiscal court has received authorization for the job development grant by the Kentucky Economic Development Finance Authority, the county, the industrial firm and the Cabinet for Economic Development shall enter into an agreement committing the grant funds to be disbursed at such time*

as the industrial firm certifies the authenticity of the following information to be delivered to the county:

1. *The industrial firm has made at least the minimum investment required;*
2. *At least twenty-five (25) new full-time Kentucky jobs have been created at the project site by the industrial firm;*
3. *No employee at the project site is paid a salary by the industrial firm which is less than one hundred thirty percent (130%) of the federal minimum wage;*
4. *The employees at the project site are paid an average wage by the industrial firm at least equal to one hundred fifty percent (150%) of the federal minimum wage;*
5. *Each employee hired for the project by the industrial firm shall have worked on a full-time basis at the minimum wages described in this section at least twelve (12) full consecutive months at the site prior to any grant funds disbursement; and*
6. *No job created by the industrial firm after twenty-four (24) months from the date of the first eligible hire at the project site shall be considered for the grant.*

If the county is satisfied the information provided is accurate and qualifies the industrial firm for the job development incentive grant as described in the agreement, it shall forward the certified information to the Cabinet for Economic Development which shall make the job development grant disbursement upon sufficient evidence that all terms of the agreement have been met.

- (11) Findings by the secretary of the Cabinet for Economic Development, provided for in subsections (2)(b), (3), and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.
- (12) By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development shall provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Section 3. Whereas using the proceeds from the issuance of private activity bonds is the primary and most effective method of financing low-interest rate mortgages for first-time, low-income homebuyers and of providing student loans for those persons seeking postsecondary educational opportunities; and whereas, the demand for low-interest rate mortgages and postsecondary educational loans will result in the depletion of the available funds before a new allocation period for private activity bonds begins, an emergency is declared to exist, and Section 1 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 27, 1998

CHAPTER 171

(HB 233)

AN ACT relating to the operation of canteens in jails.

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

Section 1. KRS 441.135 is amended to read as follows:

- (1) The jailer may maintain a canteen for the benefit of prisoners lodged in the jail and may assign such jail employees and prisoners to operate the canteen as are necessary for efficient operation.
- (2) All profits from the canteen shall be used ~~exclusively~~ for the benefit ~~or~~ ~~and~~ recreation of the prisoners. The jailer shall keep books of accounts of all receipts and disbursements from the canteen and shall annually report to the county treasurer on the canteen account.

Approved March 27, 1998

CHAPTER 172

(HB 231)

AN ACT relating to the Linked Deposit Investment Program.

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

Section 1. KRS 41.600 is amended to read as follows:

As used in KRS 41.600 to 41.625, unless the context requires otherwise:

- (1) "Eligible small business" means any person that has all of the following characteristics:
 - (a) Is headquartered in this state;
 - (b) Maintains offices and operating facilities in this state and transacts business in this state;
 - (c) Employs fewer than the equivalent of fifty (50) full-time employees, the majority of whom are residents of Kentucky;
 - (d) Has gross earnings that do not exceed one million dollars (\$1,000,000) annually;
 - (e) Is organized for profit; and
 - (f) Holds no position as officer or director of an eligible lending institution.
- (2) "Eligible agribusiness" means any person that has all of the following characteristics:
 - (a) Is actively engaged in agricultural endeavors within the Commonwealth of Kentucky;
 - (b) Shows gross earnings not in excess of one million dollars (\$1,000,000) annually;
 - (c) Derives at least one-half (1/2) of annual gross income from farming ~~and not more than sixty thousand dollars (\$60,000) annual net income from all other sources~~; and
 - (d) Holds no position as officer or director of an eligible lending institution.
- (3) "Eligible lending institution" means a financial institution that is eligible to make commercial loans including an institution of the farm credit system organized under the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq., as amended, which chooses to participate in the linked deposit investment program, and which agrees to lend the value of the deposits to small businesses or agribusinesses at a reduced interest rate according to the provisions of KRS 41.610.
- (4) "Linked deposit investment" means a certificate of deposit, collateralized or uncollateralized, or a repurchase agreement placed by the State Investment Commission with an eligible lending institution at the rate designated according to the provisions of KRS 41.610 and where the maturity shall match the terms of the loan as approved by the Department of Agriculture or the Cabinet for Economic Development.

Section 2. KRS 41.610 is amended to read as follows:

- (1) Qualified public depositories in Kentucky shall be eligible to participate in the Linked Deposit Investment Program.
- (2) An eligible lending institution choosing to participate in the Linked Deposit Investment Program shall enter into a linked deposit investment agreement with the State Investment Commission which shall include requirements necessary to carry out the purposes of the Linked Deposit Investment Program. A linked investment shall bear a minimum rate of two percent (2%) and a maximum rate fixed by the Wall Street Journal prime rate as published on the first business day of each month less four percent (4%). ~~No single eligible lending institution shall receive in excess of ten percent (10%) of total program assets.~~
- (3) The eligible lending institution that desires to receive a linked deposit investment shall agree to loan the funds to borrowers under the following terms:
 - (a) No loan shall exceed **one hundred thousand dollars (\$100,000)** ~~fifty thousand dollars (\$50,000)~~;
 - (b) Maturity dates of the loan shall be set as agreed to between the financial institution and the borrower with a maximum maturity of **seven (7)** ~~five (5)~~ years; and

- (c) The rate of interest for the term of the loan shall be fixed at the Wall Street Journal prime rate as published on the first business day of each month [~~less one percent (1%)~~], with a minimum interest rate of five percent (5%).
- (4) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses and agribusinesses. The lending institution shall assume all responsibility for credit underwriting and shall apply all usual lending standards to determine the creditworthiness of each applicant.
- (5) The eligible lending institution shall forward to the Department of Agriculture or the Cabinet for Economic Development, as appropriate, a completed loan package for review to determine if the loan package is in accordance with the administrative regulations promulgated pursuant to KRS 41.606(7). If the loan package is found to be complete and in accordance with the administrative regulations, it shall be forwarded to the State Investment Commission for funding.
- (6) The eligible lending institution shall charge no penalty for early payback of the linked deposit loan. Principal repayments received by the lending institution shall be returned to the State Investment Commission annually on the anniversary date of the loan.
- (7) Applications for renewal of repurchase agreements shall be accompanied by a status report on linked deposit loans.
- (8) The Commonwealth, Department of Agriculture, and the Cabinet for Economic Development, their agents and employees, and the State Investment Commission shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business or to an eligible small agribusiness. Any delay in payments or default on the part of a borrower shall not affect the deposit agreement between the eligible lending institution and the State.

Section 3. KRS 41.615 is amended to read as follows:

- (1) Moneys obtained from the Linked Deposit Investment Program by eligible small *businesses* and agribusinesses may be used for annual working capital for production costs, interest costs, capital expense, and debt refinancing.
- (2) Eligible lending institutions who have entered into business loans with eligible borrowers prior to July 15, 1996 shall be allowed to refinance prior loans under the terms of the Linked Deposit Investment Program. The borrower shall not be charged any penalty for the refinancing at the same lending institution.
- (3) *No eligible small business or agribusiness may have a total outstanding principal debt of more than one hundred thousand dollars (\$100,000) in the Linked Deposit Investment Program.*

Approved March 27, 1998

CHAPTER 173

(HB 190)

AN ACT relating to compulsory school attendance.

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

Section 1. KRS 159.030 is amended to read as follows:

- (1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:
- (a) Who is a graduate from an accredited or an approved four (4) year high school; or
- (b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or

- (c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or
 - (d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or
 - (e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or
 - (f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;
 - (g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.
- (2) Before granting an exemption under subsection (1)(d) of this section the Kentucky Board of Education shall require satisfactory evidence, in the form of a signed statement of a licensed physician, **advanced registered nurse practitioner**, psychologist, ~~or~~ psychiatrist, or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence the board may exempt the child from compulsory attendance. Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of the following professional persons: a licensed physician, **advanced registered nurse practitioner**, psychologist, psychiatrist, and health officer. Exemptions of all children under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated.
- (3) For any child who is excluded under the provisions of subsection (1)(d) of this section, home, hospital, institutional, or other regularly scheduled and suitable instruction meeting standards, rules and regulations of the Kentucky Board of Education shall be provided.

Approved March 27, 1998

CHAPTER 174

(HB 145)

AN ACT relating to family resource and youth service centers and declaring an emergency.

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

Section 1. KRS 156.4977 is amended to read as follows:

- (1) Beginning with fiscal year 1992 ~~through fiscal year 1997~~, grants shall be awarded to eligible local school districts to implement or continue family resource and youth services centers as defined in KRS 156.497.
- (2) Grant proposal instructions shall be developed by the Cabinet for Human Resources ~~upon the recommendations of the Interagency Task Force on Family Resource and Youth Services Centers~~. The instructions shall be contained in a grant application package and distributed to each local public school district in which there are qualifying schools.
- (3) A proposal review team comprised of at least three (3) members shall review proposals and score each application in accordance with training provided and scoring procedures established by the Cabinet for Human Resources ~~upon the recommendation of the task force~~. Proposal reviewers shall be selected by the secretary of the Cabinet for Human Resources ~~and approved by the task force~~. The reviewers shall submit the scored proposals to the **secretary of the Cabinet for Human Resources** ~~task force which shall make the final recommendations to the secretary~~. Written notification of the secretary's final decision on proposals shall be provided by the secretary to each applicant school district.
- (4) The application from each qualifying school or school consortium shall contain the following:
 - (a) A statement of need;
 - (b) Proposed goals and outcomes;
 - (c) A description of the actual services and activities to be provided at the center and how they shall be provided;
 - (d) A description of how the children and families with the most urgent needs will be served first;

- (e) Written agreements with other service providers;
 - (f) A description of the development, composition, and role of the local advisory council;
 - (g) The strategies to disseminate information;
 - (h) A training plan;
 - (i) A description of procedures to be followed to obtain parental permission for services and for sharing confidential information with other service providers. Procedures shall be developed pursuant to federal law and the Kentucky Revised Statutes including, but not limited to, KRS 210.410, 214.185, 222.441, 645.030, and Chapters 620 and 635 and shall require that no family resource center or youth services center offer contraceptives to minor students prior to receiving the express consent of the student's parent or legal guardian;
 - (j) A plan to minimize stigma;
 - (k) A work plan for each of the core components and optional components;
 - (l) Job descriptions for staff;
 - (m) A description of the center location and school accessibility;
 - (n) A description of the hours of operation of the center;
 - (o) A financial strategy and budget;
 - (p) A program evaluation plan; and
 - (q) Letters of endorsement and commitment to the center from community agencies and organizations.
- (5) Grant proposal instruction and scoring procedures shall be made available to all qualifying schools.

Section 2. Whereas under KRS 156.497(7), the Interagency Task Force on Family Resource and Youth Services Centers ceased to exist on December 31, 1997, and will no longer perform duties in relation to the award of grants to local school districts for Family Resource and Youth Services Centers, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 27, 1998

CHAPTER 175

(HB 126)

AN ACT relating to plans review and inspections of buildings.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

All buildings shall be constructed according to the construction documents approved by the building official having jurisdiction of the building in accordance with KRS 198B.060. No on-site inspector shall order changes in the construction of a building which are contrary to the approved construction documents. If an on-site inspector finds that any part of the construction is contrary to the approved plans, the on-site inspector may order correction, and if the on-site inspector believes that the approved documents are incomplete or in violation of the uniform state building code, the on-site inspector shall refer the matter to the building official having jurisdiction for the approval of the construction documents. Any approved changes to the construction of the building shall be recorded with the construction documents before the certificate of occupancy shall be issued.

Approved March 27, 1998

CHAPTER 176**(HB 100)**

AN ACT relating to school administrators.

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

Section 1. KRS 161.720 is amended to read as follows:

- (1) The term "teacher" for the purpose of KRS 161.730 to 161.810 shall mean any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of the superintendent.
- (2) The term "year" as applied to terms of service means actual service of not less than seven (7) school months within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement with full credit for service.
- (3) The term "limited contract" shall mean a contract for the employment of a teacher for a term of one (1) year only or for that portion of the school year that remains at the time of employment.
- (4) The term "continuing service contract" shall mean a contract for the employment of a teacher which shall remain in full force and effect until the teacher resigns or retires, or until it is terminated or suspended as provided in KRS 161.790 and 161.800.
- (5) The term "continuing status" means employment of a teacher under a continuing contract.
- (6) The term "standard" or "college" certificate for the purpose of KRS 161.730 to 161.810 shall mean any certificate issued upon the basis of graduation from a standard four (4) year college or completion of a local district alternative certification training program.
- (7) The term "superintendent" for the purpose of KRS 161.765 shall mean the school officer appointed by a board of education under the authority of KRS 160.350 or any person authorized by law to perform the duties of that officer.
- (8) The term "administrator" for the purpose of KRS 161.765 shall mean a certified employee, below the rank of superintendent, who devotes the majority of his employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, *school psychologist*, or school business administrator. The term "administrator" shall also include those assistant, associate, or deputy superintendents who do not fall within the definition of "superintendent" as set forth in subsection (7) of this section.
- (9) The terms "demote" or "demotion" for the purpose of KRS 161.765 shall mean a reduction in rank from one position on the school district salary schedule to a different position on that schedule for which a lower salary is paid. The terms shall not include lateral transfers to positions of similar rank and pay or minor alterations in pay increments required by the salary schedule.

Approved March 27, 1998

CHAPTER 177**(HB 97)**

AN ACT relating to school employees' salaries and declaring an emergency.

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

Section 1. KRS 160.291 is amended to read as follows:

- (1) All school employees working on a continuing, regular basis, shall be paid regularly, on dates determined by the employing board of education, during the school year or during the fiscal year for twelve (12) month employees, the provisions of KRS 337.020 notwithstanding. The gross salary received on each pay date will be an amount equal to the school employee's annual salary divided by the number of pay dates, *except a local board of education shall pay an employee any remaining salary owed prior to the end of the fiscal year upon completion of the employee's responsibilities or duties if so notified by the employee.*

- (2) Salary amounts shall be paid on the prescribed pay dates without deduction for days on which schools were closed; provided, however, any time not worked for which pay is received must be made up prior to the end of that current school year, or pay so received shall be withheld from the final salary payment of that school year.
- (3) Gross Salary payments under subsection (1) of this section need not, but may, include pay for extra duties or services. Payment for extra duties or services must be paid pursuant to a payment plan adopted by the board of education prior to the beginning of the school year. The board of education may also adopt a plan for providing a program of fringe benefits to its employees.
- (4) All payments made for salaries, extra duties, and fringe benefits by the board of education under the authority of this section are deemed to be for services rendered and for the benefit of the common schools; the payments do not affect the eligibility of any school system to participate in the public school fund as established in KRS Chapter 157. Nor shall any individual board member or administrator be held liable where additional payments for such service become necessary. Provided, however, that nothing in this section authorizes or requires the payment of salaries to personnel when schools are closed as a result of a strike or other work stoppage or when schools are open and personnel fail to render services. No part of this section shall be law if any part is declared unconstitutional.
- (5) Subsection (2) of this section does not apply to those employed on a twelve (12) month basis.

Section 2. Whereas it is urgent that school district employees be allowed to receive their remaining salary owed at the end of the school year and before the end of the fiscal year, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 27, 1998

CHAPTER 178

(HB 50)

AN ACT relating to school personnel.

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

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

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

Section 2. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
 - (a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
 - (b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new

position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

- (2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.
 - (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
 - (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
 - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
 - (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is an employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is certified for the position he holds, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.
 - (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
 - (g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.
 - (4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal

record of a probationary employee shall be made no later than the date probationary employment begins.

- (b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.
- (5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
 - (6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
 - (7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.
 - (8) *The provisions of subsections (4), (5), (6), and (7) shall apply to a nonfaculty coach or nonfaculty assistant as defined under Section 1 of this Act.*

Approved March 27, 1998

CHAPTER 179

(HB 17)

AN ACT relating to abandoned motor vehicles.

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

Section 1. KRS 189.751 is amended to read as follows:

- (1) Any person who leaves a vehicle upon a county road or city street under circumstances indicating an abandonment, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days. A vehicle left upon a county road or city street for ~~three (3)~~~~seven (7)~~ consecutive days shall be presumed to be abandoned.
- (2) The public authority having jurisdiction over a particular county road or city street shall cause ***a vehicle that is presumed to be abandoned under subsection (1) of this section and that***~~[any such vehicle which]~~ is fit for future use to be removed by some person engaged in the business of storing or towing motor vehicles and the provisions of KRS 376.275 shall apply in disposing of ~~the~~~~[such]~~ vehicle. Any money obtained in disposing of a vehicle that is in excess of any liens shall be paid by the seller to the owner and if the owner cannot be located, the excess money shall escheat to the state pursuant to the provisions of KRS Chapter 393. ~~A~~~~[Such]~~ vehicle shall be registered or transferred in the county where the sale is conducted upon an affidavit by the seller that the provisions of KRS 376.275 have been met. The affidavit shall contain information as prescribed by the transportation cabinet.
- (3) If ~~a~~~~[any such]~~ vehicle ***that is presumed abandoned under subsection (1) of this section*** is, in the opinion of the public authority, unfit for future use, the public authority may dispose of it immediately in~~[such]~~ a manner as it deems appropriate.

Section 2. KRS 189.752 is amended to read as follows:

- (1) "State highway" means any public road maintained by the State Department of Highways.
- (2) "Motor vehicle" means any vehicle propelled by an internal combustion engine capable of transporting persons or property. Motor vehicle shall not mean "moped" as defined in KRS 189.285.

- (3) "Abandoned vehicle" means any automobile ~~that~~~~which~~ is left upon the right-of-way of a state highway for ~~three (3)~~~~fifteen (15)~~ days, whether or not it is fit for future use.
- (4) "Owner" means the last registered owner.

Section 3. KRS 189.753 is amended to read as follows:

- (1) Any motor vehicle left upon the right-of-way of a state highway for ~~three(3)~~~~fifteen (15)~~ consecutive days shall be presumed an abandoned vehicle.
- (2) The Department of State Police shall locate abandoned vehicles on the right-of-way of state highways. Upon determination that a vehicle is abandoned, and notwithstanding the provisions of KRS 189.450, the Department of State Police may order any person engaged in the business of storing or towing motor vehicles to remove the abandoned vehicle to a site chosen by ~~the~~~~such~~ person. The department shall determine, if possible, the ownership of ~~the~~~~such~~ vehicle through the abandoned vehicle's license plates, serial number, or other methods of determining ownership. As soon as practicable the owner shall be notified by mail, whether he is a Kentucky resident or a resident of another state, that the abandoned vehicle was illegally upon public property; the name and the address where the storage facility is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to provisions of KRS 376.275 if not claimed within sixty (60) days. ~~A~~~~No~~ notification shall **not** be required if ownership cannot be determined. In the event of such sale, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.
- (3) The commissioner of State Police shall ***promulgate administrative regulations pursuant to KRS Chapter 13A***~~make all rules and regulations necessary~~ to carry out the provisions of this section.

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

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars (\$60) nor more than five hundred dollars (\$500).
- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).

- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, ~~the~~^{such} person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100), and upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
- (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name ~~the~~^{such} vehicle used in the transportation of inflammable liquids or explosives is licensed, ~~the~~^{such} person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for ~~three (3)~~^{seven (7)} consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

- (19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars (\$35) nor more than five hundred dollars (\$500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars (\$60) nor more than one thousand dollars (\$1,000), or by both ~~a such~~ fine and imprisonment.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of ~~such~~ a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
- (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Approved March 27, 1998

CHAPTER 180

(SCR 88)

A CONCURRENT RESOLUTION creating a Task Force on Funding for Tourism Development.

WHEREAS, tourism creates jobs and revenue in every county in Kentucky and is the state's third largest industry, with an annual economic impact of \$7.2 billion; and

WHEREAS, 144,000 Kentuckians are employed in the tourism industry, in such diversified businesses as hotels, motels, restaurants, car rental firms, groceries, antique stores, service stations, retail shops, airlines, museums, parks, and more; and

WHEREAS, tourism generates \$660 million in taxes into the state treasury each year, helping to support other programs, such as education, highways and social services; and an additional \$123 million in taxes is contributed to local governments through tourism each year; and

WHEREAS, Kentucky is blessed with natural and man-made attractions that appeal to citizens and visitors alike, and the potential is great for increasing the state's share of the tourism market; and

WHEREAS, tourism expenditures in Kentucky have actually decreased, in spite of this potential, by 2.3% in 1996 after adjustment for inflation, due to a combination of factors, including increased competition from other states, both in new attractions and larger advertising and promotion budgets; and

WHEREAS, advertising and promoting Kentucky for tourism directly impacts tourism spending and resultant state and local tax revenues, and Kentucky's budgeted advertising dollars have not kept pace with surrounding states, and Kentucky is unable to adequately promote the state as a desirable tourism destination; and

WHEREAS, the Kentucky Tourism master Plan for Strategic Development, adopted in 1995, calls for research and study into tourism funding approaches, including an analysis of methods used by other states,

NOW, THEREFORE,

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

Section 1. The Legislative Research Commission is directed to appoint a Task Force on Tourism Funding to study for the Commonwealth, the long-term funding needs and options for tourism in the 21st Century.

Section 2. The task force shall be composed of not more than 17 members and shall include four (4) members of the Kentucky House of Representatives, two (2) members of the Kentucky Senate, a representative of the Kentucky Tourism Development Cabinet, a representative of the Department of Travel, a representative of the Department of Parks, a representative of the Kentucky Revenue Cabinet, a representative of the Governor's Office of Policy and Management, a representative of the Kentucky Tourism Council, a representative of the Kentucky Association of Convention & Visitors Bureaus, a representative of the Kentucky Hotel Motel Association, a representative of the Kentucky Restaurant Association, a representative from the Department of Parks, and two (2) additional at-large members appointed by the Legislative Research Commission from a list of tourism representatives as may be identified by the Tourism Development Cabinet and the Kentucky Tourism Council. Co-chairs, one senator and one representative, shall be appointed by the Legislative Research Commission and shall be selected from the legislative members of the task force.

Section 3. The findings of the task force shall be presented to the Legislative Research Commission no later than October 1, 1999. Proposed legislation may be submitted to the 2000 Regular Session of the Kentucky General Assembly.

Section 4. Staff services shall be utilized in completing this study are estimated to cost \$30,000. These staff services shall be provided from the regular Legislative Research Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved March 27, 1998

CHAPTER 181

(SB 211)

AN ACT relating to highways and declaring an emergency.

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

Section 1. KRS 176.050 is amended to read as follows:

- (1) The department shall:
 - (a) Investigate all problems relating to the construction and maintenance of roads in the state;
 - (b) Examine all projects and ascertain the feasibility of all routes;
 - (c) Obtain information as to the proper type of road for any project;
 - (d) Examine all types of road materials which may be used in the construction or maintenance of any road to be constructed by the department or under its direction or supervision;
 - (e) ***Require the design plans for all road projects constructing a new route to identify, if at all feasible, one (1) or more publicly owned sites at least four (4) acres in size, along the proposed new route that will be used as waste sites during the construction phase of the project but that have the potential for a city, county, or other governmental entity to turn the site into an industrial park upon completion of the road project, regardless of whether the site currently has the infrastructure necessary to support an industrial park;***

- (f) *Consult with all legislative bodies affected by a new road construction project during the design phase for the purpose of soliciting local government officials' preferences for the location of waste sites that could be turned into an industrial park;*
 - (g) From time to time, examine and have examined and audited all of its books, papers and records;
 - (h)~~(f)~~ Cause to be made all necessary surveys in the establishment and construction of the system of public highways; all necessary maps, prints, plans and specifications of all work to be done on the roads; estimates of costs; advertisement for bids; contracts for construction or maintenance; and all necessary forms in connection therewith; and
 - (i)~~(g)~~ *Promulgate administrative*~~[Prescribe rules and]~~ regulations *under KRS Chapter 13A* for the care and maintenance of roads after they have been constructed.
- (2) The department may *publish*~~[have published from time to time]~~ bulletins containing useful information concerning the construction and maintenance of roads.
- (3) ~~An~~*No* invoice or bill to be paid out of the road or bridge funds shall *not* be approved by the department for payment until it has been carefully examined by the department to ascertain *if the*~~[whether such]~~ bill or invoice is in every respect a proper and legitimate charge against the road or bridge funds. The commissioner may call before him any person who may have information respecting any bill or invoice.

SECTION 2. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

Waste sites identified in Section 1 of this Act shall be on property owned by the state or a city, county, or other governmental agency and have the potential to be turned into industrial parks under the provisions of Section 1 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

- (1) *During the construction phase of a new road construction project, potential industrial park sites identified during the design phase shall be used as waste sites by the department or the contractor who was awarded the project. Waste shall include, but not be limited, to nonhazardous nonsoluble construction material, steel, concrete, brick, asphalt, rock, dirt, or other fill material, but shall not include vegetation resulting from land clearing and grubbing, utility line maintenance, seasonal and storm-related cleanup, or any hazardous material or hazardous waste as defined in KRS 174.405.*
- (2) *The purpose of using the site as a repository for waste is to reduce the cost associated with the road project and to level or otherwise create a site sufficient to support industrial activities. The department or the department's contractor shall use stabilization methods to reduce significant differential settling of the waste. The department or the department's contractor shall continually grade and compact the waste site, and design surface contours to minimize water run-off, until the site is stable, final grading is complete, and the site is ready for building to begin on an industrial park.*
- (3) *If a waste site is owned by the state, the state shall deed in fee simple the area used as a waste site to an interested city, county, or other governmental agency upon completion of the highway project after the final pay estimate has been processed.*
- (4) *The department shall upon the effective date of this Act begin consulting with the appropriate elected officials affected by new routes proposed to be constructed in the 1999-2004 six (6) year highway plan and each enacted six (6) year highway plan thereafter. The department shall consult with the appropriate elected officials to identify waste sites along the proposed new routes that may be potential industrial park sites.*

Section 4. Whereas the majority of road construction projects are prepared for letting in early spring each year to maximize the construction season, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 27, 1998

CHAPTER 182**(SB 136)**

AN ACT relating to the propane industry.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

It is declared to be in the interest of the public welfare that persons involved in the production, transportation, and sale of propane and the manufacture and distribution of propane utilization equipment shall be permitted and encouraged to act jointly and in cooperation to develop programs to enhance consumer and employee safety, to provide research and development, and to inform and educate the public about safety and other issues associated with the use of propane.

SECTION 2. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 17 of this Act, unless the context otherwise requires:

- (1) *"Commissioner" means the commissioner of the Department of Housing, Buildings and Construction;*
- (2) *"Council" means the Kentucky Propane Education and Research Council created in accordance with Section 11 of this Act;*
- (3) *"Department" means the state Department of Housing, Buildings and Construction;*
- (4) *"Education" means any action to provide information regarding propane, propane equipment, mechanical and technical practices relating to the use of propane, and propane uses to consumers and members of the propane industry;*
- (5) *"Industry" means those persons involved in the production, transportation, and sale of propane and in the manufacture and distribution of propane utilization equipment;*
- (6) *"Industry trade association" means an organization representing the propane industry which is exempt from tax, under Section 501(c)(3) or (c)(6) of the Internal Revenue Code;*
- (7) *"Odorized propane" means propane to which an odorant has been added;*
- (8) *"Person" means any individual, corporation, partnership, association, cooperative, or other business entity;*
- (9) *"Producer" means the owner of propane at the time it is recovered at a gas processing plant or refinery, without regard to the state in which actual production occurs;*
- (10) *"Propane" means a hydrocarbon whose chemical composition is predominately C₃H₈, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures thereof;*
- (11) *"Public member" means a member of the council representing significant users of propane, public safety officials, state regulatory officials, or other groups knowledgeable about propane;*
- (12) *"Research" means any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, or safety of propane and to further the development of this information;*
- (13) *"Retail marketer" means a person engaged primarily in the sale of odorized propane to the final user of the product or to retail propane dispensers;*
- (14) *"Retail propane dispenser" means a person who sells odorized propane to the final user of the product but is not engaged primarily in the business of these sales; and*
- (15) *"Supplier" means a person, other than a producer, who is the owner of propane in the Commonwealth at the time of odorization or who is the owner of odorized propane at the time it is imported into the Commonwealth.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

The commissioner may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of Sections 1 to 17 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

No association meeting or activity undertaken to carry out the provision of Sections 1 to 17 of this Act and intended to benefit all persons involved in the production, transportation, and sale of propane and the manufacture and distribution of propane utilization equipment shall be deemed or considered illegal or in restraint of trade.

SECTION 5. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

Producers, suppliers, and retail marketers of propane shall be permitted by referendum, subject to the provisions of Sections 1 to 17 of this Act, to levy upon themselves an assessment on odorized propane and provide for the collection of the assessment for the purpose of financing or contributing toward the financing of a program of research, market, development, and education to increase the consumption, use, sale, and markets for propane and toward the financing of programs to enhance consumer and employee education and safety.

SECTION 6. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

- (1) *Any existing industry trade organization which is fairly representative of the propane industry in Kentucky, such as the Kentucky Propane Gas Association, may at any time after the effective date of this Act, make application to the commissioner on forms prescribed by the department for certification and approval for the purpose of conducting a referendum among producers, suppliers, and retail marketers upon the question of levying an assessment under the provisions of Sections 1 to 17 of this Act and collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:*
 - (a) *Applicant's name;*
 - (b) *Applicant's address;*
 - (c) *Date;*
 - (d) *Program to be undertaken;*
 - (e) *Brief statement of how the program is to be implemented;*
 - (f) *Referendum to be conducted on a statewide basis;*
 - (g) *Proposed effective date of the program; and*
 - (h) *Signature of the applicant.*
- (2) *Upon receipt of the application, the commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

Upon being certified by the commissioner, the association in subsection (1) of Section 6 of this Act shall be fully authorized and empowered to hold a referendum among producers, suppliers, and retail marketers on the question of whether the industry shall levy upon itself an assessment for the purpose stated in Sections 1 to 17 of this Act.

SECTION 8. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

Any referendum conducted under the provisions of Sections 1 to 17 of this Act shall be held on a statewide basis. Voting rights in the referendum shall be based on the volume of propane produced or odorized propane sold in the Commonwealth in the previous calendar year and shall be proportional to the gallons sold. In the referendum, persons eligible for participation shall vote upon the question of whether there shall be levied an annual assessment in the amount set forth in the call for the referendum.

SECTION 9. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

- (1) *The manner, conduct, and management of any referendum held under the provisions of Sections 1 to 17 of this Act shall be under the supervision and direction of the commissioner. Any and all expenses in connection with the initial referendum shall be borne by the association conducting the referendum. Any and all expenses in connection with subsequent referenda shall be borne by the council.*

- (2) *With respect to any referendum conducted under the provisions of Sections 1 to 17 of this Act, the association or council responsible for the referendum shall select an independent auditing firm, subject to the approval of the commissioner, to conduct the referendum.*
- (3) *All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote. The information provided under this subsection shall be considered proprietary and shall remain confidential.*
- (4) *The association or council responsible for the referendum shall develop a mechanism for notifying those persons eligible to vote in the referendum. Notice of the referendum, at a minimum, shall be given to all retail marketers in Kentucky holding a "Class A" license from the department and notice shall be published in existing industry publications with significant circulation within the Commonwealth.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

- (1) *The results of the referendum, as certified by the independent auditing firm, shall be submitted to the commissioner within thirty (30) days of certification.*
- (2) *For the purpose of the referendum, producers and suppliers shall be considered a single class. Upon approval of those persons representing two-thirds (2/3) of the total volume of odorized propane voted in the retail marketer class and approval of those persons representing two-thirds (2/3) of the total volume of propane voted in the producer and supplier class, the commissioner shall issue an order authorizing the assessment.*
- (3) *The initial assessment proposed shall be no greater than one-tenth of one cent (\$0.001) per gallon of odorized propane. Thereafter, the annual assessment shall be set by the council in an amount adequate to cover the cost of plans and programs developed by the council. In no event shall the annual assessment levied under the provisions of the referendum exceed one-half of one cent (\$0.005) per gallon of odorized propane unless approved by the majority of those voting in both the retail marketer class and the producer and supplier class in a separate referendum. The increase in the annual assessment as provided for in this subsection is limited to one-tenth of one cent (\$0.001) per year.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established the Kentucky Propane Education and Research Council composed of eleven (11) members appointed by the commissioner. Five (5) members shall represent retail marketers, five (5) members shall represent producers and suppliers, and one (1) member shall be the public member as defined in Section 2 of this Act.*
- (2) *Council members representing retail marketers, producers, and suppliers shall be appointed based on the nomination of an industry trade association certified according to Section 6 of this Act. No member representing these categories may be appointed unless recommended by a certified industry trade association. Members in these categories shall be full-time employees or owners of businesses in the industry.*
- (3) *No employee of a certified industry trade association shall serve as a member of the council and no member of the council may serve concurrently as an officer or member of the board of directors of a certified industry trade association. A director of a certified association may serve as an ex officio nonvoting member of the council.*
- (4) *No more than one (1) representative from any company or its affiliate may serve on the council at any time.*
- (5) *In nominating members to the council, a certified association shall consider broad-based representation including:*
 - (a) *Gas processors and oil refiners among producers;*
 - (b) *Interstate and intrastate operators among retail marketers;*
 - (c) *Large and small companies among producers, suppliers, and retail marketers; and*
 - (d) *Diverse geographic regions of the state.*
- (6) *Council members shall serve three (3) year terms except that for initial appointments, four (4) members shall be appointed to one (1) year terms, four (4) members to two (2) year terms, and three (3) members to*

three (3) year terms. Within ninety (90) days after the effective date of this Act, certified industry trade organizations shall submit nominations to the commissioner. No member shall serve more than two (2) consecutive terms.

- (7) *Council members shall receive no compensation for their services. Only the public member may be reimbursed for reasonable and necessary expenses directly related to attendance at council meetings.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

- (1) *The council shall establish the annual assessment subject to the limitations of subsection (3) of Section 10 of this Act to be paid by the owner of odorized propane at the time of odorization or at the time of import of odorized propane into the state. The assessment shall be made based on the volume of odorized propane sold for final use within the Commonwealth.*
- (2) *The assessment shall be listed as a separate line item on the bill and labeled "Kentucky Propane Education and Research Assessment." Assessments collected from purchasers of propane are payable to the council on a monthly basis and are due by the twenty-fifth day of the month following the month of collection.*
- (3) *The council may establish an alternative means of collecting the assessment if another method is found to be more efficient or effective. The council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit to the council any amount due by the date listed in subsection (2) of this section.*
- (4) *The council shall elect its own chair and may elect other officers as necessary. The council shall determine its business structure and adopt rules and bylaws for the conduct of its business. The council shall establish procedures for the solicitation of industry comments and recommendations on plans and programs financed by the assessments.*
- (5) *The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council. The minutes, books, and records shall be made available to the members of the council, the commissioner, and persons paying the assessment.*
- (6) *The council shall, at the beginning of each fiscal year, prepare and submit to the commissioner a budget. The commissioner shall review and comment on the proposed budget.*
- (7) *The books of the council shall be audited by a certified public accountant at least once each fiscal year. Copies of the audit shall be provided to the members of the council and the commissioner.*
- (8) *The council may contract with an industry association certified under Section 6 of this Act for administrative and other services subject to the limitation in subsection (2) of Section 13 of this Act.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

The funds, including donations from individuals, associations, concerns, corporations, and grants from state or federal governmental agencies, shall be used for the purpose of promoting and stimulating, by research, market development, and education, the increased use and sale of propane and increased consumer and employee safety. None of these funds shall be used to lobby as defined in KRS 6.611. The council shall use and disburse the funds as follows:

- (1) *The council may refund to the industry association certified under Section 6 of this Act the costs and expenses incurred in the conduct of the initial referendum. The council shall bear the cost of any subsequent referenda provided for in Sections 1 to 17 of this Act;*
- (2) *The council may spend or disburse the necessary funds for administrative costs and expenses, but no more than fifteen percent (15%) of the funds collected in any year shall be utilized in this manner; and*
- (3) *The balance remaining shall be used for the purposes provided in Sections 1 to 17 of this Act, as determined by the council.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any person upon and against whom the assessment shall have been levied and collected under the provisions of Sections 1 to 17 of this Act, if dissatisfied with the assessment and the result thereof, may demand of and shall receive from the council a refund of the assessment collected, if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected. Each refund request shall be accompanied by written proof of the assessment charged.

SECTION 15. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon petition to the commissioner by producers, suppliers, and retail marketers representing thirty-five percent (35%) of the volume of propane in each class, the council shall conduct a referendum to determine if the industry favors termination of the council and the assessment. Termination shall not take effect unless it is approved by persons representing a majority of the total volume of odorized propane voted in the retail marketer class and by persons representing a majority of the total volume of propane voted in the producer and supplier class.*
- (2) *The council shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period to determine if the assessment should be continued or terminated.*
- (3) *If the council expresses in writing its desire to the commissioner to discontinue the assessment program and terminate the program, the commissioner, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the calendar year in which the action is taken.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

In all cases, the price of propane shall be determined by market forces. Consistent with the antitrust laws, the council may take no action and no provision of Sections 1 to 17 of this Act may be interpreted as establishing an agreement to pass along to consumers the cost of the assessments provided for in Sections 1 to 17 of this Act.

SECTION 17. A NEW SECTION OF KRS CHAPTER 234 IS CREATED TO READ AS FOLLOWS:

When in the judgment of the council or an association certified under Section 6 of this Act, a person has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of Sections 1 to 17 of this Act, the council or the certified association may make application to the Franklin Circuit Court for an order enjoining the act or acts or practices, and obtain a restraining order and preliminary injunction against the person.

Approved March 27, 1998

CHAPTER 183

(SB 126)

AN ACT relating to tobacco warehouses.

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

Section 1. KRS 248.290 is amended to read as follows:

- (1) Each warehouse shall pay to the department an annual license fee of ~~one~~~~two~~ hundred ~~twenty-five~~~~and seventy-five~~ dollars ~~(\$125)~~~~(\$275)~~. A license fee shall be paid on each warehouse building operated as a place of sale for tobacco, regardless of the number of such buildings owned by any individual, corporation, firm or other type of management organization. It shall be paid on July 1 of each year.
- (2) The ~~one hundred~~ ~~[amount of the license fees less]~~ twenty-five ~~dollar~~~~[dollars]~~ ~~(\$125) fee~~~~[(25)]~~ per license collected by the department shall be *used by the department to carry out its functions under KRS 248.290 to 248.440*~~[paid into the State Treasury to the credit of a revolving account to be used in the enforcement of KRS 248.350]~~. All fines collected *for violations of the provisions of KRS 248.350*~~[pursuant to KRS 248.990(10)]~~ shall be paid into *the State Treasury to the credit of a revolving account to be used in the enforcement of KRS 248.350*~~[this same revolving account]~~.

Section 2. KRS 248.300 is amended to read as follows:

- (1) The department shall administer KRS 248.290 to 248.440,~~[excluding KRS 248.350,]~~ and shall have general supervision over the sale of tobacco in warehouses throughout the state.
- (2) The Commissioner shall employ such inspectors and other employees as are necessary for the enforcement of KRS 248.290 to 248.440,~~[excluding KRS 248.350,]~~ and fix the duties and compensation of those employees.

Section 3. KRS 248.310 is amended to read as follows:

- (1) The inspectors employed under KRS 248.300 shall carry out a general inspection service of all warehouses and shall strictly enforce KRS 248.280 to 248.440~~, excluding KRS 248.350~~.
- (2) An inspector employed by the department may:
 - (a) Reweigh any reasonable amount of tobacco that has been received by the tobacco warehouse.
 - (b) Determine the weight of all containers and devices used in the transport for the purpose of weighing tobacco on the warehouse floor and establish a weight tare for each warehouse.

Section 4. KRS 248.353 is amended to read as follows:

- (1) ***Compliance with the provisions of*** KRS 248.350 shall be ***monitored by the department with enforcement assistance provided***~~*enforced*~~ by the Special Prosecutions Unit of the Office of the Attorney General.
- (2) The Attorney General ***at the request of the commissioner***~~*in his discretion*~~ (a) may make such public or private investigations within or outside of this state as he deems necessary to determine if any person has violated or is about to violate KRS 248.350 or any ***administrative regulation***~~*rule*~~ or order thereunder, or to aid in the enforcement of KRS 248.350 or in the prescribing of ***administrative regulations***~~*rules*~~ and forms thereunder, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the Attorney General may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of KRS 248.350 or any ***administrative regulation***~~*rule*~~ or order thereunder.
- (3) For the purpose of any investigation or proceeding under KRS 248.350, the Attorney General or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Attorney General deems relevant or material to the inquiry.
- (4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the Attorney General, may issue to that person an order requiring him to appear before the Attorney General, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
- (5) No person is excused from attending and testifying or from producing any document or record before the Attorney General, or in obedience to the subpoena of the Attorney General or any officer designated by him, or in any proceeding instituted by the Attorney General, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Approved March 27, 1998

CHAPTER 184

(SB 75)

AN ACT relating to retirement.

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

Section 1. KRS 61.595 is amended to read as follows:

- (1) Effective July 1, 1990, upon retirement at normal retirement date, or subsequent thereto, a member may receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) for the County Employees Retirement System and one and ninety-seven hundredths percent (1.97%) for the Kentucky Employees Retirement System of final compensation multiplied by the number of years of service credit, except that:
 - (a) The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of

- January 6, 1978, shall not be less than two hundred forty dollars (\$240) multiplied by the number of years of service as a member of the General Assembly;
- (b) The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;
 - (c) Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 regular session are eligible for an increased retirement allowance of two hundred forty dollars (\$240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving a retirement allowance, he may reapply and his retirement allowance shall be recomputed in accordance with this paragraph, and he shall thereafter be paid in accordance with the option selected by him at the time of the reapplication;
 - (d) The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars (\$512); and
 - (e) The annual retirement allowance for a member of the Kentucky employees retirement system or County Employees Retirement System shall not exceed the maximum benefit as set forth in the Internal Revenue Code.
- (2) (a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.
 - (b) There shall be no reduction in the retirement allowance of the member who has thirty (30) or more years of service credit, at least fifteen (15) of which are current service but a member of the Kentucky Employees Retirement System or the County Employees Retirement System who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education or the Higher Education Assistance Authority, may count the vested service toward attaining **the necessary** ~~thirty (30)~~ years of service credit **as provided in KRS 61.559(2)(c) and (d)** to qualify for **a(n) unreduced** retirement allowance. The credit from a Kentucky institution of higher education or the Higher Education Assistance Authority shall not be used **toward the minimum fifteen (15) years of current service required by KRS 61.559(2)(c) and (d) or** to calculate his retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).
 - (c) There shall be no reduction in the retirement allowance of the member who has twenty-six (26) years of service, sixteen (16) of which are current consecutive years of service as a cabinet secretary or administrative head of one (1) of the three (3) branches of government who has retired under the provisions of KRS 61.559(2)(e).
- (3) The retirement allowance shall be calculated by using the member's known creditable compensation prior to his last month's employment and an estimate of his creditable compensation during the last month he was employed. Based upon this calculation, the State Treasurer shall be requested to issue the initial retirement payment.
 - (4) A new calculation shall be made when the official report has been received of the member's creditable compensation during his last month's employment. However, the retirement allowance determined in

accordance with subsection (3) of this section shall be the official retirement allowance unless the new calculation derives an amount which is one dollar (\$1) greater or less than the amount of the initial retirement payment.

Approved March 27, 1998

CHAPTER 185

(SB 54)

AN ACT relating to the Kentucky lottery.

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

Section 1. KRS 154A.130 is amended to read as follows:

- (1) All money received by the corporation from the sale of lottery tickets and all other sources shall be deposited into a corporate operating account. The corporation is authorized to use all money in the corporate operating account for the purposes of paying prizes and the necessary expenses of the corporation and dividends to the state. The corporation shall allocate the amount to be paid by the corporation to prize winners. The amount in the corporate operating account which the corporation anticipates will be available for the payment of prizes on an annuity basis, may be invested in direct United States Treasury obligations. These instruments may be in varying maturities with respect to payment of annuities and may be in book-entry form. Monthly, no later than the last business day of the succeeding month, the corporation shall transfer to a lottery trust fund the amount of net revenues which the corporation determines are surplus to its needs. These funds shall be held in trust until 1990 at which time the General Assembly shall determine the manner in which the funds will be allocated and appropriated. The net revenues shall be determined by deducting from gross revenues the payment costs incurred in the operation and administration of the lottery, including the expenses of the corporation and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of lottery equipment and materials, fixed capital outlays, and the payment of prizes to the holders of winning tickets. After the start-up costs are paid, it is the intent of the Legislature that it shall be the goal of the corporation to transfer each year thirty-five percent (35%) of gross revenues to the general fund for the purposes stated above.
- (2) A Kentucky lottery trust account is established in the State Treasury. Net lottery revenues shall be credited to this restricted account as provided in subsection (1) of this section. Moneys credited to the Kentucky lottery trust account shall be invested by the state in accordance with state investment practices and all earnings from the investments shall accrue to this account. No moneys shall be allotted or expended from this account unless pursuant to an appropriation by the General Assembly, except that moneys as are needed shall be transferred to the general fund pursuant to the provisions of the Acts of the Extraordinary Session of the 1988 General Assembly. Moneys in the Kentucky lottery trust account shall not lapse at the close of the state fiscal year.
- (3) The Auditor of Public Accounts shall be responsible for a financial postaudit of the books and records of the corporation. The postaudit shall be conducted in accordance with generally accepted accounting principles, shall be paid for by the corporation, and shall be completed within ninety (90) days of the close of the corporation's fiscal year. The Auditor of Public Accounts shall contract with an independent, certified public accountant who meets the qualifications existing to do business within the Commonwealth of Kentucky to perform the corporation postaudit. The Auditor of Public Accounts shall remain responsible for the annual postaudit and the corporation shall pay all audit costs. The Auditor of Public Accounts may, at any time, conduct additional audits, including performance audits, of the corporation as he deems necessary or desirable. Contracts shall be entered into for audit services for a period not to exceed five (5) years and the same firm shall not receive two (2) consecutive audit contracts. All audits shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives. The corporation shall reimburse the Auditor of Public Accounts for the reasonable costs of any audits performed by him. The corporation shall cooperate with the Auditor of Public Accounts by giving employees designated by any of them access to facilities of the corporation for the purpose of efficient compliance with their respective responsibilities. With respect to any reimbursement that the corporation is required to pay to any agency, the corporation shall enter into an agreement with that agency under which the corporation shall pay to the agency an amount reasonably anticipated to cover the reimbursable expenses in advance of the expenses being incurred.

- (4) *By no later than December 31 of each year, in an advertisement at least one-fourth (1/4) of a page in size, the Kentucky Lottery Corporation shall publish the following information in every general-circulation daily newspaper published in Kentucky:*
- (a) *The statements of revenue, expenses, and changes in retained earnings as shown in the most recent annual audit report. It shall be explained that the transfer of dividends is the amount of lottery earnings transferred to the general fund;*
 - (b) *A statement identifying the auditing firm;*
 - (c) *A telephone number which citizens may call to obtain a complete copy of the annual audit report; and*
 - (d) *The name of the president/chief executive officer of the Kentucky Lottery Corporation and a complete list of board members.*

The Kentucky Lottery Corporation shall pay for the cost of the advertisement.

Approved March 27, 1998

CHAPTER 186

(SB 44)

AN ACT relating to local government financial information.

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

Section 1. KRS 65.905 is amended to read as follows:

- (1) *Except as otherwise provided in subsection (2) of this section, each local government as defined in KRS 65.900 shall annually, after the close of the fiscal year, complete a uniform financial information report. The report shall be submitted to the Department of Local Government by May 1 immediately following the close of the fiscal year. The Department of Local Government shall immediately send one (1) copy of the uniform financial information report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.*
- (2) *The final quarterly report filed by a county within fifteen (15) days after the end of the last quarter of the fiscal year, in accordance with KRS 68.360(2), shall be deemed the uniform financial information report for that county for purposes of compliance with KRS 65.900 to 65.925, if that quarterly report contains, at a minimum, all information required by KRS 65.910.*
- (3) Each city may have the uniform financial information report completed by its selected auditor as part of the terms and conditions of the written agreement between the city and the auditor pursuant to KRS 91A.040. Each county may have the uniform financial information report completed by its auditor selected pursuant to KRS 43.070 or 64.810. Each special district may have the uniform financial information report completed by its auditor selected pursuant to KRS 65.065. If a city does not use the auditor to complete the uniform financial information report, it shall by order designate an elected or nonelected official to be responsible for annually completing the report and submitting it to the Department of Local Government. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government shall note on the uniform financial information report the name of the agency, board, or commission; the mailing address of the agency, board, or commission; and the dollar amount annually appropriated by the local government to the agency, board, or commission.
- ~~(4)~~(3) The Department of Local Government shall by administrative regulation prescribe the format of the uniform financial information report. The department shall attempt to coordinate and combine efforts with the United States Bureau of the Census in the development of the format of the uniform financial information report so that a single report will meet the needs of both agencies and fulfill the requirements of KRS 65.900 to 65.925. Regardless of any agreement between the Department of Local Government and the United States Bureau of the Census, the department shall maintain responsibility for assuring that a uniform financial information report is distributed to each local government as soon as practicable after the close of each fiscal year, but in no event later than one hundred twenty (120) days prior to the required submission date of May 1.

(5){(4)} The Department of Local Government shall use the uniform financial information report to replace as many financial information forms as possible that local governments are currently required to complete and submit to the department for use by either the state or federal governments, by consolidating the required information into the uniform report.

Section 2. KRS 65.920 is amended to read as follows:

Any local government that fails to submit annually a uniform financial information report to the Department of Local Government shall be ineligible to receive county or municipal road aid moneys pursuant to KRS 177.360 or 177.366. Any local government receiving road aid moneys pursuant to KRS 177.365 to 177.369 or KRS 177.320 and 177.360 that fails to comply with the provisions of KRS 65.900 to 65.915 shall immediately have all road aid payments suspended until the local government submits the uniform financial information report to the Department of Local Government. *If a local government receives payments of money from the Commonwealth and fails to comply with the provisions of KRS 65.900 to 65.925 or KRS 92.280(1), the state local finance officer may notify those agencies making payments to the local government of noncompliance, and those agencies shall immediately suspend delivery of all payments to the local government except those payments made pursuant to KRS Chapter 154 or KRS 42.4588, until the state local finance officer determines that the local government has complied with the requirements of KRS 65.900 to 65.925 or KRS 92.280(1).*

Approved March 27, 1998

CHAPTER 187

(SB 42)

AN ACT relating to flood control.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner of the Department of Local Government shall administer and determine the disbursement of funds for the Local Match Participation Program for statewide flood control projects.*
- (2) *Funds appropriated for the Local Match Participation Program for statewide flood control projects may be used as matching funds by local governments for flood related projects with:*
 - (a) *The United States Army Corps of Engineers;*
 - (b) *The Federal Emergency Management Agency (FEMA); and*
 - (c) *Other flood-related federal government grant and loan programs requiring local matching funds.*
- (3) *Any general fund appropriations made for the Local Match Participation Program for statewide flood control projects may also be used for flood control planning and mitigation activities.*

Approved March 27, 1998

CHAPTER 188

(HB 517)

AN ACT relating to electric cooperative utilities.

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

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

- (3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:
- (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) ***"Generation and Transmission Cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;***
- (10) ***"Distribution Cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;***
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12)~~(10)~~ "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13)~~(11)~~ "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
- (14)~~(12)~~ "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15)~~(13)~~ "Commission" means the Public Service Commission of Kentucky;
- (16)~~(14)~~ "Commissioner" means one (1) of the members of the commission;

~~(17)~~~~(15)~~ "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.

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

- (1) *Notwithstanding any other statute to the contrary, a G&T or distribution cooperative may at any time decrease regulated operating revenues by an amount to be determined solely by the cooperative utility. If the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs shall be authorized and made permanent on the proposed effective date.*
- (2) *Notwithstanding any other statute, any revenue increase authorized by the Public Service Commission or any revenue decrease authorized in subsection (1) of this section that is to flow through the effects of an increase or decrease in wholesale rates may, at the distribution cooperative's discretion, be allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. In the event of an increase in the wholesale rates and tariffs of the wholesale supplier by the Public Service Commission, the rates and tariffs of the distribution cooperative that have been revised on a proportional basis to result in no change in the rate design shall be authorized and shall become effective on the same date as those of the wholesale supplier. In those cases where an interim increase in the power supplier's wholesale rates are authorized, the distribution cooperative's flow through rates shall be interim. The distribution cooperative's permanent rates and tariffs shall become effective on the date that the wholesale supplier's permanent rates become effective as ordered by the commission.*
- (3) *Any rate increase or decrease as provided for in subsections (1) and (2) of this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract.*
- (4) *The Public Service Commission shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish filing requirements and notice requirements to the commission, the Attorney General, and the public under this section.*

Approved March 27, 1998

CHAPTER 189

(HB 679)

AN ACT relating to long-term care facility reform.

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

Section 1. KRS 216.530 is amended to read as follows:

All ~~annual~~ inspections of long-term care facilities performed by the cabinet shall be unannounced. All ~~unannounced annual~~ inspections of long-term care facilities shall be conducted in accordance with the rules and regulations promulgated by the cabinet *in accordance with KRS Chapter 13A* setting forth the parameters of such inspections. *Except for complaint investigations, inspections shall be performed no later than seven (7) to fifteen (15) months after the previous inspection.*

Section 2. KRS 216.543 is amended to read as follows:

- (1) Every long-term care facility shall post in a conspicuous place, accessible to residents, employees and visitors the following:
 - ~~(a)~~~~(1)~~ A copy of the long-term care facility's current license;
 - ~~(b)~~~~(2)~~ The name, address, and current telephone number of the current long-term care ombudsman in the cabinet;
 - ~~(c)~~~~(3)~~ A copy of the statement required by subsection (1) of KRS 216.545; *and*
 - ~~(d)~~~~(4)~~ A list of the material available for public inspection required by KRS 216.547~~[- and~~
 - ~~(5)~~ ~~The current rating assigned to the facility by the cabinet.~~

- (2) *Every long-term care facility shall post within ten (10) feet of the front reception desk and in a prominent place easily seen by residents, employees, and visitors a printed sign at least eight (8) inches by eleven (11) inches in size, with letters at least one (1) inch high, that states: "State law (KRS 216.547) requires state inspection reports on this facility to be made available to you upon request. ASK A REPRESENTATIVE OF THIS FACILITY."*

Section 3. KRS 216.547 is amended to read as follows:

- (1) All long-term care facilities shall retain the following for public inspection in the office of the administrator and in the lobby of the facility:
- (a) A complete copy of every inspection report of the facility received from the cabinet during the past three (3) years, including the most recent inspection report;
 - (b) A description of the services currently provided by the facility;
 - (c) A listing of the rates currently charged for services provided by the facility;
 - (d) A listing together with the charges for the services and items not included in the basic rate for which residents may be charged separately; and
 - (e) A copy of every court order issued pertaining to the quality of care or services provided in the facility.
- (2) *The Office of the Inspector General shall be responsible for providing public notice of results of licensure inspections of long-term care facilities and shall issue administrative regulations in accordance with KRS Chapter 13A to carry this out. Any licensure result that has not become final shall not be subject to release for public notice until the result becomes final.* Nothing in this section shall be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.872 to 61.884.

Section 4. KRS 216.789 is amended to read as follows:

- (1) No *long-term care facility as defined by KRS 216.535(1)*~~[nursing facility]~~ shall knowingly employ a person in a position which involves providing direct services to a ~~[nursing facility]~~ resident if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.
- (2) A facility may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each *long-term care facility as defined by KRS 216.535(1)*~~[nursing facility]~~ shall request all conviction information from the Justice Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The *long-term care facility*~~[nursing facility]~~ may temporarily employ an applicant pending the receipt of the conviction information.

Section 5. KRS 216.555 is amended to read as follows:

If upon inspection or investigation the cabinet determines that a long-term care facility has violated the regulations, standards, and requirements as set forth by the cabinet pursuant to ~~[KRS 216.550 or]~~ the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act and such violation has been classified in KRS 216.557, the cabinet shall immediately issue a citation to the licensee of the long-term care facility. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision or regulation alleged to have been violated.

Section 6. KRS 216.557 is amended to read as follows:

Citations issued pursuant to KRS 216.537 to 216.590 shall be classified according to the nature of the violation as follows:

- (1) Type "A" violation means a violation by a long-term care facility of the regulation, standards, and requirements as set forth by the cabinet pursuant to ~~KRS 216.550 and~~ 216.563~~;~~ or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act, which presents an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm to a resident will occur. A Type A violation shall be abated or eliminated immediately, unless a fixed period of time not to

exceed ten (10) days, as determined by the cabinet, is required for correction. A Type A violation is subject to a civil penalty in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each and every violation.

- (2) Type "B" violation means a violation by a long-term care facility of the regulations, standards and requirements as set forth by the cabinet pursuant to ~~KRS 216.550 and~~ 216.563~~[-]~~ or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act, which presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger. A Type B violation is subject to a civil penalty in an amount not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each and every violation. A citation for a Type B violation shall specify the time within which the violation is required to be corrected as approved or determined by the cabinet. If a Type B violation is corrected within the time specified, no civil penalty shall be imposed.

Section 7. KRS 216.865 is amended to read as follows:

- (1) No nursing pool shall be operated, maintained, or advertised without obtaining a license as provided in this section.
- (2) The secretary shall adopt administrative regulations relating to license fees, standards of care and service, and procedures for enforcement of penalties.
- (3) The established standards of care and services shall at a minimum include:
 - (a) Written policies and procedures which must be maintained by each nursing pool;
 - (b) Records which must be maintained to assure that the criteria promulgated by administrative regulations are being met;
 - (c) Personnel policies which shall be developed and which shall include at a minimum: a personal interview, thorough reference check, annual evaluation of employees based on questionnaires developed and sent to hospitals, nursing homes, and other facilities to which medical personnel are sent.
- (4) Upon employment or contract with a nursing pool, all medical personnel working in health care facilities shall be required to provide the following: a current negative tuberculin skin test or chest X-ray, a current license or certificate, where applicable, and a current cardiopulmonary resuscitation certification. Further, all medical personnel shall attend an annual infection control in-service and an annual safety in-service.
- (5) Only those nursing pools meeting the standards prescribed for licensure by the secretary may be granted a license.
- (6) Each application for a license shall be made to the Division of Licensing and Regulation and shall be accompanied by a fee prescribed by the secretary and shall be renewed annually upon expiration and reapplication when accompanied by an additional fee. Licenses and renewals thereof shall expire one (1) year from their effective date.
- (7) Any license or application affected by an adverse determination by the division or the secretary shall have the same rights of appeal as set forth in ~~KRS 216.553 and~~ 216.567.
- (8) All fees collected under the provisions of this section shall be paid into the State Treasury and credited to a fund for the purposes of funding the division.
- (9) All inspections of nursing pools by the division shall be unannounced.

Section 8. KRS 216.560 is amended to read as follows:

- (1) If a licensee has failed to correct a Type A violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of five hundred dollars (\$500) for each day that the deficiency continues beyond the date specified for correction. Application for an extension of time, not to exceed ten (10) days, may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents.
- (2) If a licensee has failed to correct a Type B violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of two hundred dollars (\$200) for each day that the deficiency continues beyond the date specified for correction. Application for an extension of time, not to

exceed (10) days, may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents.

- (3) The civil penalties authorized by KRS 216.537 to 216.590 shall be trebled when a licensee has received a citation for violating a statute or regulation *for* which it has received a citation *and penalty* ~~for and paid a fine for~~ during the previous twelve (12) months.
- (4) Payment of penalties shall not be made from moneys used for direct patient care nor shall the payment of penalties be a reimbursable cost under Medicaid or Medicare.
- (5) KRS 216B.990(3) shall not apply to the offenses defined herein.
- (6) All administrative fines collected by the cabinet pursuant to KRS 216.537 to 216.590 shall be deposited in the Kentucky nursing incentive scholarship fund, which is hereby created, and the balance of that fund shall not lapse at the end of the fiscal year to the general fund.

Section 9. The following KRS sections are repealed:

216.550 Cabinet rating system -- Evaluation -- Possible ratings defined -- Change of rating.

216.553 Appeal of assignment of a particular rating.

Approved March 27, 1998

CHAPTER 190

(HCR 59)

A CONCURRENT RESOLUTION directing the Legislative Research Commission to establish a Special Subcommittee for Military and Defense-Related Issues.

WHEREAS, the United States Military is the Commonwealth's fourth largest industry, ranking behind only motor vehicle manufacturing, industrial machinery manufacturing, and coal mining, and surpassing farming, in payroll and earnings within this state; and

WHEREAS, the U.S. military spends approximately \$3 billion per year in direct payrolls to soldiers and civilians, retirement and veterans' benefits, and contracts with companies throughout Kentucky; and

WHEREAS, recent Department of Defense downsizing, as a result of base closure and realignment and force structure and budget reductions, has negatively impacted the Commonwealth, resulting in the loss of approximately 13,000 positions and an annual payroll of \$185 million; and

WHEREAS, future threats to further reduce military and civilian workforces and infrastructure in the Commonwealth must be resisted based on comprehensive, informed, and rational grounds utilizing the best efforts of the General Assembly and all interested groups and individuals throughout the Commonwealth; and

WHEREAS, it is imperative that the Commonwealth develop and foster policies and programs to reduce the vulnerability of this vital Kentucky industry to further base realignments and closings, to preserve Fort Campbell's strength and status, and to preserve and expand roles and missions for Fort Knox; and

WHEREAS, the General Assembly's present interim structure does not adequately focus legislative interest and efforts upon issues involving the total military's presence in, and importance to, Kentucky, including all aspects of active, retired, reserve, and National Guard affairs in which the state has an interest;

NOW, THEREFORE,

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

Section 1. The Legislative Research Commission shall establish a Special Subcommittee for Military and Defense-Related Issues to operate during the 1998-99 interim. The Subcommittee shall be composed of members of the General Assembly appointed by the Legislative Research Commission. The Subcommittee shall include at least one (1) member of the House of Representatives and one (1) member of the Senate appointed from the membership of each of the following interim joint committees:

- (1) State Government;
- (2) Appropriations and Revenue;
- (3) Economic Development;
- (4) Education; and
- (5) Transportation.

Section 2. The Special Subcommittee for Military and Defense-Related Issues shall report its findings and recommendations through the Legislative Research Commission to the Interim Joint Committee on State Government. Members of the Subcommittee who are appointed to the Subcommittee by virtue of their membership on another interim joint committee, as specified in Section 1 of this Resolution, are encouraged and urged to report the Subcommittee's findings and recommendations to their respective interim joint committees.

Section 3. Staff services to be utilized for the Special Subcommittee for Military and Defense-Related Issues are estimated to cost \$20,000. These staff services shall be provided from the regular Legislative Research Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved March 27, 1998

CHAPTER 191

(HJR 63)

A JOINT RESOLUTION authorizing and directing a comprehensive study of the feasibility of creating regional agricultural marketing centers in Kentucky, and making an appropriation therefor.

WHEREAS, all the states contiguous to Kentucky have greater sales of horticultural products than Kentucky;
and

WHEREAS, many of the states contiguous to Kentucky have publicly funded agricultural marketing centers;
and

WHEREAS, there are limited organized markets for Kentucky horticultural goods; and

WHEREAS, Kentucky has a suitable climate, soil, and farm resources to produce horticultural products; and

WHEREAS, there is an interest in additional agricultural enterprises for Kentucky farmers;

NOW, THEREFORE,

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

Section 1. The Department of Agriculture shall conduct a study of the feasibility of creating regional agricultural marketing centers in the Commonwealth. In determining this feasibility, the department shall investigate the history and functions of marketing centers created in other states, and shall formulate a proposed course of action regarding the creation of regional agricultural marketing centers within the Commonwealth.

Section 2. The agricultural marketing center concept refers to state-sponsored markets such as the Western North Carolina Farmers Market in Asheville, North Carolina. These markets have facilities for wholesale and retail sales of horticulture and agriculture products. The study shall also consider if facilities for grading, cooling, and packing produce on a regional basis are needed.

Section 3. There is hereby appropriated from the general fund the sum of \$20,000 to accomplish the study. Any amount remaining following the completion of the study shall revert to the general fund. The study shall begin not later than August 1, 1998, and the report and recommendations shall be submitted to the Legislative Research Commission no later than September 1, 1999.

Approved March 27, 1998

CHAPTER 192**(HB 645)**

AN ACT relating to identification cards.

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

Section 1. KRS 186.412 is amended to read as follows:

- (1) A person may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed a valid instruction permit for at least one hundred eighty (180) days. The person shall apply for an operator's license in the office of the circuit clerk of the county where he lives. The application form shall require the applicant's full legal name and signature, date of birth, Social Security number, sex, present resident address, other information necessary to permit the application to also serve as an application for voter registration, and brief physical description of the applicant. The application shall state:
 - (a) If the applicant has previously been licensed as an operator and by what state;
 - (b) If a license is canceled, suspended, revoked, or refused; and
 - (c) Other information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.
- (2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing a color photograph of the applicant. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The plastic laminated operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. The license shall also designate by color coding and use the phrase "under (21)" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).
- (3) After January 1, 1996, a person may, before the renewal date for his operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's Social Security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.
- (4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (5) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.
- (6) The circuit clerk shall issue a color photo nondriver's identification card to any person who resides in the county who applies in person in the office of the circuit clerk. A nondriver's identification card shall be subject to the provisions of subsection (2) of this section. An application for a nondriver's identification card shall be accompanied by a signed Social Security card and a birth certificate, or other proof of the applicant's date of birth that is satisfactory to the clerk. The application shall require the applicant to provide his *or her full legal name and* most current resident address that may include, but is not limited to, a mailing address, post office box, or an address provided on a voter registration card. If an applicant for a nondriver's identification card is under the age of twenty-one (21), the applicant's most current resident address shall be required unless a current resident address is not available, in which case a mailing address, post office box, or an address provided on a voter registration card may be used. Every applicant for a nondriver's identification card shall

make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal possessor of the address provided on the application form, the applicant shall swear that he has permission from the legal possessor to use the address for purposes of obtaining the nondriver's identification card. The nondriver's identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

- (7) Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature." If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.
- (8) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
 - (a) Blood type;
 - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
 - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.
- (9) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (10) An operator's license pursuant to this section shall be designated a Class D license.
- (11) A person shall not have more than one (1) license.
- (12) *Upon marriage, a woman applying for an operator's license or a color photo nondriver's identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (1) and (6) of this section:*
 - (a) *Use her husband's last name;*
 - (b) *Retain her maiden name;*
 - (c) *Use her maiden name hyphenated with her husband's last name;*
 - (d) *Use her maiden name as a middle name and her husband's last name as her last name; or*
 - (e) *In the case of a previous marriage, retain that husband's last name.*

Approved March 27, 1998

CHAPTER 193

(HB 602)

AN ACT relating to barbers.

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

Section 1. KRS 317.440 is amended to read as follows:

- (1) To protect the health and safety of the public or to protect the public against misrepresentation, deceit, or fraud in the practice or teaching of barbering, the ~~barber~~ board shall ***promulgate administrative*** ~~prescribe~~ ***reasonable rules and*** regulations:
 - (a) Governing the location and housing of barber shops or schools;
 - (b) Governing the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools;

- (c) Governing the training and supervision of barber apprentices;
 - (d) Governing the qualifications of teachers of barbering;
 - (e) Governing the hours and courses of instruction at barber schools;
 - (f) Governing the examinations of applicants for barber, apprentice barber or teacher of barbering.
- (2) **The board shall establish fees by administrative regulation according to the schedules established in Section 2 of this Act.**
- (3) **Administrative** regulations pertaining to health and sanitation shall be approved by the Kentucky secretary for human resources before becoming effective.

Section 2. KRS 317.450 is amended to read as follows:

- (1) (a) The ~~barber~~ board shall issue a license to practice barbering to any person who:
1. ~~(a)~~ Is at least **seventeen and one-half (17 1/2)** ~~eighteen (18)~~ years of age;
 2. ~~(b)~~ Is of good moral character and temperate habit;
 3. ~~(c)~~ Has acted as a licensed apprentice for at least **nine (9)** ~~eighteen (18)~~ months under the immediate supervision of a licensed barber;
 4. ~~(d)~~ Has satisfactorily passed the examination prescribed by the barber board; **and**
 5. ~~(e)~~ Has paid a fee **not to exceed fifty dollars (\$50)** ~~of twenty dollars (\$20)~~.
- (b) ~~(f)~~ The board may reciprocate with other states and issue a barber license upon payment of a fee **not to exceed two hundred fifty dollars (\$250)** ~~of fifty dollars (\$50)~~ and upon submission of satisfactory evidence that the requirements for licensure in the other state are substantially equivalent to the requirements of this state at the time of application. The board may require an applicant under this section to pass an examination to establish equivalency.
- (2) The ~~barber~~ board shall issue a license to act as **an** apprentice to a barber to any person who:
- (a) Is at least sixteen and one-half (16-1/2) years of age;
 - (b) Is of good moral character and temperate habit;
 - (c) Has at least four (4) years of high school education;
 - (d) Has graduated from an accredited or licensed school of barbering;
 - (e) Has satisfactorily passed the examination prescribed by the barber board **by promulgation of administrative regulations**; and
 - (f) Has paid a fee **not to exceed fifty dollars (\$50)** ~~of twenty dollars (\$20)~~.
- (3) The ~~barber~~ board shall issue a license to operate a barber shop to any barber licensed under the provisions of this chapter upon application **and payment** ~~of such barber accompanied by~~ a fee **not to exceed fifty dollars (\$50)** ~~of twenty dollars (\$20) provided that~~ The ~~barber~~ board shall refuse to issue ~~the~~ ~~such a~~ license upon a failure **of the licensed barber** to comply with the provisions of this chapter or the **administrative** ~~rules and~~ regulations **promulgated by** ~~of~~ the board ~~adopted pursuant thereto~~.
- (4) The ~~barber~~ board shall issue a license to operate a school of barbering to any person, firm or corporation who or which:
- (a) Applies **for a license** ~~therefor~~ upon forms furnished by the board;
 - (b) Has the equipment and facilities **that** ~~which~~ may be required by **administrative** ~~rules and~~ regulations **promulgated by** ~~of~~ the board ~~adopted pursuant to this chapter~~;
 - (c) **Has** furnished **adequate** ~~any~~ evidence **to** ~~deemed necessary by~~ the board **that**:
 1. **There is an intent** ~~in the exercise of a sound discretion that it is the purpose of the applicant~~ to establish a bona fide school for the education and training of competent barbers; and ~~can and will employ~~

2. A sufficient number of ~~licensed~~ teachers *licensed by the board will be employed* ~~of barbering~~ to conduct *the* ~~such~~ school, *including at least one (1) teacher with a minimum of twelve (12)*;
- ~~(d) Has furnished evidence of having at least twenty four (24) months experience teaching in a barber school that includes~~ ~~including~~ administrative experience ~~in such school~~; and
- ~~(d)(e)~~ Pays a fee *not to exceed one hundred fifty dollars (\$150)* ~~of one hundred dollars (\$100)~~.
- (5) The ~~barber~~ board shall issue a license to teach barbering to any person who:
- Is of good moral character and temperate habit;
 - Has a high school education;
 - Has been a licensed and practicing barber for at least *eighteen (18)* ~~thirty six (36)~~ months;
 - Has satisfactorily passed the examination prescribed by the board *by promulgation of administrative regulations*; and
 - Has paid a fee *not to exceed one hundred dollars (\$100)* ~~of twenty five dollars (\$25)~~.
- (6) Applications for examination required in this section shall be accompanied by an *examination* ~~examining~~ fee as follows:
- Barber -- *not to exceed one hundred fifty dollars (\$150)* ~~(\$20.00)~~;
 - Apprentice to a barber -- *not to exceed one hundred fifty dollars (\$150)* ~~(\$20.00)~~;
 - Teaching barbering -- *not to exceed one hundred fifty dollars (\$150)* ~~(\$25.00)~~.
- (7) Licenses issued pursuant to this section shall expire on the first day of July next following the date of their issuance ~~but the board shall renew any license so expiring at no increased renewal fee if the required annual renewal license fee is paid within thirty one (31) days after the expiration of such license, provided that the applicant for a renewal is otherwise in compliance with this chapter and the rules and regulations of the board adopted pursuant thereto~~. Any license shall automatically be renewed by the board upon receipt of the required annual license fee *no later than thirty-one (31) days after* ~~prior to~~ the expiration date *if* ~~of such license, provided~~ the applicant for renewal is *otherwise* in compliance with the provisions of this chapter and the *administrative* ~~rules and~~ regulations of the board ~~adopted pursuant thereto~~.
- (8) The annual renewal license fee for each type of license renewal shall be as follows:
- Barber -- *not to exceed fifty dollars (\$50)* ~~(\$20.00)~~;
 - Apprentice to barber -- *not to exceed fifty dollars (\$50)* ~~(\$20.00)~~;
 - Teacher of barbering -- *not to exceed fifty dollars (\$50)* ~~(\$20.00)~~;
 - Barber shop -- *not to exceed fifty dollars (\$50)* ~~(\$20.00)~~;
 - Barber school -- *not to exceed one hundred fifty dollars (\$150)* ~~(\$75.00)~~.
- (9) Except as provided in subsection (7) of this section, the fee for the renewal of an expired license, *if* ~~where~~ the period of expiration does not exceed five (5) years, shall be as follows:
- Barber -- *not to exceed twenty-five dollars (\$25)* ~~(\$15.00)~~ plus lapse fees;
 - Apprentice -- *not to exceed twenty-five dollars (\$25)* ~~(\$15.00)~~ plus lapse fees;
 - Barber shop -- *not to exceed twenty-five dollars (\$25) plus lapse fees* ~~(\$20.00)~~;
 - Barber school -- *not to exceed twenty-five dollars (\$25) plus lapse fees* ~~(\$75.00)~~;
 - Teacher of barbering -- *not to exceed twenty-five dollars (\$25)* ~~(\$15.00)~~ plus lapse fees.

Approved March 27, 1998

CHAPTER 194

(HB 549)

AN ACT relating to appointments to boards and commissions.

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

Section 1. KRS 151B.095 is amended to read as follows:

- (1) There is hereby established the State Board for Adult and Technical Education to be attached to the Cabinet for Workforce Development, which shall consist of nine (9) voting members, one (1) from each Supreme Court district as established by KRS 21A.010 and two (2) members from the state at large. Members shall serve for terms of four (4) years. A chairperson shall be selected by the membership.
- (2) The Governor shall make appointments to the board and fill any vacancies as they occur. Appointments shall conform to subsection (4) of this section.
- (3) ***Beginning on the effective date of this Act***, the terms of the appointees shall expire on ***January 31***~~June 30~~ in the appropriate year, and the terms of each new member appointed thereafter shall begin on ***February***~~July~~ 1. ***Of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring June 30, 1999, shall serve until January 31, 2000; one (1) member appointed to fill the term expiring June 30, 2000, shall serve until January 31, 2001, three (3) members appointed to fill the terms expiring June 30, 2001, shall serve until January 31, 2002; three (3) members appointed to fill the terms expiring June 30, 2002, shall serve until January 31, 2003; and subsequent appointments shall be for four (4) year terms ending January 31.***
- (4) The members of the State Board for Adult and Technical Education shall have the qualifications of school board members required by KRS 160.180, except that members of the board shall be at least thirty (30) years of age. Appointments shall be made without reference to occupation, political affiliation, or similar considerations. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.
- (5) Members of the State Board for Adult and Technical Education shall possess an understanding of business and industry and a knowledge of occupational and academic needs of adults. At least one (1) member shall possess a knowledge of vocational rehabilitation services.
- (6) The board may enter into agreements with other agencies in order to carry out services under its jurisdiction.
- (7) The board may enter into agreements with the Kentucky Community and Technical College System to provide space and equipment for programs for adults in the state-operated area vocational education and technology centers. The board shall not operate full-time diploma postsecondary programs unless there is an agreement to operate these programs with the Kentucky Community and Technical College System.

Section 2. KRS 153.215 is amended to read as follows:

- (1) There is established the Kentucky Arts Council (hereinafter referred to as "the council") which shall perform functions pursuant to KRS 153.210 to 153.235.
- (2) The purpose of the council shall be to develop and promote a broadly conceived state policy of support for the arts in Kentucky pursuant to KRS 153.210 to 153.235.
- (3) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the arts. On July 1, 1972, the Governor shall appoint not more than four (4) members for a term of one (1) year; not more than four (4) members for a term of two (2) years; not more than four (4) members for a term of three (3) years; and not more than four (4) members for a term of four (4) years. Thereafter the Governor shall make all appointments for a term of four (4) years, ***except that of the members appointed after the effective date of this Act, four (4) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; four (4) members appointed to fill the terms expiring July 1, 2000, shall serve until February 1, 2001; four (4) members appointed to fill the terms expiring July 1, 2001, shall serve until February 1, 2002; and members appointed to fill the terms expiring July 1, 2002, shall serve until February 1, 2003; and subsequent appointments shall be for four (4) year terms ending on February 1.***

- (4) Council members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual and necessary expenses incurred in the performance of their duties under KRS 153.210 to 153.235.
- (5) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.
- (6) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.
- (7) The council shall be attached to the Office of the Secretary for Education and Humanities for administrative purposes.

Section 3. KRS 153.380 is amended to read as follows:

- (1) There is established the Kentucky Oral History Commission, hereinafter referred to as "the commission," which shall be attached to the Kentucky Historical Society as a branch of the Oral History and Educational Outreach Division.
- (2) The commission, through funds made available from the State Treasury and from public or private foundations or other sources, shall coordinate, promote, and assist in the development of oral history programs across the state and shall otherwise implement programs which result in the accumulation of taped interviews and other supporting data which preserve the multifaceted history of the Commonwealth.
- (3) The commission shall consist of twelve (12) voting members, ten (10) appointed by the Governor. The commissioner of the Department for Libraries and Archives and the director of the Kentucky Historical Society shall serve as ex officio members. Commission members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.
- (4) After initial appointments, commission members shall be appointed for a four (4) year term, *except that of the members appointed after the effective date of this Act, three (3) members appointed to fill the terms expiring July 15, 1999, shall serve until February 15, 2000; two (2) members appointed to fill the terms expiring July 15, 2000, shall serve until February 15, 2001; three (3) members appointed to fill the terms expiring July 15, 2001, shall serve until February 15, 2002; and two (2) members appointed to fill the terms expiring July 2, 2002, and July 15, 2002, shall serve until February 15, 2003; and subsequent appointments shall be for four (4) year staggered terms ending on February 15.* Upon the expiration of terms or in case of vacancies, terms shall be filled by the Governor.
- (5) The commission shall, upon the appointment of its members, organize and elect officers from its membership. The commission shall choose, by a majority vote, a chairperson and a vice chairperson annually. The commission shall meet upon call of the chairman or by a majority of the members of the commission, but no less than twice each year. A majority of the voting members of the commission shall constitute a quorum for the purpose of conducting the business of the commission.
- (6) The commission shall serve in an advisory capacity to oral history activities at the Kentucky Historical Society and shall be the final grant approval authority for all funds collected by or appropriated to the commission.
- (7) The Kentucky Historical Society shall hire staff, expend funds, and operate the normal business activities required by the commission, which shall include the duty to provide:
 - (a) Office space;
 - (b) Administrative support;
 - (c) Telephone and other utilities;
 - (d) Storage or processing of oral history tapes; and
 - (e) Other activities of a support nature.

Section 4. KRS 158.680 is amended to read as follows:

There shall be appointed by the Governor a State Advisory Committee for Educational Improvement in accordance with the following:

- (1) The State Advisory Committee for Educational Improvement shall be eighteen (18) members broadly representative of citizens, parents, teachers, and administrators. Their principal duties shall be to advise the

Governor, the State Board for Elementary and Secondary Education, and the department on the implementation of the provisions of KRS 158.650 to 158.710 and KRS 158.6453 and 158.6455.

- (2) All members shall be voting members appointed by the Governor and shall serve terms of four (4) years, except that:
- (a) The original appointments will be made as follows:
- 1.~~[(a)]~~ Five (5) members for four (4) year terms;
 - 2.~~[(b)]~~ Five (5) members for three (3) year terms;
 - 3.~~[(c)]~~ Four (4) members for two (2) year terms; and
 - 4.~~[(d)]~~ Four (4) members for a one (1) year term; *and*
- (b) *Of the members appointed after the effective date of this Act, four (4) members appointed to fill the terms expiring June 17, 1999, shall serve until January 17, 2000; four (4) members appointed to fill the terms expiring June 17, 2000, shall serve until January 17, 2001; two (2) members appointed to fill the term expiring June 17, 2001, shall serve until January 17, 2002; three (3) members appointed to fill the terms expiring June 17, 2001, shall serve until January 17, 2002; five (5) members appointed to fill the terms expiring June 17, 2002, shall serve until January 17, 2003; and subsequent appointments shall be for four (4) year terms ending on January 17.*
- (3) The State Advisory Committee for Educational Improvement shall elect a chairman annually from its membership;
- (4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the State Advisory Committee for Educational Improvement or while serving in the capacity as representative of the State Advisory Committee for Educational Improvement.
- (5) The State Advisory Committee for Educational Improvement shall meet at least three (3) times each year at times and places as it determines by resolution.

Section 5. KRS 211.500 is amended to read as follows:

- (1) The Kentucky Spinal Cord and Head Injury Research Board is hereby created for the purpose of administering the spinal cord and head injury research trust fund created pursuant to KRS 211.504. The board shall be composed of seven (7) members appointed by the Governor as follows:
- (a) Two (2) members representing the University of Kentucky College of Medicine;
 - (b) Two (2) members representing the University of Louisville School of Medicine;
 - (c) One (1) member who has a spinal cord or head injury or who has a family member with a spinal cord or head injury;
 - (d) One (1) member representing the Kentucky Medical Association; and
 - (e) One (1) at-large member.
- (2) Board members shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to the provisions of KRS 211.500 to 211.504.
- (3) The terms of board members shall be four (4) years, except that *of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms ending on June 30, 1999, shall serve until January 31, 2000; two (2) members appointed to fill the terms expiring on June 30, 2000, shall serve until January 31, 2001; two (2) members appointed to fill the terms expiring on June 30, 2001, shall serve until January 31, 2002; and one (1) member appointed to fill the term expiring June 30, 2002, shall serve until January 31, 2003; and subsequent appointments shall be for four (4) year terms ending on January 31* ~~the terms of initial members shall be staggered to end as follows:~~
- (a) ~~Two (2) on June 30, 1995;~~
 - (b) ~~Two (2) on June 30, 1996;~~
 - (c) ~~Two (2) on June 30, 1997; and~~

~~(d) — One (1) on June 30, 1998].~~

- (4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.
- (5) A majority of the full authorized membership of the board shall constitute a quorum.
- (6) The board shall elect, by a majority vote, a chairman who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected for each calendar year. The board shall have such other organization as deemed necessary and approved by the board.
- (7) Meetings of the board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to call by the chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to spinal cord and head injury research projects and programs, research progress reports, authorization of projects and financial plans, and other matters necessary to carry out the intent of KRS 211.500 to 211.504.
- (8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- (9) The board shall be attached to the Cabinet for Human Resources for administrative purposes.

Section 6. KRS 229.151 is amended to read as follows:

- (1) There is hereby established the Kentucky Athletic Commission which shall consist of seven (7) members, appointed by the Governor, with initial appointments for two (2) members for terms of four (4) years, two (2) members for terms of three (3) years, two (2) members for terms of two (2) years, and one (1) member for a term of one (1) year, *except that of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring July 14, 1999, shall serve until February 14, 2000; two (2) members appointed to fill the terms expiring July 14, 2000, shall serve until February 14, 2001; one (1) member appointed to fill the term expiring July 14, 2001, shall serve until February 14, 2002; two (2) members appointed to fill the terms expiring July 14, 2002, shall serve until February 14, 2003; and subsequent appointments shall be for four (4) year terms ending on February 14.* Thereafter, members shall be appointed by the Governor for staggered terms of four (4) years. At least one (1) member shall have a background in the professional boxing or wrestling industry. At least one (1) member shall be a licensed physician. The executive director of the Division of Occupations and Professions shall serve on the commission in an ex officio capacity. One (1) member shall be designated by the Governor as chairman and one (1) member shall be elected by the commission as vice chairman, who shall have authority to act as chairman in the event of the chairman's absence or inability to act. The chairman, vice chairman, other members of the commission, and those persons referred to in KRS 229.161, shall receive one hundred dollars (\$100) per day for each meeting attended and shall be paid their actual and necessary traveling and other expenses incurred by them in the performance of their official duties. The commission shall hold one (1) regular meeting every three (3) months. Four (4) members of the commission shall constitute a quorum to conduct business.
- (2) The board shall be placed for organizational purposes under the Division of Occupations and Professions which shall provide administrative and secretarial services.

Section 7. KRS 317.430 is amended to read as follows:

- (1) There is hereby created an independent agency of the state government to be known as the Kentucky Board of Barbering, which shall have complete supervision over the administration of the provisions of this chapter relating to barbers, barbering, barber shops, barber schools, the teaching of barbering, and barber apprenticeship.
- (2) The Kentucky Board of Barbering, hereinafter referred to as the barber board or board, shall be composed of five (5) members appointed by the Governor. At least one (1) member shall be a master barber licensed to practice barbering in this state who is a member of a nationally recognized professional organization of master barbers and who is not otherwise a member of a union of barbers, a second and different member shall be a barber licensed to practice barbering in this state who is a member of an organized labor union of barbers, a third and different member shall be a barber who is not a member of a union or labor organization of barbers

and a fourth and different member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. At all times in the filling of vacancies of membership on the barber board, this balance of representation shall be maintained.

- (3) **Appointments**~~[Upon the expiration of the term of any member, the appointment]~~ shall be for a term of two (2) years, *except that of the members appointed after the effective date of this Act three (3) members appointed to fill the terms expiring October 1, 1998, shall serve until February 1, 1999; and two (2) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; and subsequent appointments shall be for two (2) year terms ending on February 1.*
- (4) The Governor shall not remove any member of the barber board except for cause.
- (5) The barber board shall elect from its members one (1) to serve as chairman, one (1) to serve as vice chairman, and a third to serve as secretary.
- (6) Three (3) members shall constitute a quorum for the transaction of business.
- (7) In addition to the other qualifications specified in this section, barber members of the barber board shall be at least twenty-three (23) years of age, citizens of the United States, residents of Kentucky and must have engaged in the practice of barbering in this state for a period of at least five (5) years.
- (8) No member of the barber board shall be financially interested in, or have any financial connection with any barber or cosmetology school, wholesale cosmetic or barber supply or equipment business, nor shall any member of the barber board teach barbering, cosmetology, or manicuring for monetary considerations.
- (9) Each member of the barber board shall receive a compensation of fifty dollars (\$50) per day for each day of attendance at meeting of the board, and shall be reimbursed for necessary traveling expenses.
- (10) The board shall hold such meetings at such places in the state and at such times as are deemed necessary by the board to discharge its duties.

Section 8. KRS 317A.030 is amended to read as follows:

- (1) There is created an independent agency of the state government to be known as the Kentucky Board of Hairdressers and Cosmetologists, which shall have complete supervision over the administration of the provisions of this chapter relating to cosmetology, cosmetologists, schools of cosmetology, students enrolled in cosmetology, apprentice cosmetologists, nail technicians, teachers of cosmetology, cosmetology salons, and nail salons.
- (2) The cosmetologist board shall be composed of five (5) members appointed by the Governor:
 - (a) Four (4) of the members shall have been cosmetologists five (5) years prior to their appointment and shall reside in Kentucky;
 - (b) Two (2) of whom shall be cosmetology salon owners;
 - (c) One (1) of whom shall be a cosmetology teacher in public education and shall not own any interest in a cosmetology salon;
 - (d) One (1) of whom shall be an owner of or one who shall have a financial interest in a licensed cosmetology school and shall be a member of a nationally-recognized association of hairdressers and cosmetologists;
 - (e) One (1) member shall be a citizen at large who is not associated with or financially interested in the practices or businesses regulated; and
 - (f) None of whom nor the administrator shall be financially interested in, or have any financial connection with, wholesale cosmetic supply or equipment businesses.

At all times in the filling of vacancies of membership on the board, this balance of representation shall be maintained.

- (3) **Appointments**~~[Upon expiration of a term of any member, the appointment]~~ shall be for a term of two (2) years, *except that of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; and three (3) members appointed to fill*

the terms expiring July 1, 2000, shall serve until February 1, 2001; and subsequent appointments shall be for two (2) year terms ending on February 1.

- (4) The Governor shall not remove any member of the board except for cause.
- (5) The board shall elect from its members a chairman, a vice chairman, and a secretary.
- (6) Three (3) members shall constitute a quorum for the transaction of any board business.
- (7) Each member of the board shall receive one hundred dollars (\$100) per day for each day of attendance at board meetings, and shall be reimbursed for necessary traveling expenses and necessary expenses incurred in the performance of duties pertaining to official business of the board.
- (8) The board shall hold meetings at the place in the state and at the times deemed necessary by the board to discharge its duties.

Section 9. KRS 323A.170 is amended to read as follows:

Four (4) members of the board appointed by the Governor shall be landscape architects registered in the Commonwealth of Kentucky, and shall have been residents of this Commonwealth for at least five (5) years immediately preceding their appointment. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. Each member shall serve for a term of three (3) years, and until his successor is appointed and qualified, *except that of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring on June 30, 2000, shall serve until February 1, 2001; and subsequent appointments shall be for three (3) year terms ending on February 1.*

Section 10. KRS 344.510 is amended to read as follows:

- (1) There is hereby established the Kentucky Commission on Women as a separate administrative body of state government within the meaning of KRS Chapter 12.
- (2) The membership of the commission shall consist of the Lieutenant Governor and not more than twenty-four (24) members and a chairman who shall be appointed by the Governor. The members of the commission shall serve terms of four (4) years; except that:
 - (a) Of the members initially appointed after June 17, 1978, six (6) members shall serve a term of one (1) year, six (6) a term of two (2) years, six (6) a term of three (3) years and six (6) a term of four (4) years; *and*
 - (b) *Of the members appointed after the effective date of this Act, six (6) members appointed to fill the terms expiring June 17, 1999, shall serve until January 17, 2000; six (6) members appointed to fill the terms expiring June 17, 2000, shall serve until January 17, 2001; six (6) members appointed to fill the terms expiring June 17, 2001, shall serve until January 17, 2002; and six (6) members appointed to fill the terms expiring June 17, 2002, shall serve until January 17, 2003; and subsequent appointments shall be for four (4) year terms ending on January 17.* The Governor shall appoint a chairman who shall serve at the Governor's will. There shall be an executive director, who shall be appointed by the Governor, and shall be administrative head and chief executive officer of the commission. The Governor, in appointing the commission, shall attempt to insure, insofar as it may be practicable, and with due regard to the several geographic regions and socio-economic groupings of the state, that the membership is broadly representative of the women of the state. The commission shall meet at the call of the chairman, but at least twice during each calendar year; a majority of the members shall constitute a quorum for the transaction of the commission's business.

Section 11. KRS 353.565 is amended to read as follows:

- (1) There is hereby created in the Department of Mines and Minerals, the "Kentucky Oil and Gas Conservation Commission" which shall be composed of five (5) members. Four (4) of the members shall be appointed by the Governor and the fifth member, who shall serve as chairman of the commission, shall be the director of oil and gas conservation and who shall serve in an ex officio capacity as a nonvoting member except in the case of a tie. The four (4) members appointed by the Governor shall be residents of this state and not more than one (1) of them may be directly employed in the exploration for or the production of oil or gas, or deriving more than fifty percent (50%) of that person's income from the exploration for or production of oil or gas, or engaged in a business directly servicing or supplying these activities. No member of the commission shall participate in the deliberations of the commission or vote on any matter before the commission in which he, his employer, or any business unit in which he has a financial interest is an interested party, but a member of the commission is not

prohibited from deliberating or voting on matters of general interest, such as the fixing of statewide spacing patterns, affecting him, his employer, or a business unit in which he has financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission. The commission shall not contain more than one (1) representative from any one (1) operator, including subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two (2) shall be residents of eastern Kentucky and two (2) shall be residents of western Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between eastern Kentucky and western Kentucky.

- (2) The members of the commission, except the chairman, shall be appointed for terms of four (4) years each, except that:
 - (a) The original appointments shall be for terms of one (1), two (2), three (3), and four (4) years respectively; *and*
 - (b) *Of the members appointed after the effective date of this Act, one (1) member appointed to fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1) member appointed to fill the term expiring June 21, 2000, shall serve until January 21, 2001; one (1) member appointed to fill one (1) of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1) member appointed to fill the second of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2003; and subsequent appointments shall be for four (4) year terms ending on January 21.* Each member appointed by the Governor shall serve until his successor has been appointed and qualified. Members may be reappointed by the Governor to serve successive terms. The members of the commission, before performing any duty hereunder, shall take an oath which shall be certified by the officer administering it. The oath in writing and the certificate shall be filed in the office of the Secretary of State. Vacancies in the membership appointed by the Governor shall be filled by appointment by him and for the unexpired term of the member whose office shall be vacant, and the appointment shall be made by the Governor within sixty (60) days of the occurrence of a vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance of office.
- (3) The commission shall meet at times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two (2) members. Notification of each meeting shall be given in writing to each member by the chairman at least five (5) days in advance of the meeting. Any three (3) members, one (1) of which may be the chairman, shall constitute a quorum for the transaction of any business, including the holding of hearings. A majority of the commission present shall be required to determine any issue brought before it for decision.
- (4) Each member of the commission, except the chairman, shall receive fifty dollars (\$50) per diem not to exceed one hundred (100) days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission, including the chairman, shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.
- (5) The commission shall execute and carry out, administer, and enforce the provisions of KRS 353.651 and 353.652. The commission may make any investigation of records and facilities as it deems proper.
- (6) If an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of an administrative regulation or order without first having a hearing, an emergency regulation may be promulgated in accordance with KRS Chapter 13A and an emergency order may be issued in accordance with KRS 13B.125.
- (7) The commission shall have specific authority to:
 - (a) Promulgate and enforce reasonable administrative regulations and issue orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission, and otherwise administer the provisions of KRS 353.651 and 353.652; and
 - (b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of its duties under the provisions of KRS 353.651 and 353.652.

- (8) Any interested person may have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission promptly shall call a hearing thereon, and, after the hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take appropriate action with regard to the subject matter thereof as it may deem appropriate. If the hearing is adjudicatory in nature, it shall be conducted in accordance with KRS Chapter 13B.
- (9) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among these owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool, or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the commission, are hereby authorized and shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.
- (10) Nothing in this section shall be construed as giving to the commission the right or authority to supersede the authority of the department in the administration of KRS 353.060.

Approved March 27, 1998

CHAPTER 195

(HB 548)

AN ACT relating to joint sewer agencies.

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

Section 1. KRS 76.231 is amended to read as follows:

- (1) *As an alternative to establishing a metropolitan sewer district pursuant to KRS 76.010, any city of the second class together with the county in which it is located, may jointly establish a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county.*
- (2) A joint sewer agency shall be established upon the enactment of identical ordinances establishing and setting out the powers of the agency by both the legislative body of the city and the fiscal court of the county.
- (3) All the powers granted a metropolitan sewer district in cities of the first class by KRS 76.010 to 76.279 may be granted by ordinance to the sewer agency except that ~~these~~^{such} powers may be restricted or qualified in order to conform to the local needs of the county and the city.
- (4) The legislative body of the city and the fiscal court of the county shall establish a schedule of rates, rentals and charges to be collected from all real property served by the facilities of the sewer agency in the manner provided by KRS 76.090. If for whatever reason the city and county cannot agree to amendments to a rate schedule, the current schedule shall remain in effect until such time as an agreement can be reached.
- (5) *For purposes of establishing a schedule of rates, rentals, and charges to be collected, the legislative body of the city and the fiscal court of the county may prescribe by joint ordinance for the creation of a rate adjustment board that shall be comprised of the members of both legislative bodies, sitting as a single body. Upon the creation of a rate adjustment board, a simple majority of the combined membership of the rate adjustment board shall be required to establish rates, rentals, and charges to be collected.*
- (6) The joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator or joint board as set out in the establishing ordinances.
- ~~(7)~~⁽⁶⁾ The joint sewer agency may be dissolved only by a joint action of the legislative body of the city and the fiscal court of the county. The establishing ordinance may be amended in the same manner as originally enacted.
- ~~(8)~~⁽⁷⁾ The legislative body of any city of the third to sixth class may by ordinance elect to be within the jurisdiction of a joint sewer agency established pursuant to this section.

Approved March 27, 1998

CHAPTER 196**(HB 516)**

AN ACT relating to banking.

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

Section 1. KRS 287.010 is amended to read as follows:

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

- (1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;
- (2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law, *including savings and loan associations*;
- (3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;
- (4) "Home state" means:
 - (a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and
 - (b) With respect to a national bank, the state in which the main office of the bank is located;
- (5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;
- (6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;
- (7) "Commissioner" means the commissioner of financial institutions;
- (8) "Department" means the Department of Financial Institutions;
- (9) "Population" means the population as indicated by the latest regular United States census;
- (10) "Trust company" includes every corporation authorized by this chapter to do a trust business;
- (11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;
- (12) "Capital stock" shall mean, at any particular time, the sum of:
 - (a) The par value of all shares of the corporation having a par value that have been issued;
 - (b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and
 - (c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law; and
- (13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value or both.

Section 2. KRS 287.013 is amended to read as follows:

- (1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is recommended that the board appointments made by the Governor be selected from the following:
 - (a) **Three (3)**~~Four (4)~~ members selected from the banking industry regulated by the department with appropriate recognition as to bank size and geographic diversity;

- (b) **Three (3) members**~~[One (1) member]~~ selected from the broker/dealer securities industry regulated by the department;
 - (c) One (1) member selected from the credit union industry regulated by the department;
 - (d) One (1) member selected from the consumer finance or industrial loan industry regulated by the department;
 - (e)~~[One (1) member selected from the savings and loan industry regulated by the department;~~
 - ~~(f)~~ Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers or directors of any financial institution; and
 - ~~(f)(g)~~ The commissioner, who shall also serve as chairman of the board.
- (2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, **or** industrial loan industry~~[or savings and loan industry]~~ shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.
 - (3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
 - (4) No member of the board, other than the commissioner, shall serve more than two (2) consecutive terms on the board.
 - (5) The board shall first meet at the call of the Governor and thereafter as the board shall determine, but at least quarterly, at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.
 - (6) Board members shall receive one hundred dollars (\$100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.
 - (7) The board shall:
 - (a) Prepare and submit at the Governor's request a list of candidates qualified to serve as commissioner and recommend to the Governor a proposed salary for each nomination for commissioner;
 - (b) Recommend to the Governor a proposed salary structure for other departmental staff in order to provide competitive salaries for recruitment and retention of staff;
 - (c) Receive and comment on various reports relating to the department and its activities as submitted to the board by the commissioner or the Governor; and
 - (d) Review, consider and make recommendations to the commissioner on any matters referred to the board by the commissioner or the Governor.
 - (8) In no event shall the board or its members interfere with the statutory duties of the commissioner whose decisions shall be governed by law.

Section 3. KRS 287.020 is amended to read as follows:

- (1) The commissioner may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. He shall devise a seal for his department, a description of which, together with an impression thereof and a certificate of approval by the Governor, shall be filed in the office of the Secretary of State. The seal shall be renewed whenever necessary.
- (2) The commissioner of financial institutions and his deputies shall be allowed their necessary traveling and other expenses of conducting their office.

- (3) The commissioner of financial institutions may issue a finding of permissible activities, services, or products to authorize banks to engage in any banking activity in which the banks could engage were they operating as national banks at the time the authority is granted. Any finding shall be specifically limited to the activity, service, or products contained therein and shall be mailed to all banks. This section shall not apply to activities prohibited under Subtitle 9 of KRS Chapter 304. ~~[- The hearing procedures of KRS 287.061 shall be applicable to the issuance of a finding. -]~~
- (4) Nothing herein contained shall be construed to repeal, modify, or alter the restrictions of KRS 287.105 relative to the leasing of motor vehicles, or of KRS 287.180 relative to the establishment of branches.
- (5) ***The commissioner may designate the deputy commissioner, division directors, general counsel, or branch managers to sign documents under his instructions.***

Section 4. KRS 287.030 is amended to read as follows:

- (1) As used in this section, "person" includes a natural person, partnership, corporation, association, business trust, voting trust, or similar organization.
- (2) No persons, except corporations, shall engage in the business of private banking in this state.
- (3) No bank incorporated under the laws of another state or national bank having its principal place of business outside this state shall transact any banking business in this state except to lend money, unless specifically authorized by law or administrative regulation, or except as permitted following a merger transaction within the meaning of Section 44 of the Federal Deposit Insurance Act pursuant to 12 U.S.C. sec. 1811 et seq., approved after June 1, 1997.
- (4) No person who after July 13, 1984, owns or acquires more than one-half (1/2) of the capital stock of a bank shall act as insurance agent or broker with respect to any insurance except credit life insurance, credit health insurance, insurance of the interest of a real property mortgagee in mortgaged property, other than title insurance.
- (5) No bank incorporated under the laws of the Commonwealth of Kentucky shall make any loan or discount on the security of the shares of its own capital stock, or the shares of stock of a bank holding company which controls the bank to the extent that such loan or discount secured by such shares exceeds the amounts permitted by Section 23(A) of the Federal Reserve Act (12 U.S.C. sec. 371c) as that section reads on July 15, 1986, nor be the purchaser or holder of any such shares, except that a bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business; and stock so purchased or acquired, shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at public or private sale. This subsection shall not affect or modify in any way KRS 386.025, but said section shall remain in full force and effect.
- (6) ***Any state or national bank with branch offices in Kentucky shall use at all times the same name for all its branch offices in Kentucky.***

Section 5. KRS 287.050 is amended to read as follows:

- (1) Before filing the articles of incorporation of any financial institution mentioned in KRS 287.040, the incorporators shall present a copy of their proposed articles to the commissioner who shall investigate the financial standing, moral character and capability of each of the incorporators and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation.
- (2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the commissioner may waive all or any part of the requirements of ***this chapter*** ~~[- subsection (1) of this section -]~~.
- (3) If the commissioner determines that it is expedient and desirable to permit the proposed corporation to engage in business, he shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation law.
- (4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 287.040 shall be approved by the commissioner before filing with the Secretary of State.

Section 6. KRS 287.060 is amended to read as follows:

- (1) Before any financial institution mentioned in KRS 287.040 may transact any banking or trust business, it shall file a written oath with the commissioner. The oath shall be taken by each director of the institution, and shall state in substance:
 - (a) That such director is a citizen of the United States, and the State of Kentucky, or, if not, the place of his residence;
 - (b) That he will faithfully discharge the duties of his office and administer the affairs of the institution, so far as the duties of his office require;
 - (c) That he will uphold the laws of the state, and particularly the banking and trust laws.
- (2) The oath shall be taken before any officer authorized to administer oaths, and shall be taken upon the election of any subsequent director or reelection of any director. The oath shall be ***maintained by the bank and be subject to review at examinations*** ~~transmitted to the commissioner immediately upon its execution and shall be filed and preserved by the commissioner.~~
- (3) The commissioner shall issue to the institution a certificate entitling it to transact the business for which it was organized after the following requirements have been met:
 - (a) The oath mentioned in subsections (1) and (2) of this section has been filed; and
 - (b) The commissioner has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and
 - (c) The commissioner has received satisfactory proof that the institution has subscribed and paid-in the required capital and has otherwise fully complied with all pertinent laws and regulations; and
 - (d) A period of thirty (30) days has elapsed since the rendition by the commissioner of a final order, as defined in KRS 13B.010, and an appeal to the appropriate court has not been taken from such order.
 - (e) If an appeal from a final order of the commissioner has been timely filed, no certificate shall be issued until all the requirements of paragraphs (a) to (c) of this subsection have been met and until:
 1. The appeal has been finally disposed of by the last possible court of review, including the United States Supreme Court; or
 2. All further opportunities for appeal have expired as a result of the failure to timely file an appeal.

Section 7. KRS 287.065 is amended to read as follows:

- ~~(1) Each director of a bank or trust company shall own in his own right unpledged capital stock of that bank or trust company, or of a corporation holding at least eighty percent (80%) of the outstanding capital stock of that bank or trust company, having a book value of at least one thousand dollars (\$1,000) at the time such person becomes a director, and the certificates of such stock shall remain in the exclusive custody and control of that bank or trust company during his term of office.~~
- ~~(2)~~ A majority of the directors of any board must be residents of Kentucky during their term of office.
- ~~(2)~~~~(3)~~ Each director shall exercise such ordinary care and diligence as necessary and reasonable to administer the affairs of the bank in a safe and sound manner. In this regard, the bank shall furnish each director with a copy of an appropriate publication outlining the duties of a bank director and an updated copy of the Kentucky banking law, and maintain in the bank updated copies of federal banking laws, as determined by administrative regulations.

Section 8. KRS 287.070 is amended to read as follows:

- ~~(1) The capital stock of any financial institution mentioned in KRS 287.040 organized prior to May 31, 1938, shall be maintained in the amount required by the law in effect on May 30, 1938.~~
- ~~(2)~~ The minimum capital stock of any bank or trust company organized after May 30, 1938 shall be ***two million five hundred thousand dollars (\$2,500,000). Additional capital may be required depending upon an investigation of the application, at the discretion of the commissioner*** ~~as follows, according to the city in which it is located:~~

_____ Cities of up to 7,999 population	\$ 25,000
_____ Cities of 7,999 to 19,999 population	\$ 50,000

_____ Cities of 20,000 to 100,000 population	\$100,000
_____ Cities of over 100,000 population	\$200,000

~~(3) The minimum capital stock of any combined bank and trust company, combined bank and real estate title insurance company or combined trust and real estate title insurance company or combined bank trust and real estate title insurance company, organized after May 30, 1938, shall be not less than twice the amount stated in subsection (2) of this section.~~

Section 9. KRS 287.080 is amended to read as follows:

The minimum capital required of a financial institution by KRS 287.070 shall be paid in full in money. ***Not less than fifty percent (50%) of the minimum capital required shall be designated as surplus***~~, and in addition thereto there shall be so paid in a surplus of not less than fifty percent (50%) of the minimum capital required~~. Such money shall be in the custody of the directors before the corporation may commence business. None of the original minimum capital of a financial institution may be designated as undivided profits.

Section 10. KRS 287.103 is amended to read as follows:

- (1) It is hereby declared to be the policy of the Commonwealth of Kentucky that the investment of funds, by a bank chartered under the laws of Kentucky or a national banking association having its principal office in Kentucky, in real and personal property as now or hereafter provided by this chapter, be recognized as a normal, proper, necessary, and integral part of the legitimate business of such state or national banks.
- ~~(2) Upon approval of the commissioner in the case of a state bank, or the proper federal supervisory authority in the case of a national bank, the institution may invest its funds in real property and/or improvements on such real property when all or a portion of the improvements are for use as its home office or for branch offices so long as the said real estate is used for carrying on its legitimate business as permitted by Section 192 of the Constitution of the State of Kentucky.~~
- ~~(3) All property owned and held by a state or national bank under this section shall be deemed to be property that is proper and necessary for carrying out its legitimate business within the meaning of KRS Chapter 271B or any section of the Kentucky Revised Statutes relating to escheat.~~

Section 11. KRS 287.105 is amended to read as follows:

Subject to such limitations and conditions as the commissioner may from time to time prescribe by general regulations, any bank or trust company organized under the laws of this state may purchase, hold and become the owner and lessor of personal property ~~acquired upon the specific request of and for the use of a customer~~ and may incur such additional obligations as may be incident to becoming an owner and lessor of such personal property, provided, however, that the net unrecovered investment of such bank or trust company in such personal property shall, for the purposes of KRS 287.280 only, be deemed to be an indebtedness of the lessee thereof, and such personal property shall be considered to be collateral securing such indebtedness.

Section 12. KRS 287.214 is amended to read as follows:

Notwithstanding the provisions of any other law, a bank ~~or trust company~~ may take, receive, reserve and charge on money due or to become due on any contract or other obligation in writing, where the original principal amount is fifteen thousand dollars (\$15,000) or less, interest at any rate allowed national banking associations by the laws of the United States of America. A trust company shall not make any extensions of credit on its own account, but may make extensions of credit for trust assets under management.

Section 13. KRS 287.350 is amended to read as follows:

- (1) The board of directors of any bank or trust company organized under the laws of this state may declare a dividend of so much of the net profits as they deem expedient. The net profits shall be computed by deducting all expenses, losses, ~~bad or suspended debts~~ and interest and taxes accrued or due from the bank.
- (2) Before any dividend is declared, other than upon its preferred stock, not less than ten percent (10%) of the net profits of the bank for the period covered by the dividend applicable to its common stock shall be carried to its surplus fund until such surplus fund amounts to a sum equal to the amount of its common capital stock.
- ~~(3) All debts due to a bank or trust company on which interest is due and unpaid for six (6) months, unless the debts are well secured or in the process of collection, are bad or suspended debts within the meaning of this section.~~

- (4)} The approval of the commissioner shall be required if the total of all dividends declared by such institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two (2) years, less any required transfers to surplus or a fund for the retirement of preferred stock or debt.

Section 14. KRS 287.385 is amended to read as follows:

For the purpose of borrowing money from a state or national bank for their own higher educational purposes, the disabilities of nonage of minors are removed for all purposes, whether male or female. Any minor is authorized to make and execute any and all promissory notes, contracts, or other instruments necessary to be executed by him in order to borrow money for his own higher educational purposes, and such promissory notes, contracts or other instruments shall have the same force and effect as though they were the obligations of persons over the age of their majority~~[- provided that no such obligation shall be valid if the rate of interest thereon exceeds six percent (6%) per annum, simple interest]~~. Any promissory note, contract or other instrument entered into by any such person pursuant to the provisions of this section shall have the approval of the parent or guardian of such minor and of the financial officer of the institution of higher learning.

Section 15. KRS 287.420 is amended to read as follows:

Within ten (10) days after the commissioner calls upon a bank or trust company, it shall publish pursuant to KRS Chapter 424 on a form furnished by the commissioner, a condensed statement of its financial condition, at the close of business on the date named in the call. The commissioner may make the call at any time he desires~~[- and shall make at least two (2) calls in each year]~~. Such published statement shall **contain all information as the commissioner shall require**~~[- show the total amounts of loans, overdrafts, money invested in bonds and other securities, money due from banks, checks and other cash items, cash on hand, capital paid in, surplus fund, undivided profits (less expense and taxes paid), money due to other banks, individual deposits subject to check, demand certificates of deposit, time deposits, outstanding certified checks and cashier's checks and such other items as will show the actual financial condition of the bank or trust company making the report]~~. The reports shall be signed and sworn to **either** by the president, vice president,~~[- or]~~ cashier, **or one (1)**~~[- and signed by at least three (3)]~~ of the directors. A copy of the report, certified to by the publisher, shall be kept in the files of the bank or trust company for review by the department.

Section 16. KRS 287.450 is amended to read as follows:

- (1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the commissioner or by an examiner appointed by the commissioner. Examination shall be made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.
- (2) The commissioner, deputy commissioner, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.
- (3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the commissioner may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The commissioner shall furnish to the Federal Reserve agent of the district in which the member bank is situated, copies of reports and examinations made of the member bank.
- (4) The commissioner may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.
- (5) The commissioner may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out-of-state state bank, or any branch of a state bank in any host state. The commissioner may accept reports of examinations and reports of investigation from other bank supervisory agencies and home state regulators in lieu of examinations made under state law. The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a state bank located in any host state. **Information produced or provided under this section shall be considered confidential as provided in KRS 287.470.**

Section 17. KRS 287.480 is amended to read as follows:

- (1) The following fees shall be paid to the commissioner by corporations engaged in a banking or trust business:
 - (a) For the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense;
 - ~~(b) For each report, a filing fee of twenty five dollars (\$25);~~
 - ~~(c)~~ For each state bank and branch of an out-of-state state bank subject to inspection and examination by the commissioner, an annual assessment based on the assets of the banks and branches, other than assets held by it in a fiduciary capacity, as reported to the department by the banks and branches as of the thirty-first day of December of the previous year. The assessment schedule shall be at the rates the commissioner shall determine to be necessary to carry out the duties of the department and shall be reasonably related to the costs ~~other than costs of examination,~~ incurred by the department in regulating banks and branches. **The assessment schedule shall be set by administrative regulation**~~The assessments for any one (1) year shall not exceed a sum equal to five cents (\$.05) per each one thousand dollars (\$1,000) and any fraction thereof of the total nontrust assets;~~
 - ~~(d) For any examinations under KRS 287.450, a fee shall be collected sufficient to cover the cost of the examination based upon fair compensation for time and actual expense;~~
 - ~~(c)(e)~~ For the examination of the assets held by the institution in a fiduciary capacity, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense. The commissioner may accept examinations made of the trust department in combined banks and trust companies by examiners for the Federal Reserve System, Federal Deposit Insurance Corporation, or a certified public accountant; and
 - ~~(d)(f)~~ Extraordinary services performed, in addition to examinations, for any financial institution, including institutions in liquidation under the supervision of the commissioner, shall be paid for by the institution upon the basis of fair compensation for time and actual expense.
- (2) The commissioner, in his discretion, may enter into cooperative agreements with other bank supervisory agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a state bank located in any host state, or any organization affiliated with one (1) or more bank supervisory agencies for the collection, remittance, and sharing of fees authorized in subsection (1) of this section.

Section 18. KRS 287.490 is amended to read as follows:

- (1) Every institution under the supervision of the department shall make a ~~written~~ report to the commissioner whenever required by him to do so. The commissioner shall not require more than five (5) reports from any one (1) institution in any one (1) year, unless he deems it necessary in order to obtain complete information ~~and each report shall be verified by the oath of the corporation's president or vice president, and its secretary or cashier, or two (2) principal officers.~~
- (2) The reports shall show the actual condition of the bank making the report at the close of business on a date designated by the commissioner and shall specify **any information required by the commissioner** ~~:

 - (a) The amount of its capital stock and the number of shares into which it is divided;
 - (b) The names of the directors, and the number of shares of stock held by them;
 - (c) The total amount of capital actually paid in, and the total amount of surplus and other reserve funds;
 - (d) The total amount due depositors, and all other liabilities;
 - (e) The total amount and character of overdrafts secured, overdrafts not secured and all other assets;
 - (f) The amount at which the lot and building occupied by the bank for the transaction of its business stands debited on its books, and the market value of all other real estate held, and how acquired, the amount at which it stands debited on the books, and where situated;
 - (g) The amount loaned on real estate;~~

- ~~(h) The indebtedness or liability of each officer, and of each director to the bank;~~
 - ~~(i) The amount invested in bonds and stocks;~~
 - ~~(j) The amount loaned on stocks and bonds, on other securities, commercial paper and other notes and bills;~~
 - ~~(k) The actual amount of money on hand and on deposit in other banks, and the name of such banks where deposited;~~
 - ~~(l) Any other property held, or money loaned, deposited, invested or placed, not otherwise mentioned in this section, and the place where situated and the value of the property, and the amount loaned, deposited, or placed; and~~
 - ~~(m) Any other information required by the commissioner}.~~
- (3) Any officer, director or board of directors of a bank or trust company shall immediately notify the commissioner concerning any information relating to that financial institution of which they have personal knowledge, involving fraud, defalcation, misfeasance or violations of this chapter. Failure to so notify the commissioner shall be grounds for officer or director removal pursuant to KRS 287.690.

Section 19. KRS 287.710 is amended to read as follows:

As used in KRS 287.720 to 287.770, unless the context otherwise requires:

- (1) "Bank" means a bank organized under the laws of this state or of the United States, or any assignee of the bank's rights under a revolving credit plan.
- (2) "Credit card" means any single card, plate or other credit device that is reusable by a debtor from time to time to obtain extensions of credit under a revolving credit plan. Checks, drafts and similar instruments that can be used only once to obtain a single credit extension are not credit cards.
- (3) "Debtor" means a person to whom or for whose benefit credit is extended pursuant to a revolving credit plan and any other person having actual, implied or apparent authority to obtain extensions of credit under such plan for the debtor.
- (4) To "extend credit" or "extension of credit" means the right granted by a bank to a debtor to defer payment of debt, incur debt and defer its payment, or purchase goods, services or anything else of value and defer payment therefor pursuant to a revolving credit plan.
- (5) "Finance charge" means the sum of all charges, payable directly or indirectly by the debtor, and imposed directly or indirectly by a bank as an incident to an extension of credit pursuant to a revolving credit plan, including interest and any amount payable under a point, discount or other system of additional charges, service or carrying charges, loan fee, finder's fee or similar charge, fees for an investigation or credit report or premiums or other charges required by the bank to be purchased from or through it or an agency named by it for any guarantee or insurance protecting the bank against the debtor's default or other credit loss. The term does not include amounts, if any, collected by the bank, or included in the extension of credit which are fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to credit extended pursuant to the plan or taxes.
- (6) "Revolving credit plan" or "plan" means an arrangement between a bank and a debtor pursuant to which:
 - (a) The bank may extend credit to the debtor by permitting the debtor to make purchases of goods, services and anything else of value or obtain loans, from time to time, directly from the bank or indirectly by use of a credit card~~, check or other device, as the plan may provide~~;
 - (b) The unpaid balances of purchases made, the principal of loans obtained and finance and other appropriate charges are debited to the debtor's account;
 - (c) A finance charge, if made, is not precomputed, but is computed on the outstanding unpaid balances of the debtor's account from time to time; and
 - (d) The bank renders bills or statements to the debtor at regular intervals, which need not be a calendar month (the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or, at the debtor's option, may be paid in installments.

Section 20. KRS 287.905 is amended to read as follows:

- (1) Any bank holding company which proposes to acquire control of a bank chartered in this state or a bank holding company which includes a bank chartered in this state, shall concurrently file with the commissioner copies of the application filed with the federal reserve board under applicable federal law. The commissioner shall approve such acquisition within ninety (90) days of acceptance of a complete application if he finds that:
 - (a) The terms of the acquisition are in accordance with the laws of this state;
 - (b) The financial condition, or the competence, experience and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired bank or bank holding company;
 - (c) The public convenience and advantage will be served by the acquisition; and
 - (d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition.
- (2) A nonrefundable fee shall accompany each application and shall be set by the commissioner in accordance with KRS 287.480.
- (3) The commissioner may examine or elect to participate in a joint examination, with the applicable federal or state regulatory agency, of any holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank. ***The provisions of KRS 287.690 apply to the holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank.***
- (4) The commissioner may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state bank that is controlled by a Kentucky bank holding company or is controlled by a bank holding company which includes a state-chartered bank, or accept reports of examinations of such out-of-state banks from federal or state regulatory authorities in lieu of conducting examinations.
- (5) The commissioner may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of banks and bank holding companies.
- (6) The cost of an examination shall be assessed against and paid by the company examined. The assessment for the examination shall be calculated in the same manner as that used for bank examinations.

Section 21. KRS 287.915 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS Chapter 287:
 - (a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and
 - (b) Any combination authorized by this section shall not require the approval of the commissioner of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the commissioner of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.
- (2) Following any combination authorized by this section:
 - (a) The surviving bank may, subject to the approval of the commissioner as provided in KRS 287.180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;
 - (b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than ~~quarterly~~~~monthly~~ to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;

- (c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and
- (d) With the approval of the commissioner, *all of a bank's offices in a county*~~[a combined bank's former main office and all of the branches in one (1) county existing on the date of the combination authorized by this section]~~ may be transferred, by a purchase and assumption or other transaction, by the ~~surviving~~ bank to a newly chartered bank having its principal office in the same county~~[where the main office of the combined bank was located prior to the combination]~~, or to an existing bank. ***If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be in excess of five (5) years***~~[or bank holding company. If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be the same as the combined bank prior to the combination].~~
- (3) For purposes of this section:
- (a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;
- (b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;
- (c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;
- (d) "Surviving bank" means a bank into which a combined bank has been combined;
- (e) "Bank" includes a national bank, savings and loan association, and federal savings bank but does not include a bank which has been in existence less than five (5) years; and
- (f) "Individual", "bank holding company" and "deposit" shall have the same meanings attributed to them in KRS 287.900(1).

Section 22. KRS 287.920 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
- (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.
- (2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky pursuant to an interstate merger transaction in which the Kentucky state bank is the resulting bank, ***or if the other state permits, by acquisition of a branch or branches in the other state***. Not later than the date on which the required application for the interstate merger transaction ***or branch acquisition*** is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).
- (3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky pursuant to an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).
- (4) The bank to be acquired in an interstate merger transaction under the provisions of ***subsection***~~subsections (2) and~~ (3) of this section shall have been involved in operation for a period of five (5) years or more. No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than

fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the transaction.

- (5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.
- (6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
 - (a) Authorized under the laws of the host state for banks chartered by the host state; or
 - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Section 23. KRS 386.735 is amended to read as follows:

Unless previously barred by adjudication, consent or *any* limitation *established by KRS Chapter 413*, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three (3) years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative.

Section 24. KRS 391.315 is amended to read as follows:

- (1) (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties *to the account* as against the estate of the decedent unless there is clear and convincing *written* evidence of a different intention at the time the account is created. If there are two or more surviving parties their respective ownerships during lifetime shall be in proportion to their previous ownership interests under KRS 391.310 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.
 - (b) *In transferring or releasing joint account funds subsequent to the date of death of one (1) or more of the named joint account holders, a financial institution or other appropriate third party may rely conclusively on the form and terms of the account to pay in accordance with paragraph (a) of this subsection. The transfer or release of those joint account funds has no bearing on the actual rights of ownership of the funds as between the surviving party or parties to the account and the dower or curtesy interest of any surviving spouse. The transfer or release by a financial institution or third party in accordance with this section shall constitute a full release and discharge of the financial institution or third party from all claims relating to ownership.*
- (2) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.
- (3) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary

thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

- (4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.
- (5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

Section 25. KRS 413.120 is amended to read as follows:

The following actions shall be commenced within five (5) years after the cause of action accrued:

- (1) An action upon a contract not in writing, express or implied.
- (2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.
- (3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.
- (4) An action for trespass on real or personal property.
- (5) An action for the profits of or damages for withholding real or personal property.
- (6) **An action for an injury by a trustee to the rights of a beneficiary of a trust.**
- (7) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.
- ~~(8)(7)~~ An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.
- ~~(9)(8)~~ An action to enforce the liability of a steamboat or other vessel.
- ~~(10)(9)~~ An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.
- ~~(11)(10)~~ An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.
- ~~(12)(11)~~ An action for relief or damages on the ground of fraud or mistake.
- ~~(13)(12)~~ An action to enforce the liability of bail.
- ~~(14)(13)~~ An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

Section 26. KRS 413.340 is amended to read as follows:

The provisions of this chapter shall not apply to **an express**~~a continuing and subsisting~~ trust **that is both continuing and subsisting**, nor to an action by a vendee of real property in possession to obtain a conveyance. **For purposes of this subsection, a subsisting trust is an express trust with respect to which the trustee is acting within its powers and with respect to which no beneficiary has a cause of action against the trustee.**

Section 27. KRS 41.220 is amended to read as follows:

- (1) Not less than three (3) solvent banks shall be designated as depositories for state funds. Each bank designated shall have not less than the minimum capital stock as required in ~~paragraphs (2) and (3) of~~ KRS 287.070. Banks shall be designated as depositories for state funds upon agreement of the State Treasurer and the secretary of the Finance and Administration Cabinet. Those designated shall be entered in the executive journal. If at any time it appears that the capital of any depository has become impaired, the state's deposits shall be withdrawn and another depository named.
- (2) The State Treasurer and the secretary of the Finance and Administration Cabinet shall determine the needs for moving state funds from one (1) designated depository to another.

Section 28. KRS 287.820 is amended to read as follows:

- (1) For the purpose of this section:

- (a) "Loan production office" means a bank office located at a place other than the principal or branch office, at which bank employees solicit and originate loans for final approval and disbursement of funds at the principal or branch office; and
 - (b) "Disbursement of funds" is the process by which a bank officer in a principal or branch office issues a negotiable instrument at the principal or branch office.
- (2) No bank shall operate a loan production office without prior approval of the commissioner. The commissioner shall approve the application unless he finds that:
 - (a) The proposed operation of the loan production office is not in accordance with this section;
 - (b) The financial standing, moral character, and capability of the bank and its management which proposes to operate a loan production office will jeopardize the financial stability of the bank;
 - (c) There is no reasonable assurance of sufficient volume of business for the proposed loan production office to be successful; and
 - (d) The public convenience and advantage will not be promoted by the opening of the proposed loan production office.
 - (3) All extensions of credit originated in a loan production office shall be in accordance with disclosure provisions, usury rates, and other fees and charges authorized by law for banks.
 - (4) Loan production offices shall not accept deposits or conduct any other banking functions except those enumerated in paragraph (a) of subsection (1) of this section.
 - (5) The department may examine the operations of any loan production office for the purpose of determining that the scope of its activities does not exceed that allowed in this section. Banks operating loan production offices shall maintain copies of records relating to extensions of credit originated in loan production offices at the principal office for examination purposes.
 - (6) The application and appeal process set forth in ~~KRS 287.061 and~~ KRS Chapter 13B and the cease and desist powers of the commissioner set forth in KRS 287.690 shall apply to loan production offices.

Section 29. KRS 287.990 is amended to read as follows:

- (1) Any person who violates subsection (2) of KRS 287.030 may be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each day he is engaged in the private banking business.
- (2) Any institution that fails to make the report required by KRS 287.420 to the commissioner within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 287.420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars (\$200).
- (3) If any person violates subsection (3) of KRS 287.440 his office shall ipso facto become vacant. The president or cashier of any bank or trust company to which any person becomes indebted in violation of subsection (3) of KRS 287.440 shall immediately report such fact to the commissioner, who may remove the person so offending.
- (4) Any receiver of an insolvent institution who fails to comply with the provisions of this chapter shall be subject to the same penalties provided for solvent institutions and officers so offending.
- (5) Any directors of a bank who knowingly violate, or knowingly permit any officer or employee of the bank to violate, any of the laws relating to banks, shall be jointly and severally liable to the creditors and stockholders for any loss or damage resulting from such violation. If the loss or damage is not made good within a reasonable time, the commissioner, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.
- (6) Any deputy commissioner or any examiner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who fails to immediately present a signed report of such facts to the commissioner, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than one hundred (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (7) Any commissioner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who willfully fails to take

the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than five hundred (\$500) nor more than five thousand dollars (\$5,000) for each offense.

- (8) Any bank or trust company that knowingly fails to make a report required by law or by the commissioner within the time designated for the making thereof, or fails to include in such report any matter required by law or by the commissioner, or fails to publish a report within thirty (30) days after it should have been published, or fails to pay when due the fees for filing reports or for an examination of the bank, shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency, but the aggregate penalty for each kind of offense shall not exceed one thousand dollars (\$1,000).
- (9) Each person, bank, or trust company that willfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of a bank who refuses to be examined under oath concerning the affairs of the bank, shall be severally fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).
- (10) Whenever any fine imposed by subsection (1), (2), (4), (6), (7), (8), (9), (15), (16), (17), or (18) of this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the fine.
- (11) Any person violating any of the provisions of KRS 287.225 shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50) nor more than two thousand dollars (\$2,000).
- (12) Any person who willfully makes charges in excess of those permitted by KRS 287.720 to 287.770 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.
- (13) Any bank which violates any provision of KRS 287.720 to 287.770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 287.740 and 287.750, and the debtor, or his legal representatives, may recover back, in an action against the bank, any amounts paid to the bank on account of such finance charge; provided such action is commenced within two (2) years from the date such violation first occurred; but the bank may nevertheless recover from the debtor an amount equal to the principal of extensions of credit made pursuant to a revolving credit plan and any charges not prohibited by KRS 287.760.
- (14) Notwithstanding the provisions of subsections (12) and (13) of this section, any failure, other than a willful and intentional failure, to comply with any provisions of KRS 287.710 to 287.770 may be corrected during the billing cycle next succeeding the receipt by the bank of written notice thereof from the debtor, and if so corrected, the bank shall not be subject to any penalty under KRS 287.710 to 287.770.
- (15) Any bank or trust company which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank who violates the terms of any order issued under KRS 287.690 which has become final shall forfeit and pay a fine of not more than one thousand dollars (\$1,000) per day for each day such violation continues. The fine shall be assessed by the commissioner by written notice. As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation. In determining the amount of the fine the commissioner shall consider the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations and such other factors as justice requires.
- (16) Any bank which violates the provisions of KRS 287.065(2){(3)} may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). The fines may be assessed by the commissioner by written notice.
- (17) Any bank which violates any provisions of KRS 287.100(10) may be fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) for the first violation, and may be fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for any subsequent violations.
- (18) Any officer or director who violates the provisions of KRS 287.280(1) may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation, and any officer or director who violates the provisions of KRS 287.280(2) may be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each violation. The fine may be assessed by the commissioner by written notice.

Section 30. KRS 413.130 is amended to read as follows:

- (1) In every action upon a merchants' account as described in subsection ~~(10)~~~~(9)~~ of KRS 413.120, the limitation shall be computed from January 1 next succeeding the respective dates of the delivery of the several articles charged in the account. Judgment shall be rendered for no more than the amount of articles actually charged or delivered within five (5) years preceding that in which the action was brought. If any merchant willfully postdates any article charged in such account, or the receipt for the delivery of it, he shall forfeit ten (10) times the amount of the article postdated, to be credited against the account. This credit shall be allowed in an action on the account, without any written pleadings setting it up.
- (2) In an action to recover a balance due upon a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, as described in subsection ~~(11)~~~~(10)~~ of KRS 413.120, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.
- (3) In an action for relief or damages for fraud or mistake, referred to in subsection ~~(12)~~~~(11)~~ of KRS 413.120, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or the perpetration of the fraud.

Section 31. KRS 287.235 is amended to read as follows:

- (1) Common trust funds shall not be considered as an entity for income or other tax purposes, nor shall investment in such fund make taxable any property which is otherwise exempt therefrom; and for purposes of taxation, the status of the common trust fund and of each participant therein shall be determined as though there were no common fund and as though each participant was the owner of its proportionate share of every asset held in the common fund. The bank or trust company maintaining said fund shall file a report of said fund with the property valuation administrator as of the ad valorem tax date and shall file annually such income tax information as may be required by the Revenue Cabinet.
- (2) *Notwithstanding subsection (1) of this section, if a common trust fund transfers substantially all of its assets to one (1) or more regulated investment companies in exchange solely for stock in the company or companies to which such assets are transferred and such stock is distributed by such common trust fund to the participants in such common trust fund in a transaction which would qualify under Section 584(h) of the Internal Revenue Code of 1986, as amended, for the nonrecognition of gain or loss of such transfer or distribution by the common trust fund, then no gain or loss shall be recognized for Kentucky income tax purposes by the common trust fund by reason of such transfer or distribution or by the participants in such common trust fund by reason of such exchange.*

Section 32. The following KRS sections are repealed:

287.061 Application for approval -- Hearing.

287.205 When national bank may act as fiduciary.

Approved March 27, 1998

CHAPTER 197

(HB 515)

AN ACT relating to the mortgage loan business.

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

Section 1. KRS 294.010 is amended to read as follows:

Unless the context otherwise requires:

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "Department" means the Department of Financial Institutions;
- (3) "Commissioner" means the commissioner of financial institutions;

- (4) "Mortgage loan" means any loan secured by a mortgage on residential real property or any loan secured by collateral which has a mortgage lien interest in residential real property;
- (5) "Residential real property" means any single family residence or multiple dwelling structure containing four (4) or less single dwelling units for four (4) or less family units, living independently of each other, or any single family condominium unit;
- (6) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries is evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other group however organized;
- (7) "Mortgage loan company" means any person who directly or indirectly:
 - (a) Holds himself out as being able to make or purchase loans secured by mortgages on residential real property;
 - (b) Holds himself out as being able to service loans secured by mortgages on residential real property; and
 - (c) Holds himself out as being able to buy or sell notes secured by mortgages on residential real property;
- (8) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly:
 - (a) Holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan which will be secured by a mortgage on residential real property; ~~or~~
 - (b) Holds himself out as being able to serve as an agent for any person who has money to loan, which loan is or will be secured by a mortgage on residential real property.

Section 2. KRS 294.020 is amended to read as follows:

- (1) The following shall be exempt from this chapter:
 - (a) Any person doing business under the laws of this state or any other state or the United States relating to banks, bank holding companies, trust companies, credit unions, savings and loan associations, service corporation subsidiaries of savings and loan associations, consumer finance companies, industrial loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. sec. 856 and the affiliates of such companies, ~~mortgage loan companies regulated by the Department of Housing and Urban Development,~~ or an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended;
 - (b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney-at-law;
 - (c) Any person doing any act under order of any court;
 - ~~(d) Any natural person making a mortgage loan with his own funds for his own investment without intent to resell the mortgage loan;~~
 - ~~(e) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;~~
 - ~~(f) The United States of America, the Commonwealth of Kentucky, or any other state, and any Kentucky city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the foregoing;~~
 - ~~(g) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);~~
 - (f) *With the approval of the commissioner, an independent contractor that solicits mortgage loans for only one (1) licensed mortgage loan company or licensed mortgage loan broker may be exempted from obtaining a license under this chapter if:*
 - 1. *The licensed mortgage loan company or licensed mortgage loan broker notifies the department that it will assume legal responsibility for the actions of the independent contractor in complying with the provisions of KRS Chapter 294; and*

2. The licensed mortgage loan company or licensed mortgage loan broker provides the department with proof that its bond will cover the independent contractor.

~~[(h) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of his practice as a real estate broker or real estate associate;~~

~~(i) Any person making less than five (5) mortgage loans per year.]~~

(2) The following shall be exempt from all the provisions of KRS Chapter 294 except that they shall be subject to the examination or investigation provisions of subsections (4), (5), and (6) of Section 14 of this Act, KRS 294.180, and KRS 294.190 if it appears on grounds satisfactory to the commissioner, on written complaint, that an examination or investigation is necessary, and they shall be subject to the prohibited acts provisions of Section 15 of this Act:

(a) Mortgage loan companies or mortgage loan brokers regulated by the Department of Housing and Urban Development;

(b) Any natural person making a mortgage loan with his or her own funds for the person's own investment without intent to resell the mortgage loan;

(c) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;

(d) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate; and

(e) Any person making less than five (5) mortgage loans per year.

(3) Any person relying upon an exemption under subsection (2)(c) or (d)~~[(1)]~~ of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he shall not disallow an exemption that is validly claimed.

Section 3. KRS 294.032 is amended to read as follows:

(1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the commissioner.

(2) The application shall:

(a) Be sworn to~~to verified~~;

(b) State the name of the applicant and each of the applicant's affiliates engaged in business as a mortgage loan company or a mortgage loan broker;

(c) State the name under which the applicant will conduct business in Kentucky;

(d) State the location of the applicant's principal office and branch offices in Kentucky;

(e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee and director, specifying the capacity and title of each;

(f) Indicate the general plan and character of the business;

(g) Contain a corporate surety bond or other instrument as prescribed by KRS 294.060;

(h) If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant~~Contain a verified financial statement of the applicant prepared by a certified public accountant or by a public accountant registered in this state~~;

(i) Require payment of the appropriate registration fees; and

(j) Require such other information as the commissioner determines necessary.

- (3) No mortgage loan *company license may be granted unless the applicant has and maintains, so long as the license is in effect, a minimum, documented funding source of five hundred thousand dollars (\$500,000). If a mortgage loan company has a net worth in excess of five hundred thousand dollars (\$500,000), an additional funding source is not required* ~~broker's license may be granted to a person unless he is a bona fide resident of this state for a period of at least six (6) months immediately preceding the date of licensing.~~
- (4) ~~No mortgage loan broker's license may be granted unless the applicant has and maintains a principal place of business in this state for the transaction of business.~~
- (5) ~~If a licensee is a person other than a natural person, the license issued to it shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, or trust, to engage in the mortgage loan business licensed pursuant to this chapter.~~
- (5) *If a licensee desires to establish a branch office in Kentucky not already approved, the licensee shall file a registration statement with the commissioner that includes the address and telephone number of the branch office, the name of the prospective manager, the anticipated opening date, and any other information prescribed by the commissioner.*
- (6) *All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the department, of not less than thirty (30) hours' duration. Mortgage loan brokers who have held a license for at least one (1) year shall be exempt from this requirement. This section shall not become effective until the department has approved at least one (1) educational training course. This section shall not apply to renewals of existing licenses.*

Section 4. KRS 294.034 is amended to read as follows:

- (1) An applicant for a license under this chapter shall provide the commissioner with separate checks payable to the Kentucky State Treasurer for:
- (a) An investigation fee of ~~three~~ ~~one~~ hundred ~~and fifty~~ dollars ~~(\$300)~~ ~~(\$150)~~ for the principal office and ~~one hundred fifty~~ ~~forty~~ dollars ~~(\$150)~~ ~~(\$40)~~ for each branch office; and
- (b) A license fee of ~~four~~ ~~three~~ hundred ~~fifty~~ dollars ~~(\$450)~~ ~~(\$300)~~ for the principal office and two hundred ~~fifty~~ dollars ~~(\$250)~~ ~~(\$200)~~ for each branch *in Kentucky* if the applicant applies for a license on or between July 1 and December 31 or of one hundred fifty dollars (\$150) for the principal office and one hundred dollars (\$100) for each branch if the applicant applies for a license on or between January 1 and June 30.
- (2) A license under this chapter shall expire June 30 next after the date of issuance if it is not renewed.
- (3) A license may be renewed by paying the annual fee for renewing a license which is three hundred ~~thirty~~ ~~five~~ dollars ~~(\$350)~~ ~~(\$300)~~ for the main office and two hundred ~~thirty~~ ~~five~~ dollars ~~(\$250)~~ ~~(\$200)~~ for each branch office *in Kentucky, and* submitting an annual *report of activity as prescribed by the commissioner, and any* ~~financial statement, and submitting~~ other information required by the commissioner.
- (4) The information and payment shall be received by the commissioner on or before *June 20 prior to* ~~July 15 following~~ the June 30 expiration date. ~~If the information and payment are not received by July 15, the license shall be cancelled.~~ The commissioner may reinstate the license if the licensee pays the filing fee and a reinstatement fee of one hundred dollars (\$100).
- (5) The department shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

Section 5. KRS 294.036 is amended to read as follows:

- (1) Each license issued under this chapter shall state the address or addresses at which business is to be conducted, the name of the licensee, and the date and place of its incorporation, if applicable.
- (2) A licensee shall post a copy of such license in a conspicuous place in the office to which it pertains.
- (3) A license may not be transferred or assigned without the prior written approval of the commissioner.
- (4) No licensee shall transact the business provided for by this chapter under any other name or maintain an office at any location other than that designated in the license.
- (5) *Every licensed mortgage loan company or mortgage loan broker shall notify the commissioner, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch.*

Section 6. KRS 294.060 is amended to read as follows:

- (1) Except as otherwise provided in this section, at the time of filing an application for registration as a mortgage loan company or mortgage loan broker, the applicant shall post corporate surety bonds in an amount ~~that the commissioner determines by administrative regulation to be necessary and appropriate under the circumstances but~~ not less than **one hundred thousand dollars (\$100,000)** ~~twenty five thousand dollars (\$25,000)~~ for mortgage loan companies and not less than **fifty thousand dollars (\$50,000)** ~~twenty five thousand dollars (\$25,000)~~ for mortgage loan brokers. Every bond shall provide for suit thereon by any person who has a cause of action under this chapter. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond. Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.
- (2) In lieu of posting corporate surety bonds, the applicant may:
 - (a) Deposit with the commissioner an irrevocable letter of credit for an amount equal to the required bond upon which the applicant is the obligor, issued by a bank approved by the commissioner, whose deposits are insured by the Federal Deposit Insurance Corporation;
 - (b) Establish an account payable to the commissioner in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required bond; or
 - (c) Deposit with the commissioner **an escrow agreement for** a savings certificate of a federally insured financial institution in this state for an amount payable which is equal to the amount of the required bond and which is not available for withdrawal except by direct order of the commissioner. Interest earned on the certificate accrues to the applicant.
- (3) If the commissioner **or the commissioner's representative** shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this chapter, the order to be complied with within thirty (30) days following service thereof upon the registrant.

Section 7. KRS 294.070 is amended to read as follows:

- (1) The use of the words "certified" or "licensed" or any form thereof separately or in any combination thereof with other words or syllables, is prohibited as part of the name of a mortgage loan company **or a mortgage loan broker**. No license of a proposed mortgage loan company **or a mortgage loan broker** having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the commissioner.
- (2) No person, unless lawfully authorized to do business in this state under the provisions of this chapter, and actually engaged in carrying on a mortgage loan or loan broker business, shall do business under any name or title which contains the terms "mortgage company," "mortgage loan company," "mortgage loan broker," "loan broker," "financial broker," or any combination employing the words "mortgage," "loan," or "broker," with one (1) or more of the words "association," "institution," "society," "company," "corporation," or words of similar import, or use any name or represent in any manner which indicates or reasonably implies that his or its business is that of a mortgage loan company or mortgage loan broker as defined by KRS 294.010.
- (3) **A mortgage loan company or mortgage loan broker required to have a license under this chapter shall not use the words "bank," "trust," "national," or "federal," or any form thereof separately or in combination thereof with other words or syllables as a part of its name or to otherwise identify itself.**

Section 8. KRS 294.075 is amended to read as follows:

- (1) As used in this section, "change of control" means:
 - (a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage **loan** company **or mortgage loan broker**; or
 - (b) A transfer of at least ten percent (10%) of the outstanding voting stock of a mortgage **loan** company **or a mortgage loan broker**.

~~{(2) The commissioner must approve}~~ A transfer of voting stock of a mortgage *loan* company *or mortgage loan broker* which constitutes a change of control ***shall be approved in writing by the commissioner, prior to the transfer.***

- (3) The owner, president, chief executive officer or a partner shall apply to the commissioner for approval of a transfer of voting stock in his mortgage *loan* company *or mortgage loan broker* which constitutes a change of control. The application must contain information which shows that the requirements of this chapter for obtaining a license will be satisfied after the change of control.

Section 9. KRS 294.090 is amended to read as follows:

The commissioner may deny, suspend, or revoke any license when the applicant or licensee:

- (1) Does not meet or has failed to comply with the requirements of this chapter;
- (2) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;
- (3) Does not conduct his business in accordance with law or the method of business includes or would include activities which are illegal where performed, or has willfully violated any provision of this chapter or any regulation hereunder;
- (4) Collects interest at a usurious rate;
- (5) Is in such financial condition that he cannot continue in business with safety to his customers;
- (6) Has been guilty of fraud in connection with any transaction governed by this chapter, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the registrant; but the commissioner may not institute a proceeding under this subsection more than one (1) year from the date of the order or injunction relied on, and he may not enter an order under this subsection on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;
- (7) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of acting as a mortgage loan company or mortgage loan broker, or has engaged in a course of business which has worked or tended to work a fraud upon any person or would so operate;
- (8) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the applicant or licensee possesses, and which if submitted by him would have rendered the applicant or licensee ineligible to be licensed under this chapter;
- (9) Has failed to account to persons interest for all funds received for the escrow account required under KRS 294.130;
- (10) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under the provisions of this chapter;
- (11) Has been convicted of any misdemeanor of which an essential element is fraud, or any felony, or has pending against him any felony charge; *or*
- (12) ***Has had any license related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state or the United States.***

Section 10. KRS 294.100 is amended to read as follows:

- (1) No mortgage loan company or mortgage loan broker may establish or maintain a branch office *in Kentucky* without ***filing the registration statement as described in subsection (5) of Section 3 of this Act and the receipt of*** prior written approval of the commissioner.
- (2) Each ***registration statement***~~[application]~~ for approval of the establishment and maintenance of a branch office shall state the proposed location, the functions to be performed, and other information which the commissioner may require if different from that contained in the original application for ***a license***~~[registration]~~.

- (3) Each **registration statement**~~{application}~~ under this section shall be **sworn to**~~{verified}~~ and accompanied by the appropriate fee as set out in KRS 294.034(1)(b).
- (4) Upon the receipt by the commissioner of **a registration statement**~~{an application}~~ and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this chapter, he shall approve the **registration statement**~~{application}~~.

Section 11. KRS 294.110 is amended to read as follows:

- (1) Mortgage loan companies are prohibited from making loans and mortgage loan brokers are prohibited from brokering loans at a rate or rates in excess of those provided by KRS 360.010 and 360.025 or other applicable usury statutes.
- ~~(2) Every loan shall be evidenced by a note for the amount of the loan. Every note evidencing a loan under this subsection shall contain the following information and provisions: The original principal amount of the loan, excluding any charge for the loan; a statement of the total charge for the loan; the terms of repayment, including the amount and date of installments and penalty or charge for late payment; the date of final maturity; and may contain all other terms of the loan contract. The borrower shall be given a copy of the note, at the time the loan is made and shall thereafter be given a receipt for each cash payment.~~
- ~~(3)~~ Every real estate loan shall be secured by a mortgage or other instrument constituting a lien upon the real estate securing the loan, according to any lawful or well-recognized practice which is best suited to the transaction. Any such instrument, constituting a lien, is herein termed a "mortgage." All such mortgages shall be recorded in accordance with the law of this Commonwealth.
- ~~(3)~~~~(4)~~ Delinquency charges may be made for each installment more than ten (10) days in arrears, and only one (1) delinquency charge shall be made on any one (1) installment. No delinquency charge shall be made unless disclosed as required under subsection (2) of this section. In addition to such delinquency charges, attorneys' fees not exceeding fifteen percent (15%) of the unpaid balance shall be taxed as costs and court costs may be collected, provided that the note is referred to an attorney not a salaried employee of the holder for collection.
- ~~(4)~~~~(5)~~ Any charges to be assessed against the borrower, in the event a loan is paid prior to maturity shall be prominently displayed and made part of the note and the loan closing statement regarding the method of computation of any rebate. **No prepayment penalty shall be assessed against the borrower following the fifth anniversary date of the mortgage. No prepayment penalty shall exceed five percent (5%) of the outstanding balance of the loan.**

Section 12. KRS 294.120 is amended to read as follows:

- (1) Every mortgage loan company may require borrowers to pay all necessary and reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording and registration fees, title examination, title insurance, mortgage insurance, credit report, survey, drawing of papers, origination fees, loan closing costs, and taxes or charges imposed upon or in connection with the making and reporting of any mortgage.
- (2) Every mortgage loan company also may require the borrowers to pay the cost of all other necessary and incidental services rendered by the mortgage loan company or by others in connection with loans in reasonable amounts. Without limiting the generality of the foregoing, such costs may include the cost of services of inspectors, engineers, and architects.
- (3) Such initial charges as described in subsections (1) and (2) of this section may be collected by the mortgage loan company from the borrower and paid to any person rendering such services, or paid directly by the borrower.
- (4) In lieu of such initial charges to cover such expenses and costs as described in subsections (1) and (2) of this section, a mortgage loan company may make a reasonable charge, part or all of which may be retained by the mortgage loan company which renders such service, or part or all of which may be paid to others who render such services.
- (5) The fees and charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this Commonwealth which limits the rate of interest which may be exacted in any transaction.

- (6) No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company *or mortgage loan broker* require the payment of a fee greater than one hundred dollars (\$100) as a condition to submitting a loan application unless the commissioner shall otherwise prescribe by rule.
- ~~(7) Upon receipt of a loan application, the mortgage loan company shall provide the applicant with a written explanation of the nature of all fees, expenses and other costs allowable under subsections (1) and (2) of this section which, whether certain or uncertain, may be incurred or required of the borrower in connection with the approval, making, closing and disbursement of the loan.~~
- ~~(8) The mortgage loan company shall furnish a loan settlement statement to each borrower upon request one (1) business day prior to the settlement date in a form consistent with the provisions of the Real Estate Settlement Procedures Act of 1974 and any amendments thereto, and in all other regards the mortgage loan company shall make the necessary and appropriate disclosures consistent with the provisions of that act and any amendments thereto. A copy of the loan settlement statement and any other disclosure documents shall be retained in the records of the mortgage loan company.~~
- ~~(9)~~ All "letters of commitment," or any other contracts or agreements between prospective borrowers and a mortgage loan company or a loan broker, where the borrowers employ services, for a fee or commission, to obtain a loan commitment or funding from a lending institution shall indicate the terms and conditions thereof, including a full and detailed description of the services the broker or company undertakes to perform, a specific statement of the circumstances in which the broker or company will be entitled to obtain or retain consideration and the period that such agreement shall remain in effect.
- ~~(8)~~~~(10)~~ Failure on the part of any party, with the exception of the borrower, to fulfill the terms of any loan commitment, letter of commitment, agreement or contract for the loan of money within the time and on such terms specified therein, or the failure to make a bona fide effort to secure a loan after receiving a fee for such service, shall constitute default by the mortgage loan company and any other person so in default; and any person damaged by such default may sue at law or equity for damages, reasonable attorneys' fees and interest at the legal rate of interest under KRS 360.010. Every cause of action for damages under this subsection survives the death of any person who might have been a plaintiff or defendant. No person may sue under this subsection more than five (5) years after any act constituting default.
- ~~{(11) The failure to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated in the letter of commitment, loan commitment or any other contract for the loan of money, or entering into an agreement which establishes unfair terms and conditions or compensation, as the commissioner shall define by rule; or any contract of loan in the making or collection of which any act shall have been done which constitutes a willful violation of any provision of this section or of KRS 294.110 shall be void, and the mortgage loan company or the lender, if not the mortgage loan company, shall have no right to collect, receive or retain any interest or charges whatsoever on such loan, but the unpaid principal of the loan shall be paid in full.}~~

Section 13. KRS 294.160 is amended to read as follows:

Every mortgage loan company and mortgage loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data and other records as the commissioner prescribes, *or that are required by federal law*. ~~{All records so required shall be preserved for three (3) years from the date of collection of the last installment payment due under each agreement unless the commissioner by rule prescribes otherwise for particular types of records.}~~ Every mortgage loan company and mortgage loan broker shall file such financial reports as the commissioner by regulation prescribes. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment.

Section 14. KRS 294.170 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete books of accounts and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.
- (2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person,

partnership, association, or corporation, or under any title, designation or value that is not thoroughly descriptive of any assets.

- (3) The affairs of every mortgage loan company and mortgage loan broker and the records required to be maintained by KRS 294.160 are subject at any time or from time to time to such periodic, special, or other examinations by the commissioner or an examiner of the commissioner within or without this state and with or without notice to the mortgage loan company and mortgage loan broker, as the commissioner deems necessary or appropriate in the public interest. All books, papers, and records of assets of the mortgage loan company shall be subject to his inspection.
- (4) The examiner shall make a thorough examination into the condition, workings and affairs of the association and report any violation of law or any unauthorized unsafe practices or any failure to keep and have correct any required books and records as he may find to the commissioner.
- (5) A mortgage loan company or mortgage loan broker shall pay a fee for each such examination based on fair compensation for time and actual expense. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this section, may cooperate with any agency of the state or federal government, other states, or the federal National Mortgage Association, ***Government National Mortgage Association, and Federal Home Loan Mortgage Corporation***, and may accept such examinations in whole or in part in lieu of an examination by the commissioner.
- (6) The commissioner or his examiners or designated representative shall have access to all books and papers of a mortgage loan company and mortgage loan broker which relate to their business, and books and papers kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.

Section 15. KRS 294.220 is amended to read as follows:

- (1) It shall be unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.
- (2) It shall be unlawful for any mortgage loan company or mortgage loan broker, in connection with the operation of a mortgage loan business or the management or servicing of mortgage contracts, directly or indirectly:
 - (a) To employ a device, scheme, or artifice to defraud;
 - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
 - (c) To fail to disburse funds in accordance with a loan commitment;
 - (d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
 - (e) ***Upon receipt of a customer's written request, to delay beyond two (2) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history.***
- (3) Unless exempted by KRS 294.020, it shall be unlawful for any person to transact any mortgage loan business in this state unless it:
 - (a) Qualifies to do business in Kentucky as required by KRS Chapter 271B; and
 - (b) Complies with the provisions of this chapter.

SECTION 16. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) ***Reports of examination, and correspondence that relates to the report of examination, of a mortgage loan company or mortgage loan broker shall be considered confidential information. No officer or director of a mortgage loan company or mortgage loan broker, employee of the department, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:***
 - (a) ***Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or***
 - (b) ***The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.***

- (2) *The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.*
- (3) *Every official report concerning a mortgage loan company or mortgage loan broker, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the department, mortgage loan company, or mortgage loan broker is a party.*

Section 17. KRS 294.990 is amended to read as follows:

- (1) Any person who willfully violates any provision of this chapter, except KRS 294.220(1), or who willfully violates KRS 294.220(1) knowing the statement to be false or misleading in any material respect, shall be guilty of a Class D felony.
- (2) Any person who willfully violates any rule or order of the commissioner, authorized under this chapter, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.
- (3) The commissioner may refer the evidence available concerning violations of this chapter or any rule or order hereunder to the appropriate prosecuting attorney, who may, with or without reference, institute the appropriate criminal proceeding under this chapter.
- (4) Nothing in this chapter shall limit the powers of the state to punish any person for any conduct which constitutes a crime.
- (5) The commissioner ~~may~~~~shall~~ assess a fine of not less than *one thousand dollars (\$1,000)* ~~fifty dollars (\$50)~~ nor more than five *thousand dollars (\$5,000)* ~~hundred dollars (\$500)~~ against any mortgage loan company *or mortgage loan broker* that *violates any provision of this chapter* ~~fails to perform the duties set out in KRS 294.130~~. The Attorney General shall institute an action, in the name of the Commonwealth, in the Franklin Circuit Court or the Circuit Court of the county in which the violation occurred, for the recovery of the fine.
- (6) Any person who shall engage in the businesses regulated by this chapter without first securing a license therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).
- ~~{(7) Any person who, after a cease and desist order has been issued by the commissioner, violates any provision of the cease and desist order, shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand (\$1000). The fine shall not be deemed to limit the power of the commissioner to revoke any license.}~~

Section 18. The following KRS section is repealed:

294.115 Broker to furnish disclosures in writing to borrower.

Approved March 27, 1998

CHAPTER 198

(HB 514)

AN ACT relating to consumer loan companies.

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

Section 1. KRS 288.430 is amended to read as follows:

- (1) Each application for a license under this chapter shall be made in writing, under oath or affirmation, in such form as the commissioner prescribes.
- (2) The application shall contain:
 - (a) In the case of an individual, his name and the address of his residence and place of business;
 - (b) In the case of a partnership or association, the name and address of every member thereof and the address of the place where the business is to be conducted;
 - (c) In the case of a corporation, the names and addresses of the *principal* officers and directors thereof and the address of the place where the business is to be conducted; and

(d) Such additional information as the commissioner prescribes.

Section 2. KRS 288.450 is amended to read as follows:

- (1) The commissioner shall, after investigation, issue to the applicant a license to make loans in accordance with this chapter, if the commissioner:
 - (a) Approves the form of the application;
 - (b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; **and**
 - ~~(c) Finds that permitting such applicant to engage in such business will promote the convenience and advantage of the community; and~~
 - ~~(d) Finds that the applicant has complied with KRS 288.440.~~
- (2) If the commissioner does not so find, he shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the fifty dollars (\$50) investigation fee to cover the cost of investigating the application.
- (3) The commissioner shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the applicant and the commissioner. If the commissioner denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The official record of the hearing shall be filed in the office of the commissioner as public records, open to public inspection.

Section 3. KRS 288.470 is amended to read as follows:

- (1) No licensee shall conduct the business authorized by this chapter in any office, room, or place of business in which any other business, **except purchase of retail and installment sales contracts and motor club memberships**, is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the commissioner.
- (2) Nothing in this chapter shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.
- (3) **Nothing in this chapter shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars (\$15,000) at the licensed location at the same rates as provided in KRS 360.010.**

Section 4. KRS 288.533 is amended to read as follows:

Notwithstanding the provisions of KRS 288.530(10) or of any other law, in any extension of credit pursuant to KRS Chapter 288, the licensee may charge and collect the following:

- (1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest; and
- (2) A bad check charge of fifteen dollars (\$15), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower; and
- (3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee; **and**
- (4) **A charge for credit investigations of one dollar (\$1) for each fifty dollars (\$50) or fraction thereof of the principal amount of the loan. This charge shall be permitted only on the first two thousand dollars (\$2,000) of the principal amount of the loan. No charge shall be collected unless a loan has been made as a result of the investigation.**

Section 5. KRS 288.600 is amended to read as follows:

Each licensee shall keep and use in his business and shall preserve for at least two (2) years after making the final entry therein, such books, accounts, records, or card systems in accordance with sound accounting principles and practices to enable the commissioner to determine whether the licensee is complying with the provisions of this chapter, and with the regulations made pursuant thereto, **and for at least three (3) years on loans secured by residential property.**

Section 6. KRS 288.610 is amended to read as follows:

- (1) The provisions of this chapter shall be enforced by the commissioner, who may, after notice to licensees and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct application shall state the date of promulgation and the effective date. A copy of every such regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the commissioner as a public record.
- (2) The commissioner shall make an annual examination of the affairs, business, office, and records of every licensee, and such further examinations or investigations as he deems necessary for the purpose of discovering violations of this chapter or of securing information necessary for its proper enforcement. **Every licensee shall pay a fee sufficient to cover the cost of each examination based upon fair compensation for time and actual expenses.**
- (3) For the purpose of making such examinations or investigations the commissioner and his representatives may require the attendance of and examine under oath all persons whose testimony he may require, relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this chapter.

Section 7. KRS 288.615 is amended to read as follows:

In undertaking the examination of a **consumer**~~[petty]~~ loan company neither the Commonwealth of Kentucky, the commissioner of the department of financial institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said **consumer**~~[petty]~~ loan company by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said **consumer**~~[petty]~~ loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 288.610 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said **consumer**~~[petty]~~ loan companies.

Section 8. KRS 288.620 is amended to read as follows:

- (1) ~~[No person, except as authorized by statute shall directly or indirectly by any device, subterfuge or pretense whatsoever, charge, contract for or receive or participate as agent, broker or in any other capacity in charging, contracting for or receiving any interest, discount or consideration greater than six percent (6%) per annum upon any loan in the amount of or the value of fifteen thousand dollars (\$15,000).~~
- ~~(2)~~ Any loan in the amount of fifteen thousand dollars (\$15,000) or less for which there has been charged, contracted for or received a greater rate of interest, discount or consideration, except as provided for by statute, is against the public policy of this state.
- ~~(2)~~~~(3)~~ No such loan made outside this state shall be enforced in the state and every person participating therein in this state shall be subject to the provisions of this chapter, but this section does not apply to loans legally made in any state, country, commonwealth, territory or district.

Section 9. KRS 288.440 is amended to read as follows:

- (1) Each applicant at the time of making application shall pay **two hundred** fifty dollars ~~(\$250)~~~~(\$50)~~ to the commissioner as a fee for investigating the application **for the initial location in Kentucky, or a fee of one hundred fifty dollars (\$150) for additional locations,** and the additional sum of **three hundred seventy-five dollars (\$375)**~~two hundred and fifty dollars (\$250)~~ as an annual license fee **for each location** for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year, the payment shall be **one hundred eighty-seven dollars (\$187)**~~one hundred and twenty five dollars (\$125)~~ as a license fee in addition to the fee for investigation.~~[In addition to the annual license fee every licensee hereunder shall pay the same fees for each examination as are allowed by statute for the examination of banks]~~

- (2) *If any person regulated by the department desires to purchase an existing licensed location or locations, the person shall submit an application to the commissioner containing the information as the commissioner may prescribe. The fee for this application shall be one hundred dollars (\$100) per location not to exceed one thousand dollars (\$1,000).*

Section 10. The following KRS sections are repealed:

288.510 Financial condition of licensee.

288.515 Advertising statement required where institution not fully insured.

Approved March 27, 1998

CHAPTER 199

(HB 486)

AN ACT relating to the Commission on Military Affairs and declaring an emergency.

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

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

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

- (c) The adjutant general of the Commonwealth, or his designated representative;
- (d) ***The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;***
- (e) The secretaries of the following cabinets, or their designees:
 1. Finance and Administration;
 2. Human Resources;
 3. Justice;
 4. Natural Resources and Environmental Protection;
 5. Transportation; ~~and~~
 6. Workforce Development; ***and***
 7. ***Education, Arts, and Humanities; and***
- ~~(f)(e)~~ The Attorney General, or his designee;
- ~~(g)(f)~~ Kentucky's Civilian Aide to the Secretary of the United States Army;
- ~~(h)(g)~~ The commander or his designee of each of the following, as nonvoting, ex-officio members:
 1. Fort Campbell;
 2. Fort Knox;
 3. United States Army Recruiting Command;
 4. Bluegrass Army Depot;
 5. Louisville District of the United States Army Corps of Engineers;
 6. ***The One Hundredth Training Division;***
 7. ***Louisville/Jefferson County Redevelopment Authority; and***
 8. Any other installation or organization with a major military mission in the Commonwealth;~~{7. The One Hundredth Training Division;}~~ and
- ~~(i)(h)~~ Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.
- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.
- (5) The Governor shall appoint the chair and vice chair of the commission from the five (5) at-large members, by September 30, 1996. The chair shall call a meeting of the commission by October 31, 1996, for the purpose of creating an executive committee.
 - (a) The commission shall establish an executive committee consisting of the Secretary of the Cabinet for Economic Development, the Adjutant General of the Commonwealth, and the five (5) at-large members.
 - (b) The chair and vice chair of the commission shall serve as chair and vice chair of the executive committee.
 - (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
- (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. ***Members' designees shall have voting privileges at commission meetings.***

- (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (8) *The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.*
- (9) *The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.*
- (10) *The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.*
- (11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds and operate the normal business activities of the commission with approval of the executive committee.
- ~~(12)(9)~~ The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Section 2. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Service is confirmed by this 1998 Regular Session of the General Assembly, the reference to Human Resources appearing in subsection (3) of Section 1 of this Act shall be codified as Families and Children.

Section 3. Whereas the Commission on Military Affairs cannot allocate grant moneys that will otherwise lapse at the close of the current fiscal year absent the authority to promulgate administrative regulations governing the allocation, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 27, 1998

CHAPTER 200

(HB 493)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A reparation obligor may request or negotiate a reduction or modification of charges from a provider of services to a secured person. In no event shall a provider of services which agrees to a reduction or modification of the charges bill the secured person for the amount of the reduction or modification. Nothing in this section is intended to prohibit a provider of services from billing charges to a secured party if the charges are not paid by a reparation obligor because the reparation benefits have been exhausted.

Section 2. KRS 304.39-210 is amended to read as follows:

- (1) Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, or medical expense is incurred. Benefits are overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one (31) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, and pays them within fifteen (15) days after the period of accumulation. ***Notwithstanding any provision of this chapter to the contrary, benefits are not overdue if a reparation obligor has not made payment to a provider of services due to the request of a secured person when the secured person is directing the payment of benefits among the different elements of loss.*** If reasonable proof is supplied as to only part of a claim, and the part totals one hundred dollars (\$100) or more, the part is overdue if not paid within the time provided by this section. Medical expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant, ***if the claimant so designates.***

- (2) Overdue payments bear interest at the rate of twelve percent (12%) per annum, except that if delay was without reasonable foundation the rate of interest shall be eighteen percent (18%) per annum.
- (3) A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.
- (4) A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of medical expense. The action may be brought only against the person providing the item of medical expense, unless the insured has intentionally misrepresented the facts or knows of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.
- (5) A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

SECTION 3. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insured may direct the payment of benefits among the different elements of loss, if the direction is provided in writing to the reparation obligor. A reparation obligor shall honor the written direction of benefits provided by an insured on a prospective basis.

Section 4. The following KRS section is repealed:

304.39-240 Assignment of benefits.

Approved March 27, 1998

CHAPTER 201

(HB 477)

AN ACT relating to eligibility to be a candidate in a political primary election.

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

Section 1. KRS 118.125 is amended to read as follows:

- (1) Except as provided in KRS 118.155, any person who is qualified under the provisions of KRS 116.055 to vote in any primary election for the candidates for nomination by the party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in that primary, upon filing, with the Secretary of State or county clerk, as appropriate, at the proper time, a notification and declaration.
- (2) The notification and declaration shall be in the form prescribed by the State Board of Elections. It shall be signed by the candidate and by not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination.
 - (a) The notification and declaration for a candidate for an office other than Governor or Lieutenant Governor shall include the following oath:

"For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the ----- Party, I, ----- (name in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that *my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address)*~~I reside at No. ----- street in the City of -----, State of Kentucky], and that I am a registered ---~~ (party) voter in ----- precinct~~[-, City of -----]; that I believe in the principles of the ----- Party, and intend to support its principles and policies[- and vote for its nominees at the coming regular election; that I was affiliated with such party and supported its nominees at the last regular election, or was~~

~~prevented from doing so by reason of _____ (state reason here);~~ that if nominated as a candidate of such party at the ensuing election I will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that I will not knowingly violate any election law or any law relating to corrupt and fraudulent practice in campaigns or elections in this state, and if finally elected I will qualify for the office."

The declaration shall be subscribed and sworn to by the person making it before an officer authorized to administer an oath.

- (b) The notification and declaration for a slate of candidates for Governor and Lieutenant Governor shall include the following oath:

"For the purpose of having our names placed on the official primary election ballot as a slate of candidates for Governor and Lieutenant Governor for nomination by the ----- Party, I, -----, (name of candidate for Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that *my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address)*~~I reside at _____ in the City of _____, State of Kentucky,~~ and that I am a registered ----- (party) voter in ----- precinct~~_____ City of _____~~; and I, -----, (name of candidate for Lieutenant Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that *my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address)*~~I reside at _____ in the City of _____, State of Kentucky,~~ and that I am a registered ----- (party) voter in ----- precinct~~_____ City of _____~~; that we believe in the principles of the ----- Party, and intend to support its principles and policies~~and vote for its nominees in the regular election at which a Governor and Lieutenant Governor are elected; that we will be or were affiliated with that party and will support or supported its nominees at the regular election preceding the year in which a Governor and Lieutenant Governor are elected, or will be or were prevented from doing so by reason of _____ (state reason here for the candidate for Governor) _____ (state reason here for the candidate for Lieutenant Governor);~~ that we will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that we will not knowingly violate any election law or any law relating to corrupt or fraudulent practice in campaigns or elections in this state, and if finally elected we will qualify for our offices."

The declaration shall be subscribed and sworn to by the persons making it before an officer authorized to administer an oath.

- (3) When the notice and declaration has been filed with the Secretary of State or county clerk, as appropriate, and certified according to KRS 118.165, the Secretary of State or county clerk, as appropriate, shall have the candidate's name printed on the ballot according to the provisions of this chapter, except as provided in KRS 118.185.
- (4) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

Approved March 27, 1998

CHAPTER 202

(HB 452)

AN ACT relating to occupations and professions.

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

Section 1. KRS 311.603 is amended to read as follows:

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against the board, any current or former member, officer, administrator, staff member, committee member, representative, agent, consultant, or employee of the board, either as a part of the board's operation or as an individual, as the result of any act, omission, proceeding, conduct, or decision related to his official duties undertaken or performed within the scope of the function of the board, *except where actual malice is shown or willful misconduct is involved*.

Approved March 27, 1998

CHAPTER 203

(HB 439)

AN ACT relating to administrative authority.

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

Section 1. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

- (1) Office of the Secretary;
- (2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (3) The Office of the Counsel. The Office of the Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;
- (4) The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;
- (5) The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the office of administrative services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;
- (6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

- (7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;
- (8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly-licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;
- (9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall only fulfill such responsibilities as delegated by the secretary;
- (10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;
- (11) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:
 - (a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;
 - (b) Licensing and regulatory functions as the secretary may delegate;
 - (c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and
 - (d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary. *To carry out the duties of the Office of the Inspector General, the Inspector General shall have*

the power to issue subpoenas for witnesses and subpoena duces tecum relevant to a review, audit, or investigation; and

- (12) The Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities, and to the extent that funds are available, shall provide such services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate such administrative regulations pursuant to KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for such removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary.

Approved March 27, 1998

CHAPTER 204

(HB 417)

AN ACT relating to Kentucky Board of Education administrative regulations.

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

Section 1. KRS 156.160 is amended to read as follows:

- (1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:
- (a) Courses of study for the different grades and kinds of common schools, subject to the following conditions:
1. a. Procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year, except as provided in subparagraph 1.b. of this paragraph. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.
 - b. A school council established pursuant to KRS 160.345 or if none exists, a school may determine, based on individual student needs, that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council or school shall revise the action plan to reflect any changes in the primary program's design.
 2. The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
- (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

- (c) The minimum requirements for high school graduation. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;
 - (d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
 - (e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
 - (f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;
 - (g) The transportation of children to and from school;
 - (h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;
 - (i) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;
 - (j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and
 - (k) The disposal of real and personal property owned by local boards of education.
- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:
1. An alternative approach will achieve the same result required by the administrative regulation;
 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
 3. There is a finding of good cause for the waiver.
- (b) ***The following shall not be subject to waiver:***
1. ***Administrative regulations relating to health and safety;***
 2. ***Administrative regulations relating to civil rights;***
 3. ***Administrative regulations required by federal law; and***
 4. ***Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the***

~~*grade configuration of schools.* [Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools shall not be subject to waiver.]~~

- (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.
- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Approved March 27, 1998

CHAPTER 205

(HB 406)

AN ACT relating to medical assistance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

When the cabinet contracts with any private peer review organization to conduct utilization reviews of the levels of care of the state's Medicaid program recipients, the following shall apply:

- (1) *In determining the appropriate level of care of a Medicaid beneficiary who is a patient in a nursing facility setting, and prior to any change that reduces a Medicaid beneficiary's eligibility for covered services, the contracted peer review organization shall assure that:*
 - (a) *An in-person assessment of the Medicaid beneficiary is made; and*
 - (b) *A licensed physician has reviewed the written documentation of the peer review organization's evaluation and provided a written review of the evaluation to be a part of the patient's record.*
- (2) *If the level of care is changed for a Medicaid beneficiary who is a resident or patient in a nursing facility setting or a Medicaid beneficiary who receives community-based waiver services, and the change makes that beneficiary ineligible for the Medicaid covered service, the peer review organization shall notify the commissioner of Medicaid in the cabinet, and shall provide a written notification sent by registered return receipt mail to the affected Medicaid beneficiary, nursing facility, affected Medicaid beneficiary's attending physician, and the affected beneficiary's responsible party.*
- (3) *If the level of care for a Medicaid beneficiary results in an adverse determination, the affected Medicaid beneficiary, or the responsible person or party, may appeal through an application for reconsideration to be filed with the cabinet within ten (10) days from the date of receipt of the registered return receipt written notification. If the responsible party's registered return receipt mail is undeliverable, the attending physician may initiate the appeal on behalf of the affected Medicaid beneficiary.*
 - (a) *All benefits which the affected Medicaid recipient, and the nursing facility are eligible for shall be continued during that ten (10) day time frame; and*
 - (b) *As long as the affected Medicaid recipient is engaged in an appeal of an adverse determination from a peer review organization, all benefits for which the affected Medicaid recipient and nursing facility are eligible shall be continued until an appropriate residential setting is secured, in any event, not to exceed ninety (90) days from the date of the request for a hearing, or until a final determination is made by a hearing officer.*
- (4)
 - (a) *If the level of care is lowered for a Medicaid beneficiary who is a resident or patient in a nursing facility setting, an independent examination may be conducted by the resident's attending physician.*
 - (b) *If the resident's attending physician conducts an independent examination, the attending physician shall make a recommendation concerning the appropriate level of care and forward, in writing, the*

results of the examination and the recommendation to the peer review organization, the affected recipient, the nursing facility, and the responsible party.

- (5) *For the purposes of this section, "responsible person or party" shall mean an individual authorized by the resident of the facility to act for the resident as an official delegate or agent. The responsible person may be a guardian, payee, family member, or any other individual who has arranged for the care of the resident and assumed this responsibility. The responsible party may or may not be related to the resident. A responsible person or party is not a guardian unless so appointed by the court.*
- (6) *The peer review organization shall:*
- (a) *Inform the patient and guardian, responsible party, or family member, upon initial qualification for Medicaid covered services, and with the written notification of an adverse determination from a peer review organization:*
 1. *Of the manner in which notification of any adverse decision will be made;*
 2. *Of the process for securing a timely review of any adverse decision;*
 3. *That a request for reconsideration must be postmarked no later than ten (10) days after receipt of the initial written notification of any adverse decision;*
 4. *Of the toll-free line that will be provided for questions regarding reviews; and*
 5. *Of the process for appealing an adverse reconsideration to the cabinet;*
 - (b) *Provide a written peer review organization physician review of all adverse determinations;*
 - (c) *Provide for an attending physician review of all adverse determinations as outlined in subsection (4) of this section;*
 - (d) *Inform the commissioner of all information related to an appeal of an adverse action; and*
 - (e) *Provide the information identified in paragraph (a) of this subsection, at the time of an adverse determination notification, to any affected nursing facility in which a Medicaid beneficiary resides.*

Section 2. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

- (1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for Human Resources to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.
- (2) "Cabinet" means the Cabinet for Human Resources.
- (3) "Resident" means any person admitted to a long-term care facility as defined by this section.
- (4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.
- (5) "Secretary" means the secretary of the Cabinet for Human Resources.
- (6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.
- (7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.
- (8) *The following information shall be available upon request of the affected Medicaid recipient or responsible party:*
 - (a) *Business names, business addresses, and business telephone numbers of operators and administrators of the facility; and*
 - (b) *Business names, business addresses, and business telephone numbers of staff physicians and the directors of nursing.*

- (9) *The following information shall be provided to the nursing facility patient upon admission:*
- (a) *Admission and discharge policies of the facility;*
 - (b) *Payment policies relevant to patients for all payor types; and*
 - (c) *Information developed and distributed to the nursing facility by the Department for Medicaid Services, including, but not limited to:*
 - 1. *Procedures for implementation of all peer review organizations' reviews and appeals processes;*
 - 2. *Eligibility criteria for the state's Medical Assistance Program, including circumstances when eligibility may be denied; and*
 - 3. *Names and telephone numbers for case managers and all state long term care ombudsmen.*

Approved March 27, 1998

CHAPTER 206

(HB 396)

AN ACT relating to the evaluation of certified employees.

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

Section 1. KRS 156.101 is amended to read as follows:

- (1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education have the primary responsibility for instructional leadership in the schools to which they are assigned.
- (2) For the purpose of this section, instructional leader shall be defined as an employee of the public schools of the Commonwealth holding a valid certificate as a principal, assistant principal, supervisor of instruction, guidance counselor, or director of special education.
- (3) In order to carry out the purpose of this section, the Kentucky Board of Education shall establish a statewide program to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth.
- (4) The instructional leader improvement program shall contain the following provisions:
 - (a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;
 - (b) Every two (2) years each instructional leader shall complete an intensive training program approved by the Kentucky Board of Education to include no less than forty-two (42) participant hours of instruction;
 - (c) The Kentucky Board of Education shall prescribe specific criteria for the training program and may contract for the training with qualified agencies or institutions; and
 - (d) Completion of the required participant hours shall be reported to the State Department of Education and to the local school district. If an instructional leader fails to complete the required hours of training, he shall be placed on probation for one (1) year and, if the training is not completed during the probationary period, his certificate shall be revoked.
- (5) As a means of improving the educational productivity of Kentucky's public schools, of providing a method by which the citizens of the Commonwealth can be assured of measures of accountability of the performance of certified school employees, and of providing encouragement and incentives for certified school employees to improve their performance, the Kentucky Board of Education shall establish a statewide program for improving the performance of all certified school personnel, including instructional leaders.
- (6) The certified employee evaluation programs shall contain the following provisions:
 - (a) Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Board of Education;

- (b) The local school district shall review the evaluation plan to insure compliance with this section. Upon adoption, revisions to the evaluation plan shall be submitted for approval by the Kentucky Board of Education; and
- (c) The Kentucky Board of Education shall notify local school districts of their responsibilities under this subsection, develop written guidelines for local school districts to follow in developing and implementing an evaluation system and shall require the following:
1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;
 2. The immediate supervisor of the certified school employee shall be designated as the primary evaluator;
 3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;
 4. Evaluation shall include a conference between the evaluator and the person evaluated;
 5. Evaluators shall be trained, tested, and certified in accordance with regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;
 6. The evaluation system shall include a plan whereby the person evaluated is given assistance for becoming more proficient as a teacher or administrator; and
 7. The training requirement for evaluators contained in subsection (6)(c)5. of this section shall not apply to district board of education members.
- (7) *A local district may request from the Kentucky Board of Education a waiver from the guidelines and administrative regulations promulgated by the state board as required in subsection (6) of this section in order to implement an alternative certified evaluation plan for employees on continuing contracts. The board shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:*
- (a) *Phase One (1): Evaluation for Professional Growth.*
 1. *Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and*
 2. *Evaluation does not include documentation that might adversely affect employment status.*
 - (b) *Phase Two (2): Transition.*
 1. *Evaluation is for the purpose of intensive scrutiny of job performance;*
 2. *Evaluation includes documentation that may lead to adverse employment decisions;*
 3. *Assistance and support for improvement shall be provided by the school district; and*
 4. *Placement of an individual in the transition phase is not subject to appeal, but the employee must be notified of the decision in writing.*
 - (c) *Phase Three (3): Evaluation for Deficiency.*
 1. *Notwithstanding KRS 161.760, written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;*
 2. *A clear time frame for proposed actions is provided the employee; and*
 3. *The summative evaluation is subject to appeal.*

An alternative plan for the evaluation of certified personnel shall be proposed to the state board if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local

district shall provide support to implement the plan. The Kentucky Department of Education shall provide technical assistance to districts wishing to develop alternative evaluation plans.

- (8) The State Department of Education shall visit school districts within the Commonwealth as needed to review and insure implementation of the evaluation system by the local school district. The department shall establish an appeals procedure for certified school employees who feel that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personal evaluations.
- ~~(9)(8)~~ The State Department of Education shall select and train evaluators from outside each local school district to conduct evaluations as needed of a sample of certified school employees within each district in order to validate the effectiveness and accuracy of the local school districts' evaluators.
- ~~(10)(9)~~ Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall be exempt from the requirements of this section except for subsection (10) of this section provided they meet the standards established by the Kentucky Board of Education for local school district evaluation systems.
- ~~(11)(10)~~ The local board of education shall establish an evaluation appeals panel for certified personnel which shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation. ***In districts that have adopted an alternative evaluation plan under subsection (7) of this section, the appeal shall only apply to the summative evaluation of Phase Three (3).***
- ~~(12)(11)~~ This section shall be known as the "Effective Instructional Leadership Act."

Approved March 27, 1998

CHAPTER 207

(HB 309)

AN ACT relating to the state property and buildings commission.

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

Section 1. KRS 56.520 is amended to read as follows:

- (1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following purposes:
- To acquire real estate for state governmental use;
 - To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;
 - To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.
- (2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of KRS Chapter 56, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.
- (3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or his representative at a designated place, day, and hour, all of which shall be announced in the advertising made relative thereto.
- (4) In the event the commission issues and sells bonds for a building project as authorized by KRS Chapter 56, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in connection with the building project, and it may so

obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.

- (5) *The commission may invest proceeds from the sale of its revenue or other authorized bonds in financial instruments and investments* as provided in KRS 42.500 *for the State Investment Commission*~~;~~ ~~the commission may invest proceeds from the sale of its revenue or other authorized bonds as follows:~~
- (a) ~~Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;~~
 - (b) ~~Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Services;~~
 - (c) ~~Obligations for the Commonwealth of Kentucky;~~
 - (d) ~~Bonds and notes of any state or local government or public authority;~~
 - (e) ~~Savings certificates issued by any federal savings and loan association if any principal amount of the certificate in excess of the amount insured by the federal government, or any agency thereof, is fully collateralized;~~
 - (f) ~~Prime quality commercial paper bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;~~
 - (g) ~~Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, if the accepting bank or its holding company is either incorporated in the Commonwealth of Kentucky or has outstanding publicly held obligations bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations;~~
 - (h) ~~Participating share in a mutual fund for local government investment;~~
 - (i) ~~A commingled investment pool established and administered under KRS 66.480;~~
 - (j) ~~Evidences of ownership of or fractional undivided interests in future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian;~~
 - (k) ~~Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States or entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a federal reserve bank, or any commercial bank, trust company, or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

 1. ~~Such obligations that are subject to the repurchase agreement are delivered in physical or in book entry form to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority. The repurchase agreement shall provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;~~
 2. ~~A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the local government or public authority or its assignee~~~~

~~or book entry procedure, conforming to the extent practicable with federal regulations and satisfactory to the local government or public authority, have been established for the benefit of the local government or public authority or its assignee;~~

- ~~3. The securities are free and clear of any adverse third party claims; and~~
- ~~4. The repurchase agreement is in a form satisfactory to the local government or public authority; and~~
- ~~(4) Guaranteed investment contracts with a bank or insurance company, if the bank or insurance company bears one (1) of the two (2) highest ratings of at least one (1) nationally recognized rating service and does not bear a rating below one (1) of the two (2) highest ratings by any nationally recognized rating service].~~

Approved March 27, 1998

CHAPTER 208

(HB 258)

AN ACT relating to the Kentucky Egg Marketing Law.

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

Section 1. KRS 260.540 is amended to read as follows:

As used in KRS 260.540 to 260.650 unless the context otherwise requires:

- (1) *"Ambient Temperature" means the atmospheric temperature surrounding or encircling shell eggs;*
- (2) *"Board" means the Egg Marketing Board;*
- (3) *"Candle" means to determine the interior quality of a shell egg based on the use of a candling light as defined in the USDA Handbook 75(7 CFR Part 56);*
- (4) *"Case" means a container of thirty (30) dozen shell eggs as used in commercial practice in the United States. The term "half-case" shall mean a container of fifteen (15) dozen eggs. Case also means any other quantity packaging which is considered a wholesale pack;*
- (5) *"Check" means an egg that has a broken shell or a crack in the shell, but whose membranes are intact and whose contents are not leaking;*
- ~~(6)(2)~~ *"Commissioner" means the Commissioner of Agriculture;*
- (7) *"Consumer" means all persons purchasing eggs for consumption and not resale;*
- ~~(8)(3)~~ *"Department" means the Department of Agriculture;*
- ~~(9)(4)~~ *"Dealer" means a person, organization, or cooperative engaged in the business of buying eggs from producers or other persons, either on his own account or as an agent, and selling or transferring eggs by the case or other quantity to a wholesaler, processor, retailer, specialty egg processor, or other persons [person] or consumers;*
- (10) *"Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material, or prominent stains covering more than one-fourth (1/4) of the shell surface;*
- (11) *"Egg product" means processed and convenience forms of eggs for home and commercial use, including hard-cooked, or specialty egg products and pasteurized liquid, pasteurized frozen, or pasteurized dried egg products;*
- (12) *"FDA" means the Federal Food and Drug Administration;*
- ~~(13)(5)~~ *"Handler" means a dealer, packer, processor, wholesaler, or retailer;*
- (14) *"Inedible" means an egg that is unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, blood ring, adherent yolks, or bloody whites, incubated beyond the blood ring stage, or consisting to any extent of filthy decomposed substance. This also includes any eggs unfit for human consumption due to causes other than those listed in this subsection.*

- (15) *"Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell;*
- (16) *"Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or contains a bloody white, large meat spots, a large quantity of blood, or other foreign material;*
- (17) *"Lot" means any given quantity of two (2) or more eggs of a named grade, billed on an invoice or inspected by the department;*
- (18) *"Packer" means any person who grades, sizes, candles, and packs eggs for purposes of sale;*
- (19)~~(6)~~ *"Person" means any individual, firm, partnership, corporation, company, ~~or~~ association, or any other type of business entity that traffics in, handles, or sells eggs, and shall include any trustee, receiver, or similar representative;*
- (20) *"Producer" means any person who exercises control over the production of eggs and disposes of eggs from the output of his or her personally owned flock;*
- (21) *"Retailer" means any person selling or offering eggs for sale to consumers in this state;*
- (22) *"Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade;*
- (23) *"Shell eggs" means the product of the domesticated hen and any other egg from the avian species offered for human consumption in its shell form;*
- (24)~~(7)~~ *"Specialty egg processor" means a person who operates a plant for the purpose of breaking eggs for freezing or drying or commercial food manufacturing, and includes a person distributing his or her products from out-of-state. A specialty egg processor may also be know as a breaker or breaking plant;*
- (25) *"Specialty egg products" means egg specialties processed for the food service industry including: wet-pack and dry-pack prepeeled hard-cooked eggs, either whole, wedged, sliced, chopped, or pickled; long rolls of hard-cooked eggs; frozen omelets; egg patties; quiche; quiche mix; frozen French toast; frozen scrambled egg mix in boilable pouches; frozen fried eggs; frozen precooked scrambled eggs; freeze-dried scrambled eggs; ultra-pasteurized liquid eggs; free-flowing frozen egg pellets; and specially coated shelf-stable hard-cooked eggs; or any other products using eggs;*
- ~~(8) "Retailer" means any person selling or offering for sale eggs to consumers in this state;~~
- (26)~~(9)~~ *"Wholesaler" means a handler who is engaged in the business of buying eggs from producers or other persons on the handler's own account and selling or transferring eggs to other dealers, wholesalers, processors, or ~~person who assembles eggs in case lots and disposes of them in quantities to~~ retailers, or through other distribution channels;*
- (27)~~(10)~~ *"Candled and Graded" means candled and graded under state and federal standards and regulations;*
- (28)~~(11)~~ *"Ungraded and Candled" means the general run of edible eggs as they come from the producer, not sized or graded, but candled; and*
- (29) *"USDA" means the United States Department of Agriculture.*

Section 2. KRS 260.550 is amended to read as follows:

No person shall buy, sell, trade, traffic, or process eggs in Kentucky without a license issued pursuant to the egg marketing law, with the following exceptions:

- (1)~~(1)~~ ~~Those who sell only eggs produced by their own flocks;~~
- ~~(2)~~ Hatcheries purchasing eggs to be used exclusively for hatching purposes;
- (2)~~(3)~~ Hotels, restaurants, and other eating places where all eggs purchased are served in the establishment;
- (3)~~(4)~~ Bakeries, confectioneries, and ice cream manufacturers who use eggs in a manufactured product; ~~and~~
- (4)~~(5)~~ Consumers buying eggs for their own consumption; or
- (5) *Producers who sell only directly to consumers and do not exceed a sales limit of sixty (60) dozen eggs per calendar week.*

Section 3. KRS 260.600 is amended to read as follows:

- (1) *Any person requiring a license may obtain an application by calling the Kentucky Department of Agriculture, Division of Regulation and Inspection. A license may be renewed when accompanied by a renewal application and the required fees. With regard to shell egg dealers, wholesalers, and packers, and specialty egg processors, dealers, and wholesalers, all of the previous year's assessment fees shall be current before licenses shall be renewed. Any person selling eggs without the required license will be subject to having the eggs removed from sale until a license has been acquired.*
- (2) A license is required of each handler of eggs ~~selling~~^{located} in the Commonwealth subject to the exceptions specified in KRS 260.550. The annual license fees are as follows, varying for dealers, wholesalers, and ~~packers~~^{processors}, according to the average weekly volume of the month in which the licensee handled the most eggs during the preceding year:
 - (a) Retailers \$ 5.00
 - (b) *Shell egg dealers, ~~and~~ wholesalers, producers, and packers within Kentucky or out-of-state:*
 - 1-25 cases *or* 1-750 dozen \$10.00 ~~\$ 5.00~~
 - 26-50 cases *or* 751-1500 dozen \$20.00 ~~\$ 10.00~~
 - Over 50 cases or over 1500 dozen*~~[51-100 cases] \$ 15.00~~
 - ~~More than 100 cases] \$40.00 ~~\$ 20.00~~~~
 - (c) *Specialty egg processors, dealers, and wholesalers within Kentucky or out-of-state:*
 - ~~[Less than 250 cases \$ 20.00~~
 - ~~250-500 cases \$ 30.00~~
 - ~~501-1000 cases \$ 40.00~~
 - ~~More than 1000 cases] \$ 50.00~~
- ~~(3)~~⁽²⁾ Any egg handler engaged in more than one (1) type of activity for which a license is provided ~~shall~~^{must} pay that license fee which is the highest of the licenses prescribed for each type of activity in which he is engaged.
- ~~(4)~~⁽³⁾ All eggs bought or sold *within the Commonwealth of Kentucky shall*~~[by or to any egg handler must]~~ bear a ~~two~~^{one} cent (\$0.02) ~~assessment~~^{inspection} fee for each fifteen (15) dozen *shell egg* lot or portion thereof~~, subject to the exemptions specified in KRS 260.550 and 260.610]. Pasteurized liquid and pasteurized frozen egg products shall be assessed a fee of one-half (1/2) cent (\$0.005) per ten (10) pound lot. Dried, dehydrated, hard-cooked, or specialty egg products shall be assessed a fee of one cent (\$0.01) per ten (10) pound lot. All reports and fees are due monthly and shall be received by the department prior to the fifteenth of the month following the month of activity, unless there is an agreement with the department to report and pay these fees on a quarterly, semi-annual, or annual basis. In this event, the reports and fees shall be received prior to the fifteenth of the month following the period of activity.~~
- ~~(5)~~⁽⁴⁾ All licenses shall expire on April 1 of each year. Handlers having more than one (1) place of business ~~shall~~^{must} hold a license for each ~~location~~^{place}. ~~Licenses shall not be transferred~~^{[Each application shall bear the names of the persons responsible for candling and grading eggs].}
- (6) *Those that are exempt from licensing under Section 2 of this Act are not exempt from inspection, with the exception of consumers. The shell eggs or egg products used by these persons are not exempt from the required assessment fee.*

Section 4. KRS 260.610 is amended to read as follows:

- (1) All eggs bought or sold by or to retailers, consumers, and institutional users by licensees shall be identified according to grade and size, using USDA standards and weight classes for consumer grades~~, with the following exception:~~
 - ~~Those retailers who sell not more than five (5) cases of eggs per week that are purchased directly from the Kentucky producers of such eggs, may sell them to consumers as unclassified.~~

- (2) Eggs to be offered for sale for human consumption shall be handled ~~in such manner as~~ to maintain and preserve the quality and grade in which they are to be offered for sale, ***including but not limited to, storage, transportation, temperature, and sanitation.***
- (3) No person shall sell, offer or expose for sale, or have in his possession for sale, for human consumption, eggs that are inedible, including eggs that are unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, or blood ring, adherent yolks, or bloody whites, incubated beyond the blood ring stage, or consisting to any extent of filthy decomposed substance.

Section 5. KRS 260.620 is amended to read as follows:

Eggs offered for sale as graded eggs shall conform to the standards prescribed in administrative regulations adopted by the department. ~~These~~~~Such~~ standards shall conform to the federal standards ***promulgated by USDA and FDA*** for grading eggs for sale.

Section 6. KRS 260.630 is amended to read as follows:

- (1) All wholesale egg packs consisting of cases or portions of cases ~~shall~~~~must~~ bear a ***legible*** label designating contents; ~~quality;~~ ~~quantity;~~ ***quantity;*** date of packing ~~or an expiration date of no more than thirty (30) days from the date of packing;~~ ~~candler's name or number;~~ dealer's name, ~~and~~ address, ***and plant number;*** and size and grade of eggs. ***The letters on the label shall not be less than one-fourth (1/4) inch in height.***
- (2) Graded eggs ***shall be*** offered for sale in cartons or other ***consumer*** packs ***and*** shall be plainly ***and legibly*** marked as to grade; ~~quality;~~ ~~and~~ size; ***quantity; dealer's name, address, and plant number; and date of packing or an expiration date of no more than thirty (30) days from the date of packing.*** ~~The marking~~ ~~with~~ letters ***shall*** not ***be*** less than one-fourth (1/4) inch in height.
- (3) ***Eggs offered for sale that are not in a carton shall be in a container that:***
 - (a) ***Contains all information required by this section; and***
 - (b) ***Displays the information in legible letters at least one-fourth (1/4) inch high on a sign attached to the container.***
- (4) ***If eggs are packed in retail "breakaway" cartons that can be divided by the consumer or retailer into smaller units for the purpose of selling lesser amounts of eggs, each half or portion of the container shall contain full information as required by subsection (2) of this section.***
- (5) ***Egg cartons cannot be reused.***
- (6) ***If a producer who sells directly to consumers only is using stock cartons, the cartons shall be labeled "ungraded" followed by "produced by:" (producer's name and address) and "sold directly to the consumer." This information may be handprinted on the carton if it is legible and appears on the top panel of the egg carton.***

Section 7. KRS 260.640 is amended to read as follows:

- (1) The Commissioner may employ inspectors for the purpose of enforcing the provisions of the egg marketing law. ~~These~~Such inspectors may examine any eggs offered or exposed for sale for human consumption at ~~the~~~~such~~ times and places and in a ~~such~~ manner as the Commissioner may direct.
- (2) ***The department shall have free access, at all reasonable hours when the business is open to the general public, to any establishment, premises, or building where eggs are processed, stored, or offered for sale, and to any vehicle used to transport or hold eggs, for the purpose of inspecting the establishment, premises, building, or vehicle or the eggs to determine compliance with the provisions of the Kentucky egg marketing law.***
- (3) ***The department shall have free access at all reasonable hours when the business is open to the general public, to any restaurant kitchen, hotel kitchen, or kitchen of any other public eating place, including schools, hospitals, nursing homes, or other similar institutions, to determine compliance with the provisions of the Kentucky egg marketing law. If the inspector determines that inspected eggs fail to comply with the Kentucky egg marketing law or standards as established by USDA, the inspector shall take the necessary action and issue an advisory on proper procedures.***

- (4) All licensees shall keep a record of all eggs handled during the license year, and ~~any~~^{such} other records ~~as~~ the department shall ~~by regulation~~ require. These records shall be available for examination by authorized agents of the department.
- (5) *An inspector may, for the purpose of enforcing the Kentucky egg marketing law, break any form of sealing on any case or retail container. If a broken seal necessitates the repacking of the cases or containers, the original packer shall absorb all expenses involved.*
- (6) *A carton of eggs with any existing conditions as designated in paragraphs (a) to (d) of this subsection shall be removed from a retail display on a daily basis.*
- (a) *Cracked eggs;*
- (b) *Leaking eggs;*
- (c) *Frozen eggs; or*
- (d) *A combination of any of the above.*
- (7) *The retailer may not rework or repack eggs into full cartons. This process may only be done by the original packer. A retailer may, however, sell an incomplete dozen provided that the quantity labeling on the carton is changed to reflect the number of eggs in the carton.*

Section 8. KRS 260.990 is amended to read as follows:

- (1) Any person who knowingly violates any of the provisions of KRS 260.040 to 260.120 shall, for the first offense, be fined not less than ten dollars (\$10), nor more than twenty-five dollars (\$25), for the second offense, he shall be fined not less than twenty-five dollars (\$25), nor more than fifty dollars (\$50), and for the third and each subsequent offense, he shall be fined not less than fifty dollars (\$50), nor more than two hundred dollars (\$200). Whenever a violation is with respect to a lot or shipment consisting of fifty (50) or more closed packages, there may be imposed in addition to the above penalties twenty-five cents (\$0.25) for the first offense, fifty cents (\$0.50) for the second offense and one dollar (\$1) for each subsequent offense for each package in excess of fifty (50) with respect to which the violation is committed.
- (2) Any person who violates any of the provisions of KRS 260.130 to 260.160 shall, for the first offense, be fined not more than twenty-five dollars (\$25); for the second offense, he shall be fined not more than fifty dollars (\$50), and for the third and each succeeding offense he shall be fined not more than one hundred dollars (\$100).
- (3) Any person who violates any of the provisions of the egg marketing law shall be fined an amount not exceeding one hundred dollars (\$100) for each offense. In a violation involving sales without a required license, each day of business operation shall constitute a separate offense.
- (4) *The department shall assess a penalty of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each violation of improper labeling, including omission of any of the required information as prescribed in Section 6 of this Act. These penalty funds shall be credited to the department for use in carrying out the provisions of the egg marketing law.*

Approved March 27, 1998

CHAPTER 209

(HB 568)

AN ACT relating to property tax, and declaring an emergency.

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

Section 1. KRS 132.220 is amended to read as follows:

- (1) Deposits belonging to a resident of Kentucky in any financial institution, as defined in KRS 136.500, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of January 1 of each year. Money in hand shall be listed, assessed, and valued as of January 1 of each year. Shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in the property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other

taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located, between January 1 and March 1 in each year, except as otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the cabinet between January 1 and May 15 in each year, except as otherwise prescribed by law. The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

- (2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.
- (3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his employee, or employees of the cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.
- (4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.
- (5) Real property tax roll entries for which tax bills have not been collected ***at the expiration of the one (1) year tolling period provided for in Section 13 of this Act*** ~~for more than one (1) year~~, and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted ***from the tax roll and the assessment shall be exonerated***. The property valuation administrator shall keep a record ***of these exonerations***, which shall be open under the provisions of KRS 61.870 to 61.884 ~~of these entries~~. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290. ***Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.***
- (6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the cabinet within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the cabinet. The cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.
- (7) Each property valuation administrator, under the direction of the cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not

exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

Section 2. KRS 133.220 is amended to read as follows:

- (1) The Revenue Cabinet annually shall furnish to each county clerk tax bill forms designed for adequate accounting control sufficient to cover the taxable property on the rolls.
- (2) After receiving the forms, the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. If the bills are bound, the cost of binding shall be paid out of the county levy. Each tax bill shall show the rate of tax upon each one hundred dollars (\$100) worth of property for state, county, and school purposes; the name of the taxpayer and his mailing address; the number of acres of farm land and its value; the number of lots and their value; the amount and value of notes and money; the value of mixed personal property; ~~the county poll; the school poll; the school tax;~~ and the total amount of taxes due the state, county, school fund, and other levies. Provision shall be made for the sheriff to have a stub, duplicate, or other proper evidence of receipt of payment of each tax bill.
- (3) Tax bills prepared in accordance with the certification of the Revenue Cabinet shall be delivered to the sheriff or collector by the county clerk before September 15 of each year. The clerk shall take a receipt showing the number of tax bills and the total amount of tax due each taxing district as shown upon the tax bills. The receipt shall be signed and acknowledged by the sheriff or collector before the county clerk, filed with the county judge/executive, and recorded in the order book of the county judge/executive in the manner required by law for recording the official bond of the sheriff.
- (4) Upon delivery to him of the tax bills, the sheriff or collector shall mail a notice to each taxpayer, showing the total amount of taxes due the state, county, school fund, and other levies, the date on which the taxes are due, and any discount to which the taxpayer may be entitled upon payment of the taxes prior to a designated date.
- (5) ***All notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses if the information to do so is available and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but no later than fifteen (15) days after receipt. Uncorrected notices shall be submitted to the cabinet by the property valuation administrator.***

Section 3. KRS 134.020 is amended to read as follows:

- (1) All state, county, and district taxes, except as otherwise provided by law, shall be due and payable on September 15 following the assessment; except that all taxes in any year on unmanufactured tobacco, money in hand, or money on deposit outside this state, shall be due and payable on the second succeeding September 15 following the assessment, unless otherwise provided by law.
- (2) Any taxpayer who pays his state, county, or district taxes by November 1 after they become due in any year shall be entitled to two percent (2%) discount thereon, and the sheriff shall allow the discount and give a receipt in full to the taxpayer. The sheriff may, at any time after the taxes mentioned in this section become due, receive less than the face amount of the tax bill as a credit on the amount due, including the amount of any penalties then due; and every payment shall be credited upon the tax bill or upon sheets annexed thereto for that purpose, and acknowledged in writing or by a rubber stamp, indicating the amount so paid to the sheriff. ***The sheriff or any authorized collector of property taxes may accept payment of taxes due by any commercially acceptable means, including credit cards.***
- (3) All state, county, and district taxes, except as otherwise provided by law, shall become delinquent on January 1 following their due date.
- (4) Any taxes which are not paid by the date when they become delinquent shall be subject to a penalty of ten percent (10%) on the taxes due and unpaid; except that taxes which became delinquent on January 1 shall be subject to a penalty of only ~~five (5%)~~ ~~two (2%)~~ percent (5%) on the taxes due and unpaid, if paid on or before the last day of January. The sheriff shall collect the penalty and account for it as he is required to collect and account for taxes.
- (5) When the tax collection schedule is delayed, through no fault of the taxpayers, the Revenue Cabinet may institute a revised collection schedule. The revised collection dates shall allow a two percent (2%) discount for all payments made within thirty (30) calendar days of the date the tax bills were mailed. Upon expiration of the

time period to pay the tax bill with a discount, the face amount of the tax bill shall be due during the next thirty (30) days. If the time period to pay the face amount has lapsed, a ~~five~~^{two} percent (5%)(2%) penalty shall be added to the tax bill for payments made during the next thirty (30) day period. Upon expiration of this time period, a ten percent (10%) penalty shall be added to all tax bills paid thereafter.

- (6) *If, upon expiration of the five percent (5%) penalty period, the real property tax delinquencies of the sheriff exceed fifteen percent (15%), the sheriff shall be required to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following the expiration of the five percent (5%) penalty period, the secretary of the cabinet may act in the name of and on behalf of the cities, counties, schools, and other taxing districts to collect the delinquent taxes. In the performance of any tax collection duties undertaken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. If the cabinet assumes collection duties, all fees and commissions which the sheriff would have been entitled to receive from the taxing districts after the expiration of the five percent (5%) penalty period shall be paid to the cabinet for deposit in the delinquent tax fund as provided in KRS 134.400.*

Section 4. KRS 134.310 is amended to read as follows:

- (1) The sheriff shall annually settle his accounts for county and district taxes with the fiscal court ~~after~~^{before} making settlement with the Revenue Cabinet. ~~At the regular October term each year,~~ The fiscal court shall appoint some competent person other than the Commonwealth's or county attorney to settle the accounts of the sheriff for money due the county or district. *The cabinet, at the request of the fiscal court or any school district, may conduct the local settlement. If no local settlement has been initiated by July 1 of any year, the cabinet may initiate the local settlement on behalf of the local district. Upon completion of the local settlement, the cabinet may receive reasonable reimbursement for expenses incurred.* The report of *the state and local*~~this~~ settlement shall be filed in the county clerk's office and approved by the county judge/executive *no later than September 1 of each year.* The settlement shall show the amount of ad valorem tax collected, and an itemized statement of the money disbursed.
- (2) The settlement shall be published pursuant to KRS Chapter 424. The report of the settlement shall be subject to objections by the sheriff or by the county attorney, who shall represent the state and county, and the county judge/executive shall determine the objections. *Objections shall be submitted to the county judge/executive within fifteen (15) days of the filing of the settlement in the clerk's office. If no objections are submitted, the settlement will become final.*
- (3) *If the county judge/executive denies the objections, the sheriff*~~Either party~~ may institute an action in Circuit Court *within fifteen (15) days of receipt of the denial for review of*~~to correct~~ the settlement *and objections. Upon review, the Circuit Court shall issue its determination and the settlement shall become final. The final settlement shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810.*~~The settlement, when approved, shall be recorded in the county clerk's office.~~
- (4) On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his hands, and take receipts as provided in KRS 134.300, *and shall pay any additional amounts charged against him as a result of the settlements. If the sheriff fails to remit amounts charged against him the cabinet may issue bills for the subsequent year and may assume all collection duties in the name of and on behalf of the cities, counties, school districts, and other taxing districts to collect the taxes. In the performance of any tax collection duties undertaken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. The fees and commissions which the sheriff would have been entitled to receive from the taxing districts shall be paid to the cabinet.*
- (5) In counties containing a population of less than seventy thousand (70,000), the sheriff shall file annually with his final settlement:
- (a) A complete statement of all funds received by his office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and
 - (b) A complete statement of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.

- (6) At the time he files the statements required by subsection (5) of this section, the sheriff shall pay to the fiscal court any fees, commissions, and other income of his office, including income from investments, which exceed the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810, and the provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.

Section 5. KRS 134.325 is amended to read as follows:

Each sheriff shall *conduct the sale of delinquent tax bills required by Section 10 of this Act and* make his *records available for* settlement with the Revenue Cabinet for all taxes collected for the Commonwealth before *April 30*~~August 1~~ of each year during his term of office. In the event that any sheriff resigns, dies, or otherwise vacates his office, the *books and records*~~settlement~~ shall be made *available* within thirty (30) days from the date that the office is vacated. Any sheriff who *fails*~~shall fail~~ to make the settlement *books and records available or fails to remit any amounts which are due to the taxing districts* as required by law shall be subject to indictment in the county of his residence and fined not less than *five*~~one~~ hundred dollars *(\$500)*~~(\$100)~~ nor more than five *thousand*~~hundred~~ dollars *(\$5,000)*~~(\$500)~~.

Section 6. KRS 134.330 is amended to read as follows:

- (1) No tax bill or tax book shall be delivered to the sheriff *during*~~after July 31 of~~ the second or any subsequent calendar year of the sheriff's regular term until he exhibits a quietus from the Revenue Cabinet and from the fiscal court of his county for the preceding tax period and his revenue bond, *if bonding is required by the fiscal court*, for the next tax year.
- (2) If the tax records of a county are destroyed by fire, lost, stolen, or mutilated so as to require reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he receives the recertified tax bills within which to make settlement with the cabinet and the fiscal court, and to receive his quietus from the cabinet and the fiscal court.

Section 7. KRS 134.360 is amended to read as follows:

In making his settlements with the fiscal court and the Revenue Cabinet, the sheriff *shall*~~may~~ file a list of uncollectible delinquent taxes, ~~whereupon the fiscal court and the secretary of revenue or his properly designated agent shall administer to the sheriff and his deputies the following oath: "You do swear that this list of insolvents and delinquents returned by you is just and true, as you believe according to the knowledge which you have, and that you have been to the residence (if in the county) of the person from whom the tax is due, and that you cannot find any property liable to sale for taxes, and that you will true answers make to all questions asked you touching said lists and the efforts made by you to collect the amount thereof." The fiscal court and the secretary of revenue shall then examine the sheriff to ascertain the facts, and upon his answers and other evidence, and their own knowledge, shall allow such portions of the list as may be correct,~~ which~~, being certified as allowed,~~ shall entitle the sheriff to a credit in his official settlement. The sheriff shall also be allowed credit in his official settlement for the tax bills on which certificates of delinquency have properly been issued to the state, county, and taxing districts.

Section 8. KRS 134.380 is amended to read as follows:

- (1) ~~[If the real property tax delinquency rate as certified by the cabinet for any county exceeds five percent (5%) in any tax year effective after December 31, 1990,]~~The secretary ~~shall investigate the reasons for the delinquency and~~ may act in the name of and in behalf of the state and in the name of and in behalf of any and all counties, school, and other taxing districts in the state~~, except cities,~~ to institute and prosecute any action or proceeding for the collection of delinquent taxes and the assessment of omitted property ~~for the tax year with the excessive delinquency rate and for any previous tax year~~. If the cabinet assumes the duties of collecting the delinquent taxes assessed under the authority of KRS Chapter 132, it shall have all the powers, rights, duties, and authority conferred generally upon the cabinet by the Kentucky Revised Statutes, including, but not limited to, Chapters 131, 134, and 135.
- (2) Field agents, accountants, and attorneys of the cabinet shall prosecute all actions and proceedings under the direction of the secretary. Field agents, accountants, attorneys, and all other employees of the cabinet engaged in the prosecution of the actions shall not be hired by personal service contract. The secretary shall prosecute diligently, or cause to be prosecuted by field agents, accountants, and attorneys employed by him, the collection of all delinquent taxes due the state.

- (3) Nothing contained in this chapter shall prevent the secretary of revenue from assessing any property in accordance with the provisions of KRS 136.020, 136.030, or 136.050, or KRS 136.120 to 136.180.
- (4) The cabinet may require *the use of* any reports, *forms, or databases* necessary to administer the law in connection with the collection of delinquent taxes~~[, and may promulgate regulations as to how the tax bills, certificates of delinquency, and other forms shall be filed and recorded].~~ The cabinet shall require an index to be kept of all certificates of delinquency.

Section 9. KRS 134.420 is amended to read as follows:

- (1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for *ten (10)*~~five (5)~~ years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440. This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes. The lien shall include all interest, penalties, fees, commissions, charges, and other expenses incurred by reason of delinquency in payment of the tax bill or in the process of collecting it, and shall have priority over any other obligation or liability for which the property is liable. The lien of any city, county, or other taxing district shall be of equal rank with that of the state. When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated. Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.
- (2) If any person liable to pay any tax administered by the Revenue Cabinet, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.
- (3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the secretary of the Revenue Cabinet, or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.
- (4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the secretary of the Revenue Cabinet or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Revenue Cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.
- (5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:
 - (a) Is in property which:
 1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and
 2. Is covered by the terms of a written agreement entered into before tax lien filing; and
 - (b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Section 10. KRS 134.430 is amended to read as follows:

- (1) All personal property owned by a delinquent taxpayer shall be subject to distraint, and all property owned by him shall be subject to levy and sale by the proper collecting officer at any time from February 1 after the tax claim becomes delinquent until the tax claim is barred by limitations, unless otherwise provided by law.
- (2) When any taxpayer becomes delinquent in the payment of a tax bill covering any property assessed by the property valuation administrator, the county board of assessment appeals, the cabinet, or any omitted property irrespective of by whom assessed, the sheriff ~~may~~~~[shall first]~~ distraint a sufficient quantity of the delinquent's personal property in the county to pay the tax claim, and a necessary part of this property shall be sold as under execution for cash.~~[For failure to first distraint and sell personal property, the sheriff shall be liable for the tax claim represented by the tax bill, but receipt of a quietus for the tax bill shall preclude liability.]~~ Neglect on the part of the sheriff to ~~[first]~~ distraint and sell personal property shall not affect the validity of the sale of the tax claim, or the lien or the rights of any purchaser. If personal property sufficient to satisfy the tax claim cannot be found in the county, the sheriff ~~may~~~~[shall]~~ sell so much of the personal property as is found and enter proper credit on the tax bill.
- (3) *As compensation for services, the sheriff shall be entitled to an additional ten percent (10%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty, for all delinquent taxes collected from the time the ten percent (10%) penalty becomes applicable through the sale of the tax claims. This fee shall be added to the total amount due and paid by the person paying the delinquent tax bill.*
- (4) If no personal property is found, or the amount found is insufficient,~~[a notation to that effect shall be entered on the tax bill.]~~ the sheriff shall, **no later than the first full week in April**~~[after entering this notation on the tax bill]~~, advertise~~[and offer]~~ for sale the tax claims of the state, county, and other taxing districts, if there is any real property subject to the lien provided in subsection (1) of KRS 134.420. **The sheriff shall receive offers for the purchase of tax claims up to fifteen (15) business days following the date of the initial advertisement or no later than April 30, or the last business day prior to April 30, if April 30 falls on a weekend or holiday.**
- ~~(5)~~~~(4)~~ No sheriff shall knowingly sell a tax claim on the same tract of land more than once for the same tax.

Section 11. KRS 134.440 is amended to read as follows:

- (1) The advertisement of sale of tax claims shall be published pursuant to KRS Chapter 424. The advertisement may in addition consist of the posting of printed notices containing the same information in three (3) or more conspicuous places in the county, fifteen (15) days before the sale. The sheriff shall place a copy of the advertisement at the courthouse door in a conspicuous place at least fifteen (15) days before the sale. The sale shall be at the courthouse door. The sheriff shall, not less than twelve (12) days before the sale, mail to the delinquent taxpayer's place of residence or business, if it can be ascertained, a notice of the time and place of sale. Failure to send the notice shall have no effect on the validity of the sale.
- (2) As compensation for his services, the sheriff shall receive **five dollars (\$5)**~~[one dollar (\$1)]~~ for each tax claim advertised. ~~The~~~~[He shall, in addition, when a certificate of delinquency filed with the county clerk is paid, be entitled to six percent (6%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty. Both]~~ fees shall be added to the amount of the tax claim as a part of the certificate of delinquency and paid by the person who pays the tax claim, and ~~[they]~~ shall not be paid by the state, county, or taxing district. Any **additional** expenses incurred that must be paid before the sale of a tax claim or the settlement of an action by the state, county, or taxing district shall be paid by the county, and this sum shall be a preferred claim of the county on any proceeds eventually recovered.

Section 12. KRS 134.450 is amended to read as follows:

- (1) **The sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims**~~[Any tax claim offered for sale as prescribed in KRS 134.430 and 134.440 shall be sold to any person for cash]~~. If there is more than one (1) willing purchaser **who has made an offer**~~[at the sale]~~, the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person,~~[the sale shall be made to]~~ the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim **shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars (\$200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase**

and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Revenue Cabinet to collect delinquent taxes. If the county attorney has not contracted with the Revenue Cabinet to collect delinquent taxes, the Revenue Cabinet shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Revenue Cabinet, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.

- (2) If no responsible ~~offer~~~~bid~~ in the amount of the tax claim is received, the sheriff shall purchase it for the state, county, and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser.
- (3) The sheriff shall file all certificates of delinquency in the county clerk's office immediately upon completion of the tax sale and the clerk shall retain them. The county clerk shall acknowledge receipt of the certificates by signing a receipt form that has been prepared in a manner prescribed by the Revenue Cabinet. If the sheriff fails to file the certificates, he shall be liable on his official bond for the aggregate amount of the certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original.

Section 13. KRS 134.470 is amended to read as follows:

An uncollectible tax bill or a certificate of delinquency shall embrace the entire tax claim, including the lien provided in subsection (1) of KRS 134.420, and shall continue to be a personal obligation of the delinquent taxpayer. Any property while owned by him shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation, and shall also be subject to distraint or levy as provided in subsection (1) of KRS 134.430, but no action may be brought to enforce a certificate of delinquency until one (1) year after the issuance thereof, and the action shall be instituted within *ten (10)*~~five (5)~~ years after the expiration of that one (1) year period. During the one (1) year period the statute of limitations shall be suspended in all respects and shall be continued in all respects for *ten (10)*~~five (5)~~ years thereafter. If the owner of a certificate of delinquency proceeds to enforce satisfaction of the certificate, he may include all other certificates held by him against the same delinquent taxpayer; but insofar as the proceedings may undertake to effect a lien foreclosure, they shall be governed by the time applicable to the particular property subject to the lien, if that property is no longer owned by the delinquent.

Section 14. KRS 134.480 is amended to read as follows:

- (1) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the state, county, or taxing district was the purchaser. When a certificate is paid to an owner other than the state, county, or taxing district the certified copy of the certificate shall be surrendered to the person making payment, and if he is the person primarily liable on the certificate he may, by exhibiting it to the county clerk, have the certificate released of record. When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by him, and such other information as the Revenue Cabinet may require. Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment thereof. Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee of fifty cents (\$0.50), have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise he shall pay a fee of fifty cents (\$0.50) to the clerk for entering such change on the certificate.

- (2) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and he shall give a receipt to the payor and make a report to the Revenue Cabinet, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days. ***The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards.*** He shall pay to the Revenue Cabinet for deposit with the State Treasurer all moneys collected by him due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto. He shall retain ~~ten~~^{five} percent (10%)~~(5%)~~ of the amount due each taxing unit for his services ***as a fee. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim.***
- (3) If the person entitled to pay a certificate of delinquency sends a registered letter addressed to the owner of record of the certificate, other than the state, county, or taxing district, and the letter is returned by mail unclaimed, the sender thereof may make payment to the county clerk, who shall make the necessary assignment or release and deposit the money to the account of the owner of record in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The clerk may deduct the sum of fifty cents (\$0.50) as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.
- (4) If any clerk fails to pay to the person entitled thereto, upon demand, the money received in payment of a certificate of delinquency, he and his sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the time he received it until paid.
- (5) Copies of the records provided for in KRS 134.450 and 134.480, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

Section 15. KRS 134.490 is amended to read as follows:

- (1) ***Within fifty (50) days after the issuance of a certificate of delinquency to a private purchaser, the private purchaser shall give the same notice as required of a county attorney in subsection (2) of Section 16 of this Act. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if the certificate is not paid, it will be subject to collection as provided by law.***
- (2) If a private person is the owner of a certificate of delinquency, he may, after the expiration of the one (1) year period provided in KRS 134.470:
 - (a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or
 - (b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or
 - (c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.
- ~~(3)~~⁽²⁾ If the state, county, or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection ~~(2)~~⁽¹⁾ of this section, the right to distraint and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney.~~[-The county attorney may designate the property subject to distraint and require the sheriff to take custody if he deems custody of the property necessary. If the sheriff fails to perform this duty, he shall not be entitled to his six percent (6%) fee provided in KRS 134.440.]~~
- ~~(4)~~⁽³⁾ If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520 and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to

be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest in accordance with the amount of their respective certificates.

Section 16. KRS 134.500 is amended to read as follows:

- (1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the ***certificate of delinquency is issued***~~[sheriff makes settlement with the cabinet and receives credit therefor]~~. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.
- (2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, ***unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner***. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:
 - (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney ***or the Revenue Cabinet*** shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
 - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
 - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.
 - (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.~~[A copy of the return receipt shall be filed by the county attorney in the office of the county clerk in the manner prescribed by the cabinet.]~~
 - (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. ***The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the Property Valuation Administration. The Property Valuation Administration shall review this list in accordance with the provisions of Section 1 of this Act to establish that the properties on the list can be identified and physically located.***
- (3) ***The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in Section 13 of this Act to collect delinquent tax bills or to initiate court action for their collection., At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.***
- (4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the ~~fee~~~~[commission]~~ shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. ***This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the***

taxing districts. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the ~~fee~~ ~~commission on the amount collected for each taxing unit~~. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which *is litigated by the taxpayer* ~~results in contested litigation~~, an additional county's attorney fee equal to thirteen percent (13%) of the total tax **plus ten percent (10%) penalty** ~~interest, and penalties due~~ may be added to the certificate or the bill and shall become part of the tax claim.

~~(5)~~~~(4)~~ If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

~~(6)~~~~(5)~~ Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) ***The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.***

Section 17. KRS 134.800 is amended to read as follows:

The county clerk shall be collector of all state, county, city, urban-county government, school, and special taxing district ad valorem taxes on motor vehicles registered by him. ***The clerk may accept payment of taxes due by any commercially acceptable means including credit cards.***

Section 18. KRS 134.990 is amended to read as follows:

- (1) Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars (\$100) for each offense.
- (2) Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and be removed from office.
- (3) Any sheriff who violates subsection (3) of KRS 134.170 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (4) Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars (\$500) for each offense.
- (5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of KRS 134.215 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and be liable on his bond for any default.
- (6) Any sheriff who fails to report as required in KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (7) Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (8) Any person who willfully fails to comply with any rule or regulation promulgated under subsection (4) of KRS 134.380 shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).

- (9) Any sheriff who violates subsection (5)~~[(4)]~~ of KRS 134.430 shall be fined one hundred dollars (\$100) and be liable on his official bond for the damages sustained by any person aggrieved.
- (10) Any county attorney who fails to prepare, and any sheriff who fails to serve, the notice provided for in subsection (2) of KRS 134.500 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (11) Any sheriff who intentionally fails to keep his books in an intelligible manner and according to the form prescribed by the Revenue Cabinet, or to make the entries required by law, shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each offense.
- (12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).

Section 19. KRS 42.500 is amended to read as follows:

- (1) There shall be a State Investment Commission composed of the Governor who shall be chairman; the State Treasurer who shall be vice chairman and serve as chairman in the absence of the Governor; the secretary of the Finance and Administration Cabinet; and two (2) persons appointed by the Governor.
- (2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.
- (3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.
- (4) The Governor, State Treasurer, and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:
 - (a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and
 - (b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.

- (5) Any designation of an alternate may, at the appointing member's direction:
 - (a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;
 - (b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or
 - (c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.
- (6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.
- (7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.
- (8) The provisions of KRS 61.070 shall not apply to members of the commission.

- (9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:
- (a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
 1. United States Treasury;
 2. Export-Import Bank of the United States;
 3. Farmers Home Administration;
 4. Government National Mortgage Corporation; and
 5. Merchant Marine bonds;
 - (b) Obligations of any corporation of the United States government, including but not limited to:
 1. Federal Home Loan Mortgage Corporation;
 2. Federal Farm Credit Banks;
 - a. Bank for Cooperatives;
 - b. Federal Intermediate Credit Banks; and
 - c. Federal Land Banks;
 3. Federal Home Loan Banks;
 4. Federal National Mortgage Association; and
 5. Tennessee Valley Authority obligations;
 - (c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;
 - (d) Bankers acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
 - (e) Commercial paper rated in the highest category by a nationally recognized rating agency;
 - (f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
 - (g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
 - (h) Asset-backed securities rated in the highest category by a nationally recognized rating agency; and
 - (i) Shares of mutual funds, not to exceed ten percent (10%) of the total funds available for investment as described in subsection (9) of this section, each of which shall have the following characteristics:
 1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;
 2. The management company of the investment company shall have been in operation for at least five (5) years;~~and~~
 3. At least ninety percent (90%) of the securities in the mutual fund shall be eligible investments pursuant to this section; *and*
 - (j) *State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty-five million dollars (\$25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to subsection (5) of Section 1 of this Act, the Revenue Cabinet shall offset the loss suffered by the Finance and Administration Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.*

- (10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:
- (a) The long and short term goals of any investment;
 - (b) The specification of moneys to be invested;
 - (c) The amount of funds which may be invested per instrument;
 - (d) The qualifications of instruments; and
 - (e) The acceptable maturity of investments.
- (11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.
- (12) Income earned from investments made pursuant to this section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of imprest cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed. Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account. If the total general fund revenue receipts are less than the total revenue estimates for the general fund under KRS 48.120 and 48.130, the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues. If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the revenue estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.
- (13) The authority granted by this section to the State Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.
- (14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.
- (15) Each member of the State Investment Commission, with the exception of the Governor, shall post bond for his acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

Section 20. The following KRS section is repealed:

134.382 Reduction of commission.

Section 21. The amendments contained in subsection (4) of Section 4 of this Act shall apply to settlements completed after December 31, 1997. The amendments contained in Section 5, subsection (4) of Section 10, Section 12, subsection (1) of Section 15, subsection (4) of Section 16, and Section 19 of this Act shall apply for sales of delinquent tax bills made on or after March 1, 1998. The remainder of the amendments contained in this Act shall apply for assessments made on or after January 1, 1998.

Section 22. Whereas the property tax administration calendar and the timelines established for the sale of delinquent tax bills necessitate that certain provisions of this Act be effective in March to ensure the proper

administration of the property tax collection process, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 30, 1998

CHAPTER 210

(HB 432)

AN ACT relating to powers of fiscal courts and declaring an emergency.

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

Section 1. KRS 67.083 is amended to read as follows:

- (1) It is the purpose of this section to provide counties as units of general purpose local government with the necessary latitude and flexibility to provide and finance various governmental services within those functional areas specified in subsection (3) of this section, while the General Assembly retains full authority to prescribe and limit by statute local governmental activities when it deems such action necessary.
- (2) The fiscal court of any county is hereby authorized to levy all taxes not in conflict with the Constitution and statutes of this state now or hereafter enacted.
- (3) The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds and employ personnel in performance of the following public functions:
 - (a) Control of animals, and abatement of public nuisances;
 - (b) Regulation of public gatherings;
 - (c) Public sanitation and vector control;
 - (d) Provision of hospitals, ambulance service, programs for the health and welfare of the aging and juveniles, and other public health facilities and services;
 - (e) Provision of corrections facilities and services, and programs for the confinement, care and rehabilitation of juvenile law offenders;
 - (f) Provision of parks, nature preserves, swimming pools, recreation areas, libraries, museums and other recreational and cultural facilities and programs;
 - (g) Provision of cemeteries and memorials;
 - (h) Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation and wildlife;
 - (i) Control of floods;
 - (j) Facilitating the construction and purchase of new and existing housing; causing the repair or demolition of structures which present a hazard to public health, safety or morals or are otherwise inimical to the welfare of residents of the county; causing the redevelopment of housing and related commercial, industrial and service facilities in urban or rural areas; providing education and counseling services and technical assistance to present and future residents of publicly assisted housing;
 - (k) Planning, zoning and subdivision control according to the provisions of KRS Chapter 100;
 - (l) Adoption, by reference or in full, of technical codes governing new construction, renovation or maintenance of structures intended for human occupancy;
 - (m) Regulation of commerce for the protection and convenience of the public;
 - (n) Regulation of the sale of alcoholic beverages according to the provisions of KRS Chapters 241 to 244;
 - (o) Exclusive management of solid wastes by ordinance or contract or by both and disposition of abandoned vehicles;
 - (p) Provision of public buildings, including armories, necessary for the effective delivery of public services;

- (q) Cooperation with other units of government and private agencies for the provision of public services, including but not limited to training, educational services and cooperative extension service programs;
 - (r) Provision of water and sewage and garbage disposal service but not gas or electricity; including management of onsite sewage disposal systems;
 - (s) Licensing or franchising of cable television;
 - (t) Provision of streets and roads, bridges, tunnels and related facilities, elimination of grade crossings, provision of parking facilities, enforcement of traffic and parking regulations;
 - (u) Provision of police and fire protection;
 - (v) Regulation of taxis, buses and other passenger vehicles for hire;
 - (w) Provision and operation of air, rail and bus terminals, port facilities, and public transportation systems;
 - (x) Promotion of economic development of the county, directly or in cooperation with public or private agencies, including the provision of access roads, land and buildings, and promotion of tourism and conventions;
 - (y) Preservation of historic structures;
 - (z) ***Regulation of establishments or commercial enterprises offering adult entertainment and adult entertainment activities.***
- (4) The county judge/executive is hereby authorized and empowered to exercise all of the executive powers pursuant to this section.
- (5) A county acting under authority of this section may assume, own, possess and control assets, rights and liabilities related to the functions and services of the county.
- (6) If a county is authorized to regulate an area which the state also regulates, the county government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation:
- (a) If the state statute or administrative regulation prescribes a single standard of conduct, a county ordinance is consistent if it is identical to the state statute or administrative regulation;
 - (b) If the state statute or administrative regulation prescribes a minimal standard of conduct, a county ordinance is consistent if it establishes a standard which is the same as or more stringent than the state standard;
 - (c) A county government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a county government is authorized to act.
- (7) County ordinances which prescribe penalties for their violation shall be enforced throughout the entire area of the county unless:
- (a) Otherwise provided by statute; or
 - (b) The legislative body of any city within the county has adopted an ordinance pertaining to the same subject matter which is the same as or more stringent than the standards that are set forth in the county ordinance. The fiscal court shall forward a copy of each ordinance which is to be enforced throughout the entire area of the county to the mayor of each city in the county.
- (8) (a) The powers granted to counties by this section shall be in addition to all other powers granted to counties by other provisions of law. These powers, other than the power to tax, may be exercised cooperatively by two (2) or more counties, or by a county and a city, or by a county and a special district, or by a county and the state through, but not limited to, joint contracts, joint ownership of property or the exchange of services, including personnel and equipment. When counties cooperate in the provision of public services, contracts shall be drawn to insure that benefits among the participating governments are relative to costs among them. If the personnel or equipment of one (1) government is provided for a second government, the second government shall fully compensate the first through the reciprocal provision of services or through monetary compensation.

- (b) A permissive procedure authorized by this section shall not be deemed to be exclusive or to prohibit the exercise of other existing laws and laws which may hereafter be enacted but shall be an alternative or supplement thereto.
- (9) Any agency of county government exercising authority pursuant to subsection (3)(y) of this section shall, prior to exercising such authority, obtain the voluntary written consent of the owner of the structure. Consent may be obtained only after advising the owner in writing of any advantages and disadvantages to the owner which are likely to result from the exercise of such authority.

Section 2. Whereas recent judicial decisions have misinterpreted the General Assembly's grant of home rule authority, which already permits counties to regulate establishments or commercial enterprises offering adult entertainment and adult entertainment activities, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 30, 1998

CHAPTER 211

(HB 246)

AN ACT proposing an amendment to Sections 36 and 42 of the Constitution of Kentucky relating to legislative sessions.

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

Section 1. It is proposed that Section 36 of the Constitution of Kentucky be amended to read as follows:

The General Assembly shall meet *each year* on the first Tuesday after the first Monday in January. In odd-numbered years, *the General Assembly shall convene in organizational session* for a period not to exceed ~~five~~~~ten~~ legislative days for the purposes of electing legislative leaders, adopting rules of procedure, and the organizing of committees. *The General Assembly shall then adjourn until the first Tuesday in February in odd-numbered years, at which time it shall convene in interim session for a period not to exceed twenty-five legislative days.* The General Assembly shall then adjourn until the first Tuesday after the first Monday in January of the following even-numbered years, at which time the General Assembly shall convene in regular session. ~~All, and its~~ sessions shall be held at the seat of government, except in case of war, insurrection or pestilence, when it may, by proclamation of the Governor, assemble, for the time being, elsewhere.

Section 2. It is proposed that Section 42 of the Constitution of Kentucky be amended to read as follows:

The members of the General Assembly shall severally receive from the State Treasury compensation for their services: Provided, No change shall take effect during the session at which it is made; nor shall a session of the General Assembly continue beyond sixty legislative days, exclusive of Sundays, legal holidays or any day on which neither House meets, except that no regular session shall extend beyond April 15 of even-numbered years *and no interim session shall extend beyond March 30 of odd-numbered years*; but this limitation as to length of session shall not apply to the Senate when sitting as a court of impeachment. A legislative day shall be construed to mean a calendar day.

Section 3. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415. The question to be submitted to the voters regarding this proposed amendment shall read: "Are you in favor of amending the Kentucky Constitution to reduce the General Assembly's organizational session by five days and to allow the General Assembly to meet in interim session in odd-numbered years for twenty-five days?"

Governor's signature not required

CHAPTER 212

(HB 402)

AN ACT relating to insurance.

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

Section 1. KRS 304.20-040 is amended to read as follows:

- (1) As used in this section:
- (a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
 - 1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;
 - 2. Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:
 - a. To any policy issued under an automobile assigned risk plan;
 - b. To any policy insuring more than four (4) automobiles; or
 - c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;
 - (b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, and automobile physical damage coverage;
 - (c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and such policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of this section; and
 - (d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.
- (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:
- 1. Nonpayment of premium; or
 - 2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;
- (b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;
 - (c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy; and
 - (d) This subsection shall not apply to nonrenewal.
- (3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.

- (4) No insurer shall refuse to renew a policy of automobile insurance solely because of the age of the insured.
- (5) ***No insurer shall refuse to renew or cancel a policy of automobile insurance solely because:***
- (a) ***Of the credit history, or lack of credit history, of the insured;***
 - (b) ***The insured has previously obtained automobile coverage from a carrier providing nonstandard coverage; or***
 - (c) ***The insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care.***
- (6) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew.
- (7)~~(6)~~ Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.
- (8)~~(7)~~ If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.
- (9)~~(8)~~
- (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (8)~~(7)~~ of this section.
 - (b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy, shall be sufficient proof of notice.
- (10)~~(9)~~ No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.
- (11)~~(10)~~ When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance ~~to which subsection (5) of this section applies~~, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. Such notice shall also inform the insured that he may, within four (4) days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the commissioner shall send his findings to the insurer and to the insured. When he sends his findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b). The party requesting the hearing shall give the commissioner written confirmation of attendance at the hearing not more than four (4) days before, nor less than twenty-four (24) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the commissioner shall cancel the hearing.
- (12)~~(11)~~ The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.
- (13)~~(12)~~ Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.
- (14)~~(13)~~ There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of

information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Section 2. KRS 304.20-340 is amended to read as follows:

The declination or termination of a policy of insurance subject to KRS 304.20-300 to 304.20-350 by an insurer or agent is prohibited if the declination or termination is:

- (1) Based solely upon the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured;
- (2) Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to an insurer which limits its market to one (1) lawful occupation or profession or to several related lawful occupations or professions or to an insurer that does not provide the kind of insurance sought by the applicant;
- (3) Based solely upon the age or location of the residence or property of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;
- (4) Based solely upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured;~~[-or]~~
- (5) Based solely upon the fact that the applicant or named insured previously obtained insurance through a residual market mechanism;
- (6) *Based solely upon the credit history, or lack of credit history, of the insured;*
- (7) *Based solely upon the fact that the insured has previously obtained property or casualty insurance from a carrier providing nonstandard coverage; or*
- (8) *Based solely upon the fact that the insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care.*

SECTION 3. A NEW SECTION OF SUBTITLE 20 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No insurer shall refuse to issue automobile or property and casualty insurance to an applicant solely because of the credit history, or lack of credit history, of the applicant.

Approved March 31, 1998

CHAPTER 213

(HB 401)

AN ACT relating to insurance.

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

Section 1. KRS 304.2-400 is amended to read as follows:

- (1) There is created in the State Treasury a trust fund designated the "Insurance Regulatory Trust Fund" to which shall be credited all payments received under KRS 304.4-010.
- (2) The moneys so received and deposited in the insurance regulatory trust fund shall be appropriated for use only by the department to defray the expenses of the department in discharge of its administrative and regulatory powers and duties as prescribed by law subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The department shall be responsible for the proper expenditure of these moneys as provided by law.

~~[(3) Any cash balance in excess of two million dollars (\$2,000,000) in the insurance regulatory trust fund after all current fiscal year expenditures are met shall lapse to the general fund.]~~

Section 2. KRS 304.2-410 is amended to read as follows:

- (1) It is the responsibility of the department, which is charged with the administration of the insurance regulatory trust fund, to make such moneys available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such moneys by the agency or agencies of the Commonwealth of Kentucky authorized to make investments and reinvestments for and on behalf of any agency of the Commonwealth of Kentucky.
- (2) Monthly, and more often as circumstances require, the department shall notify the investing authority of the amount available for investment, and the moneys shall be invested by the investing authority according to the laws relating to state investments. Such notification shall include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting obligations.

~~[(3) All earnings derived from such investments shall be paid into the general fund.]~~

Section 3. KRS 304.2-440 is amended to read as follows:

- (1) As used in this section, "insurer" means assessment or cooperative insurers, insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, and prepaid dental plan organizations.
- (2) If the commissioner finds that there are insufficient funds for operations of the department, he may make an assessment on all insurers not to exceed .000235 of net direct written premium from Kentucky as reported in insurers' annual statements for the immediately preceding calendar year. In making each assessment, the commissioner may establish a minimum assessment. Assessments made pursuant to this section shall be in addition to all other taxes, assessments, and fees.
- (3) Overdue payment of any assessments shall bear interest at the tax interest rate as set forth in KRS 131.010(6) from the date due until paid. Any unpaid assessment may be recovered in an action brought thereon in the name of the department in the Franklin Circuit Court or in any other court of appropriate jurisdiction. Such interest penalty is separate from other penalties applicable to violations of KRS Chapter 299 and this chapter and such an action is separate from any other means of collecting an assessment under KRS Chapter 299 or this chapter.
- (4) All funds derived from assessments made pursuant to this section shall be deposited in the insurance regulatory trust fund. However, funds derived from assessments made pursuant to this section shall not lapse to the general fund ~~[pursuant to KRS 304.2-400(3) or any other law]~~, but shall at all times be available to defray expenses of the department in discharge of its administrative and regulatory powers.

Section 4. KRS 304.9-440 is amended to read as follows:

- (1) The commissioner may suspend or may impose conditions upon the continuance of a license for not more than twelve (12) months, or may revoke or refuse to continue any license issued under this subtitle or any surplus lines broker license if, after notice to the licensee and to the insurer represented (as to an agent) or to the employer (as to a solicitor) and a hearing, the commissioner finds that as to the licensee any one (1) or more of the following causes exist:
 - (a) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.
 - (b) Willful violation of or noncompliance with any applicable provision of this code, or willful violation of any lawful rule, regulation, or order of the commissioner.
 - (c) Obtaining or attempting to obtain any such license through misrepresentation or fraud.
 - (d) Misappropriation or conversion to his own use, or illegal withholding, of moneys belonging to policyholders, insurers, beneficiaries, or others and received in the conduct of business under the license.
 - (e) Willful material misrepresentation of the terms of any actual or proposed insurance contract.
 - (f) Conviction, by final judgment, of a *misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or a felony involving dishonesty, breach of trust, or* ~~[felony involving]~~ moral turpitude.

- (g) In the conduct of his affairs under the license the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public.
 - (h) ***Surrendering or otherwise terminating any other license issued by this state or any other jurisdiction under threat of disciplinary action, denial or refusal of the issuance of or renewal of any other license issued by this state or any other jurisdiction, or revocation or suspension of any other license held by the licensee issued by this state or any other jurisdiction.***
- (2) The license of a firm or corporation may be suspended, revoked, or refused:
- (a) For any of such causes as relate to an individual designated in or registered as to the license to exercise its powers; or
 - (b) If an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the firm or corporation and such violation was not reported to the Department of Insurance nor corrective action taken thereon.

SECTION 5. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each person licensed under this subtitle shall notify the commissioner in writing immediately if his license to conduct securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance denied.

Section 6. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

- (1) "Insurer" means any person, entity, ~~or~~ organization, ***or reinsurer***, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the Department of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.
- (2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section ***including reinsurance*** affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.
- (3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself to be an insured or beneficiary.
- (4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.
- (5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense.
- (6) ***"Division" means the Division of Insurance Fraud Investigation of the Kentucky Department of Insurance, its employees, or authorized representatives.***
- (7) ***"Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in subsection (1) of Section 7 of this Act, on a continuing basis.***

Section 7. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he:
 - (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent

thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

- (b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any written or oral statement as part of, or in support of, an application for an insurance policy, knowing that this statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
 - ~~(c) Assists, abets, solicits, or conspires with another to prepare or make any written or oral statement that is intended to be presented to any insurer, person, entity, or organization in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;~~
 - ~~(d)~~ Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
 - ~~(d)(e)~~ Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;
 - ~~(e)(f)~~ Issues **or knowingly presents** fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
 - ~~(f)(g)~~ Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
 - ~~(g)(h)~~ Engages in unauthorized insurance, as defined in KRS 304.11-030; ~~or~~
 - ~~(h)(i)~~ Knowingly and with intent to defraud or deceive, receives temporary total disability benefits while being employed in work as defined in KRS 342.0011:
 - (i) **Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent thereof, any written or oral statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:**
 1. **The rating of an insurance policy;**
 2. **The financial condition of an insurer;**
 3. **The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or**
 4. **A document filed with the commissioner;**
 - (j) **Knowingly and with intent to defraud or deceive engages in any of the following:**
 1. **Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or**
 2. **Removal, concealment, alteration, tampering, or destruction of the assets or records of an insurer; or**
 - (k) **Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.**
- (2) (a) Except as provided in ~~paragraphs~~~~(paragraph)~~ (b) **and** (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars (\$300), and shall be punished by:
1. Imprisonment for not more than one (1) year;

2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;
- (b) ***Except as provided in paragraph (c) of this subsection***, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars (\$300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
1. Imprisonment for not less than one (1) nor more than five (5) years;
 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) ***Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:***
1. ***Imprisonment for not less than ten (10) years nor more than twenty (20) years;***
 2. ***A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or***
 3. ***Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.***
- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), ~~(b)~~, **or (c)** of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss under the person's actions which resulted in the adjudication of guilt. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.
- (3) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
 - (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

Section 8. KRS 304.47-040 is amended to read as follows:

- (1) There is created within the Department of Insurance ***a Division of***~~an~~ Insurance Fraud ***Investigation***~~Unit~~, which shall include a Workers' Compensation Branch.
- (2)
 - (a) The commissioner shall appoint qualified persons to serve as special investigators for the ***Division of Insurance Fraud Investigation***~~Unit~~ who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.
 - (b) The commissioner shall appoint appropriate staff for the Workers' Compensation Branch which shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The appointments authorized by this paragraph shall be in addition to the staff employed by the ~~division~~~~Insurance Fraud Unit~~ as of December 12, 1996.
- (3) The special investigator may:
 - (a) Administer oaths and affirmations;
 - (b) Order the attendance of witnesses or proffering of information and documentation;

- (c) Collect evidence; and
- (d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:
 - 1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;
 - 2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and
 - 3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.
- (4) The *division*~~[unit]~~ may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.
- (5) If the information the *division*~~[unit]~~ seeks to obtain is located outside the state, the person so requested may make it available to the *division*~~[unit]~~ or its representative to examine at the place where it is located. The *division*~~[unit]~~ may designate representatives, including officials of the state in which the matter is located, to inspect the information on the *division's*~~[unit's]~~ behalf, and it may respond to similar requests from officials of other states.
- (6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the commissioner under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.

Section 9. KRS 304.47-050 is amended to read as follows:

- (1) Any person, other than an insurer, agent, or other person licensed under this chapter, or an employee thereof, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the *Division of Insurance Fraud Investigation*~~[Unit]~~ a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.
- (2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the *Division of Insurance Fraud Investigation*~~[Unit]~~ a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:
 - (a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;
 - (b) Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;
 - (c) Any private medical review committee;
 - (d) Any insurer, agent, or other person licensed under this chapter; and
 - (e) Any employee of the persons named in paragraphs (a) to (d) of this subsection.
- (3) The *Division of Insurance Fraud Investigation*~~[Unit]~~ or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the *division*~~[unit]~~, may require further investigation. The *division*~~[unit]~~ shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.
- (4) The Department of Workers' Claims shall provide the *division*~~Insurance Fraud Unit~~ access to all relevant information the commissioner may request.
- (5) The *Division of Insurance Fraud Investigation*~~[Unit]~~ shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days

of the report, the prosecuting attorney shall inform the ~~division[unit]~~ of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

- (6) Notwithstanding the provisions of subsections (1) to (5) of this section, when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured may notify a law enforcement agency of their knowledge or reasonable belief and provide information relevant to the fraudulent insurance act, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss.
- (7) If the information referred to in subsection (6) of this section is specifically requested by a law enforcement agency or prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.
- (8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 10. KRS 304.47-060 is amended to read as follows:

- (1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the *Division of Insurance Fraud Investigation*~~[Unit]~~ or its authorized representative. No civil cause of action of any nature shall arise against the person:
 - (a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;
 - (b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle, *including those designated by KRS 304.47-080*;
 - (c) For any information furnished to or received from the Department of Workers' Claims, its agents, or employees; or
 - (d) For any information furnished in reports to the commissioner or the National Association of Insurance Commissioners.
- (2) The commissioner or any employee or agent of the Department of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the ~~division[Insurance Fraud Unit]~~ or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.
- (3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

- (4) The papers, documents, reports, or evidence relative to the subject of an investigation under this subtitle shall not be subject to public inspection for so long as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to the investigations shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of fraudulent insurance acts.

Approved March 31, 1998

CHAPTER 214

(HB 632)

AN ACT relating to engineers and land surveyors.

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

Section 1. KRS 322.010 is amended to read as follows:

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

- (1) "Board" means the State Board of **Licensure**~~[Registration]~~ for Professional Engineers and Land Surveyors;
- (2) "Engineer" means a person who is qualified **to engage in the practice of professional engineering** by reason of **special**~~[his]~~ knowledge **and use** of:
 - (a) **The mathematical, physical, and engineering sciences**~~;~~ ~~mathematics, the physical sciences,]and~~
 - (b) The principles **and methods** of engineering **analysis and design**, acquired by **engineering**~~[professional]~~ education and practical **engineering** experience~~;~~ ~~to engage in the practice of professional engineering];~~
- (3) **"Professional engineer" means a person who is licensed as a professional engineer by the board;**
- (4) "Engineering" **means**~~[includes]~~ any **professional** service or creative work, the adequate performance of which requires engineering education, training, and experience **as an engineer**.
 - (a) **Engineering shall include:**
 1. ~~[in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as]~~Consultation, investigation, evaluation, planning, **certification**, and design of engineering works and systems;
 - a. **Engineering design and engineering work associated with design/build projects;**
 - b. ~~[, including]~~Engineering works and systems which involve earth materials, water **or**~~[,]~~ other liquids, and gases;
 - c. ~~[,]~~Planning the use of land, **air**, and waters; **and**
 - d. **Performing engineering surveys and studies**~~;~~ ~~and]~~
 2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces **this**~~[such]~~ service or work, either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when **that**~~[such]~~ professional service **or work** requires the application of engineering principles and data;
 3. **The teaching of engineering design courses in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board;**
 4. **The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering;**

- a. *Are residents of this state;*
 - b. *Have their principal place of business in this state; or*
 - c. *Are in responsible charge of the engineering services performed; and*
5. *The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.*
- (b) *Engineering shall*~~It does~~ *not include the professional services~~work ordinarily~~ *performed by persons who:**
- 1. *Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or*
 - 2. *Only operate or maintain machinery or equipment*~~operate or maintain machinery or equipment, such as locomotive, stationary, marine, or power plant operators, nor work embraced within the practice of land surveying~~*;*
- (5)~~(4)~~ *"Practice of engineering" means the performance of any professional service included in subsection (4)(a) of this section*~~[includes all professional services included in subsection (3) of this section, together with the negotiation or solicitation for engineering work on any project in this state, regardless of whether the persons engaged in that practice are residents of this state or have their principal office or place of business in this state or any other state or country, and regardless of whether they are performing one (1) or all of these duties, or whether they are performing them in person or as the directing heads of offices or organizations]~~*;*
- (6)~~(5)~~ *"Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;*
- (7) *"Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;*
- (8) *"Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;*
- (9) *"Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;*
- (10) *"Land surveying" means any professional service or work, the adequate performance of which requires the education, training, and experience as a land surveyor.*
- (a) *Land surveying shall include, but not be limited to, the following:*
- 1. ~~[involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence to the act of]~~*Measuring and locating, establishing, or re-establishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:*
 - a. *Determination or establishment of the facts of size, shape, topography, and acreage;*
 - b. *Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;*
 - c. *Subdivision, division, and consolidation of lands;*
 - d. *Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;*
 - e. *Layout of proposed improvements, if those improvements are to be referenced to property boundaries;*
 - f. *Preparation of physical written descriptions for use in legal instruments of conveyance or real property and property rights;*

- g. *Preparation of subdivision record plats;*
 - h. *Determination of existing grades and elevations of roads and land;*
 - i. *Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and*
 - j. *Certification of documents; and*
2. *The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:*
- a. *Are residents of this state;*
 - b. *Have their principal office or place of business in this state; or*
 - c. *Are in responsible charge of the land surveying services or work performed.*
- (b) *Land surveying shall not include:*
- 1. *The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;*
 - 2. *The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or*
 - 3. *The design of grades and elevations of roads and land;*
- (11) *"Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;*
- (12) *"Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;*
- (13) *"Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;*
- (14) *"Business entity" means a corporation, partnership, or firm;*
- (15) *"Offer to practice" means:*
- (a) *A promise or commitment to engage in any act directly related to engineering or land surveying;*
 - (b) *Undertaking to engage in the practice of engineering or land surveying; or*
 - (c) *Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;*
- (16) *"Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;*
- (17) *The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;*
- (18) *The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;*
- (19) *The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and*
- (20) *The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying*

~~for the purpose of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof, including the topography, alignment, and grades of streets and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;~~

- (6) ~~"Land surveyor" means and includes any person engaged in the practice of land surveying as herein defined, and shall include any public offer, or the holding out by any person to the public, to engage in the practice of land surveying;~~
- (7) ~~"Practice of land surveying" shall include the performance of any professional service included in subsection (5) of this section. "Offer to practice" shall include performance of any act or acts directly related to land surveying, or any claim, oral or written, sign, letterhead, professional card, or other representation, on the part of any person representing himself to be a land surveyor or who holds himself out to the general public as possessing the ability and qualifications to perform land surveying within the terms of this section, KRS 322.200, 322.230 to 322.250, and 322.420 to 322.460;~~
- (8) ~~"Engineer in training" means a person who has passed a written examination in the fundamentals of engineering acceptable to the board; and~~
- (9) ~~"Land surveyor in training" means a person who has passed a written examination in the fundamentals of land surveying acceptable to the board}.~~

SECTION 2. A NEW SECTION OF KRS CHAPTER 322 IS CREATED TO READ AS FOLLOWS:

On the effective date of this section, all registered engineers and registered land surveyors shall be deemed licensed by the board until their registration expires. First-time licensure of these registrants shall be processed as a license renewal under Section 14 of this Act.

Section 3. KRS 322.020 is amended to read as follows:

- (1) *Unless licensed as a professional engineer*, no person shall:
- Engage in the practice of engineering;*~~{practice or }~~
 - Offer to practice engineering; or
 - ~~{land surveying, or }~~Use, assume, or advertise in any way any title or description tending to convey the impression that he *or she* is a *professional*~~{an}~~ engineer.
- (2) *Unless licensed as a professional*~~{or}~~ land surveyor, *no person shall*:
- Engage in the practice of land surveying;*
 - Offer to practice land surveying; or*
 - Use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a professional land surveyor*~~{unless he has been registered under this chapter}.~~

Section 4. KRS 322.030 is amended to read as follows:

KRS 322.020 shall not apply to:

- ~~{The engaging in engineering as }~~A pupil~~{ of }~~ or *engineer in training engaging in engineering* under the direction of a *professional*~~{registered}~~ engineer, if *that*~~{such}~~ practice does not include responsible charge of *engineering; or*
 - ~~{design or supervision as a principal, or the engaging in land surveying as }~~A pupil *or land surveyor in training engaging in land surveying*~~{of or }~~ under the direction of a *professional*~~{registered}~~ land surveyor, if *that*~~{such}~~ practice does not include responsible charge *of land surveying*~~{or supervision}~~;
- The practice of *engineering or land surveying* by officers and employees of the United States government while engaged in engineering or land surveying for the government;
- The practice of engineering or land surveying by a person on property *he or she leases or owns*~~{leased or owned by the person}~~ unless:
 - The practice involves the public safety,~~{or public}~~ health, *or welfare*;

- (b) *The land surveying relates to the location or determination of any existing or proposed land boundaries;* or
- (c) ~~to~~ The *practice*~~performance~~ of engineering~~that~~ relates solely to the design or fabrication of manufactured products;
- (4) An engineer or land surveyor engaged solely as an officer or employee of a privately owned public utility or of a *business entity*~~corporation~~ engaged in interstate commerce as defined in the Interstate Commerce Act (24 Stat. 379) as amended;
- (5) A licensed architect who engages in *the practice of* engineering~~practice as an~~ incident to the practice of *architecture*~~his own profession~~.

Section 5. KRS 322.040 is amended to read as follows:

- (1) A person shall qualify for *licensure*~~registration~~ as a professional engineer *by meeting the requirements set forth in paragraph (a) or (b) of this subsection.*
 - (a) *A person shall qualify if he or she has:*
 - 1. *Graduated from*~~who is a graduate of~~ an engineering *program*~~curriculum~~ of four (4) years or more *accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent*~~approved~~ by the board;
 - 2. ~~and with a specific record of an additional~~ Four (4) ~~years~~ or more *additional years* of progressive experience in engineering projects *or teaching* of a grade and character which indicates to the board that the applicant ~~is~~~~may be~~ competent to practice engineering; *and*
 - 3. *A passing score on:*
 - a. ~~Each applicant must pass a written examination in the fundamentals of engineering acceptable to the board and a written examination in~~ The Principles and Practice of Engineering *Examination; and*
 - b. ~~acceptable to the board. The board may admit to~~ The Fundamentals of Engineering Examination. *The board may allow students*~~applicants~~ enrolled in the final year of an undergraduate engineering *program to take this examination. Upon passing the examination the applicant shall be designated an engineer in training*~~curriculum. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this Commonwealth, provided the applicant is otherwise qualified. In counting years of experience, the board may give credit, not in excess of one (1) year, for satisfactory graduate study in engineering.~~
 - (b) *If an instructor in an engineering program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or an engineering program deemed equivalent by the board is not eligible for the exemption under subsection (2) of this section, the instructor shall have four (4) years from the date of hire to qualify for licensure by showing that he or she has:*
 - 1. *Graduated from an engineering program of four (4) years or more accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, or an engineering program deemed equivalent by the board;*
 - 2. *Four (4) or more additional years of progressive experience in engineering projects or teaching of a grade and character which indicates to the board that the applicant is competent to practice engineering;*
 - 3. *Passed the Principles and Practice of Engineering Examination; and*
 - 4. *Either passed the Fundamentals of Engineering Examination or graduated from a board-approved doctoral engineering degree program.*
- (2) *For the purpose of teaching engineering design courses only, an instructor who, on the effective date of this Act, holds a tenured or tenure-track position in an engineering program defined in subsection (4)(a)3. of Section 1 of this Act shall be exempt from the licensure requirements of Section 3 of this Act for the period*

that instructor is continuously employed by the institution offering that program. However, an instructor may apply and shall qualify for licensure as a professional engineer during this exempt period if he or she:

- (a) *Has graduated from an engineering program of four (4) years or more accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or an engineering program deemed equivalent by the board;*
 - (b) *Has graduated from a board-approved doctoral engineering degree program, with an additional three (3) years or more of progressive experience in engineering projects or teaching of a grade and character which indicate to the board that the applicant is competent to practice engineering; and*
 - (c) *Has passed the Principles and Practice of Engineering Examination.*
- (3) *A person shall qualify for licensure as a professional land surveyor if he or she has:*
- (a) *Passed the Fundamentals of Land Surveying Examination and is thereby designated a land surveyor in training according to the conditions set forth in paragraph (c) of this subsection;*
 - (b) *Passed the Principles and Practice of Land Surveying Examination; and*
 - (c) *Met one (1) of the following requirements*~~{Compliance with the requirements of any one (1) of paragraphs (a), (b) or (c) of this subsection shall qualify an applicant for registration as a land surveyor}:~~
 - ~~{(a) Any person holding a certificate of registration to engage in the practice of land surveying issued to him by the proper authorities of any state, territory, possession of the United States, District of Columbia, or any foreign country, based upon requirements and qualifications appearing in his application, which, in the opinion of the board, are equal to, or higher than, the requirements required to be registered in this state to practice land surveying;}~~
 - 1. ~~{(b)}~~ *Graduation*~~{Any graduate}~~ *from a board-approved program in land surveying from a college or university*~~{an engineering or surveying curriculum of not less than four (4) years, at an institution approved by the board}~~, followed by not less than four (4) years of progressive experience~~{in land surveying}~~ under the direct supervision of a~~{registered and}~~ practicing professional land surveyor.
 - a. *The experience required by the provisions of this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work being performed;*
 - b. *Work experience acquired as part of the education requirement shall not be construed as experience; and*
 - c. *Applicants shall be eligible to take the Fundamentals of Land Surveying Examination during their final year in the program;*
 - 2. *Graduation from a four (4) year program other than land surveying accredited by one of the Commissions of the Accreditation Board for Engineering and Technology, followed by not less than six (6) years of practical experience in land surveying under the direct supervision of a practicing professional land surveyor.*
 - a. *Four (4) years of the experience required by this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work being performed;*
 - b. *Work experience acquired as a part of the education requirements shall not be construed as experience; and*
 - c. *Applicants shall be eligible to take the Fundamentals of Land Surveying Examination upon completion of two (2) years of land surveying experience following graduation from the program;*
 - 3. *Graduation from a two (2) year board-approved program in land surveying followed by not less than six (6) years of progressive experience under the direct supervision of a practicing professional land surveyor.*

- a. *The experience required by this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work being performed;*
 - b. *Work experience acquired as a part of the education requirement shall not be construed as experience; and*
 - c. *Applicants shall be eligible to take the Fundamentals of Land Surveying Examination upon completion of two (2) years land surveying experience following graduation from the program; ~~and who shall pass a written examination in the fundamentals of surveying, acceptable to the board, and a written examination in the principles and practices of land surveying, acceptable to the board; and~~*
4. ~~(c)~~ *Until June 30, 2001, ~~Any person possessing~~ eight (8) or more years of progressive active experience in the practice of land surveying under the direct supervision of a ~~registered and~~ practicing **professional** land surveyor, and **passing scores on** ~~who shall pass a written examination in~~ the Fundamentals of **Land Surveying Examination**, ~~acceptable to the board,~~ and ~~a written examination in~~ the Principles and **Practice** ~~practices~~ of Land Surveying Examination; or*
5. *Effective July 1, 2001, graduation from high school, or the equivalent, followed by not less than ten (10) years of progressive experience under the direct supervision of a practicing professional land surveyor and passing scores on the Fundamentals of Land Surveying Examination and the Principles and Practice of Land Surveying Examination. Six (6) years of the experience required by this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work performed. Applicants shall be eligible to take the Fundamentals of Land Surveying Examination upon completion of four (4) years of land surveying experience ~~, acceptable to the board.~~*
- ~~(3) In the consideration of the qualifications of applicants, engineering teaching may be construed as engineering experience.~~
- (4) As it may apply to the experience qualifications for engineers or land surveyors:
- (a) *Teaching land surveying courses at the postsecondary level may earn an applicant a maximum credit of two (2) years' experience;*
 - (b) *The board may grant up to one (1) year of engineering experience credit for satisfactory graduate study in engineering and up to one (1) year of land surveying experience credit for satisfactory graduate study in land surveying;*
 - (c) ~~;~~ *The satisfactory completion of each year as a full-time student of a board-approved program ~~an approved curriculum~~ in civil engineering or land surveying ~~in a school or college approved by the board as of satisfactory standing,~~ without graduation, may ~~shall~~ be considered as equivalent to one (1) ~~a~~ year of experience required by subsection (3)(c)3., 4., and 5. ~~subsections (1) and (2)(b)~~ of this section;*
 - (d) ~~;~~ *Graduation ~~from~~ ~~in~~ a program ~~curriculum~~ other than as provided in subsection (3)(c)1., 2., and 3. of this section ~~engineering or land surveying~~ from a college or university of recognized standing may be considered as equivalent to two (2) years of experience required by subsection (3)(c)3., 4., and 5. ~~subsections (1) and (2)(b)~~ of this section;*
 - (e) ~~;~~ *No applicant shall receive credit for more than four (4) years of experience based on ~~because of~~ undergraduate educational qualifications.*
- (5) ~~The~~ ~~mere~~ *execution as a contractor of work designed by a professional ~~an~~ engineer or the supervision of the construction of that ~~such~~ work as a foreman or superintendent may ~~shall not~~ be considered experience in the practice of ~~in~~ engineering.*
- (6) Any person having the necessary qualifications prescribed in subsections (1), ~~and~~ (2), and (3) of this section shall be eligible to apply for licensure, even if the applicant is ~~registration although he may~~ not ~~be~~ practicing ~~the~~ ~~his~~ profession at the time of ~~making his~~ application.

Section 6. KRS 322.050 is amended to read as follows:

To ~~No person shall~~ be eligible for *licensure, an applicant shall be* ~~registration unless he is~~ of good character and reputation. *No applicant* ~~, nor~~ shall ~~any person~~ be eligible *who*:

- (1) ~~if he~~ Has been convicted of any felony involving moral turpitude, *fraud, or deceit*;
- (2) *Engages in conduct likely to deceive or defraud the public*; or
- (3) Is adjudged mentally disabled by a court of competent jurisdiction.

Section 7. KRS 322.060 is amended to read as follows:

- (1) (a) *A business entity shall not* ~~corporation, partnership, or firm may~~ engage in the practice of engineering in this state *unless*:
 1. ~~if~~ At least one (1) of *its* ~~the~~ principals, officers, or a designated employee ~~of the corporation, partnership, or firm~~ is *a professional engineer who is in responsible* ~~direct~~ charge of the engineering work; and
 2. *The board has issued a permit to the business entity* ~~is registered as an engineer in this state~~.
- (b) *To apply for a permit, a business entity* ~~Corporations, partnerships, or firms~~ offering engineering services in this state shall file with the board, on a form prescribed by the board:
 1. *The* ~~a list of~~ names *and* ~~,~~ addresses ~~, and registration numbers~~ of all principals and officers;
 2. ~~as well as~~ The *license number of* principals, ~~or~~ officers, *and employees who are professional engineers* ~~duly registered to practice engineering in this state who are~~ in *responsible* ~~direct~~ charge of the *business entity's* practice *of engineering* in this state;
 3. ~~and~~ A *list* ~~listing~~ of locations of all offices in this state at which the *business entity* ~~corporation, partnership, or firm~~ offers professional engineering services;
 4. *A statement of qualifications for the permit; and*
 5. *References as required by administrative regulations promulgated by the board.* ~~The corporations, partnerships, or firms shall advise the board in writing within thirty (30) days of any change of status.~~
- (c) If more than one (1) place of business is maintained in this state, *a professional* ~~an~~ engineer ~~registered in this state~~ shall be in *responsible* ~~direct~~ charge of the engineering work for each office.
- (d) A professional engineer who renders occasional, part-time, or consulting engineering services to or for a *business entity required to hold a permit from* ~~firm required to file with~~ the board *under* ~~pursuant to~~ this section shall not be designated as the person in *responsible* charge *of the engineering work* ~~for the professional activity of the firm~~.
- (e) *A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status in those items listed in paragraph (b) of this subsection.*
- (f) *Individual professional engineers providing engineering services in their own names, or architectural firms offering engineering services incident to their practice, shall be excluded from the provisions of this subsection.*
- (2) (a) *A business entity shall not engage in the practice of land surveying in this state unless*:
 1. *At least one (1) of its principals, officers, or a designated employee is a professional land surveyor in direct responsible charge of the land surveying work; and*
 2. *The board has issued a permit to the business entity.*
- (b) *To apply for a permit, a business entity offering land surveying services in this state shall file with the board, on a form prescribed by the board*:
 1. *The names and addresses of all principals and officers;*
 2. *The license numbers of the principals, officers, and employees who are professional land surveyors in responsible charge of the practice of land surveying in this state;*

3. *A list of locations of all offices in this state at which the business entity offers professional land surveying services;*
 4. *A statement of qualifications for the services relating to the permit; and*
 5. *References as required by administrative regulations promulgated by the board.*
- (c) *If more than one (1) place of business is maintained in this state, a professional land surveyor shall be in responsible charge of the land surveying work for each office.*
 - (d) *A professional land surveyor who renders occasional, part-time, or consulting services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the land surveying activity of the firm.*
 - (e) *A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status.*
 - (f) *Individual professional land surveyors providing land surveying services in their own names shall be excluded from the provisions of this subsection.*
- (3) (a) ~~{(2)}~~ After a *business entity* ~~{corporation, partnership, or firm}~~ applies for a *professional engineering or professional land surveying* permit and pays the proper fees, the board shall review the application~~{,}~~ and, upon approval, shall issue a permit.
 - (b) The board may ~~{refuse to issue a permit, or}~~ suspend, ~~{or}~~ revoke, *or refuse to issue* a permit for violation of the code of professional practice and conduct.
 - (c) The expiration date and renewal period for each permit and renewal procedures shall be established by administrative regulations *promulgated by the board*. ~~{No corporation, partnership, or firm shall engage in providing engineering services without obtaining a permit under this section. Individual registered engineers providing engineering services in their own names or architectural firms offering engineering services incidental to their practice shall be excluded from the provisions of this section.}~~
 - (4) (a) ~~{(3)}~~ No *business entity* ~~{corporation, partnership, or firm}~~ shall be relieved of responsibility for the conduct or acts of its agent, employees, or officers by reason of its compliance with this section.
 - (b) No individual practicing professional engineering *or professional land surveying* shall be relieved of the responsibility for professional services performed by reason of the individual's employment or relationship with a *business entity holding a permit* ~~{corporation, partnership, or firm licensed}~~ under this section.
 - (5) ~~{(4)}~~ Disciplinary action against a *business entity holding a permit* ~~{corporation, partnership, or firm licensed}~~ under this section shall be administered in the same manner and on the same grounds as disciplinary action against *an individual* ~~{a licensed}~~ professional engineer *or professional land surveyor*.
 - (6) ~~{(5)}~~ The Secretary of State shall not issue a certificate of incorporation or a certificate of registration as a foreign corporation authorized to do business in this state to a firm which includes in its name or, among objects for which it is established, any of the words, "engineer," "engineering," "*surveyor*," "*surveying*," "*land surveying*," or any modification or derivation thereof, unless the ~~{board has issued a certificate or letter from the board with its}~~ application for incorporation or registration with the Secretary of State *includes a certificate or letter from the board*.

Section 8. KRS 322.070 is amended to read as follows:

Applications for *professional engineer or professional land surveyor licenses* ~~{registration}~~ shall be on forms prescribed and furnished by the board ~~and{,}~~ shall contain:

- (1) Statements made under oath, showing the applicant's education and a detailed summary of *the applicant's* ~~{his}~~ technical *experience*;
- (2) ~~{work, and shall contain}~~ Not less than five (5) references, of which at least three (3) shall be from *professional* engineers or *professional* land surveyors, as may be appropriate, having personal knowledge of the applicant's engineering or land surveying experience;
- (3) *If the primary language of the applicant is not English, evidence of English proficiency shall be included with the license application. The criteria to establish English proficiency shall be determined by administrative regulations promulgated by the board; and*

(4) *Any other information as the board may require by administrative regulation.*

Section 9. KRS 322.080 is amended to read as follows:

- (1) Examinations shall be held at times and places determined by the board *by promulgation of administrative regulations.*
- (2) The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering or land surveying works so as to insure the safety of life, health, and property.

Section 10. KRS 322.090 is amended to read as follows:

An applicant failing an examination may apply for reexamination after six (6) months. Reexaminations shall be granted upon payment of a fee *to be* determined by *administrative regulations promulgated by* the board. ~~[[An applicant who has failed three (3) examinations shall not apply for reexamination within twenty four (24) months of his last preceding examination.]]~~

Section 11. KRS 322.100 is amended to read as follows:

The *license fees* ~~[[registration fee]]~~ for *professional* engineers *and professional* ~~[[or]]~~ land surveyors shall be established by *administrative* regulation *promulgated by* ~~[[of]]~~ the board. If the board refuses to issue *a license* ~~[[registration]]~~ to any applicant, the initial fee deposited shall be retained as an application fee.

Section 12. KRS 322.110 is amended to read as follows:

- (1) The board shall *issue a license authorizing the practice of engineering or land surveying to any applicant who has met the respective requirements set forth in this chapter.*
- (2) *All licenses issued under this subsection shall be signed by the chairman and the secretary of the board, under the seal of the board. Each license shall bear the full name of the licensee, the license number, and one of the following designations:*
 - (a) *"Professional Engineer";*
 - (b) *"Professional Land Surveyor";*
 - (c) *"Professional Engineer, Inactive";*
 - (d) *"Professional Engineer, Retired";*
 - (e) *"Professional Land Surveyor, Inactive";* or
 - (f) *"Professional Land Surveyor, Retired."*
- (3) *The designations in paragraphs (c), (d), (e), and (f) of subsection (2) of this section shall be defined in administrative regulations promulgated by the board.*
- (4)
 - (a) *A valid professional engineer or professional land surveyor license shall be prima facie evidence that the licensee is entitled to all rights, privileges, and responsibilities of a professional engineer or a professional land surveyor.*
 - (b) *A valid license bearing the designation "inactive" or "retired" shall be prima facie evidence that the licensee is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor, except the right to practice* ~~[[register upon payment of the registration fee required by KRS 322.100 any applicant who, in its opinion, has satisfactorily complied with the provisions of this chapter]].~~

~~[(2) The board may designate the various recognized branches of engineering and classify the applicant in the branch in which he may practice.]~~

Section 13. KRS 322.120 is amended to read as follows:

~~[(1)]~~The board may, *by promulgation of administrative regulations, establish requirements and fees for licensure by reciprocity for those applicants who:*

- (1) *Hold a current license or* ~~[[upon application and payment of a fee to be established by regulation of the board, register any person who holds a]]~~ certificate of ~~[[qualification or]]~~ *registration to engage in the practice of*

engineering or land surveying issued ~~to him~~ by ~~proper authority of the National Council of Engineering Examiners, the National Engineering Certification Committee or~~ any state, *territory, or possession* of the United States, *the District of Columbia*, or any *foreign* country; *and*

- (2) *Submit proof that the requirements and qualifications supporting that license or certificate:*
- (a) *Are not in conflict with the provisions of this chapter; and*
 - (b) *Equal or exceed this state's requirements in effect on the date of issuance. However, the land surveyor applicant may be required to take examinations, as the board deems necessary, to determine the competency to engage in the practice of land surveying in this state. The examination shall include questions on laws, procedures, and practices pertaining to land surveying in this state ~~if the requirements under which the certificate of qualification or registration was issued do not conflict with this chapter and are of a standard not lower than those provided in KRS 322.040.~~*

~~{(2) The board may make all regulations governing the matter of reciprocity with other states and countries.}~~

Section 14. KRS 322.160 is amended to read as follows:

- (1) *Licenses for individuals and permits for business entities shall be valid for not more than two (2) years from the date of issuance, unless renewed.*
- (2) *The executive director shall notify every licensee and permit holder at least one (1) month in advance of the pending expiration date.*
 - (a) *Renewal notices shall be mailed to the licensee or permit holder at their last known address and state the amount of the renewal fee.*
 - (b) *All renewals shall be completed on or before June 30 of the year of expiration ~~{The secretary treasurer of the board shall notify every registrant of the date of the expiration of his registration and the amount of the fee required for its renewal. Such notice shall be mailed at least one (1) month in advance of the expiration date. Renewals may be effected at any time prior to the expiration date by the payment of a fee to be established by regulation of the board.}~~*
 - (c) *Each licensee or permit holder is responsible for notifying the board of any address change.*
- (3) The failure ~~of any registrant~~ to renew ~~his registration~~ shall not deprive *a licensee or permit holder* ~~him~~ of the right of renewal, but the fee to be paid for the renewal ~~of registration~~ shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. Any *licensee or permit holder* ~~person~~ who fails to renew ~~his registration~~ within one (1) year after expiration shall furnish the board with:
 - (a) Satisfactory evidence of qualification of continued practice. However, the board may require reexamination; *and*
 - (b) *If the licensee or permit holder is a professional land surveyor, evidence of completion of continuing professional development hours for professional land surveyors as required by Section 26 of this Act.*
- ~~{(4)}~~ *No licensee shall be* ~~{All persons who are}~~ required to pay renewal fees to the board ~~{shall not be required to pay such fees}~~ during the time *the licensee is on active duty* ~~{such persons are actively serving}~~ in the Armed Forces of the United States.
 - (a) Any *licensee* ~~person~~ who has previously paid any renewal fee covering a period *of time spent on active duty* ~~{during which he was actively serving in the Armed Forces of the United States}~~ shall, upon filing with the board a copy of his *or her* discharge, be granted a *license* renewal ~~registration~~ without the payment of any fee.
 - (b) The free renewal shall be for as many *license* ~~registration~~ years as ~~{were served by}~~ *the licensee was on active duty* ~~{registrant in the Armed Forces}~~ and which were covered in whole or in part by the previous payment of a renewal fee.
 - (c) *The continuing professional development requirement for land surveyors under Section 26 of this Act shall be waived for those years the licensee was on active duty.*

Section 15. KRS 322.170 is amended to read as follows:

- (1) A new *license or permit*~~[registration certificate]~~ may be issued *to replace any license or permit that was lost, destroyed, or mutilated*, subject to the *administrative regulations promulgated by*~~[rules of]~~ the board~~[, to replace any certificate lost, destroyed or mutilated]~~.
- (2) *A license or permit may be reissued to replace any license or permit that was previously revoked, subject to Section 19 of this Act.*

Section 16. KRS 322.180 is amended to read as follows:

The board ~~may~~~~[shall have the power to suspend,]~~ refuse to *issue, refuse to renew, suspend,* or revoke *a license*~~[the registration of any registrant]~~, *may* reprimand, place on probation, or *admonish a licensee, may impose a fine on a licensee* not to exceed one thousand dollars (\$1,000), *or may impose any combination of these penalties, when it finds that an applicant or licensee*~~[any registrant who is found guilty by the board of]~~:

- (1) *Engaged in any*~~[The]~~ practice of~~[any]~~ fraud or deceit in obtaining *a license*~~[registration]~~;
- (2) *Engaged in*~~[Any]~~ gross negligence, incompetence, or misconduct in the practice of engineering or *land surveying*;
- (3) *Violated any provision of this chapter, the administrative regulations promulgated by the board, or the code of professional practice and conduct adopted by the board and incorporated in administrative regulations*;
- (4) *Employed, procured, or induced a person not licensed to practice engineering or land surveying in this state*;
- (5) *Aided or abetted a person not licensed to practice engineering or land surveying in this state*;
- (6) *Been granted a license upon a mistake of material fact*;
- (7) *Been convicted by a court of law of a felony involving moral turpitude*;
- (8) *Become a chronic or persistent alcoholic or has become drug-addicted so that continued practice is dangerous to clients or to the public safety*;
- (9) *Developed a physical or mental disability or other condition so that continued practice is dangerous to clients or to the public safety*;
- (10) *Violated any order of suspension or the terms or conditions of any order of probation issued by the board*;
- (11) *Had a license or registration certificate to practice as an engineer or land surveyor denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause licensure to be denied, limited, suspended, probated, or revoked in this state*;
- (12) *Engaged in conduct likely to deceive or defraud the public*;
- (13) *Presented or attempted to use as his or her own the license, seal, or stamp of another*;
- (14) *Falsely impersonated any other licensee*;
- (15) *Attempted to use an expired, suspended, or revoked license*;
- (16) *Provided certification for any plan, specification, plat, report, or physical description not prepared by him or her or under his or her direct supervision; or*
- (17) *Applied the seal, stamp, signature, or title block of another professional engineer or professional land surveyor to a plan, specification, plat, report, or physical description that was not prepared by the other professional engineer or land surveyor*~~[Having been convicted by a court of law of a felony involving moral turpitude; or~~
- ~~(4) Violation of the code of professional practice and conduct which has been adopted by the board.~~

Section 17. KRS 322.190 is amended to read as follows:

Any person *or organization, including the board upon its own volition, may file with the executive director of the board a written complaint alleging violation of any provision of this chapter. The executive director shall cause the complaint to be investigated.*

- (1) *If the investigation reveals that the alleged violation did occur but was not of a serious nature, the board may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the*

permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing in accordance with the provisions of KRS Chapter 13B.

- (2) *If the investigation reveals evidence supporting the complaint, the executive director shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before refusing to renew, suspending, revoking, reprimanding, imposing probation or an administrative fine, or any combination of actions regarding any license under the provisions of this chapter.*
 - (a) *At any time during the investigation or hearing process, the board may accept a written assurance of voluntary compliance from the licensee which effectively deals with the complaint.*
 - (b) *When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.*
- (3) *After denying an application under the provisions of this chapter, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.*
- (4) *The board may reconsider, modify, or reverse its decision on any disciplinary action.*
- (5) *Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B~~for any organization may prefer written charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of the code of professional practice and conduct against any registrant. They shall be filed with the executive director of the board.~~*

Section 18. KRS 322.200 is amended to read as follows:

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within six (6) months after the date on which they are preferred, but a charged party may waive his *or her* right to a hearing within six (6) months. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 19. KRS 322.220 is amended to read as follows:

A person whose license has been revoked may petition the board to reissue. The board shall investigate the petition and may reissue the license upon a finding that the person has complied with any terms prescribed by the board and is again able to competently practice~~The board, subject to its rules, may reissue a registration certificate to any person whose registration has been revoked.~~

Section 20. KRS 322.230 is amended to read as follows:

- (1) The State Board of *Licensure*~~Registration~~ for Professional Engineers and Land Surveyors shall consist of *nine (9)*~~seven (7)~~ members appointed by the Governor and two (2) ex officio members each with full voting rights. The ex officio members shall be the dean of the College of Engineering of the University of Kentucky and the dean of the Speed Scientific School of the University of Louisville.
- (2) The term of each member of the board shall be four (4) years. Each member shall hold office until the expiration of the term~~for which he is appointed~~, or until a successor has been appointed and has qualified.
- (3) ~~Every member shall,~~ Before beginning a~~his~~ term of office, *every member shall* file with the Secretary of State a~~his~~ written oath for the faithful discharge of~~his~~ official duties.
- (4) No member of the board shall serve as an employee of the board.

Section 21. KRS 322.240 is amended to read as follows:

- (1) Each appointed member of the board shall be a citizen of the United States and shall have been a resident of this state for five (5) years.
- (2) *One (1) member of the board shall be a citizen at large who is not associated with or financially interested in the practice of engineering or land surveying.*
- (3) *Eight (8)*~~Six (6)~~ members of the board shall have been *a registered or professional engineer or a registered or professional land surveyor* engaged in the *respective* practice~~of the profession of engineering or land surveying~~ for at least twelve (12) years, and shall have been in responsible charge of important engineering or

land surveying work~~[or responsible charge of engineering or land surveying teaching]~~ for at least five (5) years.~~[One (1) member of the board shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. At no time shall more than two (2) members whose qualifications are based on responsible charge of engineering or land surveying teaching or more than two (2) members from the faculties of the engineering or land surveying colleges of the state be appointed to the board.]~~

- (a) At least *five* (5)~~[four (4)]~~ members of the board shall *have been*~~[be]~~ registered *or professional*~~[as]~~ engineers *in Kentucky for at least four (4) years prior to the date of their appointment*; and
- (b) At least *three* (3)~~[two (2)]~~ members *of the board* shall *have been*~~[be]~~ registered *or professional*~~[as]~~ land surveyors~~[. The engineer members of the board shall have been registered engineers in Kentucky for at least four (4) years prior to the date of their appointments. The land surveyor members of the board shall have been registered land surveyors]~~ in Kentucky for at least four (4) years prior to the date of their *appointment*~~[appointments]~~.

Section 22. KRS 322.250 is amended to read as follows:

- (1) *Except as provided for in subsection (5) of this section, each land surveyor appointment to the board shall be made from a list of not less than three (3) nominees to be submitted to the Governor jointly by the Kentucky Society of Professional Engineers and the Kentucky Association of Professional Surveyors, with input from other professional societies. All other appointments to the board shall be made from a list of not less than three (3) nominees to be submitted to the Governor by the Kentucky Society of Professional Engineers with input from other professional societies.*
- (2) *The nominations shall be submitted to the Governor at least sixty (60) days prior to the appointment date.*
- (3) *The term of office for all full-term appointments shall begin January 1.*
- (4) *Board members shall be allowed to succeed themselves but shall be limited to not more than two (2) consecutive terms. A former member may be reappointed to the board if the member has not served in the preceding four (4) years.*
- (5) *If a vacancy on the board occurs for any reason resulting in an unexpired term, if not filled within three (3) months by official action of the Governor, the board may appoint a provisional member to serve in the interim until the Governor acts.*
- (6) *Every unexpired term shall be filled only for the remainder of that term*~~[The Governor shall appoint not more than two (2) full term members per year, with the exception of 1973, when he shall appoint four (4) members, two (2) for terms of three (3) years and two (2) for the full four (4) year term.]~~
- ~~(2) Every member of the board shall receive a certificate of his appointment from the Governor.~~
- ~~(3) Every appointment to the board shall be made from a list of not less than three (3) nominees to be submitted to the Governor by the Kentucky Society of Professional Engineers.~~
- ~~(4) Every unexpired term shall be filled only for the remainder of that term.~~
- ~~(5) The nominations shall be submitted to the Governor at least thirty (30) days prior to the appointment date.~~
- ~~(6) The term of office of all full term appointments shall begin January 1.~~
- ~~(7) The appointees to the board shall be limited to not more than two (2) consecutive terms.]~~

Section 23. KRS 322.260 is amended to read as follows:

- (1) Every year the board shall elect a chairman, a vice chairman and a secretary-treasurer.
- (2) The secretary-treasurer *or any other officer or designee required to handle expenditures or disburse funds of the board* shall give a surety bond to the board in a sum determined by the board. The premium on the bond shall be paid as a proper, necessary expense of the board.

Section 24. KRS 322.270 is amended to read as follows:

~~[When attending to the work of the board,]~~Each member shall receive compensation as *promulgated*~~[established]~~ by *administrative* regulation of the board and approved by the appropriate legislative body. *Official duties include*~~[This includes]~~ meetings of committees of the board and time spent in necessary travel. Further, members shall be

reimbursed for costs for *all* actual *and necessary expenses* ~~[travel, incidental, clerical and all expense necessarily]~~ incurred in carrying out *their official* ~~[the]~~ duties *as board* ~~[of the]~~ members ~~[of the board]~~.

Section 25. KRS 322.280 is amended to read as follows:

- (1) The board shall hold at least *four (4)* ~~[two (2)]~~ regular meetings each year. Special meetings shall be held ~~if [whenever]~~ the bylaws provide. Notice of all meetings shall be given in the manner provided by the bylaws.
- (2) *Six (6)* ~~[Five (5)]~~ members shall constitute a quorum.

Section 26. KRS 322.290 is amended to read as follows:

~~[(1)]~~ The board shall:

- ~~(1)~~ ~~[(a)]~~ Administer this chapter;
- ~~(2)~~ ~~[(b)]~~ Adopt an official seal; ~~[and]~~
- ~~(3)~~ ~~[(c)]~~ Provide suitable office quarters at its own expense;
- ~~(4)~~ ~~[(2)]~~ The board shall:
 - ~~(a)~~ Adopt and amend all bylaws, and rules of procedure, *and promulgate administrative regulations*, consistent with the Constitution and laws of the state, and reasonably necessary for the proper performance of its duties and the regulation *and fair conduct* of the proceedings before it;
 - ~~(5)~~ ~~[(b)]~~ *Appoint* ~~[Employ]~~ an executive director and *assistant executive directors and fix their compensation*;
 - ~~(6)~~ *Employ* any clerk or other assistants necessary for the proper performance of its work;
 - ~~(7)~~ *Appoint a general counsel and any assistant general counsel as it deems necessary, and fix their compensation*;
 - ~~(8)~~ *Appoint investigatory personnel, as it deems necessary, and fix their compensation*;
 - ~~(9)~~ *Appoint committees of licensees, as it deems necessary, to review issues before the board and make recommendations to the board*;
- ~~[(c)]~~ ~~Employ any legal assistants that it considers necessary~~;
- ~~(10)~~ ~~[(d)]~~ Make expenditures, *as it deems necessary*, for any purpose that it considers reasonably necessary for the proper performance of its duties, including *paying* the expenses of the board's delegates to national conventions of and membership dues to the National Council of *Examiners for Engineering and Surveying* ~~[Examiners]~~ or other affiliated national boards or societies; *and*
- ~~(11)~~ ~~[(e)]~~ Adopt and promulgate *by administrative regulation* a code of professional practice and conduct, which shall be *based upon generally recognized principles of professional ethical conduct and* binding upon persons *licensed* ~~[registered]~~ under this chapter, ~~and which may be amended from time to time~~. A ~~[The]~~ code of professional practice and conduct shall be made known to all *licensees* ~~[registrants]~~ and applicants and shall include, but not be limited to, the following objectives:
 - ~~(a)~~ ~~[(1)]~~ The protection of the public health, safety, and welfare;
 - ~~(b)~~ ~~[(2)]~~ The maintenance of standards of objectivity, truthfulness, and reliability in public statements;
 - ~~(c)~~ ~~[(3)]~~ The avoidance of conflicts of interest;
 - ~~(d)~~ ~~[(4)]~~ The prohibition of solicitation or acceptance of engineering or land surveying work on any basis other than qualifications for the work offered;
 - ~~(e)~~ ~~[(5)]~~ The prohibition of association with any person engaging in illegal or dishonest activities; and
 - ~~(f)~~ ~~[(6)]~~ The limitation of professional service to the area of competence of the *licensee*;
- ~~(12)~~ ~~[(f)]~~ ~~registrant~~ Adopt appropriate standards of practice;
- ~~(13)~~ ~~[(g)]~~ Bring, in its name, injunctive proceedings in the Franklin Circuit Court to enjoin any person, *business entity*, ~~[firm, association, corporation,]~~ or combination thereof in violation of KRS 322.020 *or Section 7 of this Act*; and

~~(14)(b)~~ Adopt a program for continuing education for its individual land surveyor licensees. No individual land surveyor licensee shall be permitted to renew his *or her* license unless the minimum annual continuing education requirements are met, in addition to any other requirement for renewal. The program for continuing education shall not exceed a total of eight (8) credit clock hours per year and shall not include testing or examination of the licensee in any manner.

Section 27. KRS 322.300 is amended to read as follows:

The board shall keep a record of its proceedings and a register of all applications for *licensure*~~[registration]~~. The register shall state *the following*:

- (1) ~~The~~ Name, age and residence of each applicant;
- (2) ~~The~~ Date of the application;
- (3) ~~The~~ Place of business of the applicant;
- (4) **Education**~~[His educational]~~ and other qualifications *of the applicant*;
- (5) Whether ~~or not~~ an examination was required;
- (6) Whether the applicant was rejected;
- (7) Whether *a license*~~[registration]~~ was granted;
- (8) ~~The~~ Date of the action of the board; and
- (9) Any other information that the board considers necessary.

Section 28. KRS 322.320 is amended to read as follows:

- (1) In carrying this chapter into effect the board, under the hand of its chairman *or executive director* and under its seal, may, *during the investigation or an administrative hearing procedure*, in cases involving the revocation of a *license*~~[registration]~~ or practicing or offering to practice without *a license*~~[registration]~~, subpoena witnesses and compel their attendance, and require the production of books, papers and documents. Any member may administer oaths to witnesses appearing before the board.
- (2) If any person refuses to obey any subpoena so issued, or refuses to testify or produce any books, papers or documents, the board may present its petition to any authority having jurisdiction, setting forth the facts. That authority shall, in a proper case, issue its subpoena to the person, requiring him to attend and testify or produce books, papers and documents considered necessary and pertinent by the board.
- (3) Board members *and agents and staff of the board* shall be held free of any personal liability as a result of board actions.

Section 29. KRS 322.330 is amended to read as follows:

The secretary-treasurer, *or any other officer or designee*~~[that board employee]~~ properly authorized by the board, shall:

- (1) Receive and account for all money collected under this chapter and pay it into the State Treasury; ~~and~~~~[-]~~
- (2) Publish *every two (2) years, and at other intervals as established by the board by promulgation of administrative regulations*,~~[- during July of each year,]~~ a roster~~[- or supplement thereto,]~~ showing the names and~~[- places of]~~ business *addresses* of all *professional*~~[registered]~~ engineers, *professional*~~[- and]~~ land surveyors, *and business entities holding permits to practice engineering or land surveying in this state*. Copies of the roster shall be *distributed*~~[mailed]~~ to each *professional*~~[registered]~~ engineer and *professional* land surveyor, filed with the Secretary of State, and *distributed or sold to the public*~~[furnished to the public upon request]~~.

Section 30. KRS 322.340 is amended to read as follows:

- (1) Each *professional engineer or professional land surveyor shall, upon licensure, obtain a seal or stamp of the design authorized by the board, bearing his or her name, license number, and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor."*

- (2) *The seal or stamp, signature, and the date shall be used to provide certification for all reports, specifications, drawings, and plans, if presented to a client or any public or governmental agency. Reproduction of original signatures shall be adequate to meet the requirements of this subsection.*
- (3) *No report, specification, drawing, or plan furnished on electronic media shall include, or have affixed thereto, an electronic reproduction of the stamp, seal, or signature.*
 - (a) *An original seal or stamp, signature, and the date shall be placed on a printed copy produced by electronic media for all reports, specifications, drawings, and plans.*
 - (b) *The copy produced by electronic media shall have the following inserted in lieu of an original seal or stamp, signature, and date: "This shall not be considered a certified document. This document, originally issued, sealed, and signed by (name of sealer), Kentucky Professional (Engineer or Land Surveyor), No. (License Number), on (date of sealing or stamping), shall not be used in lieu of a certified document."*
- (4) *The seal or stamp and signature shall be used by licensees only if the work being stamped was under the licensee's complete direction and control.*
- (5) *Every survey plat and physical description prepared by a professional land surveyor and submitted to a client or any public or governmental agency shall display the certification by the professional land surveyor under whose supervision the plat or description was prepared.*
- (6) *It shall be unlawful for a licensee to affix, or permit to be affixed, his or her seal, stamp, or signature to any document described in subsections (2), (3), or (5) of this section:*
 - (a) *After the expiration of a license; or*
 - (b) *For the purpose of aiding or abetting any other person to evade or attempt to evade any provisions of this chapter.*
- (7) *A professional engineer shall check and have complete dominion and control of the design and engineering work of any engineer not licensed to practice in this state. Complete dominion and control shall include possession of the sealed and signed reproducible construction documents with all supporting design calculations, indicating all changes in the design*~~registrant shall, when he is registered, obtain a seal of the design authorized by the board, bearing his name and the words, "Registered Professional Engineer", or "Registered Land Surveyor". Plans, specifications, plats and reports approved by a registrant shall be signed and dated by the registrant and stamped with the seal when filed with public authorities, and before the delivery thereof to any client during the life of the registration, but no person shall stamp, sign and date seal any document with the seal after the registration has expired or has been revoked, unless it has been renewed or reissued}.~~

Section 31. KRS 322.360 is amended to read as follows:

- (1) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving engineering, unless the plans, specifications and estimates have been prepared and the construction executed under the direct supervision of a *professional*~~registered~~ engineer or a licensed architect.
- (2) Subsection (1) of this section shall not apply to any public work, *including a highway or capital project under KRS 56.491, that involves only maintenance or repair of the facility. Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design*~~[in which the contemplated expenditure for the completed project does not exceed two thousand dollars (\$2,000), to the maintenance or repair of an existing state or county highway or to the construction, maintenance or repair of any capital construction project undertaken pursuant to KRS 56.491 the total cost of completion of which the Finance and Administration Cabinet has determined will not exceed twenty five thousand dollars (\$25,000)].~~

Section 32. KRS 322.370 is amended to read as follows:

This chapter shall not prevent a *professional*~~registered~~ engineer from carrying on any architectural practice incident to the practice of engineering.

Section 33. KRS 322.380 is amended to read as follows:

- (1) No person *without a license*~~[not registered]~~ under this chapter shall avoid or attempt to avoid this chapter by having a representative or employee seek engineering or land surveying work in his *or her* behalf.

- (2) No person shall act as a representative or employee in the type of activity prohibited by subsection (1) of this section.

Section 34. KRS 322.400 is amended to read as follows:

~~No~~~~It shall be unlawful for the~~ county clerk of any county, or any other public authority, ~~shall~~~~with whom the same may be required by law to be filed, to~~ accept for filing, file, or record any map, plat, survey, or other document related to the practice of land surveying, unless *it evidences certification by a*~~there is affixed thereto the personal seal and signature of the~~ *professional*~~registered~~ land surveyor by whom, or under whose personal supervision and direction, ~~the~~~~such~~ map, plat, survey, or other document was prepared.

Section 35. KRS 322.420 is amended to read as follows:

~~{(1) All applications for registration as a land surveyor shall be made upon forms to be provided by the board and shall be signed and sworn to by the applicant. In addition to such other information as the board may require, all applications shall contain a statement of the applicant's educational attainments and record of experience. References shall be furnished therein to not less than five (5) persons possessing direct personal knowledge of the experience and work done by the applicant, at least three (3) of whom shall be registered land surveyors. Applications shall be filed with the executive director of the board and shall be accompanied by an application fee, to be established by regulation of the board. In the event that the board shall, for good cause, deny the application, the fee accompanying the same shall be retained by the board to cover the cost of investigating and processing the same.~~

- ~~(2)~~ All fees paid to and collected by the board under the provisions of this section shall be deposited in a depository designated by the board and disbursed only at the direction of the board. The officer or employee of the board who shall be designated to collect and disburse the funds represented by such fees shall be required to execute a bond, with corporate surety, in an amount to be determined by the board and reasonably calculated to cover the aggregate of such fees for a period of one (1) year.

Section 36. KRS 322.450 is amended to read as follows:

The provisions of this chapter relating to the necessity of *licensure*~~{holding registration}~~ to engage in the practice of land surveying shall not apply to:

- (1) Any employee or employees of the Kentucky Department of Highways, or any other subdivision of the government of the Commonwealth of Kentucky, working under the direct supervision and control of a *professional*~~{qualified and registered civil}~~ engineer or *professional* land surveyor;
- (2) Any person or persons engaged in the practice of land surveying which is limited to the measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or of the State of Kentucky; or
- (3) Any employee or subordinate of a *professional land surveyor whose work is done while under the direct supervision of, and is verified by, the professional land surveyor*~~{person holding a valid land surveyor's registration under the provisions of KRS 322.010, 322.200, 322.230 to 322.250, 322.420 to 322.460, provided, however, that the work performed by such person does not include the preparation of any final maps, plats, or other documents relating to land surveying which might become the subject of public record, and providing that the work of such employee is performed under the direct supervision of, and verified by, his registered employer}~~.

Section 37. KRS 322.460 is amended to read as follows:

~~It shall be the duty of~~ The Attorney General of Kentucky~~{,} or {such of} his or her designee shall~~~~{assistants as he may designate, to}~~ act as legal *adviser*~~{advisers}~~ to the board and~~{to}~~ render~~{such}~~ legal assistance as the board may from time to time require. In addition~~{thereto}~~, the Attorney General of Kentucky, all Commonwealth's attorneys, and the county attorney of each county shall, upon request of the board, and without additional compensation~~{therefor}~~, lend their assistance to the enforcement of the provisions of *this chapter*~~{KRS 322.010, 322.200, 322.230 to 322.250, 322.420 to 322.460}~~ and the prosecution of any violations thereof. The board *shall*~~{may}~~ employ~~{such}~~ additional counsel as~~{in its discretion may be or become}~~ necessary to *effectively enforce the provisions of this chapter*~~{the effective enforcement of KRS 322.010, 322.200, 322.230 to 322.250, 322.420 to 322.460}~~, the cost of which shall be paid exclusively from funds of the board.

Section 38. KRS 322.470 is amended to read as follows:

As used in this section, "professional land surveyor" shall include the agents, the employees, and any personnel under the supervision of a professional land surveyor.

(1) A **professional**~~[registered]~~ land surveyor~~[, his agents, employees, and personnel under his supervision,]~~ may go on, over, and upon the lands of others ~~if~~^{when} necessary to perform surveys for the location of property corners, boundary lines, rights-of-way, and easements, and~~[, in so doing,]~~ may carry with them their customary equipment and vehicles.

(a) Entry under the right hereby granted shall not constitute trespass;~~[,]~~ and

(b) A **professional**~~[registered]~~ land surveyor~~[, his agents, employees, and personnel under his supervision]~~ shall not be liable to arrest or a civil action by reason of **this**~~[such]~~ entry.

(2) ~~[, however,]~~ Nothing in this section shall be construed as giving authority to a **professional**~~[registered]~~ land surveyor~~[, his agents, employees, or personnel under his supervision]~~ to destroy, injure, damage, or move anything on the lands of another without the written permission of the landowner; and nothing in this section shall be construed as removing civil liability for **these**~~[such]~~ damages.

~~(3)~~⁽²⁾ A **professional**~~[registered]~~ land surveyor~~[, his agents, employees, and personnel under his supervision]~~ shall make reasonable effort to notify adjoining landowners upon whose land it is necessary to enter.

~~(4)~~⁽³⁾ No owner or occupant of the land shall be liable for any injury or damage sustained by any person entering upon **his or her**~~[said]~~ land under the provisions of this section.

Section 39. KRS 322.550 is amended to read as follows:

If the drawings and specifications are signed by the authors~~[thereof]~~ with the true titles of their occupations as may be required by law, the following buildings and additions to buildings, classified by use group, shall require the services of a professional engineer or architect registered in **this state**~~[the Commonwealth of Kentucky]:~~

(1) Factory and industrial use group having a capacity of one hundred (100) persons or more;

(2) High hazard use group, regardless of capacity;

(3) Storage use group having a capacity of one hundred (100) persons or more; **and**

(4) **Miscellaneous use groups having a capacity of one hundred (100) persons or more.**

Section 40. KRS 322.990 is amended to read as follows:

Any person who violates any **provision**~~[provisions]~~ of this chapter shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or be imprisoned not more than three (3) months, or both.

Section 41. KRS 381.835 is amended to read as follows:

(1) The county clerk shall immediately set up the mechanics and methods by which recordation of a master deed or lease and of the individual units may be made. Provisions shall be made for the recordation of the individual units on subsequent resales, mortgages and other encumbrances, as is done with all other real estate recordation. The master deed or lease to which KRS 381.815 refers shall express the following particulars:

~~(a)~~⁽¹⁾ The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;

~~(b)~~⁽²⁾ The general description and the number of each unit, expressing its area, location and any other data necessary for its identification;

~~(c)~~⁽³⁾ The description of the general common elements of the building; and

~~(d)~~⁽⁴⁾ The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

~~(2)~~⁽⁵⁾ Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans of the building or buildings, showing the layout, location, unit numbers and dimensions of the units, stating the name of the property or that it has no name, and bearing the verified **certification by**~~[statement of]~~ a **licensed**~~[registered]~~ architect or professional engineer~~[certifying]~~ that it is an accurate copy of portions of the plans of the **building or buildings**~~[building(s)]~~ as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of

buildings, or, in the alternative, certifying that the plans fully and accurately depict the layout, location, unit numbers and dimensions of the units as built. If the plans do not include a verified statement *of a licensed* ~~by such~~ architect or *professional* engineer that ~~the~~ ~~such~~ plans fully and accurately depict the layout, location, unit numbers and dimensions of the units as built, there shall be recorded prior to the first conveyance of any unit an amendment to the declaration to which shall be attached a verified statement of a ~~registered architect or~~ professional *land surveyor* ~~engineer so~~ certifying ~~that~~ ~~as to~~ the plans ~~therefore~~ filed, or being filed simultaneously with ~~the~~ ~~such~~ amendment, *fully and accurately depict the layout, location, unit numbers, and dimensions of the units as built.* The plans shall be kept by the recording officer in a separate file for each property, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "condominium ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. ~~Correspondingly,~~ The record of the declaration ~~shall~~ *also* contain a reference to the file number of the floor plans of the building or buildings on the property affected ~~thereby~~.

Section 42. KRS 433.770 is amended to read as follows:

- (1) Any person who fraudulently and willfully removes, defaces, cuts down, or destroys a corner tree, *post*, ~~or~~ cornerstone, *or any monument erected to designate* ~~of~~ the boundary of this state, or of *any county or city, or the boundary* ~~survey~~ of any tract *or lot* of land, shall be guilty of a Class D felony *and shall cause the marker, at his or her own expense, to be re-established by a professional land surveyor.*
- (2) Any person who willfully and knowingly, but without a felonious intent, ~~breaks down, damages, or~~ removes, *defaces, cuts down, or destroys a tree, post, stone, or* any monument erected to designate the boundaries of this state or of any county or city, or the boundaries of any tract or lot of land, ~~or any tree, post, stone, or mark planted for that purpose,~~ shall *cause the marker, at his or her own expense, to be re-established by a professional land surveyor* ~~be guilty of a violation~~.

Section 43. KRS 353.590 is amended to read as follows:

- (1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.
- (2) Each application shall be accompanied by a specified fee as follows:
 - (a) The fee shall be three hundred dollars (\$300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.
 - (b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars (\$50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.
 - (c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended).
- (3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a *professional* land surveyor *in accordance with the provisions of KRS Chapter 322.* ~~When the location of the well is known to be underlain by coal bearing stratum, the plat shall be certified accurate and correct by both a land surveyor and an engineer registered in Kentucky. If any plat~~

~~submitted by an applicant is determined by the department to be materially inaccurate or incomplete, the department may require that a new plat be prepared and submitted either by a person approved by the director or an engineer registered in Kentucky. The department may further require that all future plats submitted by the applicant be prepared either by a person approved by the director or an engineer registered in Kentucky.]~~

- (5) When any person submits to the Department of Mines and Minerals an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall except as provided in this section, require from the well operator a bond in the sum of five hundred dollars (\$500) for a well to be drilled to a depth of five hundred feet (500') or less; one thousand dollars (\$1,000) for a well to be drilled to a depth between five hundred and one foot (501') and one thousand feet (1,000'); one thousand five hundred dollars (\$1,500) for a well to be drilled to a depth between one thousand and one foot (1,001') and one thousand five hundred feet (1,500'); two thousand dollars (\$2,000) for a well to be drilled to a depth between one thousand five hundred and one foot (1,501') and two thousand feet (2,000'); two thousand five hundred dollars (\$2,500) for a well to be drilled to a depth between two thousand and one foot (2,001') and two thousand five hundred feet (2,500'); three thousand dollars (\$3,000) for a well to be drilled to a depth between two thousand five hundred and one foot (2,501') and three thousand feet (3,000'); three thousand five hundred dollars (\$3,500) for a well to be drilled to a depth between three thousand and one foot (3,001') and three thousand five hundred feet (3,500'); four thousand dollars (\$4,000) for a well to be drilled to a depth between three thousand five hundred and one foot (3,501') and four thousand feet (4,000'); and five thousand dollars (\$5,000) for a well to be drilled to a depth of more than four thousand feet (4,000'). The bonds shall be made in favor of the Department of Mines and Minerals, conditioned that the wells upon abandonment shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified. An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well, and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized except pursuant to administrative regulations promulgated by the department. The commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand feet (4,000') if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established above. All bonds shall remain in effect until the plugging of the well is approved by the department, or the bond is released by the department. Any well operator in lieu of the bond may file with the department a blanket bond in a sum of ten thousand dollars (\$10,000), covering all wells drilled or to be drilled in the Commonwealth by the principal in the bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provision requiring an individual well bond. A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds, and a property bond may be executed by an operator who owns all of the surface and mineral rights of a tract proposed for drilling. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may also be accepted by the department. If an operator is required to post individual well bonds exceeding a total of five thousand dollars (\$5,000) or elects to post a blanket bond, the certificate of deposit shall be accepted by the department in lieu of that portion of the amount of the bonds exceeding five thousand dollars (\$5,000). The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth. A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (9) of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund. The bond amounts shall be applicable only to permits issued upon and after July 13, 1990. All bonds posted for permits issued prior to July 13, 1990, shall remain in full force and effect for the duration of the permits.
- (6) A successor to the well operator shall post bond and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.
- (7) If the requirements of subsection (5) of this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within the time limits set

by the department, *by administrative regulation*, or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations ~~or orders~~ of the department. If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.

- (8) A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director.
- (9) All sums received *under subsection (5) of this section or* through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.
- (10) Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.
- (11) For the purpose of this chapter, "water supply well" shall not include:
 - (a) Any well for a potable water supply for domestic use or for livestock; or
 - (b) Any water well used primarily for cooling purposes in an industrial process.

Section 44. KRS 45A.730 is amended to read as follows:

As used in KRS 45A.730 to 45A.750, unless the context requires otherwise:

- (1) "Architectural services" means any professional service involved in the practice of architecture as defined in KRS 323.010;
- (2) "Engineering services" means any professional service as defined in KRS 322.010~~(4) and (5)~~~~(3) and (4)~~;
- (3) "Firm" means any individual, firm, partnership, corporation, or other legal entity permitted by law to practice the profession of architecture or engineering and provide the services defined in subsections (1) and (2) of this section;
- (4) "Local public agency" shall have the same meaning given in KRS 45A.345;
- (5) "Project" means any capital improvement project, study, plan, survey, or new or existing program activity of a political subdivision that requires architectural or *professional* engineering services;
- (6) "Qualification statement" means federal form SF254 and any other supporting documents that present a firm's qualifications and performance data.

Section 45. KRS 376.075 is amended to read as follows:

- (1) Any *professional*~~licensed~~ engineer, licensed architect, licensed landscape architect, and *professional* land surveyor who performs professional services or services as defined in KRS 322.010~~(4)~~~~(3)~~ for *professional* engineers, KRS 323.010(3) for architects, KRS 323A.010(3) for landscape architects, and KRS 322.010~~(10)~~~~(5)~~ for *professional* land surveyors shall have a lien on the building, structure, land, or project on which the services were performed, to secure the amount of the charges for services with interest as provided in KRS 360.040 and costs.
- (2) The provisions of KRS 376.010(1) and (2) shall determine when a lien created under this section shall take precedence over a mortgage or other contract lien or bona fide conveyance for value without notice.
- (3) No person who has not contracted directly with the owner or his agent shall acquire a lien under this section.

- (4) Any lien provided for under this section shall be dissolved unless the claimant, within six (6) months after he ceases to provide services, files in the office of the county clerk of the county in which the property is situated a statement of the amount due the claimant, with all just credits and setoffs known to him, together with a description of the property intended to be covered by the lien sufficiently accurate to identify it, the name of the owner, if known, and whether the services were furnished by contract with the owner or with a contractor or architect. This statement shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf.
- (5) Any lien created under this section shall be dissolved unless an action is brought to enforce the lien within twelve (12) months from the day of filing the statement in the clerk's office as required by subsection (4) of this section. If the lienholder complies with all filing requirements under this section, and does so within the time fixed, his lien shall be valid and effective against any creditor of, or bona fide or other purchaser from, the owner of the property.
- (6) The provisions of this section shall in no way abridge or conflict with the provisions of KRS 376.210 which provide for liens on public improvements, and any potential lien or valid lien of *a professional*~~an~~ engineer, architect, landscape architect, or *professional* land surveyor on a public improvement shall be governed by KRS 376.210.

Section 46. The following KRS sections are repealed:

- 322.130 Form of registration.
- 322.140 Registration prima facie evidence of right to practice.
- 322.150 Expiration date of registration.
- 322.350 Prohibited practices -- Board to prefer charges.

Section 47. By January 1, 1999, the Governor shall appoint two (2) members of the State Board of Licensure for Professional Engineers and Professional Land Surveyors in a manner consistent with the requirements of Section 22 of this Act.

Section 48. Sections 1 to 46 of this Act take effect January 1, 1999.

Approved March 31, 1998

CHAPTER 215

(HB 289)

AN ACT relating to the affordable housing trust fund and making an appropriation therefor.

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

Section 1. KRS 154A.110 is amended to read as follows:

- (1) Proceeds of lottery prizes shall be subject to Kentucky state income tax. Any attachments, garnishments, or executions authorized and issued pursuant to statute shall also be withheld if served upon the process agent of the corporation. This section shall not apply to a retailer.
- (2) The board shall adopt rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, except that:
 - (a) No prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable. Any prize, or portion thereof, remaining unpaid at the death of a prize winner shall be paid to the estate of such deceased prize winner or to the trustee under a revocable living trust established by the deceased prize winner as settlor, provided that a copy of such a trust has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled.

- (b) No ticket shall knowingly be sold to any person under the age of eighteen (18), but this section does not prohibit the purchase of a ticket by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment to an adult member of the person's family or the legal guardian of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to the Uniform Transfers to Minors Act.
 - (c) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the corporation within applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with such additional specific rules and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved.
 - (d) No particular prize in any lottery game shall be paid more than once, and in the event of a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize.
 - (e) A holder of a winning cash ticket from a Kentucky lottery game shall claim a prize within three hundred sixty five (365) days (for a ticket issued before January 1, 1995), and within one hundred eighty (180) days (for a ticket issued on or after January 1, 1995), or for a multistate lottery game within one hundred eighty (180) days, after the drawing in which the prize was won. In any Kentucky lottery game in which the player may determine instantly if he has won or lost, he shall claim a prize within three hundred sixty five (365) days (for lottery games commenced or tickets printed or reprinted before January 1, 1995), and within one hundred eighty (180) days (for lottery games commenced or tickets printed or reprinted on or after January 1, 1995), or for a multistate lottery game within one hundred eighty (180) days, after the end of the lottery game as announced by the corporation. However, a holder of a pull-tab lottery ticket shall claim a prize within the time period and in the manner printed on the ticket. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.
 - (f) No prize shall be paid upon a ticket purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.
- (3) Any unclaimed prize money *may be retained by the corporation and added to the pool from which future prizes are to be awarded or used for special prize promotions, or may be appropriated by the General Assembly directly from the corporation for any public purpose. For fiscal years 1998-99 and 1999-00, any unclaimed prize money in excess of six million dollars (\$6,000,000) shall be transferred to the affordable housing trust fund established by KRS 198A.710* ~~[shall be added to the pool from which future prizes are to be awarded or used for special prize promotions].~~
- (4) The corporation is discharged of all liability upon payment of a prize.
 - (5) No ticket shall be purchased by and no prize shall be paid to any of the following persons:
 - (a) Any member of the board of directors, officers, or employees of the corporation;
 - (b) Any vendors or related entities, or any member of the board of directors, officers, employees of, partners in, or owners of any vendors or related entities to the vendors; or
 - (c) Any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any such person.

Approved March 31, 1998

CHAPTER 216

(HB 505)

AN ACT relating to equine drug testing.

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

Section 1. KRS 230.378 is amended to read as follows:

- (1) A receiving track may accept wagers only at the track where it is licensed to conduct its race meeting or conduct intertrack wagering. A receiving track may accept wagers through a telephone account wagering system. Wagers at a receiving track, simulcast facility, or on telephone account wagering shall form a common pool with wagers at a host track. This common pool requirement shall not apply to wagers made in connection with interstate simulcasting pursuant to KRS 230.3771; however, common pools shall be encouraged.
- (2) Except as provided in KRS 230.3771(2), the commission of a receiving track, simulcast facility, or on telephone account wagering shall be the same as the commission of the host track as determined in KRS 138.515 or 230.750.
- (3) In the absence of a valid contract with a horsemen's organization, the commission of a receiving track, after deduction of applicable taxes and other applicable deductions, shall be split as follows: twenty-two percent (22%) to the host track, twenty-two percent (22%) to the purse program at the host track, twenty-two percent (22%) to the receiving track and twenty-two percent (22%) to the purse program at the receiving track. Twelve percent (12%) of the commission shall be allocated evenly between the host track and the receiving track to cover the cost of simulcasting, unless otherwise agreed to by contract.
- (4) The deduction for the backside improvement fund, as provided for in KRS 138.515(4) ~~and the deduction for equine drug research provided for in KRS 230.265(3),~~ shall not apply to the commission or pari-mutuel tax of a receiving track or telephone account wagering.
- (5) A receiving track shall be exempt from the admissions tax levied in KRS 138.480 and from any license fee imposed by statute or regulation by the commission.

Section 2. KRS 230.265 is amended to read as follows:

- (1) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the commission on the conduct of equine drug research and testing commissioned by the Kentucky Racing Commission. The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) veterinarian from a list of three (3) submitted by the Kentucky Association of Equine Veterinarians, one (1) horseman from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association, one (1) pharmacologist from a list of three (3) submitted by the University of Kentucky, one (1) thoroughbred breeder from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc., one (1) legislator from a list of three (3) submitted by the Legislative Research Commission, one (1) representative of a licensed racing association chosen by the Governor, one (1) member of the harness racing industry from a list of three (3) submitted by the chairman of the Kentucky Racing Commission, one (1) member from a list of three (3) submitted by the Kentucky Harness Horsemen's Association, and one (1) member of the Kentucky Racing Commission, from a list of three (3) submitted by the chairman of the Kentucky Racing Commission, to serve as chairman. The council shall meet at the call of the chairman, a majority of the council, or at the request of the commission. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.
- (2) The Kentucky Equine Drug Research Council shall review equine drug research and testing research being conducted at the University of Kentucky or with state funds and shall review and report to the commission on drug research and testing research being conducted elsewhere. The council shall advise the commission and make recommendations for establishing an effective drug regulatory policy for Kentucky racing. In addition, the council shall report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.
- (3) The commission shall receive one-tenth of one percent (0.1%) of the total amount wagered ***and subject to the pari-mutuel tax levied in KRS 138.510. This money shall be*** ~~on live racing in Kentucky~~ deducted from the pari-mutuel tax levied in KRS 138.510 ***and shall*** ~~to~~ be used in financing drug research and testing research in Kentucky, ***and*** ~~which~~ shall be in addition to any funds appropriated to the commission for ***these*** ~~such~~ purposes in the executive budget.

Approved March 31, 1998

CHAPTER 217

(HB 526)

AN ACT relating to the relocation of cities in counties with cities of the first class.

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

Section 1. KRS 81.380 is amended to read as follows:

- (1) Any city, located in a county containing a city of the first class, which is ***located within an area which is adversely affected by a public project that has been initiated by a city of the first class, or by action of a joint agency of a city of the first class and the county, after June 30, 1998, or upon the expiration of the initial twelve (12) year term provided in KRS 79.310(2)*** of a cooperative compact which is in effect in the county pursuant to KRS 79.310 to 79.330, may by ordinance relocate the corporate boundaries of the city to an unincorporated area of the county. The ordinance shall set out by metes and bounds that unincorporated area of the county where the city will be relocated. The area designated for relocation shall not exceed the acreage ***within the then existing boundaries*** ~~[of the original location]~~ of the relocating city.
- (2) All financial assets and legal obligations of the city shall not be altered or interrupted by a relocation.
- (3) A city of the first class shall relinquish all priority rights ***or any rights pursuant to the terms of a cooperative compact*** for annexation to that unincorporated area which is designated for the relocation of a city as provided for in subsection (1) of this section. Any priority rights ***or any rights pursuant to the terms of a cooperative compact*** for annexation which are relinquished for the relocation of a city shall then be attached in the name of the city of the first class to that area which has been abandoned by the relocating city ***pursuant to subsection (5) of this section. The relocating city shall forward a copy of the ordinance adopted pursuant to subsection (1) of this section to the mayor of the city of the first class and the county judge/executive of the county.***
- (4) The right of a city to relocate is in no way meant to amend any provision of the statutes which govern the formation and operation of a cooperative compact created pursuant to KRS 79.310 to 79.330.
- (5) Upon the relocation of a city, the city clerk shall forward to the Secretary of State within one (1) year from the date of the relocation, a document listing the name of the city, the date of the relocation, the present classification of the city, and ***a certified copy of the ordinance adopted pursuant to subsection (1) of this section*** ~~[the boundaries of the city]~~. If a city fails to comply with this section, it shall be barred from receiving state moneys until the city complies.
- (6) ***Until ninety percent (90%) of the residential properties located within the relocating city's boundaries are acquired for the public project, the boundaries of the city shall include both the old city site and the area designated for the location of the new site of the city.***
- (7) ***After ninety percent (90%) of the residential properties have been acquired as set forth in subsection (6) of this section, the boundaries of the city shall no longer include the area where the city existed before relocation.***

Approved March 31, 1998

CHAPTER 218

(HB 545)

AN ACT relating to utilities.

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

Section 1. KRS 278.210 is amended to read as follows:

- (1) The commission may provide instruments for, and carry on, the examination and testing of any meter or appliance used to measure the product or service of any utility, and the examination and testing of any instrument used by a utility to test the accuracy of any meter or appliance used to measure its products or services.

- (2) Any patron of a utility may, upon request and payment of the fees fixed by the commission, have a test made of the meter or appliance by which his use of the products or services of the utility is measured.
- (3) The commission may establish reasonable fees for testing such meters and appliances at the request of a patron of a utility. If the appliance is found to be commercially defective or inaccurate to the extent of more than two percent (2%) to the disadvantage of the patron, the fees shall be repaid to the patron and paid by the utility.
- (4) *If a utility demonstrates through sample testing that no statistically significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that which is determined by the utility to be cost effective. This determination by the utility shall be based on established scientific, engineering, and economic methods and shall be documented in an application properly filed with the commission.*

Approved March 31, 1998

CHAPTER 219

(HB 237)

AN ACT relating to the Kentucky School for the Blind and School for the Deaf.

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

Section 1. KRS 167.015 is amended to read as follows:

- (1) The Kentucky School for the Blind at Louisville, Kentucky, and the Kentucky School for the Deaf at Danville, Kentucky, shall be managed and controlled by the Kentucky Board of Education. The board shall have possession and the responsibility and authority for preservation, repair, and control of the buildings and grounds belonging to the state and dedicated to the schools. The board may, except as provided in KRS 45A.045, sell any property held for the use and benefit of the schools, and purchase other property deemed by the board to be suitably and conveniently located, and erect buildings necessary for carrying out the purposes of the schools. The board may **promulgate administrative**~~adopt rules and~~ regulations to carry into effect its powers with respect to the schools, and may require from the superintendent of the schools any reports and information it desires as to the condition of the schools.
- (2) *In addition to being recognized as a school providing quality, full-time educational services to students who are deaf and hard of hearing or who are blind or visually impaired, the Kentucky School for the Deaf and the Kentucky School for the Blind shall also serve as the Statewide Educational Resource Center on Deafness and as the Statewide Educational Resource Center on Blindness, respectively. They shall provide technical assistance and resource services to local school districts, parents, and other agencies or organizations serving children and youth who are deaf and hard of hearing or who are blind or visually impaired. Depending on the availability of funding, services may include, but not be limited to, assessments; consultations on curriculum; language and communication; orientation and mobility; classroom devices, including telecommunication devices for the deaf and hard of hearing and Braille for the blind and visually impaired; assistive technology; professional development; and program development and implementation. The Kentucky School for the Deaf and the Kentucky School for the Blind may enter into collaborative agreements with local school districts and other public and private agencies to provide for regional or satellite programs for children and youth who are deaf and hard of hearing or who are blind or visually impaired.*

Approved March 31, 1998

CHAPTER 220

(HB 27)

AN ACT relating to capital punishment and declaring an emergency.

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

Section 1. KRS 431.220 is amended to read as follows:

- (1) (a) *Except as provided in paragraph (b) of this subsection, every death sentence shall be executed by continuous intravenous injection of a substance or combination of substances sufficient to cause death. The lethal injection shall continue until the prisoner is dead.*
- (b) *Prisoners who receive a death sentence prior to the effective date of this Act shall choose the method of execution described in paragraph (a) of this subsection or the method of execution known as electrocution, which shall consist of passing through the prisoner's body a current of electricity of sufficient intensity to cause death as quickly as possible. The application of the current shall continue until the prisoner is dead. If the prisoner refuses to make a choice at least twenty (20) days before the scheduled execution, the method shall be by lethal injection.* ~~Every death sentence shall be executed by causing to pass through the body of the condemned a current of electricity of sufficient intensity to cause death as quickly as possible. The application of the current shall be continued until the condemned is dead.~~
- (2) All executions of the death penalty by electrocution *or lethal injection* shall take place within the ~~confines~~~~walls~~ of the state penal institution designated by the Department of Corrections, and in an enclosure that will exclude public view thereof.
- (3) *No physician shall be involved in the conduct of an execution except to certify cause of death provided that the condemned is declared dead by another person.*

Section 2. KRS 431.240 is amended to read as follows:

- (1) Unless the execution is stayed *for any cause* ~~by due process of law or under authority of subsection (2) of this section~~, the warden of the ~~institution~~~~penitentiary~~ or his deputy shall proceed, on the day ~~and at the place~~ named in the judgment of conviction, *a governor's warrant, or an order of the court*, to cause the condemned person to be ~~executed~~~~electrocuted~~. The execution shall take place *at a time designated by the warden of the institution where the execution is to take place* ~~before sunrise~~ on the day designated in the judgment of conviction, *the governor's warrant, or an order of the court*.
- (2) If the condemned person is insane or pregnant with child on the day designated for the execution, the execution shall be suspended until the condemned is restored to sanity or is delivered of child. The execution shall then take place under the warrant of the Governor and at the time designated by him, unless stayed by due process of law. If execution is suspended on the ground of insanity, the commissioner of the Department of Corrections may transfer the condemned person to the state forensic psychiatric facility operated by the Department of Corrections until the time he is restored to sanity. Any administrative hearings authorized under authority of this section shall be conducted in accordance with KRS Chapter 13B.
- (3) If the condemned person escapes from custody and is recaptured after the expiration of the date fixed for the execution, the Governor, upon receiving written notice of the recapture from the warden of the ~~institution~~~~penitentiary~~, shall send his warrant of execution to the warden by special messenger and shall name therein the day of execution. The warden shall then proceed to the execution thereof according to the provisions of KRS 431.215 to 431.270.
- (4) When a judgment of death has not been executed on the day appointed therefor by the court, from any cause, the Governor, by a warrant under his hand and the seal of the Commonwealth, shall fix the day of the execution, which warrant shall be obeyed by the warden of the ~~institution~~~~penitentiary~~.

Section 3. KRS 431.250 is amended to read as follows:

The following persons, and no others, may attend an execution: The ~~executioner~~~~electrician~~ and the warden of the ~~institution~~~~penitentiary~~ and his deputy or deputies and guards; the sheriff of the county in which the condemned was convicted; the commissioner of the Department of Corrections and representatives of the Department of Corrections designated by him; the physician and chaplain of the ~~institution~~~~penitentiary~~; a clergyman and three (3) other persons selected by the condemned; *three (3) members of the victim's family designated by the commissioner from among the victim's spouse, adult children, parents, siblings, and grandparents; and* nine (9) representatives of the news media as follows: *one (1) representative from the daily newspaper with the largest circulation in the county where the execution will be conducted,* ~~one (1) representative from United Press International Wire Service,~~ *one (1) representative from Associated Press Wire Service, one (1) representative from Kentucky Network, Inc., three (3) representatives for radio and television media within the state, and three (3) representatives for newspapers within the state.* Use of audiovisual equipment by the representatives is prohibited during the execution. The Department of Corrections shall issue administrative regulations which govern media representation during the execution.

SECTION 4. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

If a court holds Section 1 of this Act unconstitutional, the prisoner shall be executed in the manner provided by Section 1 of this Act as that statute read before the effective date of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

This Act shall apply retroactively to all prisoners sentenced to death before the effective date of this Act.

Section 6. Whereas there are many condemned prisoners awaiting execution, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 31, 1998

CHAPTER 221

(HB 410)

AN ACT relating to warranties for new assistive devices.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context indicates otherwise:

- (1) *"Individual with disabilities" means any individual who is considered to have a mental or physical disability, impairment, or handicap for purposes of any other law of this state or of the United States, including any rules or regulations thereunder.*
- (2) *"Assistive device" means any item, device, piece of equipment, or product system or component thereof, including a demonstrator, that is designed and used to increase, maintain, or improve functional capabilities of individuals with disabilities in the areas of seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, or working. The term includes, but is not limited to:*
 - (a) *Manual wheelchairs;*
 - (b) *Motorized wheelchairs;*
 - (c) *Motorized scooters;*
 - (d) *Other aids that enhance the mobility of an individual;*
 - (e) *Hearing aids;*
 - (f) *Assistive listening devices;*
 - (g) *Other aids that enhance an individual's ability to hear or communicate;*
 - (h) *Voice-synthesized computer modules;*
 - (i) *Optical scanners;*
 - (j) *Talking software;*
 - (k) *Braille printers;*
 - (l) *Large print materials;*
 - (m) *Other devices that enhance an individual's ability to access print or communicate;*
 - (n) *Other devices such as environmental controls;*
 - (o) *Adaptive transportation aids;*
 - (p) *Communication boards; and*
 - (q) *Modified environments.*
- (3) *"Assistive device dealer" means a person who is in the business of selling new assistive devices.*

- (4) *"Assistive device lessor" means a person who leases new assistive devices to consumers, or who holds the lessor's rights, under a written lease.*
- (5) *"Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.*
- (6) *"Consumer" means any person, including a public agency or other private organization, who acquires an assistive device on behalf of or for the benefit of an individual with a disability who:*
- (a) *Purchases an assistive device from an assistive device manufacturer, its agent, or authorized dealer for purposes other than resale;*
 - (b) *Obtains or otherwise receives an assistive device for purposes other than resale, provided the transfer occurs before the expiration of an express warranty applicable to the assistive device;*
 - (c) *Possesses the right to enforce the express warranty; or*
 - (d) *Leases an assistive device from an authorized assistive device lessor under a written lease.*
- (7) *"Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.*
- (8) *"Early termination cost" means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease, and the return of an assistive device to the manufacturer. The term includes any penalty for prepayment under a finance arrangement.*
- (9) *"Early termination savings" means an expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease remaining after the early termination and the present value of that amount at the date of the early termination.*
- (10) *"Manufacturer" means a person who manufactures or assembles assistive devices including agents of that person, an importer, a distributor, a factory branch, distributor branch, and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer or an assistive device lessor.*
- (11) *"Nonconformity" means a specific condition or generic defect or malfunction, or a defect or condition of a component of the assistive device that substantially impairs the use, value, or safety of an assistive device, and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device, but does not include:*
- (a) *A condition of the device that is the result of abuse, neglect, unauthorized modification, or alteration of the assistive device by the consumer.*
 - (b) *A condition of the device that is the result of normal use which may be resolved through a fitting or other routine adjustment, proper preventative maintenance, or care in accordance with written instructions provided with the assistive device.*
- (12) *"Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive device:*
- (a) *The new assistive device has been subject to repair two (2) or more times, for the same nonconformity, by the manufacturer, its agent, or authorized assistive device dealer or lessor, and the nonconformity continues; or*
 - (b) *The assistive device is out of service for an aggregate of at least thirty (30) cumulative calendar days because of warranty nonconformities. The thirty (30) days shall begin upon the day the consumer first makes the assistive device available for repair to the manufacturer, its agent, or authorized dealer or lessor.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

- (1) *A manufacturer who sells or leases a new assistive device to a consumer, either directly or through an assistive device dealer or lessor, shall expressly warrant that the assistive device shall be free of any*

condition, defect, or malfunction which substantially impairs the use, value, or safety of the assistive device for a period of one (1) year after first possession of the assistive device by the consumer.

- (2) *If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.*
- (3) *Nothing in Sections 1 to 8 of this Act shall limit the ability of the manufacturer or any dealer or lessor from providing additional warranties on assistive devices nor limit or affect any other warranties applicable to assistive devices, whether implied or expressed.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer or lessor within one (1) year after first possession of the assistive device by the consumer, the manufacturer, its agent, or authorized dealer or lessor shall make repairs necessary to conform the assistive device to the warranty, whether or not the repairs are made after one (1) year from the date of first possession of the assistive device by the consumer. Repairs made under warranty shall be made at no charge to the consumer.

SECTION 4. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

- (1) *If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out, at the option of the consumer, the requirements under paragraph (a) or (b) of this subsection.*
 - (a) *To provide for refunds, at the request of the consumer, the manufacturer shall do one (1) of the following:*
 1. *Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as the interest may appear, the full purchase price including any finance charge paid by the consumer at the point of sale, plus collateral costs, less a reasonable allowance for use, except that in the case of hearing aids, the manufacturer's invoice price shall be refunded; or*
 2. *Accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus collateral costs, less a reasonable allowance for use.*
 - (b) *To receive a comparable new assistive device to that having the nonconformity or a refund, the consumer shall offer to transfer possession of the nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable assistive device or a refund. When the manufacturer provides the comparable new assistive device or the refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.*
- (2) *If, after a reasonable attempt to repair, the nonconformity is not repaired, an assistive device lessor shall receive a refund from the manufacturer. To receive a refund, the assistive device lessor shall offer to transfer possession of a nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.*
- (3) *Under this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date, if the lease sets forth that value, less the assistive device lessor's early termination savings.*
- (4) *Under this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount paid by the consumer under a purchase or for which the consumer is obligated under a written lease by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825), which is the number of days in a five (5) year period, and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.*

- (5) *No person may enforce the lease against the consumer after the consumer receives a refund.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

No assistive device returned by a consumer or assistive device lessor in this state or returned in another state as a result of a nonconformity to a warranty may be sold or leased in this state unless full disclosure of the reason for return is made to a prospective buyer or lessee.

SECTION 6. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

- (1) *Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable, and at least one (1) of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a comparable replacement assistive device or a rental assistive device reimbursement to pay for the cost incurred by the consumer for renting a comparable replacement assistive device. The applicable conditions are as follows:*
- (a) *The repair period exceeds ten (10) working days, including the day on which the device is tendered to the dealer for repair; or*
- (b) *The defect, malfunction, or nonconformity is the same one for which the assistive device has been tendered to the dealer for repair on at least two (2) previous occasions.*
- (2) *This section applies for the period of the manufacturer's express warranty or the period prescribed in subsection (2) of Section 2, whichever is greater, whether or not the repairs extend beyond that period.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of Sections 1 to 8 of this Act in a court of appropriate jurisdiction in the county where the consumer resides or where the manufacturer resides or has its principal place of business. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief the court determines is appropriate.*
- (2) *Sections 1 to 8 of this Act shall not be construed to limit rights or remedies available to the consumer under any other law, and the remedies provided under Sections 1 to 8 of this Act are inclusive and in addition to any other remedies provided by law.*
- (3) *Any agreement entered into by a consumer which waives, limits, or disclaims the rights set forth in Sections 1 to 8 of this Act shall be void as contrary to public policy.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 8 of this Act may be cited as the "Kentucky New Assistive Device Warranty Act."

Approved April 1, 1998

CHAPTER 222

(HB 498)

AN ACT relating to forfeited mining reclamation bonds.

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

Section 1. KRS 350.131 is amended to read as follows:

- (1) When a bond for an interim or preinterim program permit was forfeited prior to July 15, 1988, by the cabinet, and the entire forfeited amount is not necessary to establish proper drainage and revegetation on the permit area for which it was submitted, the cabinet may use any remaining funds to supplement reclamation of other forfeited or released permit areas, if the other permit areas endanger public health and safety.
- (2) When the bond for an interim or permanent program permit is forfeited by the cabinet, and the entire forfeited amount is more than the amount necessary to complete reclamation, the unused funds *less any interest that has*

accrued shall be returned to the party from whom they were collected, subject to the cabinet's right to attach or set off the proceeds under other state laws.

- (3) Notwithstanding any other provisions of this chapter or the provisions of KRS Chapter 45A, when the bond, other than a surety bond or bond secured by a letter of credit, for an interim or permanent program permit is forfeited and collected by the cabinet, and a person subsequently applies for a permit overlapping all or part of the disturbed area of the permit area for which the bond is forfeited, the cabinet may negotiate and enter into a contract with the applicant to reclaim the disturbed area overlapped in exchange for all or part of the forfeited bond funds held by the cabinet, if requested by the applicant. If the applicant proposes to overlap only a part of the disturbed area the cabinet may enter into a contract with the applicant to reclaim the overlapped part of the disturbed area if the cabinet has retained a portion of the forfeited bond that is sufficient for the cabinet to reclaim the part of the disturbed area that is not overlapped. Any applicant under this subsection shall not be eligible for the benefits available under this subsection if the applicant has any ownership or control connection with the permittee or operator with respect to which the bond was forfeited. The amount of forfeited bond funds the cabinet may pay to the applicant shall be determined by the cabinet based upon the estimated cost for the cabinet to reclaim the disturbed area overlapped to the reclamation standards applicable to the original permit, but not to exceed the forfeited bond amount collected and held by the cabinet. Payments under this subsection shall be made only after release of the bond pursuant to KRS 350.093(4)(a) for those areas of the overlapping permit that are covered by the contract. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any disturbances created in connection with the overlapping permit on areas that were disturbed under the forfeited interim permit may be covered by a contract under this subsection and shall be reclaimed to permanent program standards. Areas where coal is not removed under the overlapping permit and the disturbances are for reclamation of the interim permit only shall be reclaimed to interim program standards. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any disturbances created in connection with the overlapping permit on areas that were not disturbed under the forfeited interim permit shall not be covered by a contract under this subsection and shall be reclaimed to permanent program standards. Nothing in this subsection shall be construed to exempt a person from the permitting, bonding, and reclamation requirements imposed in this chapter or to infringe upon the right of any surety to reclaim any permit or increment thereof to avoid bond forfeiture.

Section 2. KRS 350.139 is amended to read as follows:

- (1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the Natural Resources and Environmental Protection Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund **except as provided in subsection (1) of Section 3 of this Act**. All funds from the forfeiture of bonds shall be placed in the State Treasury **in an interest-bearing account** and credited to a special agency account. **The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in subsection (1) of Section 1 of this Act, forfeited bond funds**~~[As far as is practicable, this fund]~~ shall be expended upon the lands for which the bond was given. **The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.**
- (2) The State Treasurer shall on or before August 1 of each year transfer thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit for surface coal mining operations to the fiscal courts of the county in which the permitted operation is located for the general purposes of that fiscal court.

Section 3. KRS 350.990 is amended to read as follows:

- (1) Any permittee, person, or operator who violates any of the provisions of this chapter or **administrative regulations promulgated**~~[adopted]~~ pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order **issued**~~[promulgated]~~ pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars (\$5,000) for the violation, and an additional civil penalty of not more than five thousand dollars (\$5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. Any

person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each violation cited in the underlying notice of noncompliance issued therewith. No separate civil penalty shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the cabinet's Office of Legal Services. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars (\$800,000) in any fiscal year shall be deposited in the bond pool fund for purposes set forth in KRS 350.595 and **KRS 350.700 to 350.755 until the fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, after which excess money collected shall be deposited fifty percent (50%) to the bond pool fund and fifty percent (50%) to the supplemental fund established under subsection (1) of Section 2 of this Act, and used for the purposes of that section. If the bond pool fund falls below sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, all excess moneys shall be deposited in the bond pool fund until that fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study.** All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the bond pool fund.

- (2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred and fifty dollars (\$750) for each day during which the violation continues. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.
- (3) The cabinet's Office of Legal Services shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination ~~issued~~~~promulgated~~ pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.
- (4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order ~~issued~~~~promulgated~~ pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.

- (5) (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.
- (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- (6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars (\$25,000). Each day of continuing violation shall be deemed a separate violation.
- (7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.
- (8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.
- (9) When a corporate permittee violates any provision of this chapter or administrative regulation ~~promulgated~~^{issued} pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.
- (10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the commissioner of the Kentucky Department of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.
- (11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet's Division of Abandoned Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

Approved April 1, 1998

CHAPTER 223

(HB 51)

AN ACT relating to the approval of capital projects.

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

Section 1. The General Assembly hereby approves and authorizes the construction and operation of two (2) one hundred twenty (120) bed nursing homes, one in western Kentucky and the other in eastern Kentucky.

Approved April 1, 1998

CHAPTER 224

(HB 537)

AN ACT relating to court reporters.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

- (1) *Depositions taken in the Commonwealth that are to be used in its courts shall be taken before:*
- (a) *A hearing examiner;*
 - (b) *A judge, clerk, commissioner, or official reporter of a court;*
 - (c) *A notary public; or*
 - (d) *Before other persons and under other circumstances authorized by law.*
- (2) (a) *A deposition shall not be taken by a person who is:*
1. *A party to the action;*
 2. *A relative, employee, or attorney of one (1) of the parties;*
 3. *Someone with a financial interest in the action or its outcome; or*
 4. *A relative, employee, or attorney of someone with a financial interest in the action or its outcome. For the purposes of this subparagraph, "employee" or "relative" shall not include an employee or relative of the attorney of one of the parties.*
- (b) *For the purposes of paragraph (a) of this subsection, "employee" includes a person who has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may ultimately be responsible for payment to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.*
- (c) *If a deposition is taken by a person described in paragraph (a) of this subsection, then that deposition shall be void.*
- (3) *The provisions of subsections (1) and (2) of this section shall not apply to contracts for court reporting services for the courts, agencies, or instrumentalities of the United States or the Commonwealth.*
- (4) *Any person who takes a deposition in violation of subsection (2) of this section shall be guilty of a Class B misdemeanor.*

Approved April 1, 1998

CHAPTER 225

(SB 207)

AN ACT relating to underage drinking.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created the "Malt Beverage Educational Fund" which shall provide moneys on a matching basis for educational information and materials that deter or eliminate underage drinking. The fund shall consist of moneys generated from one percent (1%) of the excise tax collected from the sale and distribution*

of malt beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected from distributors of malt beverages under KRS 243.884.

- (2) *The "Malt Beverage Educational Fund" shall be established in the State Treasury as a trust and revolving account under KRS 45.253. Moneys in the account shall be distributed by the State Treasurer to the Malt Beverage Educational Corporation, a nonprofit organization that is organized under the laws of this state, upon the authorization of the secretary of the Cabinet for Human Resources. The moneys shall be awarded to the corporation solely to fund educational programs to deter or eliminate underage drinking.*
- (3) *The secretary of the Cabinet for Human Resources shall authorize that moneys from the fund be disbursed to the corporation upon the secretary's receipt of a certification from the corporation showing the moneys the corporation has received from malt beverage distributors and other private sources since the last certification. The moneys disbursed from the fund shall be equal to the contributions that the corporation has received from its members and other private sources during that period. The moneys in the fund shall be disbursed in accordance with a schedule established by the secretary, and shall be disbursed until the moneys in the fund are exhausted or until the moneys in the fund lapse in accordance with subsection (4) of this section, whichever comes first.*
- (4) *Moneys that are credited to the fund and not issued to the corporation shall lapse at the end of the fiscal year and shall be returned to the general fund.*
- (5) *As a condition of receiving the governmental funds, the corporation's board of directors shall include the following among its directors:*
 - (a) *The Governor or his or her designee;*
 - (b) *The Attorney General or his or her designee;*
 - (c) *The President of the Senate or his or her designee;*
 - (d) *The Speaker of the House or his or her designee;*
 - (e) *The secretary of the Cabinet for Human Resources or his or her designee; and*
 - (f) *The commissioner of the Department of Alcoholic Beverage Control or his or her designee.*
- (6) *All expenditures of moneys from the fund shall be approved by a majority of those persons set out in subsection (5)(a) to (f) of this section. If the moneys from the fund are not expended in their entirety, any moneys that remain unused by the corporation at the end of the fiscal year shall be returned to the general fund.*
- (7) *Any moneys from the fund that are not expended shall be returned to the general fund upon the dissolution of the corporation.*
- (8) *Any high school in the Commonwealth of Kentucky that was registered with the Department of Education as of July 1, 1997, may make an application to the Malt Beverage Education Corporation by February 28 of each year and shall be granted a minimum of five hundred dollars (\$500) annually from the funds contributed by the Malt Beverage Educational Fund for the single purpose of supporting "Project Graduation" events.*

Section 2. KRS 243.890 is amended to read as follows:

Except as provided in Section 1 of this Act, receipts derived from taxes assessed and collected under the provisions of this chapter shall be appropriated for general fund purposes.

Section 3. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by the 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsections (2), (3), and (5) of Section 1 of this Act shall be codified as the Cabinet for Health Services.

Approved April 1, 1998

CHAPTER 226

(HB 453)

AN ACT relating to emergency management.

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

SECTION 1. KRS CHAPTER 39A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The General Assembly realizes the Commonwealth is subject at all times to disaster or emergency occurrences which can range from crises affecting limited areas to widespread catastrophic events, and that response to these occurrences is a fundamental responsibility of elected government in the Commonwealth. It is the intent of the General Assembly to establish and to support a statewide comprehensive emergency management program for the Commonwealth, and through it an integrated emergency management system, in order to provide for adequate assessment and mitigation of, preparation for, response to, and recovery from, the threats to public safety and the harmful effects or destruction resulting from all major hazards, including but not limited to: flood, flash flood, tornado, blizzard, ice storm, snow storm, wind storm, hail storm, or other severe storms; drought, extremes of temperature, earthquake, landslides, or other natural hazards; fire, forest fire or other conflagration; enemy attack, threats to public safety and health involving nuclear, chemical, or biological agents or weapons; sabotage, riot, civil disorder or acts of terrorism, and other domestic or national security emergencies; explosion, power failure or energy shortages, major utility system failure, dam failure, building collapse, other infrastructure failures, transportation-related emergencies on, over, or through the highways, railways, air, land, and waters in the Commonwealth, emergencies caused by spill or release of hazardous materials or substances, mass-casualty or mass-fatality emergencies; other technological, biological, etiological, radiological, environmental, industrial, or agricultural hazards; or other disaster or emergency occurrences; or catastrophe; or other causes; and the potential, threatened, or impending occurrence of any of these events; and in order to protect life and property of the people of the Commonwealth, and to protect public peace, health, safety, and welfare, and the environment; and in order to ensure the continuity and effectiveness of government in time of emergency, disaster, or catastrophe in the Commonwealth, it is hereby declared to be necessary:

- (1) To create a Division of Emergency Management as the emergency management agency of state government and to authorize the creation of local emergency management agencies in the cities, counties, and urban-county or charter county governments of the Commonwealth;*
- (2) To confer upon the Governor, the county judge/executives of the counties, the mayors of the cities and urban-county governments of the Commonwealth, and the chief executive of other local governments the emergency powers provided in KRS Chapters 39A to 39F;*
- (3) To establish provisions for mutual aid among the cities, counties, and urban-county or charter county governments of the Commonwealth, with other states, and with the federal government with respect to the performance of disaster and emergency preparedness, response, recovery, and mitigation functions; and*
- (4) To authorize the establishment of a statewide comprehensive emergency management program and integrated emergency management system, the promulgation of orders or administrative regulations, and the taking of other steps necessary and appropriate to carry out the provisions of KRS Chapters 39A to 39F.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

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

- (1) "Adjutant General" means the executive head of the Department of Military Affairs vested with general direction and control authority for the department and the division of emergency management;*
- (2) "Catastrophe" means a disaster or series of concurrent disasters which adversely affect the entire Commonwealth of Kentucky or a major geographical portion thereof;*
- (3) "Comprehensive emergency management program" means the public safety program developed, organized, implemented, administered, maintained, and coordinated by the Division of Emergency Management and local emergency management agencies created pursuant to the provisions of KRS Chapters 39A to 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency, declared*

emergency, disaster, or catastrophe, or threat of any of those, as contemplated in Section 1 of this Act or as defined in this section;

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

SECTION 3. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The General Assembly recognizes that the rationale and purpose of the comprehensive emergency management program of the Commonwealth has evolved from a program for response to threats to national security, enemy attack, and other national defense needs, to a program for response to all hazards, but primarily, domestic hazards and threats including natural, man-made, technological, industrial, or environmental emergencies or disasters, for which civil government is primarily responsible. Because of major changes in the rationale and necessity for emergency management capabilities, as well as the urgent requirement for multi-agency participation and inter-

agency coordination to ensure timely, effective, and appropriate disaster and emergency response in the Commonwealth, and to otherwise modernize and improve the administration, effectiveness, and relevance of the comprehensive emergency management program for the contemporary needs of the citizens of the Commonwealth, the General Assembly declares:

- (1) *A Division of Emergency Management is hereby created as the emergency management agency of state government which shall develop the comprehensive emergency management program of the Commonwealth on behalf of the Governor, and in consultation with the cabinet secretaries of state government, other appropriate state agency heads, local elected chief executives, local emergency management directors, and local emergency planning committees, for the purpose of developing and enhancing comprehensive emergency management program policies, plans, or procedures to provide for a coordinated responsive, and integrated emergency management system in the Commonwealth;*
- (2) *The division may accept on behalf of the Commonwealth any grant, contribution, or fund, federal or otherwise, made to assist in meeting the costs of carrying out the provisions and purposes of KRS Chapters 39A to 39F, and fully comply with all funding requirements imposed by the receipt and use of the grant, contribution, or fund; and*
- (3) *The term "Division of Emergency Management" shall constitute and designate the official name of the emergency management agency of state government created pursuant to subsection (1) of this section and "Division of Emergency Management", in the exact order or form as specified in this subsection, shall not be utilized by or assigned to any other agency of state or local government, or other state or local entity, or any political subdivision of the Commonwealth to constitute or designate the official name of any such agency, entity, or political subdivision.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The following administrative bodies shall be attached to the division for administrative purposes:

- (1) *Governor's Earthquake Hazards and Safety Technical Advisory Panel; and*
- (2) *Kentucky Emergency Response Commission.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The Division of Emergency Management shall coordinate for the Governor all matters pertaining to the comprehensive emergency management program and disaster and emergency response of the Commonwealth. The division shall be the executive branch agency of state government having primary jurisdiction, responsibility, and authority for the planning and execution of disaster and emergency assessment, mitigation, preparedness, response, and recovery for the Commonwealth; the coordination of all disaster and emergency response by and between all state agencies, all agencies of city, county, and urban-county or charter county government, all local entities, and all political subdivisions of the Commonwealth for an emergency, declared emergency, disaster, or catastrophe as contemplated in Section 1, 2, or 3 of this Act; the coordination of, and liaison with, related or concerned federal government agencies, elected officials of other states, private organizations or private sector companies dealing with disaster and emergency response; the coordination of all recovery operations and mitigation initiatives subsequent to disasters or emergencies; and the coordination of all public information activities regarding state government disaster and emergency response operations.*
- (2) *The Division of Emergency Management shall have and exercise the following powers, authorities, and duties:*
 - (a) *To develop, administer, and maintain a statewide comprehensive emergency management program for the Commonwealth, and through it an integrated emergency management system for the disaster and emergency response of the Commonwealth, which shall be coordinated with the emergency management programs, and other related public safety, emergency response, mitigation, or disaster recovery programs, of all appropriate federal government agencies including the Federal Emergency Management Agency, the Department of Transportation, the Environmental Protection Agency, the Occupational Safety and Health Administration, the Department of Defense, the National Oceanic and Atmospheric Administration, the Department of Justice, the Bureau of Alcohol, Tobacco, and Firearms, the National Transportation Safety Board, the Chemical Safety and Hazard Investigation Board, the Army Corps of Engineers, the National Security Council, the Department of Health and Human Services, the Federal Railroad Administration, the U.S. Geological Survey, the Department*

of Energy, the Nuclear Regulatory Commission, the Department of Agriculture, the Department of Housing and Urban Development, the American Red Cross, the other states, and other appropriate public or private agencies, to the fullest appropriate extent;

- (b) To coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in the cities, counties, and urban-county or charter county governments of the Commonwealth to ensure that all such programs, agencies, and organizations are organized, administered, and operated as functional components of the integrated emergency management system of the Commonwealth;*
- (c) To develop and maintain a comprehensive, risk-based, all-hazards disaster and emergency response plan entitled "Kentucky Emergency Operations Plan," the provisions of which shall establish the organizational structure to be utilized by state government for managing disaster and emergency response, and set forth the policies, procedures, and guidelines for the coordination and execution of all disaster and emergency response for an emergency, declared emergency, disaster, or catastrophe in the Commonwealth. The Kentucky Emergency Operations Plan shall be submitted to the Governor for approval when the Governor assumes office following each gubernatorial election, or at other times as the director deems appropriate. The Governor shall provide written approval of the Kentucky Emergency Operations Plan through issuance of an executive order and the division shall file a copy of the executive order with the Legislative Research Commission. The Kentucky Emergency Operations Plan shall be the primary strategic disaster and emergency response planning component of the integrated emergency management system of the Commonwealth, and shall be utilized and followed by all state agencies, all local government agencies, all local public agencies or entities, and all other political subdivisions of the Commonwealth which may be involved in disaster and emergency response in the Commonwealth. The Kentucky Emergency Operations Plan shall be updated by the division not less than annually;*
- (d) To maintain and operate the State Emergency Operations Center facility, which shall be the official and primary state government twenty-four (24) hour warning point, communications, and command center, from which the Governor, cabinet secretaries, department heads, and other state agency officials can, at any time, rapidly, adequately, and effectively manage the disaster and emergency response of the Commonwealth. The State Emergency Operations Center facility shall be the primary state direction and control component of the integrated emergency management system of the Commonwealth for the coordination of all disaster and emergency response in the Commonwealth;*
- (e) To develop, monitor, and operate, on a twenty-four (24) hour per day basis, the appropriate alerting or warning systems, public safety telecommunications systems or radio networks, any state trunked, fiber, or interactive communication systems, computer, fax, other telecommunications or information networks and systems needed for communication and coordination with all necessary or appropriate federal, state, or local public safety, law enforcement, emergency management, or other disaster and emergency response agencies, and state or local dispatch centers in the Commonwealth, and other appropriate interests, and through these agencies and systems to receive or disseminate emergency information, or to receive timely notification of, and continual assessment of, all threatened or actual emergency incidents or disaster situations occurring anywhere in or near the Commonwealth;*
- (f) To immediately notify the Governor and the Adjutant General, in the event of any major emergency incidents or disaster occurrences, or the threatened or impending occurrence of any of these events, and to keep the Governor and the Adjutant General informed of all actions being taken in response to these events;*
- (g) To respond to the scenes of emergencies or disasters, or their threatened or impending occurrence and to directly and immediately investigate, analyze, and assess the nature and seriousness of these situations; to convene meetings, gather information, conduct briefings, and evaluate on-going emergency response activities; take actions to execute the appropriate provisions of the Kentucky Emergency Operations Plan; coordinate the establishment and operation of a state incident management system; establish or manage sub-state or area emergency operations centers, or on-scene command posts; and fully expedite and coordinate the disaster and emergency response of the Commonwealth;*
- (h) To establish and operate area field offices of the division, each office to be headed by an area manager, responsible for administering the policies, plans, programs, and duties of the division in*

specific geographic areas of the Commonwealth, including the coordination of comprehensive emergency management programs developed by the cities, counties, urban-county, or charter county governments in the areas;

- (i) *To provide funds to the cities, counties, and urban-county or charter county governments of the Commonwealth to support the development, administration, operation, and maintenance of local emergency management agencies created pursuant to KRS Chapters 39A to 39F;*
- (j) *To require the regular submission of program administration data, records, materials, reports, or documents from local emergency management agencies as may be necessary and sufficient to conduct performance reviews and assessments to ensure compliance with all state or federal funding and program requirements, and to ensure local program compatibility and consistency with the mission, goals, and objectives of the comprehensive emergency management program and integrated emergency management system of the Commonwealth;*
- (k) *To ascertain the requirements of the Commonwealth and its cities and counties for emergency resources and the necessities of life in the event of disaster or emergency; institute an emergency resource management plan and procure emergency supplies, materials, and equipment; and use or employ in time of emergency any of the property, services, and resources of state or local government in the Commonwealth, for the purposes set forth in KRS Chapters 39A to 39F;*
- (l) *To institute public information and education programs, emergency management training programs, and exercise programs to test and evaluate emergency operations plans and disaster and emergency response and recovery capabilities; and*
- (m) *To promulgate administrative regulations to carry out the provisions of KRS Chapters 39A to 39F.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The General Assembly recognizes that the nature and scope of the activities necessary to develop and to administer a statewide comprehensive emergency management program, together with an integrated emergency management system requires the full support, cooperation, and active participation of all cabinets, departments, divisions, offices, or agencies of state government, local elected officials, local public agencies or entities, special districts, political subdivisions of the Commonwealth, volunteer organizations, individual citizens, and the private sector in this Commonwealth. To provide effective executive leadership for a program area of such broad scope and to ensure the professional administration of the comprehensive emergency management program and integrated emergency management system of the Commonwealth, the General Assembly declares:

- (1) *The Division of Emergency Management shall be headed by a director recommended by the Adjutant General and appointed by the Governor; and*
- (2) *The director shall have the powers, rights, responsibilities, and authorities, as provided in KRS Chapters 39A to 39F, or other laws, and shall carry out all duties under the general direction of the Adjutant General of the Department of Military Affairs.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The director, with the approval of the Adjutant General, shall exercise the following powers, responsibilities, and duties:

- (1) *To represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the Commonwealth;*
- (2) *To coordinate the development of a statewide comprehensive emergency management program, and through it, an integrated emergency management system for the disaster and emergency response of the Commonwealth;*
- (3) *To promulgate administrative regulations and issue orders, directives, standards, rules, procedures, guidance, or recommended practices necessary to coordinate the development, administration, organization, operation, implementation, and maintenance of the statewide comprehensive emergency management program and the integrated emergency management system of the Commonwealth;*
- (4) *To coordinate the development of comprehensive emergency management programs by the cities, counties, and urban-county or charter county governments as functional components of the integrated emergency management system of the Commonwealth;*

- (5) *To supervise the development and maintenance of the Kentucky Emergency Operations Plan, and to review and give concurrence to local emergency operations plans required pursuant to KRS Chapters 39A to 39F;*
- (6) *To coordinate the comprehensive emergency management program of the Commonwealth with the emergency management or other emergency response-related programs of the federal government, and of other states, to the fullest appropriate extent;*
- (7) *To advise the Governor and the Adjutant General immediately of the occurrence or threatened or impending occurrence of any disaster or emergency, and to recommend to the Governor any emergency actions, written orders, emergency powers, or executive orders that the Governor should execute;*
- (8) *To serve as the Governor's primary liaison with local officials in the event of the occurrence, or threatened or impending occurrence, of any disaster or emergency in the cities, counties, urban-counties, or charter counties of the Commonwealth;*
- (9) *To take any other preparedness or response actions deemed necessary for adequate response to a disaster or emergency situation to include: requesting increased readiness activities by state or local agencies in advance of an actual disaster or emergency; requesting implementation of local emergency operations plans or the activation of local emergency operations centers; requesting reports from state or local agencies regarding emergency situations, damage assessments, or the taking of emergency response actions; and requesting the mobilization or deployment of any trained and equipped forces of state or local government for the disaster and emergency response purposes set forth in KRS Chapters 39A to 39F;*
- (10) *To request and utilize the personnel, equipment, services, and facilities of existing officers and agencies of the Commonwealth and of all political subdivisions and special districts. All these officers and agencies shall fully cooperate with and extend their resources to the director as requested to the extent that local public safety is not unreasonably compromised;*
- (11) *To employ measures and give directions to the state or local boards of health as necessary for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or with the findings or recommendations of the boards of health, because of conditions arising from disasters, emergency situations, national security emergencies, or the threat thereof;*
- (12) *To request and utilize the services of state and local law enforcement officers for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or any order of the Governor pertaining to disaster and emergency response;*
- (13) *On behalf of this Commonwealth, with the approval of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide, local, county, or city basis, or with other states or a province of a foreign country. The mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national guard personnel and resources while under the control of the state; health, medical, and related services; firefighting; rescue; search and rescue or recovery; urban search and rescue; hazardous materials response services, transportation and construction services and equipment; personnel necessary to provide or conduct these services and other supplies, equipment, facilities, personnel, and services as needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, search and rescue and police units and health units; and on the terms and conditions deemed necessary;*
- (14) *To sponsor and develop mutual aid plans and agreements among the urban-county or charter county governments, counties, cities, and other political subdivisions and special districts of the Commonwealth, similar to the mutual aid arrangements with other states referred to in subsection (13) of this section;*
- (15) *To procure motor vehicles, radio, and telecommunications equipment, protective clothing, safety equipment, and other necessary supplies and materials to meet the emergency response, operational, and administrative needs of the division;*
- (16) *To identify deficiencies existing in the emergency management program organization, facilities, and capabilities of the Commonwealth, including but not limited to: personnel and administrative resources; state, sub-state, area, or local emergency operations centers; mobile command posts; emergency telecommunications and computer systems; alerting and warning systems; stockpiles of critical resources; or any other necessary elements, and to recommend to the Adjutant General, for consideration by the Governor or the General Assembly or other appropriate funding authority, the administrative or*

operational funding requirements, and long range capital construction or improvement projects, needed to meet the emergency management infrastructure needs of the Commonwealth;

- (17) *To serve as the state coordinating officer and notify the Governor of the appropriations necessary to fund the expected emergency operational or response costs of the division, and the Commonwealth's share of the grants provided by PL 93-288, Title V, Federal Disaster Assistance Programs as amended by PL 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or successor Acts or Titles, and further, take action necessary to ensure entitlement to all other federal relief or assistance programs;*
- (18) *To cooperate with the President of the United States, the Federal Emergency Management Agency, and other appropriate federal offices and agencies, and the offices and agencies of other states in matters pertaining to the comprehensive emergency management program of the Commonwealth and nation; and in connection with these, to take any measures considered necessary to implement any request of the President and the appropriate federal offices and agencies, for any action requiring effective disaster and emergency response, including the direction or control and mobilization of disaster and emergency response forces; tests and exercises, warnings, and signals for drills or other emergency response activities and the mechanical devices to be used in connection with these; the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to a drill, emergency, declared emergency or disaster; public meetings or gatherings; and the evacuation and sheltering of the civilian population; and*
- (19) *To delegate any authority vested in the director under KRS Chapters 39A to 39F and to provide for the subdelegation of any such authority.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 9. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by Section 1, 2, or 3 of this Act, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:*
 - (a) *To enforce all laws, and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;*
 - (b) *To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;*
 - (c) *To seize, take, or condemn property for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:*
 - 1. *All means of transportation and communication;*
 - 2. *All stocks of fuel of whatever nature;*
 - 3. *Food, clothing, equipment, materials, medicines, and all supplies; and*
 - 4. *Facilities, including buildings and plants;*
 - (d) *To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;*
 - (e) *To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;*
 - (f) *To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in*

accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

- (g) *To declare curfews and establish their limits;*
 - (h) *To prohibit or limit the sale or consumption of goods or commodities for the duration of the emergency;*
 - (i) *To perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population; and*
 - (j) *To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth.*
- (2) *In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by Section 1, 2, or 3 of this Act, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:*
- (a) *To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;*
 - (b) *To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;*
 - (c) *To declare curfews and establish their limits;*
 - (d) *To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and*
 - (e) *To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

If property is taken for temporary use, pursuant to the provisions of this chapter, the Governor shall, within thirty (30) days of the taking, fix the amount of compensation to be paid for the property. If the property is returned to the owner in a damaged condition or is not returned to the owner, the Governor shall, within thirty (30) days after the taking, fix the amount of compensation to be paid for the damage or failure to return. When the Governor deems it advisable for the state to take title to property taken under this section, the owner shall be notified in writing by certified mail, return receipt requested, and a copy of the notice shall be filed with the Secretary of State.

SECTION 11. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

If the owner of any property seized, taken, or condemned pursuant to Section 10 of this Act refuses to accept as adequate the compensation fixed by the Governor, the owner may present a claim to the Board of Claims, which shall hear and determine it according to the provisions of KRS Chapter 44 and the administrative regulations of the board.

SECTION 12. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The owner of property seized, taken, or condemned may appeal from the award of the Board of Claims to the Circuit Court of the county of the owner's residence. The Rules of Civil Procedure shall, so far as applicable, govern the procedure on appeal. A trial de novo shall not be allowed unless the record on appeal is not sufficient to determine the matter from the record, but if the action is tried it shall be tried according to the practice prescribed for the trial of jury cases.*
- (2) *An appeal from the judgment of Circuit Court may be taken to the Court of Appeals.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *If the owner of property seized, taken, or condemned accepts as adequate the compensation fixed by the Governor, the owner shall file a statement of the amount of compensation from the Governor with the Finance and Administration Cabinet, which shall draw a warrant on the State Treasurer for the amount of the compensation in favor of the person entitled to payment.*
- (2) *If the compensation is determined by award of the Board of Claims or judgment of a court, as provided in Sections 10, 11, and 12 of this Act, a certified copy of the award or judgment shall be filed with the Finance and Administration Cabinet which shall draw a warrant on the State Treasurer for the amount of the award or judgment.*
- (3) *The State Treasurer shall pay the warrants out of any money in the Treasury not otherwise appropriated.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Emergency Operations Plan and local emergency operations plans shall include measures for, and the Governor for the state or portion thereof, the county judge/executive for a county other than an urban-county, or a portion thereof, and the mayor for a city or an urban-county or portion thereof, may issue written executive orders providing for:*
 - (a) *The control of traffic in order to provide for rapid and safe movement in evacuation over public highways and streets during any disaster or emergency;*
 - (b) *The control and alteration of speed limits and traffic regulations on public highways during any disaster or emergency; and*
 - (c) *The prohibition or limitation of use of motor vehicles on public highways during any disaster or emergency.*
- (2) *The Governor may extend the provisions of subsection (1) of this section to the public thoroughfares of any political subdivision of the Commonwealth.*
- (3) *The Governor may order agencies of state government and political subdivisions of the Commonwealth to take steps necessary to effectuate plans made or orders issued pursuant to this section.*
- (4) *During a declared emergency or disaster, the Governor, county judge/executive, or mayor, may, for their respective jurisdictions, place these plans in effect.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

For the purpose of making surveys and investigations and obtaining information which may be necessary to the operation or enforcement of KRS Chapters 39A to 39F, the Governor, or the director with the written approval of the Governor, may compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations. All officers, boards, commissions, and divisions of the state, the political subdivisions thereof, and special districts, having information which is the subject of the investigation, shall cooperate with and assist the Governor or the director in making the investigation and surveys.

SECTION 16. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any inconsistent provision of law, the Governor may, when it is found to be in the public interest:*
 - (a) *Authorize any division or agency of the state to lease or lend, on such terms and conditions as deemed necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government to the President of the United States, the chiefs of the Armed Forces, or to the Federal Emergency Management Agency;*

- (b) *Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state on such terms and conditions as may be deemed necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government, or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state; and*
 - (c) *Permit state employees to engage in disaster and emergency response activities, within or without the state, for the division, or for a local jurisdiction upon request of a local emergency management agency to the division. State employees assigned to or volunteering for this duty shall be considered as being employed by the agency by which they are regularly employed and shall continue to receive salary and benefits while engaging in disaster and emergency response work.*
- (2) *The permission of the Governor for the use of state employees in the manner specified in subsection (1)(c) of this section shall be presumed, and shall be automatic unless the Governor specifies otherwise with regard to the use of a specific employee or employees.*
 - (3) *The Chief Justice for the Court of Justice and the Director of the Legislative Research Commission, with regard to employees of their respective branches of government, may permit Court of Justice and legislative employees to engage in disaster and emergency services work under the same terms and conditions as specified in subsections (1) and (2) of this section.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The political subdivisions of the state and other agencies designated or appointed by the Governor may make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes, and to supplement the carrying out of the provisions of this chapter, if not inconsistent with any orders or administrative regulations promulgated by the Governor or by any state agency exercising a power delegated to it by the Governor.*
- (2) *All written orders and administrative regulations promulgated by the Governor, the director, or by any political subdivision or other agency authorized by KRS Chapters 39A to 39F to make orders and promulgate administrative regulations, shall have the full force of law, when, if issued by the Governor, the director, or any state agency, a copy is filed with the Legislative Research Commission, or, if promulgated by an agency or political subdivision of the state, when filed in the office of the clerk of that political subdivision or agency. All existing laws, ordinances, and administrative regulations inconsistent with the provisions of KRS Chapters 39A to 39F, or of any order or administrative regulation issued under the authority of KRS Chapters 39A to 39F, shall be suspended during the period of time and to the extent that the conflict exists.*
- (3) *The law enforcement authorities of the state and of its counties, urban-counties, charter counties, and cities shall enforce the written orders and administrative regulations issued pursuant to KRS Chapters 39A to 39F.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

A peace officer, when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in the officer's presence any order or administrative regulation made pursuant to this chapter, or KRS Chapter 39B, 39C, 39D, 39E, or 39F.

SECTION 19. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

When the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of disaster and emergency response, the state, acting through the Governor, or the political subdivision, acting through its chief executive or governing body, may accept the offer and upon acceptance the Governor of the state or chief executive or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, and subject to the terms of the offer.

SECTION 20. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

No person shall be employed or associated in any capacity in any disaster and emergency response organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act

against the United States. Each person who is appointed to serve in an organization for disaster and emergency response shall, before entering upon his or her duties, take an oath, in writing, before a person authorized to administer oaths in this Commonwealth, which shall be as follows:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this Commonwealth and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of emergency management director according to law;

And I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this state, have not fought a duel with deadly weapons within this state, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offended, so help me God."

SECTION 21. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *Each agency, board, or commission of state government, unless the requirement is waived, in writing, by the director, shall develop agency emergency operations procedures which are consistent with and which meet the requirements of the Kentucky Emergency Operations Plan. The agency emergency operations procedures shall be updated not less than yearly.*
- (2) *Each agency, board, or commission of state government shall take those measures necessary to ensure that it can continue to operate during times of disaster or emergency, that it can protect its vital records, and that it has designated at least four (4) persons, preferably by title, who may act for the agency, and for its major component operations, during an emergency or disaster if the primary person with the power to make necessary decisions is unavailable for any reason.*
- (3) *In carrying out the provisions of subsections (1) and (2) of this section, each agency, board, or commission of state government shall follow the general planning guidance of the division and the requirements of administrative regulations promulgated by the division.*
- (4) *Each agency, board, or commission of state government shall train its employees with regard to the contents of the agency emergency operations procedures, and shall give any additional training necessary to implement the procedures during times of emergency or disaster.*
- (5) *Each agency, board, or commission of state government shall, upon request of the director, send an employee of the agency with full authority to take any action on behalf of the agency to the State Emergency Operations Center, area offices of the division, state command posts or other designated location during periods of emergency or disaster.*
- (6) *As used in this section, agency, board, or commission means all agencies, unless the requirement is waived, in writing, by the director, listed in KRS 12.020, other state bodies created by executive order of the Governor, the Legislative Research Commission, and the Court of Justice and its agencies.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Emergency Operations Plan shall include procedures for one multi-risk, multi-agency, unified incident command or management system to be used by all state agencies responding to the scene of an emergency, declared emergency, disaster, or catastrophe, as contemplated by Section 1, 2, or 3 of this Act.*
- (2) *Local emergency operations plans shall include procedures for:*
 - (a) *An incident command or management system to be used by individual local agencies or departments when responding to the scene of day-to-day, routine emergency incidents; and*
 - (b) *One unified incident command or management system to be used by all local agencies or departments when responding to the scene of a multi-agency or multi-jurisdictional emergency, declared emergency, disaster, or catastrophe, as contemplated by Section 1, 2, or 3 of this Act.*
- (3) *All incident command or management system procedures required pursuant to subsections (1) or (2) of this section shall be based upon or utilize the five (5) functions of: command, operations, planning, logistics, and finance.*

SECTION 23. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The division shall maintain the State Emergency Operations Center and those alternate locations deemed necessary, and shall activate the State Emergency Operations Center when deemed necessary by the director, the Adjutant General, or the Governor.*
- (2) *Each cabinet of state government, and each independent agency of state government, and other organizations provided for in the Kentucky Emergency Operations Plan shall immediately send a designated person to the State Emergency Operations Center upon request of the director, during a time of emergency or disaster or the threatened or impending happening of such an incident. They shall remain at the State Emergency Operations Center until relieved and replaced, unless released by the director.*
- (3) *Persons representing agencies of state government or other organizations assigned to the State Emergency Operations Center during times of emergency or disaster or the threatened or impending happening thereof may obligate the funds, equipment, and personnel of the organization which they represent, and make decisions on behalf of the organization which they represent.*

SECTION 24. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of this Act, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:*
 - (a) *The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.*
 - (b) *When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.*
 - (c) *A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.*
 - (d) *A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.*
- (2) *Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection. This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any act of Congress.*
- (3) *Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any of its political*

divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any order or administrative regulation promulgated pursuant to the provisions of this chapter, or other precautionary measures enacted by any city of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.

- (4) *Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of malice or bad faith, even when those decisions are made rapidly in response to the exigencies of an emergency.*
- (5) *Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.*

SECTION 25. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The division may enter into agreements with other states with regard to mutual aid for routine provision of emergency management services or for mutual aid during times of emergency or disaster, or any combination of these.*
- (2) *Kentucky emergency management personnel, either working for the state or local government or affiliated with the state or a local government, paid or volunteer, shall, to the extent provided by the law of the host state, have the same rights and privileges as they have in Kentucky.*
- (3) *Emergency management personnel, either working for the state or a local government or affiliated with the state or a local government of another state, paid or volunteer, shall, to the extent provided by Kentucky law, have the same rights and privileges as do Kentucky emergency management personnel working for the state or local government or affiliated with the state or a local government, whether paid or volunteer. This provision shall not apply to the provision of peace officer services, unless approved in writing by the Governor, or the General Assembly, as appropriate for the specific incident.*
- (4) *Kentucky emergency management-provided workers' compensation shall apply to a state or local emergency management agency worker, paid or volunteer, or worker in an operating unit officially affiliated with the division, or worker in a local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of this Act, who is serving in another state pursuant to an agreement consummated under this section.*
- (5) *An emergency management worker from another state, paid or volunteer, who is working for or affiliated with the state emergency management agency and who is serving in Kentucky pursuant to an agreement consummated under this section may be accorded Kentucky emergency management workers' compensation coverage by action of the director.*

- (6) *The provisions of subsections (4) and (5) of this section shall not apply to hazardous materials emergency response operations defined in 29 C.F.R. 1910.120 which are above the first-responder operations level, on-scene incident commander level excluded.*
- (7) *An emergency management worker from another state, paid or volunteer, who is working for the state emergency management agency or a local emergency management agency or a worker in an organization affiliated with the state or local emergency management agency of another state who holds license or certification from the worker's state to practice a profession, or paraprofessional activity, or other activity for which a license or certification is required to practice that activity in Kentucky shall be, for the period of that work, under an agreement consummated pursuant to this chapter, considered as properly licensed or certified in Kentucky to perform the services granted by the worker's license or certification. The worker shall, however, while in Kentucky, be subject to discipline by the appropriate Kentucky licensing or certifying agency for acts of misconduct or negligence which are committed in Kentucky.*
- (8) *City, county, urban-county, or charter county emergency management agencies in Kentucky may make written agreements with similar local emergency management agencies in adjoining states if the agreements are submitted to the state emergency management agencies of both states and are approved in writing by the directors of both agencies. Agreements pursuant to this section shall be subject to the same rights and privileges as state agreements under this section, but shall be limited to two (2) years, unless renewed by submission of a new agreement for approval.*
- (9) *The provisions of this section shall be subject to the provisions of all applicable federal law.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *During the threatened or impending happening of a disaster or emergency, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resources to assist in the mitigation of the potential effects of the disaster or emergency, regardless of whether the use is on public or private property.*
- (2) *During the actual happening of and any part of the response phase of a disaster or emergency the Governor, the Adjutant General, or the Director, shall, when necessary or desirable, authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resource to assist in the operations of government, or the private sector, necessary to deal with the disaster or emergency, regardless of whether the use is on public or private property.*
- (3) *After the active or response phase of the disaster or emergency has passed and the recovery phase has begun, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, funds, or any other publicly owned or supported resources to assist in the recovery phase of the disaster or emergency, regardless of whether the use is on public or private property.*
- (4) *A formal declaration of disaster or emergency shall not be necessary to invoke the provisions of subsection (1) or (2) of this section.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 28. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The definitions and other provisions of this chapter shall apply to this chapter and to KRS Chapters 39B, 39C, 39D, 39E, and 39F unless the language or context of a particular statute requires otherwise.

SECTION 29. KRS CHAPTER 39B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *Each city, county, urban-county or charter county government of this Commonwealth shall create, support, and maintain a local emergency management agency, which shall serve the public safety interest of the local government within the territorial boundaries of the city or county where the agency is created. Each local emergency management agency shall develop, implement, and maintain a local comprehensive emergency management program, including a local emergency operations plan, in accordance with the provisions of KRS Chapters 39A to 39F. The local emergency management agency shall be an integral component of the statewide integrated emergency management system of this Commonwealth, and shall fully comply with all applicable provisions of KRS Chapters 39A to 39F, the comprehensive emergency*

management program requirements of the Commonwealth, the provisions of the Kentucky Emergency Operations Plan, and all administrative regulations promulgated by the Division of Emergency Management.

- (2) *Each county government, and the urban-county, charter county, or city governments located within the territorial boundaries of a county, are encouraged to jointly create a single, unified local emergency management agency to serve all local governments collectively, and therefore may, in lieu of creating individual and separate local agencies, jointly create a single, unified local emergency management agency, provided the agency and its program:*
 - (a) *Fully comply with all the provisions of KRS Chapters 39A to 39F;*
 - (b) *Comply with the Interlocal Cooperation Act or locally adopted memorandums of agreement, as necessary and appropriate; and*
 - (c) *Are determined to be in compliance with all requirements of KRS Chapters 39A to 39F by the director of the Division of Emergency Management.*
- (3) *The local emergency management agency shall be an organizational unit of the executive branch of city, county, and urban-county or charter county government and shall have primary jurisdiction, responsibility, and authority for all matters pertaining to the local comprehensive emergency management program and, under the general supervision of the local emergency management director, shall serve as a direct function of the office of county judge/executive or mayor. In accordance with the policies of the state-local finance officer, a separate emergency management agency fund account shall be designated and included in the city, county, and urban-county or charter county budget ledgers, and all financial matters of a local emergency management agency, involving funds provided through the Division of Emergency Management, shall be handled through the county, urban-county, or charter county treasury and financial system.*
- (4) *City, county, and urban-county or charter county governments may use the term "emergency management" in a manner or form appropriate to constitute and designate the official name of the local emergency management agency established pursuant to this chapter, except for any use of the term "Division of Emergency Management" specified to constitute and designate the official name of the state emergency management agency pursuant to Section 3 of this Act. The term "emergency management" may be used in a manner or form appropriate to constitute and designate the official name of a local emergency management council, or the statewide association of emergency management agencies or personnel, but shall not be utilized by, assigned to, or otherwise specified by any local unit, agency, or department, or any political subdivision of the Commonwealth in any manner or form to constitute or designate the official name of the local unit, agency, or department, or political subdivision, except as authorized in this subsection.*
- (5) *All local emergency management agencies or local disaster and emergency services organizations in the Commonwealth, and the local directors, and members of each, shall, for all purposes, be under the direction of the director of the division, and of the Governor when the latter deems that action necessary.*

SECTION 30. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

- (1) *The county judge/executive of each county, the mayor of each city or urban-county government, or the chief executive of other local government, within thirty (30) days of assuming office following their election, shall appoint a local emergency management director who meets all qualifications criteria pursuant to KRS Chapters 39A to 39F, and shall immediately notify the director of the Division of Emergency Management of the appointment.*
- (2) *In lieu of appointing a separate local emergency management director for each jurisdiction, the county judge/executive of a county and mayors of cities or urban-county governments, or the chief executive of other local government located within the territorial boundaries of the same county may jointly appoint a single local emergency management director who meets all the qualifications criteria pursuant to KRS Chapters 39A to 39F. It is the policy of the Division of Emergency Management to encourage and support the joint appointment of a single local director in each territorial county of the Commonwealth. The duly appointed local emergency management director shall direct, control, and manage all the affairs of the local emergency management agency and comprehensive emergency management program of the jurisdictions wherein appointed.*

- (3) *A local emergency management director appointed under the provisions of subsections (1) or (2) of this section shall serve at the pleasure of the appointing authority, but shall serve not longer than four (4) years without reappointment and, in addition to any local requirements, shall meet the qualification requirements listed in this subsection:*
- (a) *The local director shall be a high school graduate with an additional three (3) years of experience in business administration, government planning, industrial, or commercial planning, public safety, management of emergency services, or related community or governmental service. Management level experience may not be substituted for high school education. Education at an accredited college or university may be substituted for experience on a year-for-year basis.*
 - (b) *The local director shall be a resident of the Commonwealth of Kentucky and the county served.*
 - (c) *The local director shall hold no partisan elective office, nor file for, seek, or campaign for any partisan elective office while holding the position of local emergency management director.*
 - (d) *The local director shall be routinely available to respond to emergency scenes, command posts, or emergency operations centers to coordinate emergency response of all local public and private agencies and organizations; to perform necessary administrative, planning, and organizational duties; to complete and submit required reports, records, emergency operations plans, and documents; to attend required training; and attend meetings convened by the appointing authority or the area manager of the division.*
 1. *If the local director is also a full-time or part-time employee of the federal or state government, the local director shall have written authorization from the appropriate appointing authority to hold the position of local emergency management director and to fully comply with the provisions of paragraph (d) of this subsection. A copy of the written authorization shall be submitted to the division at the time of appointment.*
 2. *If the local director is also a full-time or part-time employee of a city, county, urban-county government or charter county government in another capacity, that government shall enact an official city or county order or ordinance specifying that the individual appointed as local emergency management director shall fully comply with the provisions of paragraph (d) of this subsection. The order or ordinance shall also specify that the individual, when performing the duties of local emergency management director, shall relinquish all authorities and responsibilities associated with any other governmental employment and shall indicate another person, by name or position, to assume those authorities and responsibilities until such time as the local director shall cease to function as local emergency management director. A copy of the enacted order or ordinance shall be submitted to the division at the time of appointment. The city, county, or urban-county government, or charter county government shall not seek reimbursement from the division for the local director's salary for any time spent in another capacity.*
 3. *If the local director is also a full-time or part-time employee in the private sector, the local director shall have a letter from each employer stating that the local director shall, without penalty or exception, be permitted to fully comply with the provisions of paragraph (d) of this subsection. A copy of the letter from each employer shall be submitted to the division at the time of appointment.*
 4. *If the local director is self-employed, the local director shall certify at the time of appointment, by letter to the director of the division, that the local director's schedule shall permit full compliance with the provisions of paragraph (d) of this subsection.*
- (4) *A local director whose salary has been reimbursed by the division prior to January 1, 1994, shall not be subject to the provisions of subsection (3)(a) of this section, so long as remaining continuously in that position for the appointing jurisdiction.*
- (5) *A local director whose salary is reimbursed in part or in full by the Division of Emergency Management pursuant to Sections 40 and 41 of this Act, shall also meet any other requirements of KRS Chapters 39A to 39F and any requirements which may be imposed by the Federal Emergency Management Agency, or its successor.*

SECTION 31. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

A local emergency management director, appointed pursuant to this chapter, shall have the following powers, authorities, rights, and duties:

- (1) To represent the county judge/executive or mayor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the county, urban-county, charter county, or the county and the cities therein, unless there is a local director appointed for a city in accordance with this chapter, who represents that city;*
- (2) To be the executive head and chief administrative officer of the local emergency management agency, and to direct, control, supervise, and manage, the development, preparation, organization, administration, operation, implementation, and maintenance of the comprehensive emergency management program of the county, urban-county government, charter county government, or the county and the cities therein, and to coordinate all local disaster and emergency response, unless there is a local director appointed for a city in accordance with this chapter, who represents that city;*
- (3) To develop and maintain a local emergency operations plan entitled "county emergency operations plan," or "city emergency operations plan," or "city/county emergency operations plan," as appropriate, the provisions of which shall establish the organizational structure to be utilized by local government to manage disaster and emergency response, and set forth the policies, procedures, and guidelines for the coordination of all disaster and emergency response in the county and all the cities therein for an emergency, declared emergency, disaster, or catastrophe. The local emergency operations plan shall be developed consistent with the appropriate provisions of the Kentucky emergency operations plan, the provisions of KRS Chapters 39A to 39F, planning guidance issued by the division, and administrative regulations promulgated by the division. The local emergency operations plan shall be officially adopted by signed executive order of the county judge/executive or mayor. The executive order shall be filed with the office of the clerk for the local jurisdiction and a copy placed in the local emergency operations plan. A copy of the local emergency operations plan, and all revisions or updates thereto, shall be submitted by the local director to the Division of Emergency Management for concurrence review and reference. The local emergency operations plan shall be a component of the integrated emergency management system of the Commonwealth, and subject to the Kentucky Emergency Operations Plan, shall be the primary local strategic planning document governing the coordination of all disaster and emergency response in the county, city, or the county and the cities therein, and shall be applicable to, utilized by, and adhered to by, all local emergency response departments, agencies, and officials of the local disaster and emergency services organization in the county and the cities therein. The local emergency operations plan shall be updated not less than annually;*
- (4) To establish and maintain a local disaster and emergency services organization in accordance with the local emergency operations plan, the Kentucky Emergency Operations Plan, and the provisions of Section 33 of this Act;*
- (5) To notify the county judge/executive, mayor, or executive authority of other local governments and the Division of Emergency Management immediately of the occurrence, or threatened or impending occurrence, of any emergency or disaster, and recommend any emergency actions which should be executed;*
- (6) To be the chief advisor to, and the primary on-scene representative of, the county judge/executive, mayor, or executive authority of other local governments in the event of occurrence of any emergency, declared emergency, disaster, or catastrophe within the local jurisdiction;*
- (7) (a) To respond and have full access to the scenes of an emergency, declared emergency, disaster, or catastrophe to immediately investigate, analyze, or assess the seriousness of all situations; to coordinate the establishment and operation of a local incident command or management system; to execute the local emergency operations plan, as appropriate; to activate the local emergency operations center or on-scene command post; to convene meetings, gather information, conduct briefings, and to notify the division of on-going response actions; and fully expedite and coordinate the disaster and emergency response of all local public and private agencies, or to have a staff assistant do so;*
 - (b) At a declared emergency or declared disaster, at the direction of the county judge executive or mayor, as appropriate, to take or direct immediate actions to protect public safety; however, this paragraph shall not*

preclude a local director from providing any assistance that he is requested to, and is able to, provide at any emergency.

- (8) *To act as an official representative of the division in emergency situations when specifically requested by the director;*
- (9) *To report directly to the county judge/executive, mayor, or executive authority of other local governments, act in an official policy-making capacity when carrying out the duties of local emergency management director, and exercise full signatory authority for execution of all contracts, agreements, or other official documents pertaining to the administration and operation of the local emergency management agency and program;*
- (10) *To direct or supervise all paid or volunteer emergency management staff assistants or other local emergency management agency workers, and all operating units or personnel officially appointed and affiliated with the local disaster and emergency services organization pursuant to Section 35 of this Act;*
- (11) *To prepare and submit regular or scheduled program activity reports to the area manager of the division and local chief executives;*
- (12) *To execute bond, if appropriate, in the amount determined by the appointing authorities;*
- (13) *Annually, by the first day of March, to prepare and submit a program budget request to the county judge/executive and mayor;*
- (14) *Annually, by the fifteenth day of July, to prepare and submit to the division a locally-approved, fiscal year program paper and budget request;*
- (15) *To perform all administrative, organizational, or operational tasks required by the provisions of this chapter, or administrative regulations, or program guidance pertaining thereto;*
- (16) *To be a registered member of the Kentucky Emergency Management Association or other professional emergency management organization; and*
- (17) *To carry out all other emergency management-related duties as required by KRS Chapters 39A to 39F, administrative regulations, or local orders or ordinances.*

SECTION 32. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

- (1) *The local director of each local emergency management agency in the Commonwealth may develop or cause to be developed mutual aid arrangements with special districts and other public and private agencies within this Commonwealth for reciprocal disaster and emergency response aid and assistance in case of disaster or other emergency too great to be dealt with unassisted. The arrangements shall be consistent with the Kentucky Emergency Operations Plan, the local emergency operations plan, and the comprehensive emergency management program of the Commonwealth, and in time of emergency it shall be the duty of each local disaster and emergency services organizational unit, including each special district, and each public or private agency, to render assistance in accordance with the provisions of these mutual aid arrangements.*
- (2) *The local director of each local emergency management agency in the Commonwealth may assist the division, acting on behalf of the Governor, in negotiation of reciprocal mutual aid agreements between the Commonwealth and other states, including foreign states or provinces, or their political subdivisions, and shall carry out the arrangements or any agreements relating to the local political subdivision.*

SECTION 33. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

- (1) *Each local emergency management director shall establish and maintain a local disaster and emergency services organization in accordance with a city or county or city/county emergency operations plan required pursuant to KRS Chapters 39A to 39F. The local disaster and emergency services organization shall be comprised of the following members and participants:*
 - (a) *The county judge/executive and mayors, or the chief executive of other local governments;*
 - (b) *Elected legislative officials of the county and cities;*
 - (c) *The local emergency management director and all local emergency management agency staff members and workers, or emergency management agency-supervised operating units or personnel;*

- (d) *All regular or volunteer public safety or emergency services department heads or agency chiefs in the cities or county;*
 - (e) *All regular or volunteer public safety or emergency services department or agency members in the cities or county;*
 - (f) *All districts, corporations, public agencies, groups, or political subdivisions of the state and special districts within the county or the cities thereof, which are organized under the laws of the Commonwealth to provide an emergency response service or related function in the interest of public safety; and*
 - (g) *All private sector personnel, agencies, organizations, companies, businesses, or individuals and citizens who agree to provide their assets, resources, talents, services, or supplies in aid to the local disaster and emergency services organization of the cities or county in accordance with the approved local emergency operations plan of the city, county, urban-county government, or charter county government.*
- (2) *The local disaster and emergency services organization shall have responsibility for the performance of all disaster and emergency response functions contemplated in Section 1, 2, or 3 of this Act and as listed or assigned in the city, county, or city/county emergency operations plan, except that the Division of Forestry of the Natural Resources and Environmental Protection Cabinet shall have primary responsibility for directing the implementation of all forest fire emergency responses consistent with KRS Chapter 149. Disaster and emergency response functions may be assigned within the local disaster and emergency services organization to existing agencies and organizations, public and private. It shall not be necessary for the local disaster and emergency services organization to create, provide, or maintain an additional or auxiliary capability for any existing function or service deemed adequate to local needs.*
- (3) *The local disaster and emergency services organization shall be the primary disaster and emergency response force of city, county, urban-county government, or charter county government and an organizational component of the integrated emergency management system of the Commonwealth. The local emergency management director shall have primary responsibility for the coordination of all disaster and emergency response of the local disaster and emergency services organization for an emergency, declared emergency, disaster, or catastrophe.*

SECTION 34. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

- (1) *The city or county or city/county emergency operations plan developed pursuant to the provisions of KRS Chapters 39A to 39F shall include adequate provisions or procedures to assess, mitigate, prepare for, respond to, and recover from all disaster or emergency incidents contemplated by Section 1, 2, or 3 of this Act and shall provide for all functions contemplated by these sections.*
- (2) *The local emergency operations plan shall be submitted by the local director to the county judge/executive, mayor, or chief executive of other local governments immediately following each regular election for these offices, for approval and adoption by the local chief executives through issuance of an executive order pursuant to the provisions of KRS Chapters 39A to 39F.*
- (3) *In the event of a conflict between a city emergency operations plan and a county emergency operations plan and decisions made thereunder:*
- (a) *The decision made pursuant to the county plan shall prevail if the incident, its consequences, or the threat thereof, extend beyond the boundaries of the city;*
 - (b) *The decision made pursuant to the city plan shall prevail if the incident, its consequences, or the threat of the incident, do not extend beyond the boundaries of the city; and*
 - (c) *The same precedence shall govern plans of urban-counties and charter counties.*

SECTION 35. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

Each city, county, urban-county government, or charter county government may:

- (1) *Through the county judge/executive of a county other than an urban-county government, mayor of an urban-county government, chief executive of other local governments, or mayor of a city, or their designees as provided by ordinance, declare in writing a state of emergency when required, and thereafter execute any emergency powers granted under this chapter to provide for adequate and appropriate response to any*

occurrence or situation or any impending event or situation resulting from any of the situations or events contemplated by Section 1, 2, or 3 of this Act;

- (2) *Appropriate and expend funds, make contracts, enact cost-recovery ordinances, obtain and distribute equipment, materials, and supplies for disaster and emergency response purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster or emergency; review or approve local emergency operations plans; and enact orders or ordinances pertaining to local emergency management programs in accordance with the policies and plans prescribed by the federal and state emergency management agencies and the provisions of KRS Chapters 39A to 39F;*
- (3) *Appoint, employ, remove, or provide, with or without compensation, staff assistants to the local emergency management director, and clerical, administrative, technical or other local emergency management agency staff personnel, and local emergency management agency-supervised operating units officially affiliated with the local disaster and emergency services organization by city or county order or ordinance including rescue squads, auxiliary fire, police, and medical personnel, urban search and rescue teams, severe weather spotters teams, damage assessment teams, amateur radio or communications personnel, or other emergency response groups, teams, or personnel, and other disaster and emergency response workers;*
- (4) *Establish a primary and one (1) or more secondary emergency operations centers or on-scene command posts to serve as official local government command posts during an emergency, declared emergency, disaster, or catastrophe;*
- (5) *Subject to the order of the Governor, or the chief executive of the county, urban-county government, charter county government, or city, to assign and make available for duty, the employees, property, or equipment of the county or city relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for disaster and emergency response purposes within or outside of the physical limits of the county, urban-county government, charter county government, or city;*
- (6) *In the event of a national emergency or state of declared emergency or declared disaster or catastrophe, as provided in Section 9 of this Act, waive procedures and formalities otherwise required by the law pertaining to: the performance of public work; entering into contracts; the incurring of obligations; the employment of permanent and temporary workers; the utilization of volunteer workers; the rental of equipment; the purchase and distribution, with or without compensation, of supplies, materials, and facilities; the appropriation and expenditure of public funds; and the demolition and removal of damaged public and private structures; and*
- (7) *Confer or authorize the conferring upon members of the auxiliary police the powers of peace officers, subject to the provisions of KRS 61.300, and any other restrictions imposed by the appointing authority.*

SECTION 36. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

When the employees of any county, urban-county, charter county, or city are rendering outside aid pursuant to the authority contained in this chapter, the employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they are normally employed.

SECTION 37. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

- (1) *The city, county, urban-county government or charter county government, in which any equipment is used pursuant to this chapter shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for loss, damage, or expense shall be allowed unless, within sixty (60) days after it is sustained or incurred, an itemized written notice of the claim under oath is served by mail or otherwise upon the chief fiscal officer of the county, urban-county, charter county, or city where the equipment was used. The county, urban-county, charter county, or city which is aided pursuant to this chapter shall also reimburse the county, urban-county, charter county, or city furnishing the aid for the compensation paid to employees furnished under this chapter during the time of the rendition of the aid, and shall defray the actual traveling and maintenance expenses of the employees while they are rendering the aid. Reimbursement shall include any amounts paid or due to compensation due to personal injury or death while employees are engaged in rendering aid. The term "employee" as used in this section shall mean, and the provisions of the section shall apply with equal effect to, paid, volunteer, or auxiliary employees, and other local emergency management agency or disaster and emergency response workers.*
- (2) *The rights, privileges, and obligations set out in this section shall also apply if aid is rendered outside the Commonwealth. Payment or reimbursement in this case shall be made by the state or political subdivision*

receiving the aid pursuant to a reciprocal mutual aid agreement or compact with another state or by the federal government.

SECTION 38. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

The chief executive or governing body of each political subdivision of the state may:

- (1) *Enter into a contract or lease with the state, or accept any loan, or employ personnel, and the political subdivision may equip, maintain, utilize, and operate any property and employ necessary personnel therefor in accordance with the purposes for which the contract is executed; and*
- (2) *Do all things and perform all acts deemed necessary to effectuate the purpose for which the contract was entered into in accordance with the Kentucky Emergency Operations Plan.*

SECTION 39. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 40. KRS CHAPTER 39C IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

In order to develop and maintain effective local emergency management agencies, and comprehensive emergency management programs and related activities, it is declared to be the policy of the Commonwealth of Kentucky to encourage and assist the counties, cities, urban-county governments or charter county governments of the Commonwealth by authorizing, and there is hereby authorized, the expenditure of supplementary state funds for local emergency management agencies which are created, administered, operated, and maintained pursuant to KRS Chapters 39A to 39F, and are integral components of the integrated emergency management system of this Commonwealth.

SECTION 41. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Supplementary state funds appropriated to the division shall be allocated by the division to local emergency management agencies on a reimbursement basis in amounts not to exceed fifty percent (50%) of the total local funds expended by the local agencies in any given year for the institution, administration, or support of the comprehensive emergency management programs of the city, county, urban-county government or charter county government.

SECTION 42. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

The purpose of the supplementary state fund established in Sections 40 and 41 of this Act is to:

- (1) *Assist local emergency management agencies established pursuant to KRS Chapters 39A to 39F to develop adequate comprehensive emergency management programs and disaster and emergency response capabilities;*
- (2) *Maintain and improve these agencies, programs, and capabilities through enhanced training, planning, staffing, administration, operations, and equipment acquisition; and*
- (3) *Benefit the Commonwealth as a whole, through creation of an effective and responsive statewide integrated emergency management system.*

SECTION 43. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

- (1) *The Director of the Division of Emergency Management shall have overall responsibility for policy, guidance, administration, and proper utilization of the supplementary fund established in Sections 40 and 41 of this Act.*
- (2) *The director shall serve as the principal liaison between the division and local officials participating in programs affected by this fund.*
- (3) *The director shall appoint an advisory committee consisting of seven (7) members, including no more than four (4) employees of the staff of the division, to assist in making initial funding allocations each fiscal year and in making quarterly adjustments, based upon program and financial reviews. The members of the committee shall serve at the pleasure of the director, but for no more than four (4) years without reappointment, and shall serve without reimbursement, except when funded through the emergency*

management assistance programs. The decisions of the committees shall be advisory only and not binding upon the director.

- (4) *The director, with the advice of the advisory committee, shall make determinations related to fund allocations.*
- (5) *Area managers of the division shall fully explain program opportunities and requirements to local elected officials and local directors, review budget and program submissions, and make recommendations to the director.*
- (6) *Funds pursuant to Sections 40 and 41 of this Act shall be made available to not more than one (1) local emergency management agency in any county on a reimbursement basis up to fifty percent (50%) of the total local funds expended in any given year by the local emergency management agency created pursuant to KRS Chapters 39A to 39F.*

SECTION 44. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Local emergency management agencies created pursuant to Section 29 of this Act shall be eligible to apply for benefits from the fund created pursuant to Sections 40 and 41 of this chapter if they meet the following criteria:

- (1) *The local emergency management agency shall have a qualified, duly-appointed local director who is capable of fully executing the duties of the position pursuant to Section 31 of this Act. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, during the first year of participation in the funding program, the local director, whether serving on a voluntary or paid basis, shall have successfully completed all correspondence courses specified by the division by administrative regulation. The local director shall also participate in an emergency management workshop when offered. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, each local director shall also attend an introductory emergency management course when offered.*
 - (a) *In each following year, each local director shall attend an emergency management workshop, when offered.*
 - (b) *In subsequent years, a local director shall continue his or her education by annually completing advanced instruction offered by the division, including the training courses and the Emergency Management Development Program as required by administrative regulations promulgated by the division. The requirements of this section may be met by successfully completing related courses offered by federal agencies and other organizations, as approved by the division.*
- (2) *Each local emergency management agency employee, other than the local director, whose salary is reimbursed in part by this fund, shall attend one (1) emergency management workshop at least every other year, and shall complete other instruction offered by the division as required by administrative regulations promulgated by the division.*
- (3) *The local director appointed pursuant to KRS Chapters 39A to 39F, shall develop a local emergency operations plan and appropriate annexes. This plan shall be subject to concurrence review by the director of the division. In subsequent years, the plan and all annexes shall annually be reviewed, updated, approved, and officially adopted in accordance with the provisions of KRS Chapters 39A to 39F.*
- (4) *During the second and each subsequent year of participation in the program, the local director shall conduct an exercise to test the local emergency operations plan in accordance with exercise program requirements and guidelines of the Federal Emergency Management Agency or the division.*
- (5) *Each local emergency management agency created pursuant to KRS Chapters 39A to 39F shall provide for an organized and designated emergency operating center in the local jurisdiction from which all operations of the local disaster and emergency services organization shall be coordinated. This center shall provide resources for communications, information management, and other operational capabilities necessary to ensure the coordination of all disaster and emergency response in the local jurisdiction. The local emergency operations center shall be a direction and control component of the integrated emergency management system of the Commonwealth.*
- (6) *Each local emergency management agency shall develop, and submit annually to the division, a program paper detailing agency administrative data, current staff personnel listings, a specific work plan of program objectives scheduled for accomplishment during the next fiscal year, and a budget request. Forms and guidance materials for this report shall be provided by the division.*

- (7) *Each employee of a local emergency management agency created pursuant to this chapter with the exception of the local director and each deputy, if the deputy functions in a policymaking capacity, whose salary is reimbursed in part or in total with these funds, shall meet the standards of the Kentucky merit system, or the standards of the federal Office of Personnel Management or its successor or local equivalent, when recognized by the director.*
- (8) *In order for a local emergency management agency to participate in the funding program, one (1) of the following persons shall attend an annual emergency management workshop:*
- (a) *The county judge/executive;*
 - (b) *The deputy county judge/executive;*
 - (c) *The mayor of an urban-county government or the largest city in the county, or the mayor of the city which is the county seat of the county, or the chief executive of other local government;*
 - (d) *The city manager;*
 - (e) *The local emergency management deputy director; or*
 - (f) *A member of the fiscal court or urban-county council of the county.*
- (9) *The division shall determine by administrative regulation:*
- (a) *Public officials and disaster and emergency services personnel who may be reimbursed for attendance at emergency management workshops or other activities; and*
 - (b) *Reimbursements for attending courses and workshops, which shall be limited as follows:*
 - 1. *Reimbursement rates for meals and travel mileage shall not exceed those for state employees.*
 - 2. *Reimbursement shall be made for attending the workshop or course nearest to the participant's residence. A participant may attend a workshop at a greater distance but will be reimbursed for meals and mileage equal to that of attending the nearest workshop or course. In cases of extreme hardship, the nearest course or workshop requirement may be waived, in writing, by the director.*
- (10) *The division shall:*
- (a) *Publicize all available state and federal emergency management agency training courses to mayors, county judges/executive, and local directors; and*
 - (b) *Assist local personnel listed in this section in gaining entrance to state and federal emergency management agency training courses.*
- (11) *If, at any time, the director of the division determines that a local emergency management agency or a local director does not comply with the eligibility requirements of this section, the director shall notify that local director, and the appointing authorities, in writing, of the intent to deny financial assistance to the local emergency management agency. The local director shall have ten (10) working days to come into compliance or otherwise provide information to the director to justify eligibility for funding. If the director continues to determine that the local emergency management agency or the local director does not meet eligibility requirements, the local emergency management agency shall be ineligible for funds and the director shall notify the local director and the appointing authorities, of the determination. A local director aggrieved by a decision of the director may appeal to the Franklin Circuit Court within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo.*

SECTION 45. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

- (1) *Local emergency management agencies requesting financial aid from the fund created pursuant to Sections 40 and 41 of this Act, shall submit, not later than July 15 of each year, a local "Annual Program Paper" application to the area manager of the division.*
- (2) *The area manager shall review the application and accompanying documents and forward them to the director of the division along with the area manager's assessments and recommendations, not later than August 15 of each year.*

- (3) *The director shall submit the request for financial aid to the advisory committee for its review and recommendations. The advisory committee shall review the application, accompanying documents, and the assessment and recommendation of the area manager and make a recommendation to the director with regard to the application and the request for funding.*
- (4) *Requests for funding shall be evaluated by the following criteria:*
- (a) *Meeting the eligibility criteria specified in Section 44 of this Act, unless some aspect thereof has been waived as provided in Section 48 of this Act.*
 - (b) *Meeting all the requirements specified by the division for developing, preparing, maintaining, and submitting the annual program paper.*
 - (c) *Local emergency operations plans submitted and a determination of their conformity to the Kentucky Emergency Operations Plan, and an assessment of their capability, state of currency, sign of official adoption, and general adequacy to provide for the coordination of disaster and emergency response operations.*
 - (d) *Past program performance of the local director in fully carrying out the duties of local director as specified in Section 31 of this Act, and overall program performance as it relates to completeness, adequacy, and timeliness in accomplishing program tasks, objectives, or goals.*
 - (e) *Historical spending records for this and similar programs.*
 - (f) *Local resources committed to the program on a per capita basis.*
- (5) *If available funds do not meet the total funds requested by all local emergency management agencies, then funding allocations may be reduced after a reevaluation of the criteria set forth in subsection (4) of this section.*
- (6) *The director of the Division of Emergency Management shall then review and evaluate each application, together with the recommendations thereon, and not later than September 15 of each year, designate and approve funds for eligible local emergency management agencies and notify the local director.*

SECTION 46. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

- (1) *Within fifteen (15) days of the end of each month, the local emergency management agency shall submit a completed claim of reimbursement with supporting documentation to the area manager of the division. After review, the area manager shall forward the documentation for administrative review and a reimbursement check shall be returned to the jurisdiction. Reimbursement shall be at the predetermined rate.*
- (2) *Requests to utilize these funds to purchase any item of emergency management-related administrative or office equipment having a total cost in excess of five hundred dollars (\$500) shall be submitted to the director for approval or denial before the purchase. To obtain approval, the local emergency management agency shall submit a project application to the area manager, who shall review it and forward it to the director, together with the area manager's recommendations in reference thereto. If the application is approved by the director, the local emergency management agency shall be notified of the approval and, after making the purchase, may submit a reimbursement claim.*

SECTION 47. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

- (1) *The performance of each local emergency management agency or local director receiving funding pursuant to Sections 40 and 41 of this Act shall be evaluated quarterly as to compliance with the provisions of KRS Chapters 39A to 39F, satisfactory program administration, and the achievement of scheduled program objectives by the local emergency management agency or local director. Based upon this evaluation:*
- (a) *Programs which are judged deficient, or otherwise not in compliance with KRS Chapters 39A to 39F, or program guidance of the division, may have funds withheld and those funds which have been withheld may be transferred to other local emergency management agencies.*
 - (b) *Programs which meet or exceed their minimum program objectives and have needs for additional funds for program improvements may be granted additional requested funds, or portions thereof, for use by the local emergency management agency in making the improvements, subject to the availability of funds.*

- (2) *Within fifteen (15) days after the end of each quarter, the local emergency management director shall prepare and submit all documentation, records, or reports required by the division to substantiate and document the work activity of the local director and the local emergency management agency in performing official duties or work plan objectives during each quarter.*
- (3) *Program progress and compliance shall be reviewed quarterly by the area manager of the geographical area in which the local emergency management agency is located. The area manager shall review training records, exercise reports, financial records and budget expenditure rates, all work plan documentation reports or materials submitted by the local director at the end of each quarter, program guidance materials, or other sources of information, and make an assessment as to whether the local emergency management agency or local director is in compliance with current program requirements or guidance, or is making satisfactory progress toward the full achievement of the objectives outlined in the work plan of the annual program paper. The area manager shall transmit an assessment report to the director of the division together with any recommendations thereon.*
- (4) *The director shall then review the material submitted, together with the area manager's recommendations, and submit it to the advisory committee for its evaluation and recommendations with regard thereto.*
- (5) *The advisory committee shall transmit to the director its determination of the local emergency management agency's state of compliance or progress, and that of the local director, and the committee's recommendations with regard thereto. The director shall review the report and all recommendations thereon. The director shall then make a final determination with regard to compliance and progress and, if a deficiency is found, the measures which shall be taken to assure compliance.*
- (6) *Local emergency management agencies or local directors determined not to be making satisfactory progress toward the accomplishment or completion of work plan objectives as outlined in the annual program paper, or not performing in accordance with the written program guidance or the requirements of KRS Chapters 39A to 39F, shall be given thirty (30) days to correct the deficiencies in the manner outlined by the director.*
- (7) *A local emergency management agency aggrieved by a decision of the director may appeal to the Franklin Circuit Court within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo, unless the record is insufficient.*
- (8) *If a decision has been made by the director to withhold funding from the local emergency management agency, that funding shall remain withheld during the pendency of any appeals of the decision.*
- (9) *At the end of the thirty (30) day period further funding may be withdrawn by the director, if the deficiencies have not been corrected. The funds may then be reallocated to other local emergency management agencies.*
- (10) *The director, during the review process outlined in this section, shall also review the expenditure rate of each local emergency management agency receiving funds. If it is determined that a local agency will not utilize all allocated funds, appropriate portions of the allocation may be withdrawn and reallocated to another local emergency management agency.*

SECTION 48. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Requests for the waiver of any requirement of Sections 44, 45, 46, and 47 of this Act or any criteria of KRS Chapter 39F may be submitted with appropriate justification to the director of the division. The director may grant waivers only upon the finding that the justification merits special action and failure to grant the waiver would jeopardize the continuation or development of a viable local emergency management agency and program. In every case, the director shall insure that the local agency and program continues to meet the basic intent of KRS Chapter 39B. Waivers shall apply on a one (1) time basis relating to a specific request and shall not be construed to establish precedents.

SECTION 49. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

The division shall administer the supplementary state funding program authorized in Sections 40 and 41 of this Act and the division shall, by administrative regulations, promulgate and apply eligibility requirements and standards of performance to be achieved by all local emergency management agencies. The division may promulgate other administrative regulations, and issue any program guidance, necessary to carry out the provisions of Sections 40 and 41 of this Act.

SECTION 50. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Local emergency management agencies, including local directors or their deputies, and other local emergency management agency staff personnel and workers, and local emergency management agency-supervised operating units or personnel officially affiliated with the local disaster and emergency services organizations pursuant to Section 35 of this Act, paid or volunteer, for the purposes of receiving workers' compensation benefits paid by the division, shall be covered by those benefits when performing emergency assessment, mitigation, preparedness, response, or recovery functions, with the following limitations:

- (1) *The local emergency management agencies, including local directors or staff personnel and workers, and local emergency management agency-supervised operating units or personnel, shall not be covered when performing fundraising functions, unless all proceeds of the function are to be dedicated to the administration or operation of the local emergency management agency or operating unit.*
- (2) *No person shall be covered when performing hazardous materials emergency response operations defined in 29 C.F.R. 1910.120 which are above the first-responder operations level, on-scene incident commander level excluded, except as provided in subsection (3) of this section.*
- (3) *A volunteer hazardous materials response team as defined in 29 C.F.R. 1910.120 which meets all provisions of 29 C.F.R. 1910.120(q), operates on a regional basis, and is supervised by a local emergency management agency may, by action of the director pursuant to administrative regulations, be provided Kentucky emergency management workers' compensation coverage. Such hazardous materials response teams shall take no actions involving environmental clean-up, removal, or transportation of hazardous substances or materials except as may be essential for initial emergency control or initial emergency stabilization when there is a clear and evident risk of harm to people.*
- (4) *No person shall be covered unless enrolled on a workers' compensation enrollment form that is filed with the area manager of the division, except when the magnitude of an emergency, or a preparedness exercise activity, is so great that a local director must solicit additional workers. At these times, the local director may develop and maintain a list of workers, to include names, Social Security account numbers, missions assigned, and dates covered, and submit a copy of the list to the area manager within twenty-four (24) hours of the conclusion of the emergency, or the preparedness exercise activity.*

SECTION 51. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 52. KRS CHAPTER 39D IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *When, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the Governor shall, as often as the exigencies of the situation require, by proclamation, designate a temporary location for the seat of government at the place within this Commonwealth deemed advisable, and shall take action and issue orders necessary for an orderly transition of the affairs of state government to the temporary location. If practicable, the temporary location designated by the Governor shall conform to that provided for in the current Kentucky Emergency Operations Plan. The temporary location shall remain as the seat of government until the Governor establishes a new location under this section, or until the emergency is ended and the seat of government is returned to its normal location.*
- (2) *While the seat of government remains at the temporary location, all official acts required by law to be performed at the seat of government by any officer, independent agency, division, or authority of this Commonwealth, including the convening and meeting of the General Assembly in regular or special session, shall be as valid and binding when performed at that temporary location as if performed at the normal location.*

SECTION 53. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

- (1) *When, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual places, the governing body of each county, urban-county, charter county, and city of this Commonwealth may meet at any place within or without the territorial limits of that political subdivision, at the direction of the elected chief executive officer or his or her successor, and shall proceed to establish and designate by ordinance, resolution, or other manner, alternate or*

substitute places as the temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation. The alternate or substitute places may be within or without the territorial limits of the county, urban-county, charter county, and city, and shall be within those of the state. If practicable, they shall be the places designated as the temporary locations of government in the current local emergency operations plan.

- (2) *While the public business is being conducted at a temporary location, the governing body and other officers of a county, urban-county, charter county, and city of this Commonwealth shall have and exercise, at that location, all of the executive, legislative, administrative, and judicial powers and functions conferred upon that body and officers under state law. The powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto. All acts of the body and officers shall be as valid and binding as if performed within the territorial limits of their county, urban-county, charter county and city.*
- (3) *This section shall control notwithstanding any statutory charter or ordinance provision to the contrary.*

SECTION 54. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

The governing body of each county, urban-county government, charter county government, and city shall enact the ordinances and resolutions necessary to provide for the continuity of government throughout the duration of a state of emergency. The ordinances and resolutions shall provide a method by which temporary emergency appointments to public office are made, except as limited by express constitutional provisions, and shall define the scope of the powers and duties which may be exercised, and provide for termination of the appointment so made. This section shall control notwithstanding any statutory provision to the contrary.

SECTION 55. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context clearly requires otherwise:*
- (a) *"Emergency interim successor" means a person designated under this section, if an officer is unavailable, to exercise the powers and discharge the duties of that office until a successor is appointed or elected and qualified as provided by law, or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.*
- (b) *"Office" includes all state and local offices, the powers and duties of which are defined by law, except the office of Governor, and except those in the General Assembly and the judiciary. An "officer" is a person who holds an office.*
- (c) *"Political subdivision" includes counties, urban-counties, charter counties, cities, special districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.*
- (d) *"Unavailable" means that during a state of emergency either:*
1. *A vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office; or*
 2. *That the lawful incumbent of the office and any duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.*
- (2) *Subject to administrative regulations of the Governor, all state officers, shall, in addition to any deputy authorized to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of emergency interim successors so that there will be not fewer than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof, at any time. If any state officer is unavailable following an emergency, and if a deputy, if any, is also unavailable, the powers of office shall be exercised and the duties of office shall be discharged by any designated emergency interim successors in the order specified. The emergency interim successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this section, or other official authorized under the Constitution or this section to exercise the powers and discharge the duties of the office of Governor has, where a vacancy exists, appointed a successor to fill the vacancy, or until a successor is otherwise appointed, or elected and qualified as provided by law, or until an officer or*

any deputy or a preceding named emergency interim successor becomes available to exercise, or resume the exercise and discharge of, the powers and duties of the office.

- (3) Each cabinet and each department of state government, and each agency of state government shall appoint not fewer than three (3) nor more than seven (7) emergency interim successors for each position specified in the Kentucky Emergency Operations Plan and the internal emergency operations procedures for that department or agency. Emergency interim successors in the order of the succession shall have the full power to exercise all powers of their department or agency and to commit its resources during a time of emergency or disaster if the person normally exercising the position becomes unavailable. If the preceding emergency successor becomes unavailable he or she shall resume all duties from the emergency interim successor, unless he or she chooses to permit the emergency interim successor to remain in the position until relieved.*
- (4) The local legislative bodies of cities, counties, urban-counties, and charter counties shall enact ordinances or orders governing the manner in which vacancies in offices and employment shall be filled, and for the prompt filling thereof during times of disaster and emergency, if the filling of these vacancies is not otherwise provided for by law. The legislative bodies shall enact ordinances providing for the appointment of not fewer than three (3) nor more than seven (7) emergency interim successors for each local office, department, and agency specified in the Kentucky Emergency Operations Plan and local emergency operations plans and annexes thereto. Emergency interim successors, in the order of their successions, shall have the full power to exercise all powers of the office, department, or agency and to commit its resources during a time of emergency or disaster if the person normally exercising the position is unavailable. If the preceding emergency successor becomes available, he or she shall resume the duties being performed by the emergency interim successor, unless he or she chooses to permit the emergency interim successor to remain in the position until relieved. The administrative orders and ordinances shall not be inconsistent with this section.*
- (5) This section applies to officers of all special districts and political subdivisions not included in subsection (4) of this section. The officers, subject to such administrative regulations as the executive head of the political subdivision promulgates, shall designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of persons so that there will be not fewer than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof at any time. If any officer of any political subdivision or any deputy provided for pursuant to law is unavailable, the powers of the office shall be exercised and duties shall be discharged by the designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until the time a vacancy which exists is filled in accordance with the Constitution or the KRS, or until the officer, a deputy, or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of the office.*
- (6) No person shall be designated or serve as an emergency interim successor unless he or she is eligible under the Constitution and statutes to hold the office to which he or she is designated to succeed, but no statutory provision prohibiting local or state officials from holding another office shall be applicable to an emergency interim successor.*
- (7) Emergency interim successors shall take the oath required to exercise the powers and discharge the duties of the office to which they may succeed. No person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he or she succeeds, shall be required to comply with any other provision of law relative to taking office.*
- (8) Officials authorized to act as Governor pursuant to this section, and emergency interim successors are empowered to exercise the powers and discharge the duties of an office only during the continuance of an emergency. The General Assembly, by joint resolution, may at any time terminate the authority of the emergency interim successors to exercise the powers and discharge the duties of office.*
- (9) Until the persons designated as emergency interim successors shall exercise the powers and discharge the duties of an office in accordance with this section, the persons shall serve in their designated capacities at the pleasure of the designating authority.*
- (10) Any dispute concerning a question of fact arising under this section with respect to an office in the executive division of the state government, except a dispute of fact relative to the office of Governor, shall*

be adjudicated by the Governor or other official authorized under the Constitution to exercise the powers and discharge the duties of the office of Governor, and the decision reached shall be final.

SECTION 56. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

The state Archives and Records Commission shall establish a system for the preservation of essential state public records necessary for the continuity of governmental functions in the event of an emergency, disaster, or catastrophe. The commission shall:

- (1) *Determine what records are essential for operation during a state of emergency and thereafter through consultation with all state cabinets, departments, and independent agencies and the administrator of state archives services and records, establish the manner in which the records shall be preserved, and provide for their preservation;*
- (2) *Require every state cabinet, department, and independent agency to establish and maintain a preservation program for essential state public records;*
- (3) *Provide for security storage of essential state records;*
- (4) *Furnish state cabinets, departments, and independent agencies with copies of the final plan for preservation of essential public records; and*
- (5) *Advise all political subdivisions of the Commonwealth on preservation of essential public records.*

SECTION 57. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 58. KRS CHAPTER 39E IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The Kentucky Emergency Response Commission is established to:

- (1) *Implement all provisions of Title III, Pub. L. No. 99-499, associated federal regulations, and subsequent related legislation and regulations related to hazardous substances; develop policies related to the response of state and local governments to releases of hazardous substances; develop standards for planning for these events; develop reporting requirements for those who manufacture, use, transport, or store these substances; provide information to the public concerning hazardous substances in the community; develop training requirements; and develop requirements for local governments and covered facilities to exercise plans related to hazardous substance response; and*
- (2) *Perform any other functions assigned by statute or by the chairman.*

SECTION 59. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Commission" means the Kentucky Emergency Response Commission and those persons appointed by the Governor to implement provisions of Title III, Pub. L. No. 99-499 and this chapter.*
- (2) *"Local emergency planning committee," hereafter referred to as the "local committee," means those persons appointed by the commission to assist in the implementation of Title III, Pub. L. No. 99-499 and this chapter.*
- (3) *"Release" means, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers and other closed receptacles, of any hazardous substance.*
- (4) *"Reportable quantity" means an amount of hazardous substances released which requires notification to local and state warning points.*
- (5) *"Hazardous substance" means a substance specified by Title III, Pub. L. No. 99-499, subsequent federal regulations, this chapter, and subsequent administrative regulations as requiring notification if released or if stored, manufactured, or used.*

- (6) *"Warning point" means that location, operated by state or local government, and identified by the state commission or local committee, and which is continuously staffed, and which has the capability or responsibility to contact governmental emergency response organizations and, if capability exists, to warn the public of hazards which may affect them.*
- (7) *"Emergency response organization" means a unit of local government or a unit authorized by local government which may be called to make a response because of a release of a hazardous substance, and whose responsibilities are included in plans developed under this chapter.*
- (8) *"Facility" means all buildings, equipment structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person which controls, is controlled by, or under common control with such person, and which manufactures, stores, or uses substances covered under this chapter. For purposes of Section 76 of this Act, the term includes motor vehicles, rolling stock, and aircraft.*

SECTION 60. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *The commission shall be composed of not more than twenty-five (25) members and shall be chaired by the director of the Division of Emergency Management of the Department of Military Affairs, who shall also be a member. Other members shall include, but not be limited to, representatives of the Natural Resources and Environmental Protection Cabinet, the office of the state fire marshal, the Kentucky State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate.*
- (2) *Members of the commission shall be appointed by the Governor. All appointments shall be for a term of two (2) years. Members shall serve until their successors are appointed and qualified and shall be eligible for reappointment.*
- (3) *The commission shall meet not less than semi-annually, or as convened by the chairman.*
- (4) *If a member misses three (3) consecutive meetings of the full commission or three (3) meetings in two (2) consecutive years, the position shall be declared vacant by the commission. In these cases, the Governor shall make an appointment to fill the unexpired term.*
- (5) *The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.*
- (6) *Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.*

SECTION 61. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The commission shall:

- (1) *Appoint local emergency planning committees and revise these committees as it deems appropriate. The committees shall include, as a minimum, representatives from each of the following groups:*
- (a) *Elected local officials;*
 - (b) *Law enforcement;*
 - (c) *Emergency management;*
 - (d) *Fire service;*
 - (e) *First aid;*
 - (f) *Health service;*
 - (g) *Local environmental;*
 - (h) *Hospital;*
 - (i) *Transportation;*
 - (j) *Broadcast and print media;*
 - (k) *Community groups; and*

- (1) *Owners and operators of facilities subject to this chapter;*
- (2) *Adopt standards and procedures for the operations of local committees;*
- (3) *Develop reporting requirements and procedures consistent with those of Title III, Pub. L. No. 99-499, for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances;*
- (4) *Develop guidance and standards for plans related to hazardous substances;*
- (5) *Approve, disapprove, and, where necessary, make recommendations to improve plans developed by local emergency planning committees;*
- (6) *Recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement provisions of this chapter, consistent with Title III, Pub. L. No. 99-499;*
- (7) *Receive from any source and authorize the expenditure of funds;*
- (8) *Develop policies relating to the training of committees and persons subject to respond to releases of hazardous substances;*
- (9) *Develop policies relating to exercising and testing plans developed by local emergency planning committees;*
- (10) *Specify a warning point to which all required emergency notifications shall be made;*
- (11) *Develop a procedure by which facilities may report the presence and inventories of hazardous substances and by which members of the public may obtain these reports;*
- (12) *Annually review all commission policies and procedures and update them as necessary; and*
- (13) *Adopt policies for the conduct of the business and duties of the commission.*

SECTION 62. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *The commission shall institute a fee system to assist in the administration of its programs and activities at both state and local levels.*
- (2)
 - (a) *Any facility required to report under the provisions of this chapter shall annually submit to the commission the required fee of forty dollars (\$40) no later than March 1. This paragraph shall not apply to facilities that pay a fee pursuant to paragraph (b) of this subsection.*
 - (b) *Any facility required to report under the provisions of this chapter and which meets any of the following standards shall annually submit to the commission the required fee of two hundred fifty dollars (\$250) no later than March 1:*
 1. *The facility has any of the extremely hazardous substances identified in 40 C.F.R. Part 355, as amended;*
 2. *The facility has eleven (11) or more hazardous substances as defined in Section 59 of this Act; or*
 3. *The facility has a total inventory of hazardous substances as defined in Section 59 of this Act of over four hundred ninety-nine thousand nine hundred ninety-nine (499,999) pounds.*
 - (c) *If the same owner or owners own two (2) or more facilities in a single county and all of the facilities are required to submit fees pursuant to paragraph (a) of this subsection, the fees due from the owner or owners shall not exceed a total of two hundred fifty dollars (\$250) for all those facilities in that county.*
 - (d) *The provisions of this subsection shall not apply to a facility owned or operated by local, state, or federal government.*
- (3) *The funds derived from the fee system shall be placed in a trust and agency account, which shall be known as the "Kentucky Emergency Response Commission Fee Account," and which shall not lapse. The funds in the account shall be expended only for the purpose specified in subsection (1) of this section.*

- (4) *The commission shall promulgate administrative regulations to implement the provisions of this section, for issuance by the Division of Emergency Management.*

SECTION 63. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The commission may undertake other activities that are:

- (1) *Required by federal law or regulation;*
- (2) *Authorized by federal law or regulation;*
- (3) *Authorized by executive order of the Governor;*
- (4) *Clearly adjunct to the duties specified in Section 61 of this Act;*
- (5) *Necessary to approve or disapprove actions of the local committees;*
- (6) *Necessary to effectively implement the requirements of Title III, Pub. L. No. 99-499; and*
- (7) *Necessary to commence a civil action against the owner or operator of a facility for failure to comply with the provisions of Section 326, Title III, Pub. L. No. 99-499.*

SECTION 64. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *The "SARA Title III Programs Account" is hereby established as a trust and agency account in the State Treasury for the purpose of assisting in the administration and operation of programs authorized by this chapter.*
- (2) *Funds from civil and other penalties, donations, and sources other than fees shall be placed in the account. The account shall not lapse.*

SECTION 65. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *The Division of Emergency Management shall provide administrative support to the commission within the limitation of staff resources. The division may employ staff and may acquire technical or professional assistance as determined to be necessary by the director of the division, and for whom federal, state, or other funds have been provided.*
- (2) *Persons employed under this section shall report to the director of the division and shall implement policies and directives of the commission as specified by the director. Other employees of the division may also support the commission and assist in the implementation of hazardous substance planning, reporting, investigation, training, and exercising as directed by the director. In cases when the commission develops policies or directives which cannot reasonably be implemented by division staff, the director may defer implementation until sufficient resources exist. In cases when the director advises the commission, in writing, that the division cannot provide requested resources, the commission may seek assistance from other agencies of state government.*
- (3) *In no case shall the director devote division resources to support the commission if that support would result in the withdrawal of federal or state funds from the division.*
- (4) *The division shall, upon concurrence by the director, promulgate administrative regulations recommended by the commission and consistent with Title III, Pub. L. No. 99-499. The regulations shall include, but not be limited to:*
 - (a) *Substances which require inventory reporting;*
 - (b) *Quantities of each substance covered; and*
 - (c) *Emergency notification procedures and requirements.*

SECTION 66. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Local emergency planning districts shall be consistent with county boundaries. The commission may authorize two (2) or more districts to combine, upon request of the committees of the affected districts. There shall be only one (1) emergency planning committee within a district.

SECTION 67. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *Local emergency planning committees are created as part of the state commission.*

- (2) *Local committee members shall be appointed by the commission, and shall be considered as agents of the state for all purposes, including purposes of liability protection.*

SECTION 68. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *Duties of the committees shall include:*

- (a) *Development of plans to prepare emergency response organizations within cities, counties, urban-county governments, and charter county governments to respond effectively to releases of hazardous substances;*
- (b) *Identification of a twenty-four (24) hour warning point within the district to which persons responsible for releases of hazardous substances must report those releases;*
- (c) *Establishment of a method, consistent with federal law, commission policies, and administrative regulations, by which manufacturers, users, or storers of hazardous substances may report the presence of those substances, and by which members of the public may obtain information about those substances;*
- (d) *Appointment of a committee chairman, from among its members, for a term of two (2) years. Chairmen may be reappointed;*
- (e) *Development and maintenance of plans consistent with administrative regulations promulgated by the commission; and*
- (f) *Development of procedures for the annual review of emergency plans and procedures developed under this chapter.*

- (2) *Local committees shall advise the commission of their actions by providing a copy of minutes to the commission within thirty (30) days of the date of the meeting. If the minutes are later changed before approval, a copy of the revised minutes shall be submitted to the commission within thirty (30) days of the approval.*
- (3) *Local committees may request the chief of the fire department with jurisdiction over a facility which has, or may have, substances subject to Title III, Pub. L. No. 99-499, to make on-site inspections of the facilities and to report all findings to the chairman of the committee.*
- (4) *Members of local committees shall serve for terms as specified by the commission, though not to exceed four (4) years except by reappointment. Committees may establish attendance standards for continued membership and shall advise the commission of any additions or deletions from the membership that are desired. These changes may be approved or disapproved by the commission.*
- (5) *Committee meetings shall be subject to provisions of KRS 61.805 to 61.850 relating to public meetings and to KRS 61.870 to 61.884 relating to open records, provided that trade secrets, as determined by the federal Environmental Protection Agency, are processed in accordance with 42 U.S.C. 11042.*
- (6) *The local committee may, after consultation with the commission chairman, seek civil remedies prescribed in Section 326, Pub. L. No. 99-499.*
- (7) *The local committee may, with the advice and consent of the commission chairman, submit information to the county attorney for prosecution.*
- (8) *Consultations pursuant to subsection (6) of this section shall be made prior to the giving of notice of intent to commence a civil action.*

SECTION 69. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Owners or operators of facilities which manufacture, use, or store extremely hazardous substances, as identified in 40 C.F.R. Part 355, and in quantities as identified in administrative regulations promulgated by the Division of Emergency Management shall advise the commission, local committee, and fire department in whose jurisdiction the facility resides, of the name of the substance and its quantity, within sixty (60) days of the date the facility first receives the substance or substances in excess of the quantities as identified in the administrative regulations, or if there is a revision of these regulations and the facility has present a substance or substances on the revised list in excess of the quantity established for those substances, within sixty (60) days.

SECTION 70. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Owners or operators of facilities covered under Section 69 of this Act shall identify, within thirty (30) days of notifying the commission that the facility is subject to this chapter, the name of a facility representative who will work with the local committee in the development of emergency plans, and that person shall provide information necessary to the development of those plans.

SECTION 71. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *City, county, urban-county governments, and charter county governments, school districts, special purpose district boards, or other municipal corporations or political subdivisions of the state or local government shall participate in the planning process conducted by local emergency planning committees. This participation shall include, as a minimum, providing information concerning government-owned or controlled emergency response assets, reviewing plans developed by the committee, and concurring that the final plan can be executed with existing resources.*
- (2) *In local governments where local emergency management agencies receive state or federal funds, those agencies shall provide administrative and planning support to the committee as specified by the director of the division.*
- (3) *If state or federal funds are appropriated specifically to support emergency response planning or other portions of Pub. L. No. 99-499, these funds may be allocated to local emergency management agencies and may be expended as specified by the director.*
- (4) *Local governments may enact ordinances specifying standards which owners or operators of facilities shall meet to provide warning of releases to workers and to the public which may be affected by a release.*

SECTION 72. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *Plans developed under the guidance of the state commission shall be a part of the local emergency operations plan's hazardous materials annex. These plans shall be consistent with the requirements and criteria prescribed by the Kentucky Emergency Operations Plan's hazardous materials annex and shall emphasize a coordinated response by all local emergency response organizations.*
- (2) *If, in the judgment of the commission, the local plan is inadequate, or is inconsistent with the Kentucky Emergency Operations Plan, the local plan shall be returned to the committee and the committee shall revise the plan until approved by the commission.*
- (3) *Local committees shall annually review and update, where appropriate, each plan and submit revisions to the commission.*

SECTION 73. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

After the state commission approves plans developed by each local emergency planning committee, emergency response organizations of each city, county, urban-county government, and charter county government shall respond in a manner consistent with those plans.

SECTION 74. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Agencies of state government shall respond, within the confines of the Kentucky Emergency Operations Plan and agency policies, to releases of hazardous substances. Each response shall be consistent with the hazardous materials annex of the Kentucky Emergency Operations Plan. If an on-scene response is required by the Kentucky Emergency Operations Plan or by agency policy, state agencies shall cooperate with one another and with local emergency response organizations and with the party or parties responsible for that release.

SECTION 75. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Any claims against the commission or committees or their members shall be filed with the State Board of Claims in accordance with KRS Chapter 44.

SECTION 76. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

When a release of a substance covered under Title III, Pub. L. No. 99-499 and administrative regulations promulgated under this chapter occurs in a reportable quantity, the owner or operator of the facility where the release occurs, or the owner or operator of the vehicle transporting the hazardous substance, shall notify the local and state warning points within times established by administrative regulation. These regulations shall also specify information to be provided upon initial report and in written follow-up reports.

SECTION 77. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *The state commission shall, by administrative regulation promulgated by the Division of Emergency Management, establish warning and notification standards, which shall include, but not be limited to:*
 - (a) *The establishment of twenty-four (24) hour warning points;*
 - (b) *Public warning; and*
 - (c) *Notification of local emergency response organizations.*
- (2) *Any notification made pursuant to this chapter shall not relieve the facility owner or operator or other responsible party of any notification required by other state or federal laws or regulations.*

SECTION 78. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The division shall, upon direction of the commission, promulgate administrative regulations requiring manufacturers, users, or storers of hazardous substances to report information concerning inventories and locations of those substances. These administrative regulations shall use, by reference, lists of extremely hazardous substances and forms issued by the United States Environmental Protection Agency or by the Kentucky Emergency Response Commission.

SECTION 79. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Upon request of the commission or local committee, facilities covered by those administrative regulations required in Section 78 of this Act shall, within the time periods prescribed by federal law, provide additional information necessary for developing and implementing the emergency plan about each substance to include, but not be limited to, material safety data sheets.

SECTION 80. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Reports to the commission or committee shall be available to the public upon request in accordance with the provisions of KRS 61.870 to 61.884 relating to open records, if this information is not protected from release to the general public as a trade secret under federal law. Reasonable fees, consistent with KRS 61.874, may be charged for reproduction of these reports.

SECTION 81. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

No section of this chapter shall be construed as repealing any other laws of the Commonwealth, but it shall be held and construed as ancillary and supplemental to those laws.

SECTION 82. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

- (1) *Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.*
- (2)
 - (a) *When a person violates Section 69, 70, 76, or 79 of this Act, the commission chairman shall proceed against that person under paragraph (b) of this subsection or subsection (3) of this section but not both.*
 - (b) *Any person violating Section 69, 70, or 79 of this Act shall, upon the first conviction thereof, be fined not less than two hundred and fifty dollars (\$250) nor more than five hundred dollars (\$500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 69, 70 or 79 of this Act shall, upon subsequent convictions, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000). If any offense is continued for more than one (1) day, each day upon which such offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 76 of this Act shall, upon the first conviction, be fined not less than one thousand dollars (\$1,000) nor more than twenty-five hundred dollars (\$2,500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 76 of this Act shall, upon subsequent conviction, be fined not less than twenty-five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed.*

- (3) *Any person violating any provision of this chapter shall be assessed a civil penalty of not less than two hundred and fifty dollars (\$250) nor more than five hundred dollars (\$500). If any violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation and a separate civil penalty may be imposed therefor.*

SECTION 83. KRS CHAPTER 39F IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) *"General Rescue Squad" means a rescue squad which performs one (1) or more of the following functions as a stated mission of the organization:*
- (a) *Light duty rescue;*
 - (b) *Extrication of persons from vehicles;*
 - (c) *Water rescue and recovery operations not utilizing divers;*
 - (d) *Search for lost, trapped, or missing persons not utilizing dogs;*
 - (e) *Low angle rescue and recovery operations;*
 - (f) *High angle rescue and recovery operations.*
- (2) *"Reports and notification" means the reporting and notification of any search and rescue mission to the appropriate agency or person in the manner as specified by this chapter.*
- (3) *"Rescue" means gaining access, rendering appropriate care, and transporting of a person or persons by whatever means, to a safe environment for appropriate care.*
- (4) *"Rescue squad" means any organization which engages in the search for lost persons, rescue of persons, rescue of persons who are trapped or who are in need of rescue services, search for and recovery of drowned persons, or any other rescue related activity. "Rescue squad" shall not include the rescue of persons from a fire by a fire department, the extrication of persons from a vehicle or other activities which an emergency medical technician, emergency medical technician first responder, or paramedic is authorized to perform pursuant to applicable statutes and administrative regulations, if the activities are performed by a person for an ambulance service or in the role of a first responder. If these activities are performed other than as a first responder or in the role of an ambulance service and are involved in rescue operations, they come within the purview of activities of a rescue squad.*
- (5) *"Search" means the process of looking for a person or persons whose location is not precisely known, and who may be in distress.*
- (6) *"Search and rescue" ("SAR") means the process of looking for a lost, missing, or overdue person or persons who may be in distress, and rendering care with the use of appropriately trained and adequately equipped personnel.*
- (7) *"Search and rescue mission" includes, but is not limited to, searching for a missing or lost person or persons, cave rescue, high angle or rough terrain rescue, urban search and rescue, dive rescue and recovery of drowning victims, inland water search, rescue, and recovery. "Search and rescue" may also include any mission permitted pursuant to this chapter. A "search and rescue mission" does not include mine rescue missions under the jurisdiction of the Department of Mines and Minerals pursuant to KRS Chapter 351.*
- (8) *"Specialized Rescue Squad" means a rescue squad which performs one (1) or more of the following functions as the primary or sole mission of the organization:*
- (a) *Cave rescue;*
 - (b) *Search utilizing dogs for lost, trapped or missing persons;*
 - (c) *Search for lost, trapped or missing persons, aircraft, or vehicles, utilizing aircraft, but does not apply to licensed air ambulances, active or reserve military organizations, the National Guard, or the Civil Air Patrol; and*
 - (d) *Water rescue and recovery operations utilizing divers.*

- (9) *"Victim Recovery" means the search for and the removal to the jurisdiction of the coroner of the remains of a person known or believed to be dead. If the person is found alive, it includes rescue of the person.*

SECTION 84. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.*
- (2) *Except as provided in Section 86 of this Act, a rescue squad shall be composed of at least twelve (12) active members and shall maintain at least one (1) vehicle dedicated to rescue service. Squads may operate in conjunction with a fire division, or may operate as a separate unit.*
- (3) *Each rescue squad shall develop and maintain bylaws and written procedures to specify, at a minimum, election or appointment, succession, and term of officers; financial accounting; property accountability; and rules of notification and response to emergencies.*
- (4) *Rescue squads shall contribute to public safety and welfare by performing functions which may include but not be limited to: removal of victims trapped in vehicles or structures; search for lost or missing persons, except those sought for criminal acts; first aid; emergency evacuation; recovery of drowning victims; recovery of any corpse if not accessible by ambulance or hearse and if so authorized by the coroner; and traffic control at an accident scene when requested by law enforcement authorities. Rescue squads shall not engage in law enforcement activities other than traffic control.*
- (5) *The division shall administer funds appropriated for rescue equipment and training and the division shall promulgate administrative regulations to be applied to all rescue squads that apply for financial assistance.*

SECTION 85. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A rescue squad which proposes to provide regional or statewide specialized rescue services may apply to the director for an alternative affiliation agreement and alternative vehicle and equipment requirements in lieu of those specified in Section 94 of this Act under the following terms and conditions:*
- (a) *The rescue squad meets all of the requirements specified in Section 94 of this Act except for a local affiliation agreement, vehicle dedicated solely to rescue service, or possession of basic rescue equipment.*
- (b) *The director accepts, in writing, that the rescue squad will provide a needed rescue service either on a regional or statewide basis.*
- (c) *The rescue squad and the director execute an affiliation agreement containing the same information required in Section 94 of this Act for a local affiliation agreement.*
- (d) *The rescue squad maintains specialized rescue equipment appropriate to its mission as specified in the affiliation agreement or an annex thereto.*
- (e) *The requirement for a vehicle dedicated solely to rescue service may be waived, in writing, by the director upon determination that having a specific vehicle may be inappropriate to the mission of the rescue squad and that the rescue squad has adequate means of transportation enabling it to respond in an efficient manner.*
- (f) *The rescue squad, when requested to provide services, shall immediately notify and coordinate activities with the local director and with the local rescue squads serving the county in which the response is requested.*
- (2) *Agreements specified in subsection (1) of this section shall be renewed annually.*
- (3) *Rescue squads participating in the alternative program specified in this section shall be eligible to participate in rescue grant funding, state sponsored workers' compensation, training, and other programs of the division.*
- (4) *Rescue squads operating under an agreement pursuant to this section may respond in any county covered by the agreement, or statewide if the agreement permits. Rescue squads covered under an agreement*

pursuant to this section may respond in counties not covered by the agreement only by request of the rescue squad or public officials in that county or upon request of the director or his designee.

SECTION 86. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *One or more persons with search dogs and handlers may constitute a specialized rescue squad using search dogs, under the terms and conditions as specified in writing by the director;*
- (2) *Each handler of a dog shall have a vehicle available for the transportation of the dog and handler to the scene of a search;*
- (3) *Each handler shall meet the training requirements of the statutes and administrative regulations relating to searching with dogs;*
- (4) *The primary dog utilized in responding to the search shall be certified in accordance with the statutes and administrative regulations;*
- (5) *Each handler shall have the equipment required by statute or administrative regulation for searching with dogs; and*
- (6) *No single search dog handler shall engage in general rescue squad activity or specialized rescue squad activity unless he or she is a member of such an organization.*

SECTION 87. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A general rescue squad shall be organized pursuant to Sections 84 or 85 of this Act and shall engage in one or more of the activities listed in the definition of a general rescue squad. A general rescue squad may engage in any other activity, other than ones prohibited by law or administrative regulation, if the activity is specified in its mission statement.*
- (2) *A general rescue squad shall not engage in a specialized rescue squad activity as a primary mission unless it meets the requirements of subsection (3) of this section. A general rescue squad may engage in a specialized rescue squad activity as an initial responding unit within its service area, however, upon responding to such an activity, the highest officer in command of the response shall cause the immediate notification of the appropriate specialized rescue squad, the local director, and the duty officer of the Division of Emergency Management.*
- (3) *A general rescue squad may engage in a specialized rescue squad activity if:*
 - (a) *That activity is specified in its mission statement;*
 - (b) *The rescue squad has twelve (12) persons including a commanding officer from within its membership of the rescue squad whose mission statement is to engage in the specialized rescue squad activity;*
 - (c) *The persons assigned to the specialized rescue squad activity meet the training requirements specified by statute and by administrative regulation;*
 - (d) *The rescue squad has the equipment required by administrative regulation to engage in the specialized rescue squad activity listed in its mission statement; and*
 - (e) *The rescue squad has a vehicle for transporting the required equipment to the scene.*

SECTION 88. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A general rescue squad may engage in general and any specialized rescue squad activity utilizing one or more vehicles that hold all of the equipment required for both the general and specialized rescue squad activities specified in its mission statement.*
- (2) *A specialized rescue squad may engage in one or more specialized rescue squad activities or general rescue squad activities utilizing one or more vehicles that hold all of the equipment required for the specialized, or general and specialized, rescue squad activities specified in its mission statement.*
- (3) *The director may waive, in writing, the requirement, upon good cause shown, and upon written alternative plan submitted by a specialized rescue squad showing that adequate response equipment can be transported to the scene in an efficient manner without the necessity for a squad-owned vehicle.*

SECTION 89. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A specialized rescue squad shall engage in one or more of the activities listed in the definition of a specialized rescue squad. A specialized rescue squad may engage in any other activity, other than the ones prohibited by law or administrative regulation, if the activity is specified in its mission statement.*
- (2) *A specialized rescue squad shall not engage in a general rescue squad activity as a primary mission unless it meets the requirements of subsection (3) of this section. A specialized rescue squad may engage in a general rescue squad activity as an initial responding unit within its service area, however, upon responding to that activity, the highest officer in command of the response shall cause the immediate notification of the appropriate general rescue squad for assistance, the local director, and the duty officer of the Division of Emergency Management.*
- (3) *A specialized rescue squad may engage in a general rescue squad activity if:*
 - (a) *That activity is specified in its mission statement;*
 - (b) *The rescue squad has twelve (12) persons including a commanding officer from within the membership of the specialized rescue squad whose mission statement is to engage in the general rescue squad activity;*
 - (c) *The persons assigned to the general rescue squad activity meet the training requirements specified by statute and administrative regulation;*
 - (d) *The rescue squad has the equipment required by administrative regulation to engage in general rescue squad activity as listed in its mission statement; and*
 - (e) *The rescue squad has a vehicle for transporting the required equipment to the scene.*

SECTION 90. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The director of the Division of Emergency Management shall appoint a state coordinator of search and rescue, who shall:

- (1) *Identify, inventory, and coordinate resources available for searches and rescues;*
- (2) *Investigate and apply for grants and other financial assistance for searches and rescues;*
- (3) *Maintain statistics regarding searches and rescues;*
- (4) *Coordinate assistance during searches and rescues;*
- (5) *Act as liaison with other states' operations involving searches and rescues;*
- (6) *Provide assistance, upon request, during searches and rescues;*
- (7) *Prepare a plan for searches and rescues;*
- (8) *Prepare and distribute publications relating to searches and rescues;*
- (9) *Establish, by administrative regulation, recommendations for organizations specializing in search and rescue, and certify organizations which meet those recommendations at the appropriate level;*
- (10) *Maintain a list of all certified organizations and resources;*
- (11) *Coordinate training in techniques of search and rescue; and*
- (12) *Coordinate requests for federal assistance with the Air Force Rescue Coordination Center.*

SECTION 91. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *The local search and rescue coordinator of each political subdivision, appointed in accordance with Section 102 of this Act, shall be responsible for coordinating and planning for local search and rescue activities. Operation of search and rescue activities shall be in accordance with the Kentucky Emergency Operations Plan, and the local emergency operations plan approved by the elected chief executives of each local political subdivision. The local search and rescue coordinator shall notify the duty officer of the Division of Emergency Management of all search and rescue missions. The local search and rescue coordinator shall work in a coordinating capacity directly supporting all search and rescue activities in that political subdivision, and in registering emergency search and rescue workers. The chief of the appropriate law enforcement agency of each political subdivision may, upon request of the local director or local search and*

rescue coordinator, restrict access to a specific search and rescue area to personnel authorized by the local director. Access shall be restricted only for the period of time necessary to accomplish the search and rescue mission. An unauthorized person shall not interfere with a search and rescue mission.

- (2) *When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with the provisions of KRS Chapter 72.*

SECTION 92. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The Rescue Aid Program, which is administered pursuant to this chapter and appropriations in the state budget, is designed to:

- (1) *Reduce and prevent the loss of life by creating a better equipped, trained, and coordinated rescue force throughout the Commonwealth;*
- (2) *Upgrade the capabilities of local rescue squads by providing financial assistance to be used to purchase equipment and obtain training; and*
- (3) *Encourage the development of rescue squads where none exist.*

SECTION 93. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *The director of the division shall have overall responsibility for policy, guidance, administration, implementation, and proper utilization of the rescue aid fund.*
- (2) *The director shall serve as principal liaison between the division and local officials participating in programs affected by the rescue aid fund, and shall ensure proper utilization of the rescue aid fund.*
- (3) *The director shall appoint an advisory committee consisting of seven (7) members, including no more than four (4) employees of the staff of the division to assist in making determinations related to rescue grant fund allocations, compliance with fund requirements, releasing equipment to rescue squads, and withdrawal and reallocation of equipment or funds. The members of the committee shall serve at the pleasure of the director, but for no more than four (4) years without reappointment, and shall serve without reimbursement, except when funded through the Emergency Management Assistance Program. The decisions of the committee shall be advisory only and shall not be binding upon the director.*
- (4) *The director, with the advice of the advisory committee, shall make determinations relating to rescue grant fund applications, releasing equipment to rescue squads, and withdrawal and reallocation of equipment or funds.*
- (5) *Area managers of the division shall fully explain rescue grant opportunities and requirements to local elected officials, local emergency management directors, and local rescue squads; review rescue grant fund applications, documentation and program submissions; and make recommendations to the director.*
- (6) *Local emergency management directors shall be responsible for submitting rescue grant fund applications and documentation of expenditures to the division, as required, and shall facilitate and ensure the coordination of local rescue programs to meet the needs of the communities served.*
- (7) *The chief officer of the rescue squad shall initiate rescue grant fund applications, submit all applications or documentation to the local emergency management director, and ensure that all funds are expended for items or services as approved.*

SECTION 94. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

In order to ensure that rescue squads seeking funding under the rescue grant program achieve and maintain compliance with the provisions of this chapter, the following requirements shall be met:

- (1) *Each rescue squad shall develop written bylaws to specify as a minimum:*
 - (a) *The mission of the rescue squad.*
 - (b) *The election or appointment, succession, and term of officers.*
 - (c) *Financial accounting and property accountability.*
 - (d) *Administrative procedures.*
 - (e) *Definition of active membership in the squad.*

- (2) *Each rescue squad shall develop written standard operating procedures which specify as a minimum:*
 - (a) *Procedures and rules for notification and response to emergencies.*
 - (b) *Procedures for all operations and response activities of the squad in accordance with the mission statement.*
- (3) *A current copy of the bylaws and a current copy of all standard operating procedures shall be sent by the squad to the division. Amendments to the bylaws and standard operating procedures shall be sent to the division within ten (10) working days of their adoption. The division shall maintain a file of rescue squad bylaws and standard operating procedures. These files shall be public records. Copies of the bylaws and standard operating procedures of the squad, updated as required in this subsection, shall also be sent concurrently to the local emergency management director.*
- (4) *Each rescue squad shall have a vehicle dedicated solely to rescue service. The make, model, year, vehicle identification number, and license number of each vehicle used by the squad solely for rescue service shall be supplied to the local emergency management director and to the division. When a new vehicle is put in service, or a vehicle is withdrawn from service, both the local director and the division shall be notified within ten (10) working days.*
- (5) *A minimum of twelve (12) persons shall be identified by name as active members of the rescue squad.*
- (6) *The active membership list of the rescue squad shall be submitted quarterly to the division through the area manager with a copy of the same list submitted concurrently to the local emergency management director.*
- (7) *The active membership list shall be continuously maintained in an accurate and current status by the rescue squad, and shall be available for inspection by state and local government officials, employees, and the public.*
- (8) *Rescue squads shall maintain a formal training program appropriate to accomplish the mission of the rescue squad.*
 - (a) *The training program shall consist of not less than two (2) hours of formal training per month. Actual rescue missions shall not constitute training.*
 - (b) *To be eligible for continued funding, each squad shall report not less than one hundred sixty-eight (168) man-hours of training for its members annually. This training shall be reported on the incident and training reports submitted pursuant to this chapter.*
 - (c) *Training at a rescue school provided by an emergency management agency or other appropriate training may be utilized to meet the requirements of subsection (2)(b) of this section.*
- (9) *Rescue squads shall be formally affiliated with the local disaster and emergency services organization through the following means:*
 - (a) *Execution of a city or county order or ordinance, the adoption of a written search and rescue plan pursuant to Section 101 of this Act, and the promulgation of a written statement of affiliation as the local charter of authorization signed by the county judge/executive or mayor, the local emergency management director, and the chief rescue officer outlining a specific working agreement. The statement of affiliation shall be subject to annual renewal. No statement of affiliation shall be subject to automatic renewal; it shall be an affirmative process. The document shall include, as a minimum, call out authority, chain of command, the responsibilities of each concerned party, terms and conditions of the local charter of authorization to operate in the jurisdiction, and procedures for revocation of the local charter, and shall be reviewed by the chief elected official of the government signing it and the local director. Both shall certify, if signing the document, that they have reviewed the mission statement of the rescue squad and the statement of affiliation and that they find that the rescue squad possesses:*
 1. *Adequate numbers of trained personnel to perform the mission;*
 2. *Proper and adequate equipment, including at least all of the required equipment specified by administrative regulations of the division, to perform the mission, and that the equipment is in proper working order;*

3. *A rescue vehicle, dedicated solely to rescue purposes, which is adequate to perform the mission of the squad, and is in proper working order; and*
4. *Adequate command and control personnel, training, and policies to ensure that the squad can quickly and efficiently respond and perform its mission when called upon.*
- (b) *Incorporation, into the statement of affiliation, of a finding by the chief elected official and the local director that, following review of the mission statement of the rescue squad and the statement of affiliation, the rescue squad is performing a function not performed by other agencies of government or private agencies or organizations. If other organizations are performing functions which are listed on the mission statement of the rescue squad, then the statement shall contain reasons why duplication of existing services of other organizations by the rescue squad is necessary; and*
- (c) *Incorporation of the responsibilities of the rescue squad into the rescue services annex of the local emergency operations plan or other appropriate annex.*
- (10) *If either the chief elected official or the local director declines to sign the statement of affiliation provided for in subsection (9) of this section, the rescue squad shall be without local charter and shall return to the division all equipment purchased with state funds. This return of equipment shall take place within five (5) days of the refusal of either designee to sign the statement of affiliation. Neither the chief elected official nor the local director shall be required to state a reason why they sign or decline to sign a statement of affiliation.*
- (11) *When a rescue squad is not independent, but is incorporated within other emergency service agencies or divisions, such as a fire department or fire division, the squad members shall be available for and capable of performing rescue services not incidental to their primary mission.*
- (12) *Rescue squads shall maintain a full complement of minimum equipment appropriate to the type of rescue to be undertaken. Minimum equipment lists and other requirements for rescue squads shall be promulgated by the director by administrative regulation.*
- (13) *Rescue squads shall not assess fees or charges for any rescue activity.*

SECTION 95. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A rescue grant fund project application shall be initiated by the chief rescue officer and forwarded to the local emergency management director. The local director shall review all applications for completeness and accuracy, prioritize and consolidate the applications, and make recommendations thereon. In the absence of a local director, the county judge/executive shall fill this role.*
- (2) *The local director shall forward all applications to the area manager of the division, who shall review them, make recommendations thereon, and forward documentation to the director.*
- (3) *The director shall forward all applications to the advisory committee. The advisory committee shall meet during the months of April, August, and December on dates announced by the director, to assess applications and compliance and to make recommendations to the director with regard to allocations of funds, assessment of compliance, reallocations of funds, release of equipment, reallocation of equipment, and any other matters assigned by the director. The advisory committee shall:*
 - (a) *Hold only public meetings; and*
 - (b) *Maintain written minutes reflecting the actions of the advisory committee. All applications on file and all other matters pending shall be reviewed during each session and recommendations made thereon to the director.*
- (4) *Requests for funding shall be evaluated by the following criteria:*
 - (a) *Meeting the minimum eligibility criteria of Section 84 or 94 and Section 85 of this Act, unless some aspect thereof has been waived as provided in Section 48 of this Act. In determining membership eligibility, no person may be counted as a member of more than one (1) rescue squad even though that person may be available to or a member of more than one (1) rescue squad. If possible, a squad of primary membership shall be determined and the person counted as a member of that squad. If this cannot be determined, the person shall not be counted as a member of any rescue squad;*
 - (b) *Unit and individual training;*
 - (c) *Number of rescue responses annually;*

- (d) *Population served;*
 - (e) *Geographic area served;*
 - (f) *Number, type, and location of other rescue squads in the geographic area served;*
 - (g) *Equipment possessed by the squad; and*
 - (h) *The extent to which the rescue squad integrates its activities with the local emergency management program of the area served.*
- (5) *The advisory committee shall forward the applications together with its recommendations thereon to the director for final decision and allocations of funds. The division's administrative officer shall ensure timely payment of the funds.*
 - (6) *The director shall maintain written reasons with regard to all funding decisions for a period of one (1) year from the time they are announced.*
 - (7) *The director shall provide applicants with written decisions with regard to their applications.*
 - (8) *Decisions and the reasons for any decisions regarding funding shall be made available to any person upon written request.*
 - (9) *The local emergency management director shall maintain file copies of all applications and decisions thereon for at least five (5) years.*

SECTION 96. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *The rescue squad shall order or purchase with state or federal grant funds only the approved equipment, services, or training, and no other, within fifteen (15) days of the receipt of the grant funds and shall provide a copy of all paid invoices as well as proof of payment, (canceled check, cash paid receipt, or similar document), within ninety (90) days of the receipt of the grant funds. An extension of time periods may be granted for cause upon written application to the director. Requests for time extensions shall be submitted through the local emergency management director to the area manager, for transmittal to the director. The director may grant or deny extensions based upon need. Any funds not encumbered or expended during the grant period shall be returned to the division, unless authorized in writing by the director to make additional purchases with encumbered funds.*
- (2) *All equipment purchased with rescue aid funds shall be selected from the minimum equipment list unless an exception is approved by the director. Optional items shall not be approved until all items on the required list have been acquired.*
- (3) *The rescue squad shall be accountable to the Commonwealth of Kentucky for all equipment purchased in whole or in part with rescue aid funds, and shall ensure the storage or positioning of all equipment within the geographical boundaries of the Commonwealth at all times, except when being utilized on an out-of-state mission approved by the division. All equipment with a purchase price of three hundred dollars (\$300) or more shall be assigned a serial number provided by the division which shall be engraved on the equipment. After five (5) years from the date of purchase, all equipment costing less than three hundred dollars (\$300) shall be released to the squad. Equipment costing in excess of three hundred dollars (\$300) may be released to the squad after approval has been granted by the director. Squads requesting release of equipment shall define in writing the rationale and justification for the release.*
- (4) *Permission to dispose of unserviceable, obsolete, or damaged items, which have not been released to the squad pursuant to subsection (3) of this section, purchased in whole or in part with rescue aid funds, may be granted by the director. Requests for this action shall be submitted through the local emergency management director to the area manager for transmittal to the director.*
- (5) *When a rescue squad is disbanded, loses its local charter to operate, or otherwise becomes, in the determination of the director, incapable of performing its duties as provided in Section 94 of this Act, all equipment purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, shall revert to the division for reallocation. If local funds were used to pay for a portion of the equipment or the equipment has depreciated, the squad may return the equipment to the division or repay an amount determined appropriate by the director. The option of repayment shall exist only upon the disbanding, loss of local charter, or determination of inability of the squad to perform its duties.*

- (6) *In making determinations with regard to equipment which a rescue squad possesses either for funding or accountability purposes, equipment personally owned by members of a rescue squad shall not be counted for any purpose. Personally owned equipment shall not be used to fulfill the requirements of the minimum equipment list for the squad.*
- (7) *Equipment which has been purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, shall be subject to inspection upon twenty-four (24) hours notice, by the local emergency management director, an area manager, or any other employee of the division.*
- (8) *An inspection shall be made when accountable items are reported damaged, in need of replacement, or where there is evidence of misuse. Inspections may also be made upon the request of the local director, an area manager, or the director.*
- (9) *An annual inspection of equipment purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, may be conducted by the local director, or an area manager. The review shall be made to ensure accountability, or proper maintenance and utilization of the equipment.*
- (10) *All funds provided pursuant to Sections 92 to 98 of this Act shall be subject to state audit and rescue squads shall cooperate fully to provide necessary documentation and other support required for the audit.*
- (11) *A rescue squad aggrieved by a decision of the division to withdraw funds or equipment allocated to the rescue squad pursuant to subsection (5) of this section may appeal the decision in the manner provided in Section 47 of this Act.*

SECTION 97. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A report shall be made by the chief officer of the rescue squad to the local director and the area manager of the division within forty-eight (48) hours when:*
 - (a) *Accountable equipment purchased with rescue aid funds is lost, stolen, or damaged; or*
 - (b) *The squad is disbanded, loses its local charter to operate, or is otherwise rendered incapable of performing its duties as outlined in this chapter.*
- (2) *Local emergency management directors shall maintain a cumulative list of equipment owned by each rescue squad participating in the rescue aid program, denoting those items purchased with rescue aid funds. An updated list shall be submitted to the area manager each time a rescue aid grant application is submitted.*
- (3) *Rescue squads participating in the rescue aid program or who receive workers' compensation benefits through the division shall complete quarterly incident and training reports reflecting rescue squad activity or the lack thereof, as appropriate, and submit these reports to the local director and the area manager within ten (10) days from the end of the quarter. The area manager shall transmit the reports together with any comments thereon to the director within ten (10) days of receipt thereof.*

SECTION 98. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *A rescue squad taxing district may be created by the fiscal court pursuant to KRS 65.182 or 65.188.*
- (2) *The ad valorem tax that may be imposed for the maintenance and operation of the district shall not exceed ten cents (\$.10) for each one hundred dollars (\$100) of the assessed valuation of all property in the district.*
- (3) *Upon the creation of a district, the district so established shall be a taxing district within the meaning of Section 157 of the Constitution of Kentucky.*
- (4) *The district ad valorem taxes shall be collected by the sheriff in the same manner as county ad valorem taxes. The sheriff shall be entitled to a fee of four percent (4%) of the amount of the tax collected for the district.*
- (5) *The affairs of the district shall be controlled by a board of directors appointed by the county judge/executive, the mayor of an urban-county, or the chief executive of another local government with the approval of the legislative body of that jurisdiction.*
 - (a) *If the district consists of one (1) county, three (3) directors shall be appointed;*

- (b) *If the district consists of two (2) counties, the county judge/executive of the county having the greater portion of the population of the district shall appoint two (2) directors and the county judge/executive of the other county shall appoint the third director;*
 - (c) *If the district consists of more than two (2) counties, the county judge/executive of the county having the greatest portion of the population of the district shall appoint two (2) directors and the county judge/executive of the remaining counties comprising the district shall each appoint one (1) director;*
 - (d) *The legislative body of each city of the first three (3) classes, or if there is no such class of city, the city of the highest class located within the district shall appoint one (1) additional director.*
- (6) *The board of directors shall be appointed within thirty (30) days after the establishment of the district. Each board member shall reside within the county or city for which appointed. Directors shall be appointed for terms of two (2) years each, except that initially the appointing authority shall appoint a minority of the board members for one (1) year terms. Subsequent terms shall all be for two (2) years. Any vacancies shall be filled by the appointing authority for the unexpired term.*
 - (7) *A majority of the membership of the board shall constitute a quorum.*
 - (8) *A member of the board of directors may be removed from office as provided by KRS 65.007.*
 - (9) *The board of directors shall provide rescue service to inhabitants of the district and may:*
 - (a) *Purchase vehicles and all other necessary equipment and employ trained personnel who meet all federal and state requirements;*
 - (b) *Adopt rules and regulations necessary to effectively and efficiently provide rescue service for the district. Rules and regulations shall be consistent with the provisions of this chapter;*
 - (c) *Employ persons to administer the daily operations of the rescue service;*
 - (d) *Compensate employees of the district at a rate determined by the board;*
 - (e) *Apply for and receive available funds from the state and federal government for the purpose of maintaining or improving the rescue service of the district; and*
 - (f) *Acquire by bequest, gift, grant, or purchase any real or personal property necessary to provide rescue service.*
 - (10) *A district shall be eligible for grants pursuant to Section 95 of this Act and workers' compensation coverage pursuant to Section 99 of this Act.*
 - (11) *Tax revenues of a rescue squad taxing district shall be used only for rescue services as described in this chapter. Tax revenues of a rescue squad taxing district shall be distributed among all rescue squads in the district in proportion to the percentage of the district's population served by each squad.*

SECTION 99. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Rescue squad organizations or members of them or individuals associated with them for the purposes of receiving workers' compensation benefits paid by the division shall be covered by those benefits when performing emergency preparedness, response, or recovery functions, with the following limitations:

- (1) *Rescue squad organizations and individuals shall not be covered when performing fundraising functions, unless all proceeds of the function are to be dedicated to the administration or operation of the rescue squad organization.*
- (2) *Rescue squad organizations and individuals shall not be covered when involved in any law enforcement activity, including security or evidence recovery, except for traffic control at an accident scene or the recovery of evidence by diving or dragging when the assistance is requested by law enforcement authorities.*
- (3) *Rescue squad organizations and individuals shall not be covered when the primary purpose of the mission is the provision of emergency medical care or first aid. However, coverage shall be extended when:*
 - (a) *A rescue squad provides emergency medical transportation when inclement weather or rough terrain prevents a regular ambulance from providing transportation. Transportation may be provided only upon request of the appropriate emergency medical services agency. The distance of travel shall be restricted to the nearest appropriate medical facility or ambulance;*

- (b) *Additional personnel or equipment are required to supplement existing emergency medical services which have been overtaxed at an incident which is subsequently declared as an emergency by any official authorized to make such a determination; or*
 - (c) *A rescue squad provides first aid, or emergency medical care is rendered as a necessary function during a rescue mission, and the primary purpose of the mission was the rescue and not the provision of emergency medical care.*
- (4) *Rescue squad organizations or individuals shall not be covered when engaging in firefighting unless the firefighting was performed as a secondary function to protect persons involved in a rescue mission.*
 - (5) *Rescue squad organizations or individuals shall not be covered when engaging in hazardous materials response, containment, cleanup, or other operations related to hazardous materials, when operating at the hazardous materials technician or hazardous materials specialist level of operation as defined in 29 C.F.R. 1910.120.*
 - (6) *No person shall be covered unless enrolled on a workers' compensation enrollment form and filed with the area manager of the division, except when the magnitude of an emergency, or a training exercise, is so great that a local emergency management director must solicit additional workers. At these times, the local director may develop and maintain a list of workers, to include names, Social Security account numbers, missions assigned, and dates covered and submit a copy of the list to the area manager of the division within twenty-four (24) hours of the conclusion of the emergency or the training exercise.*

SECTION 100. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *All 911 centers and dispatch centers, law enforcement agencies, law enforcement dispatchers, fire departments, rescue squads, emergency medical service agencies, and emergency management agencies shall report the information required to be reported by administrative regulation, for all reports of persons missing, lost, or overdue, if a search for the lost person has lasted for more than two (2) hours to:*
 - (a) *The local emergency management director; and*
 - (b) *The local search and rescue coordinator for the jurisdiction in which the person is reported missing.*
- (2) *Any search for a missing minor, as that term is defined in KRS 2.015, shall be reported to the Kentucky State Police by the person or organization to whom the missing minor is reported. The making of this report does not relieve the person or organization from the duty to make other notifications and reports required in this section.*
- (3) *Any search and rescue mission which has lasted four (4) hours without the subject being located, shall be immediately reported to the duty officer of the Division of Emergency Management by telephone or radio.*
- (4) *The results of each lost, missing, or overdue person report or search mission required to be reported under subsections (1) to (3) of this section shall be reported to the division and the local director on forms provided by the division and containing the information required by administrative regulation. The report shall be filed within twenty (20) days after:*
 - (a) *The search and rescue mission is discontinued; or*
 - (b) *The victim has not been found and a decision is made to keep the case open or continue searching on a limited basis, whichever occurs earlier.*
- (5) *Each agency required to notify a local emergency management director or the division of a report of a missing person, or a search mission pursuant to this section shall develop a written standard operating procedure for handling and reporting requests to search for missing, lost, or overdue persons. This standard operating procedure shall be a public record.*
- (6) *The contents of reports, information to be conveyed upon notification, and other matters relating to the administration of this section and the securing of information required hereby shall be specified by the division by administrative regulations.*

SECTION 101. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

- (1) *Each local search and rescue coordinator shall assist local rescue squads in developing a comprehensive written search and rescue plan which shall address as a minimum:*
 - (a) *Direction and control responsibilities or incident command system procedures;*

- (b) *Notification and reporting procedures and requirements;*
 - (c) *Call-out procedures;*
 - (d) *Resource identification;*
 - (e) *Coordination of resources;*
 - (f) *Mutual aid agreements;*
 - (g) *Training requirements for search and rescue responders and managers;*
 - (h) *Coordination of all on-scene operations with other local, state, and federal agencies; and*
 - (i) *The provision of copies of topographical maps for search team members.*
- (2) *The local search and rescue plan shall be incorporated into the rescue services annex of the local emergency operations plan and submitted for review and adoption as part of the local emergency operations plan.*
- (3) *The local search and rescue plan shall be a public record and shall be updated not less than annually. A copy of the plan shall be filed with the division not less than ten (10) days after each update or amendment.*

SECTION 102. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Each local emergency management director shall assume the duties of, or appoint with the concurrence of the fiscal court, city governing body, urban-county council, or governing body of other local government, a local search and rescue coordinator who shall be responsible for the coordination of all search and rescue resources and operations during all search and rescue missions within the city or county. The position of local search and rescue coordinator may be a volunteer position. The local search and rescue coordinator, if appointed by the local emergency management director, shall serve a similar term not to exceed four (4) years, but may be reappointed for a similar term upon the expiration of a previous term. The local search and rescue coordinator may be removed for cause at any time by the local director, with the concurrence of the fiscal court, city governing body, urban-county council or governing body of other local government. The local search and rescue coordinator shall successfully complete training in search management, search techniques, and incident command required by the division by administrative regulation.

SECTION 103. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The Division of Emergency Management may promulgate administrative regulations which address minimum training requirements and standards of response for individuals, agencies, and organizations who respond to the following search and rescue missions:

- (1) *Searching for missing, lost, or overdue person or persons;*
- (2) *Cave rescue;*
- (3) *Dive rescue and recovery of drowning victims;*
- (4) *Inland water search, rescue, and recovery;*
- (5) *Search dogs and handlers; testing and certification;*
- (6) *Urban search and rescue; and*
- (7) *High angle or rough terrain rescue and recovery.*

SECTION 104. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

Section 105. KRS 186.1721 is amended to read as follows:

- (1) Upon application to the county clerk of the county of his residence, any member of a local disaster and emergency services organization or volunteer rescue squad in the Commonwealth shall be issued a five (5) year license plate in the same form and character as license plates authorized by law to be used upon similar private vehicles registered in Kentucky, except that the license plates shall bear the inscription "Disaster and Emergency Services," a registration number and an appropriate standardized insignia. Each application shall be

accompanied by proof of current service as furnished by the county judge/executive, mayor, or **local emergency management director** ~~[disaster and emergency services coordinator]~~, and the payment of a fee of twenty-five dollars (\$25). Annually thereafter, upon application to the county clerk of the county of his residence, together with proof of current service, and payment of an eleven dollar fifty cent (\$11.50) registration fee, the clerk shall issue a current year renewal decal to the applicant to be affixed to the disaster and emergency services license plate originally issued to the applicant.

- (2) Upon the sale, transfer, or termination of lease of a vehicle licensed as authorized by subsection (1) of this section, the owner or lessee shall remove the disaster and emergency services license plate and return it and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar fifty cent (\$11.50) state fee and a three dollar (\$3) clerk's fee. When the plate has been presented to the clerk, he shall reissue it free from payment to the Transportation Cabinet for use on any other vehicle of the same class and category owned or leased by the same applicant to whom a disaster and emergency services license plate was originally issued.
- (3) Upon termination of membership as a member of the disaster and emergency services organization or volunteer rescue squad, an applicant to whom a disaster and emergency services license plate was issued under this section shall, within thirty (30) days, return the plate to the county clerk of the county of his residence.
- (4) For the services performed in issuing the disaster and emergency services license plate and in annually issuing a current year renewal decal to be affixed to the disaster and emergency services license plate, the county clerk shall receive from each applicant a fee of three dollars (\$3). A two dollar (\$2) fee shall be charged for the reissuance of the license plate after the sale or transfer of the vehicle for which it was originally issued.
- (5) Any applicant seeking a license plate according to this section for a vehicle provided to him pursuant to an occupation shall conform to the requirements set forth in KRS 186.050(14).
- (6) Registration under this section shall expire December 31 of each year.
- (7) The secretary of the Transportation Cabinet shall provide forms necessary to carry out the purpose of this section.

Section 106. KRS 189.910 is amended to read as follows:

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

Section 107. KRS 189.920 is amended to read as follows:

- (1) All fire department, rescue squad, or publicly owned **emergency management** ~~[civil defense]~~ agency emergency vehicles and all ambulances shall be equipped with one (1) or more flashing, rotating, or oscillating red lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.
- (2) All state, county, or municipal police vehicles and all sheriffs' vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.

- (3) By ordinance, the governing body of any city or county may direct that the police or sheriffs' vehicles in that jurisdiction be equipped with a combination of red and blue flashing, rotating, or oscillating lights.
- (4) All public safety vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating yellow lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. Yellow flashing, rotating, or oscillating lights may also be used by vehicles operated by mail carriers while on duty, funeral escort vehicles, and church buses.
- (5) All Department of Corrections vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. The Department of Corrections vehicles shall not be equipped with or use a siren, whistle, or bell. The equipment prescribed by this subsection shall be in addition to any other equipment required by motor vehicle laws.
- (6) Red flashing lights may be used by school buses.
- (7) No emergency vehicle, public safety vehicle, or any other vehicle covered by KRS 189.910 to 189.950 shall use any light of any other color than those specified by KRS 189.910 to 189.950. Sirens, whistles, and bells may not be used by vehicles other than those specified by KRS 189.910 to 189.950, except that any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
- (8) ***Vehicles used as command posts at incidents may be equipped with and use when on scene, a green rotating, oscillating, or flashing light. This light shall be in addition to the lights and sirens required in this section.***

Section 108. KRS 304.18-060 is amended to read as follows:

"Blanket health insurance" is that form of health insurance covering groups of persons as enumerated in one (1) of the following subsections under a policy or contract issued to:

- (1) Any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on ~~the~~^{such} common carrier or ~~the~~^{such} means of transportation.
- (2) An employer, who shall be deemed the policyholder, covering any group of employees, dependents or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.
- (3) A college, school or other institution of learning; ~~;~~[;] a school district or districts; ~~a~~[;] ~~or~~[;] school jurisdictional unit; ~~;~~[;] or to the head, principal, or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers, or employees.
- (4) A religious, charitable, recreational, educational or civic organization; ~~;~~[;] or branch thereof, which shall be deemed the policyholder covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.
- (5) A sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors.
- (6) A volunteer fire department, first aid, ***emergency management agency*** ~~[civil defense]~~ or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by ~~the~~^{such} policyholder.
- (7) A newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.
- (8) An association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by ~~the~~^{such} policyholder.
- (9) Any other person or group covering any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket health insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

Section 109. KRS 342.140 is amended to read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

- (1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:
 - (a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;
 - (b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);
 - (c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);
 - (d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.
 - (e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.
 - (f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where the services are rendered by paid employees.
- (2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.
- (3) In the case of volunteer firemen, police, and **emergency management agency** ~~civil defense~~ members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.
- (4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his wages should be expected to increase during the period of disability, that fact may be considered in computing his average weekly wage.
- (5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his wages from all the employers shall be considered as if earned from the employer liable for compensation.
- (6) The term "wages" as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent the gratuities are reported for income tax purposes.
- (7) The commissioner shall, from time to time, based upon the best available information, determine by administrative regulation industries which ordinarily do not have a full working day for five (5) days in every week. In those industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. "At full time" as used in this subsection means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

Section 110. KRS 342.640 is amended to read as follows:

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

- (1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;
- (2) Every executive officer of a corporation;
- (3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of ***an emergency management agency***~~[the civil defense corps of this state]~~, as established under ***KRS Chapters 39A to 39E***~~[Chapter 39]~~, shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state;
- (4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and
- (5) Subject to the provisions in subsection (4) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

Section 111. KRS 432.570 is amended to read as follows:

- (1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same. Nothing in this section shall preclude a probation and parole officer employed by the Department of Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state-issued portable radio apparatus capable of transmitting or receiving signals.
- (2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50) and not exceeding five hundred dollars (\$500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.
- (3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.
- (4) Nothing contained in this section shall prohibit the possession of a radio by:
 - (a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;

- (b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or
 - (c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; ~~disaster and~~ emergency **management agency**~~services~~ personnel authorized in writing by the ~~state~~ director of **the division of**~~disaster and~~ emergency **management**~~service~~ (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the amateur radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers. Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.
- (5) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other nonpolice persons for utilization in the N.O.A.A. weather radio system.

Section 112. KRS 65.060 is amended to read as follows:

As used in KRS 65.008, 65.009, 65.065 and 65.070, the term "district" shall mean and the provisions of KRS 65.008, 65.009, 65.065 and 65.070 shall apply to any board, commission, or special district created pursuant to the following statutes: **Sections 84 and 98 of this Act**~~(KRS 39.700)~~, 65.160, 65.162, 65.210 to 65.300, 65.510 to 65.650; KRS 74.010 to 74.416; KRS 75.010 to 75.260; KRS 76.005 to 76.210, 76.241 to 76.273, 76.274 to 76.279, 76.295 to 76.420, 76.600 to 76.640; KRS 77.005 to 77.305; KRS 80.262 to 80.610; KRS 91A.350 to 91A.390; KRS 96A.010 to 96A.230; KRS 104.450 to 104.680; KRS 107.310 to 107.500; KRS 108.010 to 108.070, 108.080 to 108.180; KRS 109.056, 109.059, 109.115 to 109.190; KRS 147.610 to 147.705; KRS 147A.050 to 147A.120; KRS 154.50-301 to 154.50-346; KRS 164.605 to 164.675; KRS 173.450 to 173.650, 173.710 to 173.800; KRS 179.700 to 179.735; KRS 183.132 to 183.160; KRS 184.010 to 184.300; KRS 210.460 to 210.480; KRS 212.720 to 212.760; KRS 216.310 to 216.360; KRS 220.010 to 220.613; KRS 262.100 to 262.660, 262.700 to 262.990; KRS 266.010 to 266.990; KRS 267.010 to 267.990; KRS 268.010 to 268.990; or KRS 273.405 to 273.453.

Section 113. The following KRS sections are repealed:

- 39.400 Necessity for and purpose of provisions for disaster and emergency response.
- 39.401 Definitions.
- 39.407 Powers of adjutant general.
- 39.408 Executive orders.
- 39.409 Emergency powers of Governor, mayors, and county judges/executive.
- 39.410 Compensation for property taken for temporary use -- Notice to owner of property where title is taken.
- 39.411 Board of Claims to fix compensation if amount is in dispute.
- 39.412 Appeal from award of Board of Claims.
- 39.413 Procedure for payment of compensation.
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Section 114. For the purposes of KRS Chapter 39E, the existing members of the Kentucky Emergency Response Commission created by KRS 39.810 shall continue in office for the remainder of their existing terms as the membership of the Kentucky Emergency Response Commission established by Sections 58 to 60 of this Act.

Section 115. In lieu of the official seal of the Commonwealth of Kentucky, the division shall be authorized to design, display and affix the distinctive seal and markings of the Division of Emergency Management on any and all state vehicles owned, leased or operated by the division for official purposes and operated by personnel of the division.

Approved April 1, 1998

CHAPTER 227

(HB 229)

AN ACT proposing an amendment to Section 170 of the Constitution of Kentucky relating to the finances of the Commonwealth.

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

Section 1. It is proposed that Section 170 of the Constitution of Kentucky be amended to read as follows:

There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by ~~any~~~~the railroad~~ retirement system *either within or without the Commonwealth of*

Kentucky, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. ~~[All laws exempting or omitting property from taxation other than the property above mentioned shall be void.]~~ The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location. ***Notwithstanding the provisions of Sections 3, 172, and 174 of this Constitution to the contrary, the General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property.***

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415. The proposed amendment shall be summarized on the ballot and presented to the voters in the following language: "Are you in favor of amending Section 170 of the Constitution of Kentucky to permit the General Assembly to exempt motor vehicles and any other class of personal property from the levy of all or any portion of the property tax and to extend the homestead property tax exemption to persons who are classified as totally disabled by any public or private retirement system?"

Governor's signature not required

CHAPTER 228

(SB 28)

AN ACT relating to physician assistants.

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

Section 1. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;
- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
- (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;
- (8) "Temporary permit" means a permit issued to a person who has applied for a regular or limited license, and who appears from verifiable information in the application to the secretary to be qualified and eligible therefor;
- (9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing ***the physician*** ~~him~~ to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;

- (10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
- (11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by emergency medical technicians or medical emergency dispatchers certified by the Cabinet for Human Resources, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Human Resources by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;
- (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- (13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;
- (14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;
- (15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;~~and~~
- (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;
- (17) *"Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or who possesses a current physician assistant certificate issued by the board prior to the effective date of this Act;*
- (18) *"Supervising physician" means a physician licensed by the board who supervises physician assistants; and*
- (19) *"Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, or other telecommunication device. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience; that the identification of and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.*

Section 2. KRS 311.560 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless *the person*~~he~~ holds a valid and effective license or permit issued by the board as hereinafter provided.
- (2) The provisions of subsection (1) of this section shall not apply to:
- (a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;

- (b) Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter;
 - (c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the board. This shall not be construed to otherwise exempt interns or first-year postgraduate trainees, or to exempt in any manner resident or staff physicians of hospitals, from the licensure requirements of KRS 311.550 to 311.620.
- (3) *Physician assistants shall be considered to practice medicine or osteopathy with physician supervision. A physician assistant may perform those duties and responsibilities that are delegated by the supervising physician. A physician assistant shall be considered the agent of the supervising physician in the performance of all practice-related activities, including but not limited to the performance of or ordering of diagnostic, therapeutic, and other medical services. A physician assistant shall not render services in hospitals or other licensed health care facilities without the express written permission of the facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.*
- (4) *A physician assistant may prescribe and administer drugs and medical devices to the extent delegated by the supervising physician. Prescribing and administering of drugs may include all nonscheduled legend drugs. Any physician assistant who is delegated prescribing privileges may request, receive, and sign for professional sample drugs and distribute professional sample drugs to patients.*

Section 3. KRS 311.565 is amended to read as follows:

- (1) The board may:
- (a) Exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy which shall include, but not be limited to, promulgation of reasonable administrative regulations enabling the board to regulate the conduct of its licensees;
 - (b) Promulgate reasonable administrative regulations establishing moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and permits that may be issued by the board;
 - (c) Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that may be issued by the board, and to reprimand or to place licensees on probation, in compliance with the provisions of KRS 311.530 to 311.620;
 - (d) Appoint an executive director and assistant executive directors and fix their compensation. The executive director shall oversee the work of the board, shall be authorized to discharge the duties of the secretary, as provided by KRS 311.530 to 311.620, and shall carry out the duties of the executive director as set forth elsewhere in this chapter;
 - (e) Appoint a general counsel and assistant general counsel and fix their compensation;
 - (f) Appoint investigatory personnel and fix their compensation;
 - (g) Appoint one (1) or more hearing officers, who need not be members of the board, and fix their compensation. Every hearing officer shall be vested with the full and complete power and authority of the board to schedule and conduct hearings on behalf of and in the name of the board on all matters referred for hearing by the board or secretary thereof, including, among other things, proceedings for placing licensees on probation and for limitation, suspension, and revocation of licenses. All administrative hearings conducted by the board, a member of the board, or a hearing officer appointed by the board, shall be conducted in accordance with KRS Chapter 13B. No hearing officer shall be empowered to place any licensee on probation or to issue, refuse, suspend, limit, or revoke any license;
 - (h) Appoint committees of licensees, who need not be board members, to review issues of public or medical interest before the board and to make recommendations to the board on the issues;

- (i) Promulgate administrative regulations to promote the efficient and fair conduct of disciplinary proceedings;
- (j) Promulgate a code of conduct governing the practice of medicine and osteopathy, which shall be based upon generally-recognized principles of professional ethical conduct;
- (k) Utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620;
- (l) Make its personnel and facilities available to other governmental entities under mutually agreeable terms and conditions;
- (m) Issue regular licenses without further testing by endorsement from another state having qualifications and standards at least as high as those of this state or by endorsement from the National Board of Medical Examiners, the National Board of Examiners for Osteopathic Physicians and Surgeons, the National Joint Committee of Preregistration Physician Training Programs, or any approved successors thereof;
- (n) Issue and renew regular licenses to practice medicine or osteopathy in accordance with KRS 311.530 to 311.620 and any reasonable regulations of the board;
- (o) Issue and renew, or refuse to issue or renew, or cancel and terminate limited licenses pursuant to administrative regulations promulgated by the board; provided however, no person who held a limited license for institutional practice or general practice as of September 1, 1972, shall be denied the renewal of that limited license for nondisciplinary reasons;
- (p) Appoint examiners, who need not be members of the board, and employ or contract with the Federation of State Medical Boards of the United States, Inc., or the National Board of Medical Examiners or other organizations, agencies, or individuals to prepare examination questions and grade examination papers;
- (q) Determine the schools, colleges, universities, institutions, and training acceptable in connection with licensure under KRS 311.530 to 311.620;
- (r) Prescribe the time, place, method, manner, scope, and content of examinations, but at least two (2) examinations shall be held annually;
- (s) Prescribe all forms which it considers appropriate, and require the submission of photographs, fingerprints, and personal history data;
- (t) Prescribe and collect reasonable fees and charges for examinations, directories, and the issuance and renewal of licenses and permits; *and*
- (u) Impose fines of not greater than five thousand dollars (\$5,000) per violation upon a finding pursuant to disciplinary proceedings that the licensee has violated any provision of KRS 311.595 to 311.597 or duly-promulgated disciplinary regulation of the board; ~~and~~
- ~~(v) Exercise all the administrative functions of the state in regard to the regulation of physician assistants. In promulgating these regulations under the provisions of KRS Chapter 13A, the board shall address:

 1. The professional qualifications of physician assistants;
 2. The supervision of physician assistants by licensed physicians;
 3. The review and discipline of physician assistants and their supervising physicians;
 4. The scope of practice allowed physician assistants;
 5. The facilities in which physician assistants may practice; and
 6. The delegation of responsibilities from physicians to physician assistants.~~

~~The board may establish qualifications that the physician assistants shall attain before the board grants the right to practice in this state. At a minimum, these qualifications shall include the passage of a written examination approved by the board and satisfactory completion of a clinical training program approved by the board. The board may establish an advisory committee to aid the board in the regulation of physician assistants, who shall be considered adjuncts to supervising physicians and not independent practitioners of any healing art.~~

- (2) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a physician licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a physician is falsely accused.
- (3) The board, the hearing officer, and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

SECTION 4. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall promulgate all administrative regulations in accordance with the provisions of KRS Chapter 13A that are reasonable and necessary for the performance of the various duties imposed upon the board by the provisions in Sections 1, 2, and 4 of this Act.*
- (2) *The board shall establish a nine (9) member physician assistant advisory committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. The matters shall include, but not be limited to:*
 - (a) *Applications for physician assistant credentialing;*
 - (b) *Renewal requirements;*
 - (c) *Approval of supervising physicians;*
 - (d) *Disciplinary actions; and*
 - (e) *Establishment and revision of administrative regulations.*
- (3) *The physician assistant advisory committee shall be appointed by the board and shall consist of five (5) practicing physician assistants, two (2) supervising physicians, one (1) member of the board, and one (1) citizen at large. Initial appointments shall be for two (2) years for three (3) members, three (3) years for three (3) members, and four (4) years for three (3) members. Terms thereafter shall be for four (4) years. Members shall serve no more than two (2) consecutive four (4) year terms.*
- (4) *The chairperson of the advisory committee shall be elected by a majority vote of committee members and shall be responsible for presiding over meetings that shall be held on a regular basis. Members shall receive reasonable reimbursement consistent with state personnel policy for expenditures in attending committee meetings.*
- (5) *Nothing in this chapter shall be construed to require credentialing of a physician assistant student enrolled in a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or its successor agency or of a physician assistant employed in the service of the federal government while performing duties incident to that employment.*

Section 5. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

- (1) "Board" shall mean Kentucky Board of Nursing.
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.
- (3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
 - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
 - (b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.

- (5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.
- (6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
- (a) The care, counsel, and health teaching of the ill, injured, or infirm.
 - (b) The maintenance of health or prevention of illness of others.
 - (c) The administration of medication and treatment as prescribed by a physician, *physician assistant*, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:
 1. Preparing and giving medications in the prescribed dosage, route, and frequency;
 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 3. Intervening when emergency care is required as a result of drug therapy;
 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 6. Instructing an individual regarding medications.
 - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.
 - (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.
- (7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, and nurse practitioner pursuant to KRS 314.042.
- (8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.
- (9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.
- (10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
- (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.
 - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

- (c) The administration of medication or treatment as authorized by a physician, *physician assistant*, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.
 - (d) Teaching, supervising, and delegating except as limited by the board.
 - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.
- (11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.
 - (12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.
 - (13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.
 - (14) "Sexual assault nurse examiner" shall mean a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(2).

Section 6. KRS 315.040 is amended to read as follows:

- (1) Nothing in this chapter shall be construed to prevent, restrict, or otherwise interfere with the sale of nonprescription drugs in their original packages by any retailer. No rule or regulation shall be adopted by the Board of Pharmacy under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist.
- (2) Nothing in this chapter shall interfere with the professional activities of any licensed practicing physician, or prevent *the physician*~~him~~ from keeping any drug or medicine that he *or she* may need in his *or her* practice, from compounding *the physician's*~~his~~ own medications, or from dispensing or supplying to~~his~~ patients any article that seems~~to him~~ proper *to the physician*.
- (3) Nothing in this chapter shall be construed to interfere with the activities of a midlevel health care practitioner as provided in KRS 216.925.
- (4) Nothing in this chapter pertaining to the use of collaborative care agreements shall apply in any hospital or other health facility operated by a hospital without the express written permission of the hospital's governing body. Collaborative care agreements may be restricted by the policies and procedures of the facility.
- (5) ***Nothing in this chapter shall interfere with the activities of a physician assistant as authorized in KRS Chapter 311.***

Section 7. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) The term "secretary" means the secretary of the Cabinet for Human Resources;
- (2) The term "cabinet" means the Cabinet for Human Resources or its designee;
- (3) The term "person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (4) The term "food" means:
 - (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;

- (5) The term "drug" means:
- (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (6) The term "device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments, apparatus and contrivances, including their components, parts and accessories, intended:
- (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;
- (7) The term "cosmetic" means:
- (a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of any such articles, except that such term shall not include soap;
- (8) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (9) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (10) The term "immediate container" shall not include package liners;
- (11) The term "labeling" means all labels and other written, printed or graphic matter:
- (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (12) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (13) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (14) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;
- (15) The term "new drug" means:

- (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- (16) The term "contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;
- (17) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;
- (18) The term "federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);
- (19) The term "flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (20) The term "enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;
- (21) The terms "bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;
- (22) The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;
- (23) The term "practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, ~~and~~ advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, ***and physician assistants when administering or prescribing pharmaceutical agents as authorized in subsections (3) and (4) of Section 2 of this Act;***
- (24) The term "prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

- (25) The term "Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);
- (26) The term "Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85-172; 71 Stat. 441, including any amendments thereto;
- (27) The term "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;
- (28) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide, Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;
- (29) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (30) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
- (a) A pesticide chemical in or on a raw agricultural commodity; or
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;
- (31) (a) The term "color additive" means a material which:
- 1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or
 - 2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;
- (b) The term "color" shall include, but not be limited to black, white, and intermediate grays;
- (c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.
- (32) The term "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;
- (33) The term "retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (34) The term "food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments;

private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

- (35) The term "temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (36) The term "retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but shall not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (37) The term "salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (38) The term "salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (39) The term "food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and
- (40) The term "food storage warehouse" means any establishment in which food is stored for subsequent distribution.

Approved April 1, 1998

CHAPTER 229

(SB 269)

AN ACT relating to municipal utilities.

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

Section 1. KRS 96.530 is amended to read as follows:

- (1) Any city acquiring or constructing an electric light, heat, and power plant under the provisions of KRS 96.520 shall, by ordinance, appoint a city utility commission consisting of three (3) commissioners to operate, manage, and control the plant, except that a city of the second class shall appoint five (5) commissioners. The utility commission shall have absolute control of the plant in every respect, including its operation and fiscal management and the regulation of rates, except that in fixing rates the commission shall be governed by the provisions of KRS 96.430, as it is made applicable to ~~those~~~~[such]~~ plants by KRS 96.520, and by any ordinance enacted under that section, except that in fixing rates the commission in a city of the second or third class shall be governed by the provisions of KRS 96.535 and any ordinance enacted **according to this section**~~[thereunder]~~. The utility commission, when so appointed, shall be a public body politic and corporate, with perpetual succession; and the body may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The utility commission shall provide rules for the management of the plant, and it shall fix the number, qualifications, pay, and terms of employment of all employees needed to operate the plant. In cities of the second or third class providing civil service coverage for city employees, the utility commission appointed under this section may provide civil service coverage for all of its employees and it shall exercise the powers and functions with respect to ~~their~~~~[such]~~ employees which are vested in the city legislative body with respect to the city employees by KRS 90.380. Employees who have been in the employment of the utility commission for one (1) year immediately preceding the adoption of an

order by the utility commission placing all of its employees under civil service coverage shall not be required to stand a civil service examination and they shall be eligible for all the benefits provided by civil service coverage. Out of the revenue of the plant, it shall pay operating expenses, repairs, and necessary additions and provide sufficient reserve fund against any emergency that may arise. The commission shall from time to time pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.430 and 96.440, as they are made applicable to ~~the [such]~~ plants by KRS 96.520, except that the commission in a city of the second or third class shall pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.535 and any ordinance adopted **according to this section** ~~[thereunder]~~. Notwithstanding the foregoing provisions, the utility commission, for the purpose stated in subsection (1) of KRS 96.520, may enter into an agreement for the operation of any of its plants or other facilities.

- (2) Except as provided in KRS 61.070, no person shall be appointed a member of the commission who has, within the last two (2) years before his appointment, held any city, county, state, or federal office, or been a member of any committee of any political party, or who is related within the third degree to the mayor, or a member of a city legislative body. The commission shall not appoint to any subordinate office that it may create any person who is related to any commissioner, to the mayor or to any member of the city legislative body. No officer or employee of the city, whether holding a paid or unpaid office, shall be eligible to be appointed as a member of the commission or to be employed by the commission in any capacity. The members of the commission shall be citizens, taxpayers, and legal voters of the city and shall not at the time of appointment be indebted to the city or be surety on the official bond of any officer of the city. If at any time during his term of office any member of the commission becomes a candidate for or is elected or appointed to any public office, he shall automatically vacate his membership on the commission and another person shall be appointed in his place.
- (3) The city shall pay the cost of securing bonds for the commissioners from a surety company, and each commissioner shall execute bond to be approved by the city legislative body.
- (4) The city legislative body shall fix the salary to be paid each member of the commission at a sum not to exceed:
 - (a) ~~two thousand four hundred dollars (\$2,400) per annum, if the city does not own or operate electric generation facilities; or~~
 - (b) ~~Two thousand four hundred dollars (\$2,400) per annum, if the city owns or operates electric generation facilities].~~ **The Department of Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the Consumer Price Index of the preceding year by using 1998 as the base year, and the salary of the commissioners may be adjusted at a rate no greater than that stipulated by the department.**
- (5) The first commissioners appointed under this section shall be appointed one (1) for the term of one (1) year, one (1) for the term of two (2) years and one (1) for the term of three (3) years. Upon the expiration of the first terms, successors shall be appointed for a term of three (3) years. On a commission with five (5) members, not more than two (2) members shall hold concurrent terms of office.
- (6) All commission members appointed subsequent to the initial members shall be appointed by the mayor or chief executive of the municipality, with the approval of the governing body of the municipality.

Section 2. KRS 96.520 is amended to read as follows:

- (1) Any city of the second, third, fourth, fifth, or sixth class may purchase, establish, erect, maintain, and operate electric light, heat, and power plants, with extensions and necessary appurtenances ~~[thereto]~~, within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with electric light, heat, ~~and~~ power, **and telecommunications** and, for ~~this [such]~~ purpose, may enter into and fulfill the terms of an interconnection agreement with any **electric or combination electric or gas** utility whose rates and service are regulated by the Public Service Commission of Kentucky (or, if not so regulated, operating and having customers only outside of Kentucky), **or an affiliate entirely owned by or under complete common ownership with an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky**, and may establish, erect, maintain, and operate ~~[such]~~ plants, individually or jointly with any **of these utilities or utility affiliate** ~~[such utility]~~. In the case of any joint action, ~~a [such]~~ city and utility **or utility affiliate** may provide by contract for their respective responsibilities, for operation and maintenance and for the allocation of expenses, revenues, and power. If in the accomplishment of ~~this [such]~~ purpose ~~a [such]~~ city at any time has capacity or energy surplus to the immediate needs of the city and its

inhabitants, ~~the~~ surplus, if not disposed of for consumption outside this state, may be disposed of only to *an electric or combination electric and gas* utility whose rates and service are regulated by the Public Service Commission of Kentucky, *or to an affiliate entirely owned by or under complete common ownership with such a utility.*

- (2) The city shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:
- (a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city, rather than by twenty-five percent (25%) of the qualified voters of the city who voted at the last preceding regular election.
 - (b) Notwithstanding any other ~~acts or~~ laws ~~of other import wherever the same may be found in the Kentucky Revised Statutes~~, bonds may be issued bearing interest at ~~a~~ rate or rates and may be sold on a basis to yield interest at ~~a~~ rate or rates as may be determined upon the sale *of the bonds* ~~thereof~~.
 - (c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed \$10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.
- (3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the second, third, fourth, fifth, or sixth class in addition or as an alternate to any other method authorized by statute, provided that ~~the~~ city was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings shall be required for the acquisition of any electric light, heat, or power plant or the issuance of bonds under this section except the proceedings required by KRS 96.360 to 96.510.

Approved April 1, 1998

CHAPTER 230

(SB 253)

AN ACT relating to the designation of coal as the official mineral of Kentucky.

WHEREAS, since the first commercial mine opened in 1820 at McLean Drift Bank in western Kentucky, and since a young mountaineer, John Mayo, rode his horse across the eastern Kentucky mountains opening mines, coal, or "black gold" as he called it, has been the lifeblood for thousands of Kentuckians; and

WHEREAS, coal continues to be mined all across the Commonwealth, from Paradise down by the Green River in Muhlenberg County to Pigeon Roost in Martin County; and

WHEREAS, for the last half-century, Kentucky has led the nation in coal production, which has provided jobs, salaries, and economic wealth to thousands of Kentuckians; and

Whereas, more miners work in Kentucky than any other state, as some 25,000 miners earn their living "digging coal" in the Bluegrass State; and

WHEREAS, Kentucky native recording artists, such as Loretta Lynn and Dwight Yoakam, have recorded many songs, including "Coal Miner's Daughter" and "Coal Miner's Prayer," that connect coal to life in the Commonwealth; and

WHEREAS, carbide lanterns, mule-drawn carts, and coal shovels certainly are as symbolic of Kentucky life as tobacco barns, grazing horses, and bluegrass music, and coal has indeed been a major part of our state's identity, heritage and history;

NOW, THEREFORE,

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

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

Coal is named and designated as the official mineral of Kentucky.

Approved April 1, 1998

CHAPTER 231

(HB 168)

AN ACT relating to cellular telecommunications facilities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

In addition to the definitions set forth in KRS 100.111, the following definitions shall apply to Sections 1 to 2 of this Act:

- (1) *"Cellular antenna tower" means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services;*
- (2) *"Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;*
- (3) *"Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower;*
- (4) *"Personal communication service" has the meaning as defined in 47 U.S.C. sec. 332(c);*
- (5) *"Uniform application" means an application for a certificate of convenience and necessity issued under KRS 278.020 submitted by a utility to the Public Service Commission to construct an antenna tower for cellular telecommunications services of personal communications service in a jurisdiction, that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for any county that contains a city of the first class; and*
- (6) *"Utility" has the meaning as defined in KRS 278.010(3).*

SECTION 2. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

- (1) *A planning unit as defined in KRS 100.111 and legislative body or fiscal court that has adopted planning and zoning regulations, except for a county that contains a city of the first class as provided under KRS 278.650, may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in KRS Chapter 100 by officially registering with the Public Service Commission. The registration shall be in the form of an official resolution adopted by the local planning commission. Nothing in this section shall require a planning unit and legislative body or fiscal court to plan for and regulate the siting of cellular antenna towers.*
- (2) *Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the jurisdiction of a planning unit that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for a county that contains a city of the first class as provided under KRS 278.650, and that has officially registered with the Public Service Commission shall:*
 - (a) *Submit a copy of the utility's completed uniform application to the planning commission of the affected planning unit to construct an antenna tower for cellular or personal telecommunications services within five (5) days of applying to the Public Service Commission for a certificate of necessity and convenience as required by KRS 278.020(1). The uniform application shall include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:*
 1. *All of the planning unit's jurisdiction; and*
 2. *A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;*

- (b) Include in any contract with a owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal; and*
 - (c) Comply with any local ordinances concerning land use, subject to the limitations imposed by 47 U.S.C. 332(c), KRS 278.030, 278.040, and 278.280.*
- (3) Commencing from the time that a utility files a uniform application with the Public Service Commission, all information contained in the uniform application and any updates, except for information that specifically identifies the proposed location of the cellular antenna tower then being reviewed by the applying utility, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The Public Service Commission and the local planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.*
- (4) After receiving the uniform application to construct a cellular antenna tower, the planning commission shall:*
 - (a) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;*
 - (b) Make its final decision to approve or disapprove the uniform application; and*
 - (c) Advise the utility and the Public Service Commission in writing of its final decision within sixty (60) days commencing from the date that the uniform application is received by the planning commission or within a date certain specified in a written agreement between the local planning commission and the utility. If the planning commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the local planning commission and the utility to a specific date for the planning commission to issue a decision, it is presumed that the local planning commission has approved the utility's uniform application.*
- (5) (a) If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the planning commission approves the uniform application or the sixty (60) day time period has expired, whichever occurs first. If a planning commission rejects the uniform application to construct an antenna tower, the Public Service Commission may override the decision of the planning commission and issue a certificate of convenience and necessity for construction of the cellular or personal communications services antenna tower, if it determines that there is no acceptable alternate site and that the public convenience and necessity requires the proposed construction.*
 - (b) Any party, other than the applying utility, that is aggrieved by the final action of a planning commission under this section, may intervene in the action to the Public Service Commission, but this appeal shall not automatically postpone action by the Public Service Commission.*
- (6) The planning commission may require the utility to make a reasonable attempt to co-locate additional transmitting or related equipment on any new or existing towers, if there is available space on the tower and the co-location does not interfere with the structural integrity of the tower and does not require the owner of the tower to make substantial alterations to the tower. A planning commission may provide the location of existing cellular antenna towers on which the commission deems the applying utility can successfully co-locate its transmitting and related equipment. If the local planning commission requires the utility to attempt co-location, the utility shall provide the local planning unit with a statement indicating that the utility has:*
 - (a) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the utility's facilities, and that identifies the location of the tower which the applying utility will co-locate its transmission and related facilities on; or*

- (b) *Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the utility's facilities and that:*
1. *Identifies the location of the towers which the applying utility attempted to co-locate on; and*
 2. *Lists the reasons why the co-location was unsuccessful in each instance.*
- (7) *The local planning commission may deny a uniform application to construct a cellular antenna tower based on a utility's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers.*
- (8) *In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.*

Section 3. KRS 100.324 is amended to read as follows:

- (1) All other provisions of this chapter to the contrary notwithstanding, public utilities operating under the jurisdiction of the Public Service Commission, except as specified in *Section 2 of this Act and* subsection (5) of this section, or the Department of Vehicle Regulation or Federal Power Commission, any municipally-owned electric system, and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. Service facilities include all facilities of such utilities and common carriers by rail other than office space, garage space, and warehouse space and include office space, garage space, and warehouse space when such space is incidental to a service facility. The Public Service Commission and the Department of Vehicle Regulation shall give notice to the planning commission of any planning unit of any hearing which affects locations or relocations of service facilities within that planning unit's jurisdiction.
- (2) The nonservice facilities excluded in subsection (1) of this section must be in accordance with the zoning regulations.
- (3) Upon the request of the planning commission, the public utilities referred to in this section shall provide the planning commission of the planning unit affected with information concerning service facilities which have been located on and relocated on private property.
- (4) Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.
- (5) Every utility which proposes to construct an antenna tower for cellular telecommunications services or personal communications services within a county containing a city of the first class shall submit the proposal to the planning commission of the affected planning unit. The planning commission shall review the proposal in light of its agreement with the comprehensive plan and locally-adopted zoning regulations and shall, within sixty (60) days from the date the proposal is submitted, make its final decision and advise the utility in writing whether the proposed construction is in accordance with the comprehensive plan and locally-adopted zoning regulations. If the planning commission fails to issue a final decision within sixty (60) days, it is presumed to have approved the proposal, and may not later appeal a decision of the Public Service Commission under KRS 278.650(3). If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally-adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the expiration

of the sixty (60) day period or until the planning commission issues its final decision on the utility proposal, whichever occurs first.

SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of a uniform application, provided under subsection (5) of Section 1 of this Act, for a certificate of convenience and necessity to construct cellular antenna towers, and the procedures to carry out the commission's responsibilities under Section 2 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

Commencing from the time that a utility files a uniform application, as defined in subsection (5) of Section 1 of this Act, with the commission, all information contained in the uniform application and any updates, except for information that specifically identifies the proposed location of the cellular antenna tower then being reviewed by the applying utility, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Record Act, KRS 61.872 to 61.874, or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.

Section 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Approved April 1, 1998

CHAPTER 232

(HB 263)

AN ACT relating to charitable gaming and declaring an emergency.

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

Section 1. KRS 238.505 is amended to read as follows:

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

- (1) "Division" means the Division of Charitable Gaming within the Justice Cabinet;
- (2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;
- (3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;
- (4) "Bingo" means a specific game of chance in which participants use cards or paper sheets divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;
- (5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. Charity game ticket shall include pulltabs;
- (6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;
- (7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;

- (8) "Charity fundraising event" means a fundraising activity of limited duration at which games of chance approved by the division are conducted, and examples of which include fairs, festivals, carnivals, ~~and~~ bazaars, **and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding;**
- (9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:
- (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and
 - (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;
- (10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include a resident printer who prints raffle tickets at the request of a licensed charitable organization;
- (11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available ~~for financial consideration~~ to two (2) or more licensed charitable organizations **during a one (1) year period** for the conduct of charitable gaming;
- (12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;
- (13) "Adjusted gross receipts" means gross receipts less all cash prizes ~~and for~~ **the amount paid for** ~~cash value of~~ merchandise prizes **purchased;**
- (14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;
- (15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;
- (16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;
- (17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; ~~wagering on prerecorded horse races, KRS Chapter 230 notwithstanding;~~ and any other game of chance as identified, defined, and approved by administrative regulation of the division; ~~and~~
- (18) **"Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;**
- (19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, **including bingo held at a charity fundraising event;**
- (20) **"Immediate family" means:**
- (a) **Spouse and parents-in-law;**
 - (b) **Parents and grandparents;**
 - (c) **Children and their spouses; and**
 - (d) **Siblings and their spouses; and**
- (21) **"Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility.**

Section 2. KRS 238.515 is amended to read as follows:

The division shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the division shall have the following powers and duties:

- (1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;
- (2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;
- (3) Prescribing reasonable fees for licenses;
- (4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;
- (5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the division shall ***have the authority to issue administrative subpoenas and summonses. The division shall also*** establish toll-free telephone service for receiving complaints and inquiries;
- (6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;
- (7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;
- (8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the division; and
- (9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter.

Section 3. KRS 238.520 is amended to read as follows:

- (1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:
 - (a) The secretary of the Justice Cabinet or his designee;
 - (b) The Attorney General or his designee;
 - (c) One (1) representative from the Kentucky ***Commonwealth's Attorneys***~~{County Clerks}~~ Association;
 - (d) One (1) representative from the Kentucky Charitable Gaming Association;
 - (e) One (1) certified public accountant; and
 - (f) Four (4) members selected from the public at large.

The certified public accountant, the four (4) at-large members, and the representatives from the Kentucky ***Commonwealth's Attorneys***~~{County Clerks}~~ Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

- (2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.
- (3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the division and to the General Assembly to assist in establishing effective policy for the licensing and regulation of charitable gaming.
- (4) The commission shall meet quarterly or as otherwise directed by the division. ***Five (5)***~~{Four (4)}~~ members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership. Members shall receive no compensation for serving on the commission, but shall be reimbursed

for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

Section 4. KRS 238.525 is amended to read as follows:

- (1) ~~The requirement for licenses imposed in KRS 238.530, 238.535, and 238.555 shall become effective September 16, 1994. From March 16, 1994, until September 16, 1994, any person who desires to engage in an activity that requires licensure may do so if the licensure requirements are met and the activity is conducted in accordance with the provisions of this chapter.~~
- (2) ~~Applications for licensure and copies of charitable gaming laws and administrative regulations shall be made available through the office of the county clerk in each county.~~
- (3) Licenses shall be issued by the division on an annual *or biennial* basis, except as otherwise permitted in KRS 238.530 and 238.545. A license *term* ~~year~~ may be determined by the division in any manner it deems appropriate to facilitate efficient licensing. The division shall charge a ~~an annual~~ renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.
- (2) ~~(4)~~ The division may issue a temporary license to an applicant who has ~~substantially~~ met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.
- (3) ~~(5)~~ An applicant for any license to be issued under *Section 5 and Section 12 of this Act* ~~chapter~~ shall be subjected to a state and national criminal history background check by the division, with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. *An applicant for any license to be issued under Section 6 of this Act shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the division with the assistance of the Kentucky State Police and the Federal Bureau of Investigation.* The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant ~~organization~~; any employee or member of an applicant ~~organization~~ who has been designated as chairperson of the charitable gaming activity; the *applicant itself* ~~charitable organization or business~~; and any individual with a ten percent (10%) or more financial interest in the *applicant* ~~business~~. The division shall require the fingerprinting of all applicants *for licensure under Section 5 and Section 12 of this Act and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under Section 6 of this Act*, who are natural persons in connection with the national criminal history background check to assure the identity of the applicant or applicants. The division may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.
- (4) ~~(6)~~ No applicant shall be licensed if an individual associated with the applicant in a capacity listed in subsection (5) of this section or the applicant *itself* ~~organization~~ has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.
- (5) ~~(7)~~ No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (5) of this section have been fingerprinted. The Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The division may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.
- (6) ~~(8)~~ If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the division in writing within thirty (30) days of the date the change occurred.

Section 5. KRS 238.530 is amended to read as follows:

- (1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the division as a distributor. The division shall charge a license fee not to exceed one thousand dollars (\$1,000).
- (2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the division as a manufacturer. The division shall charge a license fee not to exceed five hundred dollars (\$500).

- (3) No person who is licensed as a charitable organization, **and no owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed**~~[-or-a]~~ charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. **No affiliate of an owner, officer, or employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be licensed as a distributor or manufacturer.** No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.
- (4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the division and shall submit as part of the application process the following:
- (a) The full name, address, date of birth, and Social Security number of the applicant;
 - (b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;
 - (c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;
 - (d) Federal employer tax number;
 - (e) A sworn statement by the applicant or the appropriate officer that all information provided is true and correct and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;
 - (f) The name, address, and telephone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and
 - (g) Any other information the division deems appropriate.
- (5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the division to document all activities related to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the division at reasonable times, and all records shall be maintained for a minimum of three (3) years. The division may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation promulgated by the division.
- (6) A distributor who does not receive payment in **accordance with the terms of its sales or lease agreement**~~[full]~~ from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the division of the delinquency in writing in a form and manner prescribed by the division. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the division of the delinquency in writing in a form and manner prescribed by the division.
- (7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.
- (8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a **distributor or a** charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.
- (9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer or distributor in the Commonwealth of Kentucky.
- (10) No officer, **owner**, employee, or contractee of a licensed distributor or licensed manufacturer **or their affiliates and no member of the immediate family of an owner, officer, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates**, shall, with respect to a licensed charitable organization:
- (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;

- (d) Advise a licensed charitable organization on the expenditure of net receipts;
- (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
- (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;~~{-or}~~
- (g) Provide, *coordinate, or solicit the services of* personnel or volunteers in any manner;
- (h) *Provide training or consulting on the conduct of charitable gaming, except in connection with the use of its own equipment or supplies;*
- (i) *Store its charitable gaming equipment or supplies in or on the premises of a licensed charitable gaming facility; or*
- (j) *Donate or give any prize to be awarded in the conduct of charitable gaming.*

Section 6. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
 - (a) Bingo in which the gross receipts do not exceed a total of *fifteen*~~{five}~~ thousand dollars *(\$15,000)*~~{(\$5,000)}~~ per year;
 - (b) A raffle or raffles for which the gross receipts do not exceed *fifteen*~~{five}~~ thousand dollars *(\$15,000)*~~{(\$5,000)}~~ per year; and
 - (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed *fifteen*~~{five}~~ thousand dollars *(\$15,000)*~~{(\$5,000)}~~ per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed fifteen thousand dollars (\$15,000).
- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the division in writing, on a form issued by the division, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter, except:
 - (a) Payment of the fee imposed under the provisions of KRS 238.570; and
 - (b) The reporting requirements imposed under the provisions of KRS 238.550(2), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.
- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
 - (a) Report the amount to the division; and
 - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the division shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the division determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, ***unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.***
- (8) In order to qualify for licensure, a charitable organization shall:

- (a)
 - 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
 - 2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030(1), as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
 - (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;
 - (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "accomplishing its charitable purposes" means relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3); and
 - (d) Have maintained an office or place of business~~[or operation]~~, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. ***The office or place of business shall be a separate and distinct address and location from that of any other licensee of the division; except that up to three(3) licensed charitable organizations may have the same address if they legitimately share office space.*** For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. ***Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.***
- (9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:
- (a) The name and address of the charitable organization;
 - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
 - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
 - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;
 - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
 - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
 - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;
 - (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
 - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

- (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming; ~~and~~
 - (k) *An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the division; and*
 - (l) Any other information the division deems appropriate.
- (10) The division may issue a ~~limited~~ license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- ~~(12) In order to continue to be qualified for licensure, a charitable organization shall continuously meet the requirements set forth in KRS 238.550(3) and (4). If a charitable organization is unable to meet those requirements, the division shall revoke the charitable organization's license or deny its application for renewal licensure by administrative action as provided in KRS 238.560.~~

SECTION 7. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

- (1) *The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. All fees paid to the division during the calendar year shall be excluded from the calculation of percentage retained.*
- (2) *The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:*
 - (a) *If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of one (1) year and shall be required to submit to the division an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the probationary period;*
 - (b) *If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall have its license suspended for a period of one (1) year; and*
 - (c) *If the percentage retained falls below thirty percent (30%) or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive time, the licensee shall have its license suspended for a period of two (2) years.*
- (3) *Any licensee that has had its license suspended under the provisions of subsection (2)(b) or (c) of this section shall be required to submit to the division an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license.*
- (4) *Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke or deny its license for failure to meet the forty percent (40%) retention threshold prior to the effective date of this Act may petition the division for reconsideration of its action or proposed action. Upon petition for reconsideration, the division shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The division shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.*

Section 8. KRS 238.540 is amended to read as follows:

- (1) Charitable gaming shall be conducted by a licensed charitable organization at only one (1) location *and at the date and time* which shall be stated on the license. A license holder shall notify the division *at least thirty (30) days in advance* of its intent to change *its* location, *date, or time* and approval by the division shall be received by the licensee prior to the conduct of charitable gaming at a new location.

- (2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.
- (3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the division, law enforcement officials, and other interested officials.
- (4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. Any effort or attempt to disguise any other type of compensation shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.
- (5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, *service company*, or consultant in managing or conducting *any aspect of* charitable gaming.
- (6) A licensed charitable organization shall not purchase *or lease* charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.
- (7) *A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.*
- (8) *Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number.*

Section 9. KRS 238.545 is amended to read as follows:

- (1) A licensed charitable organization shall be limited by the following:
 - (a) In the conduct of bingo, to two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct bingo at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for bingo that exceed five thousand dollars (\$5,000) *in fair market*~~cash~~ value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase bingo supplies or play bingo. A charitable organization may permit persons under age eighteen (18) to play bingo for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars (\$10);
 - (b) Charity game tickets shall be sold only at the address of the location designated on the license to conduct charitable gaming;
 - (c) Charity game tickets may be sold, with prior approval of the division:
 1. At any authorized special charity fundraising event conducted by a licensed charitable organization *at any off-site location*; or
 2. By a licensed charitable organization possessing a special limited charitable gaming license at any off-site location; and
 - (d) An automated charity game ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the division, only at the address of the location designated on the license to conduct charitable gaming, and only during bingo sessions. The division shall promulgate administrative regulations regulating the use and control of approved automated charity game ticket dispensers.
- (2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars (\$599) in value, not including the value of cumulative or carryover prizes awarded in *seal card* games~~using seal cards~~.

Cumulative or carryover prizes in *seal card* games~~[utilizing seal cards]~~ shall not exceed two thousand four hundred dollars (\$2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars (\$50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement.~~[If seal cards are used,]~~ Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the division. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity game ticket.

- (3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.
- (4) No licensed charitable organization shall conduct a charity fundraising event *or a*~~[in which]~~ special limited *charity fundraising event*~~[charitable games are conducted,]~~ unless they have a~~[special limited]~~ license *for the respective event* issued by the division. *No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars (\$100).* Except for state, county,~~[and]~~ city fairs, *and*~~[a]~~ special limited *charity fundraising events, a charity fundraising event*~~[charitable games]~~ license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total *charity fundraising event*~~[special limited charitable game]~~ licenses per year, *including two (2) special limited charity fundraising event licenses.* No person under eighteen (18) years of age shall be allowed to play or conduct any special limited charitable game. The division shall have broad authority to regulate the conduct of~~[gaming authorized by a]~~ special limited *charity fundraising events in accordance with the provisions of Section 10 of this Act*~~[charitable games license issued under this subsection].~~
- (5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

SECTION 10. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

- (1) *A licensed charitable organization shall be limited to two (2) special limited charity fundraising event licenses per year, and a special limited charity fundraising event shall be limited to one (1) session not to exceed six (6) hours. A special limited charity fundraising event shall be conducted only between the hours of 12 noon and 1 a.m.*
- (2) *A special limited charity fundraising event may be held:*
 - (a) *On or in the premises of a licensed charitable organization;*
 - (b) *In a licensed charitable gaming facility, subject to restrictions contained in subsection (7) of Section 12 of this Act; or*
 - (c) *At an unlicensed facility under the following conditions:*
 1. *An unlicensed facility shall host no more than one (1) special limited charity fundraising event per year;*
 2. *The facility shall be closed to the general public during the conduct of a special limited charity fundraising event or the event shall be held in a separate room or area not accessible to the general public;*
 3. *Equipment used in the conduct of a special limited charity fundraising event shall be removed from the premises within two (2) working days after the event; and*

4. *The unlicensed facility shall be subject to requirements stipulated in subsection (3) of Section 12 of this Act.*

- (3) *No cash shall be used in playing special limited charity games at a special limited charity fundraising event. Games shall be played with chips, scrip, or imitation money which shall be purchased only through a central bank or cashier under the authority of the chairperson designated by the licensed charitable organization conducting the special limited charity fundraising event. No chips, scrip, or imitation money shall be sold at a gaming table or by a dealer.*
- (4) *Chips, scrip, or imitation money may be redeemed for cash or prizes. Prizes to be offered and their fair market values shall be displayed or listed in a conspicuous location within the gaming area. Prizes shall be redeemed directly or through an auction process within twenty-four (24) hours after the conclusion of the event.*

Section 11. KRS 238.550 is amended to read as follows:

- (1) All *adjusted* gross receipts from charitable gaming shall be handled only by *chairpersons*~~{bona fide volunteers}~~, officers, or employees of the licensed charitable organization. All adjusted gross receipts shall be deposited *within two (2) business days* into a checking account devoted exclusively to charitable gaming. *All payments for charitable gaming expenses, prizes purchased, and any charitable donations from charitable gaming receipts shall be made from this checking account and any payments or donations*~~{Payment for legitimate expenses}~~ shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. The division may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.
- (2) Accurate records and books shall be maintained by each licensed charitable organization for a period of three (3) years. Division staff shall have access to these records at reasonable times. All licensed charitable organizations shall be required to submit reports to the division at least quarterly. These reports shall include, but shall not be limited to, the following information:
- (a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;
 - (b) The amounts or values of all prizes paid out during the reporting period, *including a listing of all prizes donated, the names of donors, and the fair market value of the donated prizes*;
 - (c) The names and addresses of all persons who are winners of prizes of six hundred dollars (\$600) or more;
 - (d) All expenses paid and the names and addresses of all persons to whom expenses were paid;
 - (e) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and
 - (f) Any other information the division deems appropriate.
- (3) No licensed charitable organization shall incur expenses, except as provided in this *chapter*~~{subsection}~~. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following expenses:
- (a) Charitable gaming supplies and equipment;
 - (b) Rent;
 - (c) Utilities;
 - (d) Insurance;
 - (e) Advertising;
 - (f) Janitorial services;
 - (g) Bookkeeping and accounting services;
 - (h) Security services;

- (i) Membership dues for its participation in any charitable gaming trade organization; and
- (j) Any other expenses the division may determine by administrative regulation to be legitimate.

~~{(4) At least forty percent (40%) of the adjusted gross receipts resulting from the conduct of charitable gaming during each two (2) consecutive calendar quarters shall be retained by the charitable organization and used exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax exempt status or consistent with its status as a common school, as an institution of higher education, or as a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.}~~

Section 12. KRS 238.555 is amended to read as follows:

- (1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The division shall charge a license fee not to exceed two thousand five hundred dollars (\$2,500). ***Specific license fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulation and based on the number of sessions which the facility holds per week or other applicable factors or combination of factors.*** Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.
- (2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:
 - (a) The address of the facility;
 - (b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;
 - (c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;
 - (d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;
 - (e) A copy of the lease agreement used by the applicant; and
 - (f) Any other information the division deems appropriate.
- (3) No ***owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate*** shall, concerning a lessee:
 - (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;
 - (d) Advise a licensed charitable organization on the expenditure of net receipts;
 - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
 - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;~~{or}~~
 - (g) Provide, ***coordinate, or solicit the services of*** personnel or volunteers in any manner;
 - (h) ***Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or***
 - (i) ***Donate or give any prize to be awarded in the conduct of charitable gaming.***
- (4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. ***The licensed charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming***

facility is reduced commensurate with the cost of the goods and services as itemized in the lease ~~The lease shall specifically state the amount of rent to be charged and the goods and services to be provided, including concessions, if applicable.~~ The amount of rent, **goods, and services** charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The division by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the division. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.

- (5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:
 - (a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in a city of the first class, in a city of the second class, in an urban-county or charter county government, or in a county containing a city of the first class or second class;
 - (b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city of the third class, fourth class, fifth class, or sixth class, or in a county that does not contain a city of the first class or second class.
- (6) A licensed charitable gaming facility shall report at least quarterly to the division and shall provide any information concerning its operation that the division may require.
- (7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.
- (8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license **number** of the charitable organization that is conducting charitable gaming activities in the facility.
- (9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the division, law enforcement officials, and other interested officials.

SECTION 13. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

All peace officers, on being informed or having reason to believe that charitable gaming not authorized under this chapter is taking place or is about to take place, shall suppress and prevent it. For this purpose, any peace officer may enter any place where any unlicensed charitable gaming is being conducted or about to be conducted and may arrest without a warrant any person who does not submit satisfactory proof that he or she possesses the necessary license required by this chapter.

Section 14. KRS 238.570 is amended to read as follows:

- (1) A fee is imposed on charitable gaming in the amount of **four-tenths** ~~one-half~~ of one percent (**0.4%**) ~~(0.5%)~~ of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. Each licensed charitable organization shall remit to the division all moneys due on a quarterly basis.
- (2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the Justice Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the division shall be deposited in this account. Moneys in this account shall be expended by the division only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the division shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.
- (3) If the provision of subsection (1) of this section that imposes a fee of **four-tenths** ~~one-half~~ of one percent (**0.4%**) ~~(0.5%)~~ of all gross receipts derived from all charitable gaming conducted by licensed charitable organizations is declared unconstitutional in a final decision of the highest appellate court of the Commonwealth of Kentucky, for the privilege of conducting charitable gaming in the Commonwealth of

Kentucky, there is hereby levied upon the use, sale, rental, lease, or distribution by sale or by gift of charitable gaming supplies and equipment a fee of ten percent (10%) of the value of all supplies and equipment used, sold, rented, leased, or otherwise distributed by a licensed distributor to any licensed charitable organization in the Commonwealth of Kentucky.

- (a) Every distributor of charitable gaming supplies and equipment shall pay and report the fee levied pursuant to this subsection on or before the twentieth day of the calendar month next succeeding the month in which possession of the charitable gaming supplies and equipment is transferred from the distributor to the licensed charitable organization, in accordance with administrative regulations promulgated by the division.
 - (b) The division may require a bond from distributors in accordance with the administrative regulations promulgated by the division.
- (4) If the alternative license fee schedule as provided in subsection (3) of this section is activated due to a final decision of the highest appellate court in the Commonwealth of Kentucky as provided in subsection (3) of this section, the distributor's license fee as provided in KRS 238.530(1) shall become inapplicable.

Section 15. Whereas the conduct of certain types of charity fundraising events at unlicensed facilities has created regulatory and law enforcement problems which need to be addressed in an expedient manner, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 1, 1998

CHAPTER 233

(HB 648)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 136.320 is amended to read as follows:

- (1) Each life insurance company incorporated under the laws of and doing business in Kentucky shall value as of January 1 and report to the Revenue Cabinet ~~by July 15, 1966, and~~ by April 1 each year ~~thereafter~~, on forms prescribed by the Revenue Cabinet, the following:
 - (a) The fair cash value of the company's intangible personal property, hereinafter referred to as "capital," consisting of all money in hand, shares of stock, notes, bonds, accounts, and other credits, exclusive of due and deferred premiums, whether secured by mortgage, pledge, or otherwise, or unsecured.
 - (b) The fair cash value of the company's intangible personal property exempt from taxation by law.
 - (c) The aggregate amount of *the* company's reserves, reduced by the amount of due and deferred premiums, maintained in accordance with the applicable provisions of KRS 304.6-040 and 304.6-130 to 304.6-180, on all outstanding policies and contracts supplementary thereto.
 - (d) ~~Such~~ Other information as may be required by the Revenue Cabinet to accurately determine the fair cash value of each company's "taxable capital" and "taxable reserves."
- (2) Based on information supplied by each company and ~~such~~ other information ~~that~~*as* may be available, the Revenue Cabinet shall value each company's "taxable capital" and "taxable reserves" as follows:
 - (a) "Taxable capital" shall be determined by deducting "taxable reserves" from "capital," less exempt intangible personal property.
 - (b) "Taxable reserves" shall be determined by multiplying the aggregate amount of reserves as computed in subsection (1)(c) of this section by the percentage determined by dividing "capital," less exempt intangible personal property, by "capital," including exempt intangible personal property.
- (3) (a) An annual tax *for state purposes shall be imposed against the fair cash value of "taxable capital" for calendar years beginning before 2000, at a rate* of seventy cents (\$.70) on each one hundred dollars (\$100). ~~of the fair cash value of "taxable capital" and~~

(b) *An annual tax for state purposes shall be imposed against every company making an election pursuant to Section 3 of this Act to be taxed under this section, against the fair cash value of taxable capital for calendar years beginning in 2000 as follows:*

1. *For calendar year 2000, fifty-six cents (\$0.56) on each one hundred dollars (\$100);*
2. *For calendar year 2001, forty-two cents (\$0.42) on each one hundred dollars (\$100);*
3. *For calendar year 2002, twenty-eight cents (\$0.28) on each one hundred dollars (\$100);*
4. *For calendar year 2003, fourteen cents (\$0.14) on each one hundred dollars (\$100); and*
5. *For calendar year 2004 and each calendar year thereafter, one tenth of one cent (\$0.001) on each one hundred dollars (\$100).*

(c) *An annual tax for state purposes shall be imposed at a rate of one-tenth of one cent (\$0.001) on each one hundred dollars (\$100) of the fair cash value of "taxable reserves" ~~shall be imposed for state purposes~~.*

(d) *Beginning in tax year 2004 an insurer may offset the tax liability imposed under this subsection against the tax liability imposed under subsection (4) of this section.*

(4) *For calendar year 2000, and each calendar year thereafter, every company subject to the tax imposed by subsection (3) of this section, and making an election pursuant to Section 3 of this Act to be taxed under this section, shall pay the following rates of tax upon each one hundred dollars (\$100) of premium receipts:*

- (a) *For calendar year 2000, thirty-eight cents (\$0.38);*
- (b) *For calendar year 2001, seventy-two cents (\$0.72);*
- (c) *For calendar year 2002, one dollar and two cents (\$1.02);*
- (d) *For calendar year 2003, one dollar and twenty-eight cents (\$1.28); and*
- (e) *For calendar year 2004 and each calendar year thereafter, one dollar and fifty cents (\$1.50).*

Every company subject to the tax imposed by this subsection shall, by March 1 of each year, return to the Revenue Cabinet a statement under oath of all premium receipts on business done in this state during the preceding calendar year or since the last return was made. "Premium receipts" includes single premiums, premiums received for original insurance, premiums received for renewal, revival, or reinstatement of the policies, annual and periodical premiums, dividends applied for premiums and additions, and all other premium payments received on policies that have been written in this state, or on the lives of residents of this state, or out of this state on business done in this state, less returned premiums. No deduction shall be made for dividends on life insurance but dividends on accident and health insurance policies may be deducted.

(5) *The taxes imposed under subsections (3) and (4) of this section ~~tax~~ shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district, except as provided in subsections (6) and (7) ~~(4), (5), and (6)~~ of this section.*

~~(6)(4)~~ *The county in which the principal office of the company is located may impose a tax of fifteen cents (\$0.15) on each one hundred dollars (\$100) of "taxable capital."*

~~(7)(5)~~ *The city in which the principal office of the company is located may impose a tax of fifteen cents (\$0.15) on each one hundred dollars (\$100) of "taxable capital."*

~~(8)(6)~~ *The Revenue Cabinet shall by September 1 each year bill each company for the state taxes. It shall immediately certify to the county clerk of the county in which the principal office of the company is located the value of "taxable capital" subject to local taxation. The county clerk shall prepare and deliver a bill to the sheriff for collection of taxes collectible by the sheriff and shall certify the value to all other collecting officers of districts authorized to levy a tax.*

~~(9)(7)~~ *Each company's real and tangible personal property shall be subject to taxation at fair cash value by the state, county, school, and other taxing districts in which ~~the~~ ~~such~~ property is located in the same manner and at the same rates as all other property of the same class.*

~~(10)(8)~~ Taxes on property subject to taxation under this section shall be subject to the same discount and penalties as provided in KRS 134.020 and shall be collected in the same manner as taxes on property locally assessed, except that the state tax on the "taxable capital" and "taxable reserves" shall be collected directly by the Revenue Cabinet.

~~(11)(9)~~ Any taxpayer subject to taxation under this section may protest in the manner provided in KRS 131.110.

Section 2. KRS 136.330 is amended to read as follows:

(1) Every ~~foreign~~ life insurance company doing business in this state, other than fraternal assessment life insurance companies, shall, by March 1 of each year, return to the Revenue Cabinet a statement under oath of all premium receipts on business done in this state during the preceding calendar year or since the last return was made. "Premium receipts" includes single premiums, annuity premiums, premiums received for original insurance, premiums received for renewal, revival or reinstatement of the policies, annual and periodical premiums, dividends applied for premiums and additions, and all other premium payments received on policies that have been written in this state, or on the lives of residents of this state, or out of this state on business done in this state, less returned premiums. No deduction shall be made for dividends on life insurance or annuity policies, but dividends on accident and health insurance policies may be deducted. ***Premium receipts shall not include annuity premiums or annuity dividends beginning in calendar year 2000.***

(2) (a) ***An annual tax on premium receipts shall be imposed against every company making a return under this subsection for calendar years beginning before 2000 at a rate of*** ~~Every company shall, at the time of making the return, pay a tax of~~ two dollars (\$2) upon each one hundred dollars (\$100) of ~~such~~ premium receipts.

(b) ***An annual tax on premium receipts shall be imposed against every company making an election pursuant to Section 3 of this Act to be taxed under this section, and every company making a return under this section, for calendar years beginning in 2000 as follows:***

1. ***For calendar year 2000, one dollar and ninety cents (\$1.90) upon each one hundred dollars (\$100) of premium receipts;***
2. ***For calendar year 2001, one dollar and eighty cents (\$1.80) upon each one hundred dollars (\$100) of premium receipts;***
3. ***For calendar year 2002, one dollar and seventy cents (\$1.70) upon each one hundred dollars (\$100) of premium receipts;***
4. ***For calendar year 2003, one dollar and sixty cents (\$1.60) upon each one hundred dollars (\$100) of premium receipts; and***
5. ***For calendar year 2004 and each calendar year thereafter, one dollar and fifty cents (\$1.50) on each one hundred dollars (\$100) of premium receipts.***

~~(3) The 1962 amendment to this section shall be effective as of January 1, 1962, and shall apply to the premium taxes due and payable as shown on returns filed subsequent to that date.~~

~~(4)~~ The health insurance contract or contracts for state employees as authorized by KRS 18A.225 and 18A.228 shall not be subject to taxation under this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

Beginning with calendar year 2000, every life insurance company incorporated under the laws of and doing business in Kentucky shall make an irrevocable election whether to be taxed under the provisions of Section 1 of this Act or Section 2 of this Act. For insurance companies incorporated under the laws of and doing business in Kentucky, prior to January 1, 2000, the election shall be filed with the commissioner of insurance and the secretary of the Revenue Cabinet on or before January 1, 2000. For insurance companies applying for a certificate to do business in Kentucky as a domestic life insurance company, after January 1, 2000, the election shall be filed with the company's initial application for certificate of authority to do business in Kentucky.

Section 4. KRS 136.377 is amended to read as follows:

(1) Any company whose tax, as provided in ***subsection (4) of Section 1 of this Act***, KRS 136.330, 136.340, 136.350, 136.370 and 342.445 or 304.3-270 was five thousand dollars (\$5,000) or more in the previous year shall file a declaration of estimated tax ~~and remit one third (1/3) of such amount on or before June 1, 1965,~~ provided that if any taxpayer uses the amount of the tax liability for the previous calendar year as the estimate

~~for such declaration no penalties or interest shall apply to any subsequent adjustments. The remainder of the tax shall be due on or before March 1, 1966].~~

- (2) ~~[As provided in subsection (1) of this section, but beginning in 1966, and each year thereafter,]~~The tax due shall be paid in three (3) installments, one-third (1/3) on or before June 1, one-third (1/3) on or before October 1, and the remainder on or before the following March 1. Provided, however, if any taxpayer uses the amount of the tax liability for the previous calendar year as the estimate for such declaration no penalties or interest shall apply to any subsequent adjustments.
- (3) Any adjustments may be made on or before October 1. All adjustments shall be made on or before March 1.
- (4) All ~~[such]~~ taxes not paid when due may be subject to a penalty of five percent (5%) per month, but not more than twenty-five percent (25%) penalty shall be assessed on any one (1) report, and interest at the tax interest rate as defined in KRS 131.010(6) from the date the report was due.

Section 5. KRS 304.42-130 is amended to read as follows:

- (1) A member insurer, other than a ~~domestic life insurance company or~~ nonprofit hospital, medical, surgical, dental or health service corporation, may offset its ~~[premium]~~ tax liability to this state imposed against it ~~[either]~~ under **subsections (3) and (4) of Section 1 of this Act**, KRS 136.330, 136.340, or 136.350, whichever may be applicable, **against the** ~~[an]~~ assessment described in subsection (8) of KRS 304.42-090 to the extent of twenty percent (20%) of the amount of ~~the~~ ~~[such]~~ assessment for each of the five (5) calendar years following the year in which ~~the~~ ~~[such]~~ assessment was paid. ~~If [in the event]~~ a member insurer should cease doing business, all uncredited assessments may be credited against its ~~[premium]~~ tax liability for the year in which it ceases doing business.
- ~~(2) [A member insurer which is a domestic life insurance company may offset against its tax liability to this state imposed under KRS 136.320(3) an assessment described in subsection (8) of KRS 304.42-090 to the extent of twenty percent (20%) of the amount of such assessment for each of the five (5) calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against such tax liability for the year in which it ceases doing business.]~~
- ~~(3) Any sums acquired by refund, pursuant to subsection (6) of KRS 304.42-090, from the association which have theretofore been written off by contributing insurers and offset against [such] taxes as provided in [subsection (1), (2) or (3) of] this section, and are not then needed for purposes of this subtitle, shall be paid by the association to the commissioner and by him deposited with the State Treasurer for credit to the general fund of this state.~~

Approved April 1, 1998

CHAPTER 234

(HB 651)

AN ACT relating to sanitation districts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

The district may establish a surcharge or other rate, fee, or charge to be made applicable to users in areas where facilities are to be acquired, constructed or established, and to amortize part or all of the costs thereof, in addition to the charge authorized by KRS 220.510. The surcharges, rates, fees, or charges shall be determined on the basis of one or more of the factors stated in KRS 220.510, and may include, at the discretion of the district, a finance charge not to exceed ten percent (10%). In carrying out any rate, fee, or charge classification, the district shall follow the procedures set forth in KRS 220.593(2).

SECTION 2. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of KRS Chapter 220, the board of directors of the district may adopt rules requiring owners of property within the district whose property is served by a connection of sewers maintained and operated by the district or whose sewers are connected to interceptor sewers maintained and operated by the district to:*

- (a) *Disconnect storm water inflows to sanitary sewers maintained and operated by the district and not operated as a combined sewer, or to connections with these sewers;*
 - (b) *Disconnect nonstorm water inflows to storm water sewers to the extent the sewers are maintained and operated by the district and not operated as a combined sewer, or to connections with these sewers;*
 - (c) *Reconnect or relocate any disconnected inflows in compliance with rules and regulations of the district and applicable building codes, health codes or other relevant law or administrative regulation.*
- (2) *Any inflow required to be disconnected under a rule adopted pursuant to KRS Chapter 220 shall constitute a nuisance subject to injunctive relief and abatement pursuant to KRS Chapter 220, or as otherwise permitted by law.*
 - (3) *The board of directors of a district may expend district funds, and other moneys from state or federal sources to the extent permitted by their terms, loans, or grants, for either of the following:*
 - (a) *The cost of disconnections, reconnections, or relocations required by rules adopted pursuant to KRS Chapter 220, performed by district personnel or persons under contract with the district;*
 - (b) *Payments to the property owner or a contractor hired by the property owner pursuant to a competitive process for the cost of disconnections, reconnections, or relocations required by rules adopted pursuant to KRS Chapter 220 after the board of directors has approved the work to be performed and after the district has received from the property owner a statement releasing the district from all liability in connection with the disconnections, reconnections, or relocations.*
 - (4) *Except as provided in subsection (6) of this section, the board of directors of the district shall require in its rules regarding disconnections, reconnections, or relocations of sewers the reimbursement of moneys expended pursuant to subsection (3) of this section. This shall be done by the district assessing a charge to the property owner in the amount of the payment made pursuant to subsection (3) of this section for immediate payment or payments in installment with interest as determined by the board of directors not to exceed ten percent (10%). The payments may be billed as a separate item and in addition to any other fees charged to that owner for the usage of the sewers as may be required by the district. The board of directors may approve installment payments for a period of not more than fifteen (15) years. Charges not paid when due may cause the board of directors to compel payment in the manner authorized in KRS Chapter 220 and the rules and regulations of the district.*
 - (5) *The district may specify the maximum amount of the cost of any disconnection, reconnection, or relocation required pursuant to subsection (1) of this section that may be paid by the district for each affected parcel of property without requiring reimbursement. The board of directors shall determine the maximum amount for each qualifying parcel that does not need to be reimbursed.*
 - (6) *Disconnections, reconnections, or relocations required under this section performed by a contractor under contract with the property owner shall not be subject to competitive bidding laws of the Commonwealth of Kentucky.*
 - (7) *Property owners shall be responsible for maintaining any improvements made to private property to reconnect or relocate disconnected inflows pursuant to this section unless a recorded public easement, dated prior to January 1, 1994, exists requiring maintenance by a city, county or sanitation district.*
 - (8) *No provisions of this section shall apply to any municipal customer of the district which as of January 1, 1998, owns, operates, and maintains a separate storm sewer utility, provided the utility is adequately funded and performs at a level that is equal to or greater than the storm water facilities of the district capitalized. All these municipal customers shall only be responsible for the cost of that municipal facility.*

Section 3. KRS 220.030 is amended to read as follows:

Sanitation districts may be established for any of the following purposes:

- (1) To prevent and correct the pollution of streams.
- (2) To regulate the flow of streams for sanitary purposes.
- (3) To clean and improve stream channels for sanitary purposes.

- (4) To provide for the collection and disposal of sewage and other liquid wastes produced within the district; and incident to ~~those[such]~~ purposes and to enable their accomplishment, to construct, with all appurtenances ~~thereto~~, laterals, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, to maintain, operate, and repair ~~these[same]~~, and do all other things necessary for the fulfillment of the purposes of KRS 220.010 to 220.520.
- (5) To provide for the management of onsite sewage disposal systems.
- (6) To develop and implement plans for the collection and disposal of storm drainage~~[to the extent that collection and disposal of storm drainage is required by applicable federal and state regulations]~~.

Section 4. KRS 220.035 is amended to read as follows:

- (1) A fiscal court may:
 - (a) Review and approve, amend, or disapprove proposed district land acquisitions;
 - (b) Review and approve, amend, or disapprove proposed district construction of capital improvements;
 - (c) Review and approve, amend, or disapprove proposed service charges or user fees; and
 - (d) Review and approve, amend, or disapprove the district's proposed budget.
- (2) In order to exercise any or all the powers enumerated in subsection (1) of this section, the fiscal court shall adopt a county ordinance explicitly stating which of the powers the fiscal court intends to exercise and setting forth the procedures by which the sanitation district shall submit plans and documentation for review and approval, amendment or disapproval. The exercise of such powers shall become effective thirty (30) days following the effective date of the ordinance. In the case of districts lying in two (2) or more counties, no fiscal court shall exercise the powers enumerated in subsection (1) of this section until each fiscal court has adopted conforming ordinances stating the powers to be exercised.
- (3) In the case of districts lying in two (2) or more counties, the votes of the respective fiscal courts shall be weighted in the same manner as appointments to the district board are apportioned pursuant to KRS 220.140.
- (4) In the case of districts governed by the provisions of KRS 220.135, the county judges/executive shall exercise the powers listed in subsection (1) of this section. They shall meet jointly at least once each fiscal year to exercise these powers. Their votes shall be *equally* weighted~~[in the same manner as appointments to the district board are apportioned pursuant to KRS 220.140]~~. In the case of review and approval of proposed service charges or user fees, a majority of the~~[weighted]~~ votes of the county judges/executive shall be required to override the recommendation of the district board of directors.

Approved April 1, 1998

CHAPTER 235

(HB 286)

AN ACT relating to policemen's and firefighter's pension funds in cities of the first class.

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

Section 1. KRS 95.290 is amended to read as follows:

- (1) The city legislative body in cities of the first class may enact ordinances providing for a system of pensions for retired and disabled members of the police and fire divisions of the department of public safety and their dependents, may appropriate funds for the purpose of paying such pensions, may allot and pay to the policemen's pension fund or the firefighters' pension fund or either or both of them, all fines and forfeitures imposed upon members of the respective divisions, and may provide for, assess, and collect contributions from the members for the benefit of the fund.
- (2) There shall be a governing body of the policemen's pension fund, and a governing body of the firefighters' pension fund. The governing bodies of the respective funds shall hold title to all assets in their respective funds, and shall have exclusive authority relating to investment of the assets of the funds, including contracting with investment advisors or managers to perform investment services as deemed necessary and prudent by the

board. A majority of the governing body of each fund shall be comprised of *persons receiving pension benefits from* ~~members of~~ the respective pension systems, and no more than one (1) member of the city legislative body may be a member of the governing body of either the policemen's or the firefighters' pension fund. *To be effective, an action of the governing body of a fund shall require only a simple majority of the votes cast at a properly convened meeting of the governing body where a quorum is present, with a quorum being a majority of the members of a governing body.*

- (3) Any policemen's pension fund or any firefighters' pension fund established under the provisions of this section shall be held or distributed for, *and only for*, any of the following purposes of the respective fund as applicable:
- (a) Paying pensions, *and any bonus payments under applicable ordinances*;
 - (b) *Making* payments to the city for transfer to the County Employees Retirement System for alternate participation pursuant to KRS 78.530(3)(a) and 78.531(2);
 - (c) *Transferring* ~~Transfer of~~ pension assets through investment contract or other financial instrument for the purpose of amortizing unfunded service *liabilities* ~~liability~~; and
 - (d) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.565.

Pursuant to the terms of this section, if policemen of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), and (c) of this subsection, these excess funds shall be distributed to the city for use by the city for any other purpose it may elect, including, but not limited to, the establishment of a reserve for payment under paragraph (d) of this subsection. The governing board of the fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal services, the amount such governing board deems proper.

- (e) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.565. Pursuant to the terms of this section, if firefighters of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), and (c) of this subsection, these excess funds shall be distributed according to the terms of an agreement negotiated between the city and the union organization representing the firefighters. The city may use its share of the distributed excess funds for any purpose it may elect, including, but not limited to, the establishment of a reserve for payment under paragraph (e) of this subsection.
- (4) (a) *The governing body of each pension fund shall insure that all of the assets in the fund are distributed for the purposes in subsection (3) of this section, and only for these purposes. If in any calendar year the assets in either fund exceed those needed for the actuarial liability for payment of pension benefits and any anticipated liabilities under subsection (3)(b) and (c) of this section, the legislative body of the city establishing the pension system shall insure by pension bonus ordinance that a portion of these excess funds be distributed in an equitable manner to all eligible pension recipients. Nothing in this subsection shall be construed to require any change to be made to any pension ordinance as it exists on the effective date of this Act.*
- (b) The governing board of *either* ~~the~~ fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal *or other professional* services, the amount such governing board deems proper.
- (5) ~~(4)~~ Any ordinance establishing a pension fund under this section shall make equitable provision for the rights of persons having an interest in assets transferred to the fund from any fund heretofore established by statute.
- (6) *To assure equal protection for the beneficiaries of either fund, any action taken by the city executive or legislative body in cities of the first class that affects a policemen's pension fund or a firefighters' pension fund established under this section shall, to the maximum extent permitted by law, treat each fund in a uniform manner and shall not cause any change to be made to the structure or operation of either fund, whether through legislation, litigation, compromise, settlement, or otherwise, unless any proposed change is offered to the other fund before it takes effect. Nothing in this subsection shall be construed to require any change to be made to any pension ordinance as it exists on the effective date of this Act.*

- ~~(7)(5)~~ The legislative body in a city of the first class shall issue the appropriate order, pursuant to KRS 78.530(1), directing participation for policemen in the County Employees Retirement System. All new employees who would have been granted membership in the local policemen's pension system shall be members of the County Employees Retirement System. All active members of the local policemen's pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for policemen who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local pension fund, other than assets necessary to pay benefits to the remaining active members of the local policemen's pension system and to retirees and their survivors as determined by actuarial evaluation, to assist in the payment of the annual installment cost of alternate participation. All policemen who become members of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage, and the city may, at its option, purchase accumulated sick leave for each policeman upon retirement pursuant to KRS 78.616.
- ~~(8)(6)~~ The legislative body in a city of the first class may issue the appropriate order, pursuant to KRS 78.530(1), directing participation for firefighters in the County Employees Retirement System. In the event that the legislative body in a city of the first class issues such an order, then all new employees who would have been granted membership in the local firefighters' pension system shall be members of the County Employees Retirement System. All active members of the local firefighters' pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for firefighters who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local firefighters' pension fund, other than assets necessary to pay benefits to the remaining active members of the local firefighters' pension system and to retirees and their survivors as determined by actuarial evaluation, to assist in the payment of the annual installment cost of alternate participation. After certification by the County Employees Retirement System of eligibility for hazardous duty coverage, each firefighter who becomes a member of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage.
- ~~(9)(7)~~ Notwithstanding the provisions of KRS 61.565, which relate to the contributions required of participating employers, any city of the first class participating in the County Employees Retirement System hazardous duty pension plan which has in effect a collective bargaining agreement with a group of employees who participate in said plan, shall have the right to enter into agreement with its employees or with their respective collective bargaining representatives. This agreement may include, but is not limited to, specifications of what portion of the required employer contribution shall be borne by the participating employer and what portion shall be borne by the participating employee. This provision in no way modifies the employer's obligation to remit the contributions required by the County Employees Retirement System pursuant to KRS 61.565, whether such contributions are borne by the city or by its participating employees.
- ~~(10)(8)~~ With regard to the employer participation or employer contributions pursuant to KRS 61.565 as it relates to future pension contribution requirements or as it relates to payback period or interest charge for service liability cost under alternate participation, if any statute or any resolution of the appropriate state board of trustees having authority over employer participation or employer contribution grants any terms or conditions to any city of the second through the sixth class, or to any county, or to any urban-county government, which are more favorable in terms of participation than terms or conditions granted to any city of the first class, then said provisions for employer participation or contribution shall be available to the city of the first class, at its option and effective upon adoption by the city of the first class and notification to the County Employees Retirement System.

Approved April 1, 1998

CHAPTER 236

(HB 434)

AN ACT relating to the provision of support services for low income parents in the process of achieving self-sufficiency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall take all necessary actions to ensure that parents receiving public assistance may engage in educational and vocational programs where assessment shows their chances of achieving self-sufficiency will improve.*
- (2) *The cabinet shall file quarterly progress reports and an annual report with the Legislative Research Commission and the Interim Joint Committee on Health and Welfare documenting the results of the cabinet's efforts to enable parents receiving public assistance to participate in activities to achieve self-sufficiency. The annual report shall identify the number and proportion of parents, compared to the previous state fiscal year and the last full year of activity under the Job Opportunities and Basic Skills Program who:*
 - (a) *Participated in each type of educational, vocational training, or work activity, including post-secondary education;*
 - (b) *Successfully completed educational or vocational programs;*
 - (c) *Earned income due to work activity, including work study programs, while receiving public assistance;*
 - (d) *Became ineligible for public assistance due to increases in earnings; and*
 - (e) *Became ineligible for public assistance for other reasons, including but not limited to penalties or expiration of time limits.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall honor parents' requests to volunteer for basic, secondary, post-secondary, and vocational education programs, including work study and internships; where:*
 - (a) *The activity is:*
 1. *Countable toward federal work participation rates; or*
 2. *Combined with work activity countable toward federal work participation rates;*
 - (b) *The activity is made part of a self-sufficiency plan in which it will lead to achievement of a specific employment goal;*
 - (c) *The parent meets admission criteria for the educational program; and*
 - (d) *The parent does not already have marketable skills sufficient to achieve at least two hundred percent (200%) of the federal poverty threshold, adjusted by household size.*
- (2) *The cabinet shall honor parents' requests to continue current educational activities as defined under subsection (1) of this section, where the parent is making good and satisfactory progress based on standards normally applied by the educational or vocational programs to enrollees.*
- (3) *The cabinet shall inform all parents receiving public assistance of the option to engage in educational and vocational training activities, as defined under subsection (1) of this section, and receive supportive services:*
 - (a) *At least once per year, no less than six (6) weeks prior to the start of fall semester of the state university and community college system;*
 - (b) *During the initial and any subsequent self-sufficiency planning process;*
 - (c) *During conciliation in which the parent requests a change in placement; and*

- (d) *At any time upon request of the parent.*
- (4) *The cabinet shall not require a parent who is currently participating in an education program to discontinue participation and shall not discontinue supportive services for education under subsection (1) of this section, except where:*
- (a) *The parent is no longer making good or satisfactory progress;*
- (b) *The parent fails to verify satisfactory attendance under standards normally applied by the educational program to enrollees;*
- (c) *The parent in a noncountable education activity fails to participate in the additional required countable activity;*
- (d) *The parent refuses an offer of employment paying at least two-hundred percent (200%) of the federal poverty threshold, adjusted for household size; or*
- (e) *The parent becomes ineligible for public assistance for reasons unrelated to educational activity.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall undertake a joint planning process with appropriate state, local, and private education institutions, interested agencies, and citizens to ensure that opportunities for low income parents to continue or improve their education shall continue with the implementation of the public assistance program funded by federal block grant dollars under Title IV-A of the Federal Social Security Act, 42 U.S.C. sec. 602, et seq. To this end, by July 31, 1998, the cabinet shall convene and provide staff services for an advisory group of interested parties to evaluate opportunities and strategies and make recommendations for continued participation by low income parents in education activities, including but not limited to representatives of:*
- (a) *The state university system;*
- (b) *The state community college system;*
- (c) *Private colleges and universities;*
- (d) *State vocational and technical schools;*
- (e) *The Kentucky Higher Education Assistance Authority;*
- (f) *Basic and secondary education programs, including literacy, adult basic education, GED, and high school programs;*
- (g) *Advocacy and citizens groups representing low income parents, including low income parents in sufficient number to represent at least one quarter (1/4) of the total group;*
- (h) *Providers of child care and other supportive services; and*
- (i) *Two (2) members each from the Senate, as appointed by the President of the Senate, and the House of Representatives, as appointed by the Speaker of the House.*
- (2) *The cabinet shall prepare a strategic plan for continuation of education opportunities for low income parents, based on the recommendations of the advisory group. The cabinet shall submit the plan to the Legislative Research Commission and the Interim Joint Committee on Health and Welfare no later than July 31, 1999. At a minimum, the plan shall set forth strategies, including any funding necessary, to:*
- (a) *Create work study opportunities; and*
- (b) *Increase the access to child care funding.*

Approved April 1, 1998

CHAPTER 237

(HB 566)

AN ACT relating to horse racing.

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

Section 1. KRS 230.380 is amended to read as follows:

- (1) Any track licensed by the commission to conduct horse racing and desiring to establish a simulcast facility shall apply for and may receive approval from the commission for each simulcast facility. Prior to considering an application for approval of a simulcast facility, the commission shall notify by regular mail, each state senator, state representative, county judge/executive, and mayor in the jurisdiction in which the proposed simulcast facility is located, at least ten (10) days in advance of the commission meeting at which the application is to be considered or voted upon. Consideration of an application shall be based on criteria contained in administrative regulations promulgated ~~under~~~~[pursuant to]~~ KRS 230.300. Approval, if granted, shall be granted for a term of one (1) calendar year.
- (2) A track or tracks may proceed with the establishment of a simulcast facility unless, within sixty (60) days of the date on which the commission approved the facility, the governing body of the local government jurisdiction in which the facility is to be located votes, by simple majority of those voting, to disapprove the establishment of the simulcast facility. For the purposes of this section, "governing body" means, in an incorporated area, the board of aldermen, city council or board of commissioners; in a county, the fiscal court; in an urban-county government, the urban-county council, or in a charter county, the legislative body created in accordance with KRS 67.825 to 67.875.
- (3) The commission shall not approve the establishment of any simulcast facility within a radius of fifty (50) miles of a licensed track. The commission may approve the establishment of one (1) simulcast facility within a radius of greater than fifty (50) miles but less than seventy-five (75) miles of a licensed track, but the facility shall not be approved to operate without the prior written consent of the licensed track within whose seventy-five (75) mile radius the facility is located.
- (4) The commission may promulgate administrative regulations as it deems appropriate to protect the integrity of pari-mutuel wagering at any simulcast facility.
- (5) Licensed tracks conducting horse racing may enter into joint agreements to establish or operate one (1) or more simulcast facilities, on terms and conditions as the participating tracks may determine. Any agreements respecting these arrangements shall be filed with the commission, and applications for simulcast facilities shall be filed by and licenses may be issued to, these licensed tracks by the commission.
- (6) A simulcast facility may be established and operated on property that is owned or leased and which is not used solely for the operation of a simulcast facility; provided however, that a simulcast facility may not be established on the premises of a lottery vendor.
- (7) A simulcast facility shall not be subject to and shall not pay any excise tax imposed pursuant to KRS 138.510, any license tax imposed ~~under~~~~[pursuant to]~~ KRS 137.170, or any admission tax imposed ~~under~~~~[pursuant to]~~ KRS 138.480.
- (8) One percent (1%) of all moneys wagered at a simulcast facility shall be dedicated for local economic development and shall be allocated as follows:
 - (a) If a simulcast facility is located in an incorporated area, seventy-five percent (75%) shall be allocated to the governing body of the city in which the facility is located, and twenty-five percent (25%) to the governing body of the county in which the facility is located.
 - (b) If a simulcast facility is located in an unincorporated area, all moneys shall be allocated to the governing body of the county or charter county in which the facility is located.
- (9) (a) After the deduction of moneys under subsection (8), simulcast facility shall deduct a commission allowed ~~under~~~~[pursuant to]~~ KRS 138.515 with respect to all wagers made at the simulcast facility. The commission, less moneys allocated in subsection (8) of this section, shall be split as follows:
 1. Thirty percent (30%) shall be allocated to the host track;
 2. **Forty-six and one-half percent (46.5%)**~~[Thirty percent (30%)]~~ to the purse program at the host track;
 3. **Thirteen and one-half percent (13.5%)**~~[Six percent (6%)]~~ to be retained by the track or tracks owning the simulcast facility for the purpose of application to expenses incurred in connection therewith;~~[and]~~

4. ***Six percent (6%) to be allocated to the Kentucky Thoroughbred Owners and Breeders, Inc. to be expended as follows:***
 - a. ***Up to three percent (3%) for capital improvements and promotion of off-track betting; and***
 - b. ***The remainder for marketing and promoting the Kentucky thoroughbred industry; and***
 5. ***Four percent (4%) to be allocated to the commission to be used for purses at county fairs in Kentucky licensed and approved by the commission, and for the standardbred sires stakes program established under KRS 230.770. [Thirty four percent (34%) shall be allocated and deposited in the breeders' award fund described in KRS 230.217.]***
- (b) The commission of a simulcast facility derived from interstate wagering shall be reduced by any amounts required to be paid by contract to the host track or track conducting the live race before it is divided as set forth in this section. No simulcast facility may receive any interstate simulcast except with the approval of the live Kentucky host track.
- (c) ***The Kentucky Thoroughbred Owners and Breeders, Inc. shall annually report to the commission on all money expended in accordance with subsection (9)(a)4. of this section. The report shall be in the form required, and provide all information required by the commission.***

Section 2. KRS 138.530 is amended to read as follows:

- (1) The Revenue Cabinet shall enforce the provisions of and collect the tax and penalties imposed and other payments required by KRS 138.510 to 138.550, and in doing so it shall have the general powers and duties granted it in KRS Chapter 131 and KRS 135.050, including the power to enforce, by an action in the Franklin Circuit Court, the collection of the tax, penalties and other payments imposed or required by KRS 138.510 to 138.550.
- (2) The remittance of the tax imposed by KRS 138.510 ~~and the commission from simulcast facilities to the breeders' award fund~~ shall be made weekly to the Revenue Cabinet no later than the fifth business day, excluding Saturday and Sunday, following the close of each week of racing, during each race meeting and accompanied by reports as prescribed by the cabinet. All funds received by the Revenue Cabinet shall be paid into the State Treasury and shall be credited to the general expenditure fund.
- (3) The supervisor of pari-mutuel betting appointed by the Kentucky Racing Commission shall weekly, during each race meeting, report to the Revenue Cabinet the total amount bet or handled the preceding week and the amount of tax due the state thereon, under the provisions of KRS 138.510 to 138.550.
- (4) The supervisor of pari-mutuel betting appointed by the Kentucky Racing Commission or his duly authorized representatives shall, at all reasonable times, have access to all books, records, issuing or vending machines, adding machines and all other pari-mutuel equipment for the purpose of examining and checking the same and ascertaining whether or not the proper amount or amounts due the state are being or have been paid.
- (5) Every person, corporation, or association required to pay the tax imposed by KRS 138.510 shall keep its books and records so as to clearly show by a separate record the total amount of money contributed to every pari-mutuel pool, including daily double pools, if any.

Section 3. KRS 230.210 is amended to read as follows:

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

- (1) "Association" means any person licensed by the Kentucky Racing Commission under KRS 230.300 and engaged in the conduct of a recognized horse race meeting;
- (2) "Commission" means the Kentucky Racing Commission;
- (3) "Commissioner" means a commissioner of the Kentucky Racing Commission;
- (4) "Thoroughbred race or thoroughbred racing" means a form of horse racing in which each horse participating in the race is a thoroughbred, (i.e., meeting the requirements of and registered with The Jockey Club of New York) and is mounted by a jockey;
- (5) "Harness race" or "harness racing" means trotting and pacing races of the standardbred horses;

- (6) "Appaloosa race or Appaloosa racing" means that form of horse racing in which each horse participating in the race is registered with the Appaloosa Horse Club of Moscow, Idaho, and is mounted by a jockey;
- (7) "Horse race meeting" means horse racing run at an association licensed and regulated by the Kentucky Racing Commission, and may include thoroughbred and harness racing;
- (8) "Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;
- (9) "Arabian" means a horse that is registered with the Arabian Horse Registry of Denver, Colorado;
- (10) "Track" means any association duly licensed by the Kentucky Racing Commission to conduct horse racing. "Track" shall include any facility or real property that is owned, *leased*, or purchased by a track within the same *geographic area within a sixty (60) mile radius of a track* ~~county~~ but not contiguous to track premises, upon commission approval, *and provided the noncontiguous property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area;*
- (11) "Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast racing and conduct pari-mutuel wagering;
- (12) "Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;
- (13) "Intertrack wagering" means pari-mutuel wagering on simulcast horse races from a host track by patrons at a receiving track;
- (14) "Interstate wagering" means pari-mutuel wagering on simulcast horse races from a track located in another state or foreign country by patrons at a receiving track or simulcast facility;
- (15) "Host track" means the track conducting racing and offering its racing for intertrack wagering, or, in the case of interstate wagering, means the Kentucky track conducting racing and offering simulcasts of races conducted in other states or foreign countries;
- (16) "Receiving track" means a track where simulcasts are displayed for wagering purposes. A track ~~that~~~~which~~ submits an application for intertrack wagering shall meet all the regulatory criteria for granting an association license of the same breed as the host track, and shall have a heated and air-conditioned facility ~~that~~~~which~~ meets all state and local life safety code requirements and seats a number of patrons at least equal to the average daily attendance for intertrack wagering on the requested breed in the county in which the track is located during the immediately preceding calendar year;~~and~~
- (17) "Telephone account wagering" means a form of pari-mutuel wagering where an individual may deposit money in an account at a track and may place a wager by direct telephone call or by communication through other electronic media owned by the holder of the account to the track; *and*
- (18) *"Principal" means any of the following individuals associated with a partnership, trust, association, limited liability company, or corporation that is licensed to conduct a horse race meeting or an applicant for a license to conduct a horse race meeting:*
- (a) *The chairman and all members of the board of directors of a corporation;*
 - (b) *All partners of a partnership and all participating members of a limited liability company;*
 - (c) *All trustees and trust beneficiaries of an association;*
 - (d) *The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;*
 - (e) *All stockholders or other individuals who own, hold, or control, either directly or indirectly, ten percent (10%) or more of stock or financial interest in the collective organization; and*
 - (f) *Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.*

Section 4. KRS 230.280 is amended to read as follows:

- (1) No person shall hold or conduct any horse race meeting for any stake, purse, or reward within the Commonwealth of Kentucky without securing the required license from the commission.
- (2) *The commission shall investigate the qualifications of each applicant for a license to conduct a horse race meeting or the renewal of a license to conduct a horse race meeting. The commission may issue or renew a license unless the commission determines that:*
- (a) *The track location, traffic flow, facilities for the public, and facilities for racing participants and horses do not meet state code or are otherwise inadequate to protect the public health and safety;*
 - (b) *The racing dates and times requested conflict with another race meeting of the same breed of horse;*
 - (c) *The financing or proposed financing of the entire operation is not adequate for the operation or is from an unsuitable source;*
 - (d) *The applicant or licensee has failed to disclose or has misstated information or otherwise attempted to mislead the commission with respect to any material fact contained in the application for the issuance or renewal of the license;*
 - (e) *The applicant has knowingly failed to comply with the provision of this chapter or any administrative regulations promulgated thereunder;*
 - (f) *Any of the principals of the applicant or licensee is determined to be unsuitable because he or she has:*
 - 1. *Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;*
 - 2. *Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;*
 - 3. *Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or of being of notorious or unsavory reputation;*
 - 4. *Been placed and remains in the custody of any federal, state, or local law enforcement authority;*
 - 5. *Had a racing or gaming license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or*
 - 6. *Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or*
 - (g) *The applicant or licensee has had a racing or gaming license denied or revoked in another jurisdiction on grounds that would be grounds for license denial or revocation in Kentucky.*

Section 5. KRS 230.300 is amended to read as follows:

- (1) Any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky or to engage in simulcasting and intertrack wagering as a receiving track during any calendar year shall first apply to the commission for a license to do so. The application shall be filed at the commission's general office on or before **October 1 of the preceding year**~~[June 1]~~ with respect to applications to conduct live horse race meetings, and~~[on or before October 1,]~~ with respect to intertrack wagering dates, **and on forms prescribed by the commission.** The application shall **include the following information:**
- (a) *The full name and address of the person making application;*
 - (b) *The location of the place, track, or enclosure where the applicant proposes to conduct horse racing meetings;*

- (c) *The dates on which the applicant intends to conduct horse racing, which shall be successive days unless authorized by the commission;*
 - (d) *The proposed hours of each racing day and the number of races to be conducted;*
 - (e) *The names and addresses of all principals associated with the applicant or licensee;*
 - (f) *The type of organizational structure under which the applicant operates, i.e., partnership, trust, association, limited liability company, or corporation, and the address of the principal place of business of the organization;*
 - (g) *Any criminal activities in any jurisdiction for which any individual listed under paragraphs (a) and (e) has been arrested or indicted and the disposition of the charges, and any current or on-going criminal investigation of which any of these individuals is the subject; and*
 - (h) *Any other information that the commission by administrative regulation deems relevant and necessary to determine the fitness of the applicant to receive a license, including fingerprints of any individual listed under paragraphs (a) and (e), if necessary for proper identification of the individual or a determination of suitability to be associated with a licensed racing association.*
- (2) *An application for license shall be accompanied by the following documents:*
- (a) *For a new license applicant, a financial statement prepared and attested to by a certified public accountant in accordance with generally accepted accounting principles, showing the following:*
 - 1. *The net worth of the applicant;*
 - 2. *Any debts or financial obligations owed by the applicant and the persons to whom owed; and*
 - 3. *The proposed or current financing structure for the operation and the sources of financing.*
 - (b) *For a license renewal applicant, an audited financial statement for the prior year;*
 - (c) *A copy of the applicant's federal and state tax return for the previous year. Tax returns submitted in accordance with this provision shall be treated as confidential;*
 - (d) *A statement from the Revenue Cabinet that there are no delinquent taxes or other financial obligations owed by the applicant to the state or any of its agencies or departments;*
 - (e) *A statement from the county treasurer of the county in which the applicant conducts or proposes to conduct horse racing meetings that there are no delinquent real or personal property taxes owed by the applicant.*
- (3) *The completed application shall be signed by the applicant or the chief executive officer if the applicant is an organization, sworn under oath that the information is true, accurate, and complete, and the application shall be notarized.*
- (4) *If there is any change in any information submitted in the application process, the applicant or licensee shall notify the commission within thirty (30) days of the change.*
- (5) ~~specify the location of the track and the days on which racing or intertrack wagering, or both, is desired to be conducted or held and shall be in the form and contain such other information and data as the commission may, by administrative regulation require.~~
- (2) The commission shall as soon as practicable, but in no event later than ~~November~~^{September} 1 in any calendar year award dates for racing in the Commonwealth during the next year. In awarding dates, the commission shall consider and seek to preserve each track's usual and customary dates, as these dates are requested. *If dates other than the usual and customary dates are requested, the applicant shall include a statement in its application setting forth the reasons the requested dates are sought.* Dates for the conduct of intertrack wagering shall be awarded as provided in KRS 230.377. In the event scheduled racing is canceled by reason of flood, fire, ~~or~~ inclement weather, *or other natural disaster or emergency*, the commission may award after ~~November~~^{September} 1 additional racing dates to make up for those dates canceled by ~~flood, fire, or inclement weather~~.
- (6) The commission may issue a license to conduct a horse race meeting to any association making the aforesaid application if *the applicant meets the requirements established in Section 2 of this Act and other applicable provisions of KRS Chapter 230, and if* the commission finds that the proposed conduct of racing by the

association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which the association proposes to conduct a race meeting, and capability to comply with the administrative rulings of the commission, the licensing of the association would serve to nurture, promote, develop, or improve the horse industry in the Commonwealth.

- (7) As a condition precedent to the issuance of a license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.
- (8)~~(3)~~ Every license issued under this chapter shall specify among other things the name of the person to whom issued, the address and location of the track where the horse race meeting to which it relates is to be held or conducted, and the days and hours of the day when the meeting will be permitted; provided, however, that no track ~~that which~~ is granted overlapping dates for the conduct of a live race meeting with another horse racing track within a fifty (50) mile radius shall be permitted to have a post time after 5:30 p.m., prevailing time for overlapping days between July 1 and September 15, unless agreed to in writing by the tracks affected.
- (9)~~(4)~~ A license issued under this section is neither transferable nor assignable and shall not permit the conduct of a horse race meeting at any track not specified therein. However, if the track specified becomes unsuitable for racing because of flood, fire, or other catastrophe, the commission may, upon application, authorize the meeting, or any remaining portion thereof, to be conducted at any other suitable track available for that purpose, provided that the owner of the track willingly consents to the use thereof.
- (10)~~(5)~~ Horse racing dates may be awarded and licenses issued authorizing horse racing on any day of the year. Horse racing shall be held or conducted only between sunrise and midnight.
- (11)~~(6)~~ The commission may at any time require the removal of any official or employee of any association in those instances where it has reason to believe that the official or employee has been guilty of any dishonest practice in connection with horse racing or has failed to comply with any condition of his license or has violated any law or any administrative regulation of this commission.
- (12)~~(7)~~ Every horse race not licensed under this section is hereby declared to be a public nuisance and the commission may obtain an injunction against the same in the Circuit Court of the county where the unlicensed race is proposed to take place.

Section 6. KRS 230.361 is amended to read as follows:

- (1) The commission shall promulgate administrative regulations governing and regulating mutuel wagering on horse races under what is known as the pari-mutuel system of wagering. ~~The [Such]~~ wagering shall be conducted only by a person licensed under this chapter to conduct a race meeting and only upon the licensed premises. The pari-mutuel system of wagering shall be operated only by a totalizator or other mechanical equipment approved by the commission. The commission shall not require any particular make of equipment.
- (2) ~~[In no event shall]~~ The operation of a pari-mutuel system for betting where authorized by law **shall not** constitute grounds for the revocation or suspension of any license issued and held under KRS 230.350.
- (3) All reported but unclaimed pari-mutuel winning tickets held in this state by any person or association operating a pari-mutuel or similar system of betting at horse race meetings shall be presumed abandoned if not claimed by the person entitled **to them**~~[thereto]~~ within **one (1) year**~~[two (2) years]~~ from the time the ticket became payable.
- (4) The commission may issue a license to conduct pari-mutuel wagering on steeple chases or other racing over jumps; ~~if provided that~~ all proceeds from ~~the [such]~~ wagering, after expenses are deducted, ~~is [be]~~ used for charitable purposes. If the dates requested for such a license have been granted to a track within a forty (40) mile radius of the race site, the commission ~~shall [may]~~ not issue a license until it has received written approval from the affected track. Pari-mutuel wagering licensed and approved under this subsection shall be limited to four (4) days per year. All racing and wagering authorized by this subsection shall be conducted in accordance with applicable administrative regulations ~~promulgated by [of]~~ the commission.

Section 7. KRS 230.362 is amended to read as follows:

~~{Beginning July 1, 1978, }~~Any person holding unclaimed pari-mutuel winning tickets presumed abandoned under the provisions of KRS 230.361 shall file annually, on or before September 1 of each year, with the office of the commission a list of and the amounts represented by unclaimed pari-mutuel tickets held by such person as of July 1, and ~~{such}~~ other information as the commission may require for the administration of KRS 230.361 to 230.373. The report shall be made in duplicate; the original shall be retained by the commission and the copy shall be mailed to the sheriff of the county where the unclaimed pari-mutuel tickets are held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days ~~a {said}~~ copy **of the report** on the courthouse door or the courthouse bulletin board, and to publish ~~the {said}~~ copy in the manner set forth by KRS Chapter 424. The cost of the publication shall be paid by the commission. The sheriff shall immediately certify in writing to the commission the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and such posting and publishing shall be constructive notice to all holders of pari-mutuel tickets which have remained unclaimed for a period of **one (1) year**~~{two (2) years}~~ from the time the ticket became payable.

Section 8. KRS 230.374 is amended to read as follows:

All sums reported and paid to the commission under the provisions of KRS 230.361 to 230.373, with the exception of funds paid under KRS 230.398, shall be paid by the commission to the Kentucky Racing Health and Welfare Fund, Inc., a nonprofit charitable corporation, organized for the benefit, aid, assistance, and relief of thoroughbred owners, trainers, jockeys, valets, exercise ~~riders {boys}~~, grooms, stable attendants, pari-mutuel clerks, and other thoroughbred racing personnel employed in connection with racing, and their ~~spouses {wives}~~ and children, who can demonstrate their need for financial assistance connected with death, illness, or off-the-job injury and are not otherwise covered by union health and welfare plans, workers' compensation, Social Security, public welfare, or any type of health, medical, death, or accident insurance. These sums shall be paid on or before December 31 in each year, **however, provided that** no payments shall be made by the commission to the Kentucky Racing Health and Welfare Fund, Inc., unless the commission and the Auditor of Public Accounts are satisfied that the fund is in all respects being operated for the charitable and benevolent purposes as set forth **in this section**~~{above}~~ and that no part of the funds paid to the fund by the commission or any net earnings of the fund inure to the benefit of any private individual, director, officer, or member of the fund or any of the persons who turned over sums to the commission representing unclaimed pari-mutuel tickets.

Section 9. The following KRS section is repealed:

230.217 Breeders' award fund -- Breeders' Award Committee.

Approved April 1, 1998

CHAPTER 238

(HB 397)

AN ACT relating to tourism development and declaring an emergency.

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

Section 1. KRS 154.29-010 is amended to read as follows:

As used in KRS 139.536 and KRS 154.29-010 to 154.29-060, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 154.29-050, on behalf of the authority and an approved company on or before June 30, 2002, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the Tourism Cabinet and the authority pursuant to KRS 154.29-050 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
 - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;

- (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (d) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
 - (g) All other costs comparable with those described in this subsection;
- (4) "Authority" means the Kentucky Economic Development Finance Authority as set forth in KRS 154.20-010;
- (5) *"Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;*
- ~~(6)(5)~~ "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, ~~or~~ business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Cabinet pursuant to KRS 154.29-030. *An eligible company may operate or intend to operate directly or indirectly through a lessee;*
- (7) *"Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;*
- ~~(8)(6)~~ "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 154.29-010 to 154.29-060;
- ~~(9)(7)~~ "Inducements" means the Kentucky sales tax ~~refund credit~~ as prescribed in KRS 139.536;
- ~~(10)(8)~~ "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 154.29-010 to 154.29-060;
- ~~(11)(9)~~ "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
- ~~(12)(10)~~ "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, ~~an~~ area of natural phenomenon or scenic beauty, *a Kentucky crafts and products center, or an entertainment destination center.* A tourism attraction shall not include any of the following:
- (a) Lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, *or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency;*

- (b) Facilities that are primarily devoted to the retail sale of goods, *other than an entertainment destination center, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction* ~~[unless the goods are created by individuals at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project];~~ and
- (c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

(13)~~(11)~~ "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Section 2. KRS 154.29-030 is amended to read as follows:

- (1) The secretary of the Tourism Cabinet shall establish standards for the making of applications for inducements and the recommendation to the authority of eligible companies and their tourism attraction projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The secretary of the Tourism Cabinet shall consult with the authority when establishing standards to ensure that standards established pursuant to subsection (1) of this section and KRS 154.29-040(1) do not conflict.
- (3) With respect to each eligible company making an application to the secretary of the Tourism Cabinet for inducements, and with respect to the tourism attraction project described in the application, the secretary of the Tourism Cabinet shall make inquiries and request materials of the applicant that shall include, but not be limited to, marketing plans for the project that target individuals who are not residents of the Commonwealth; a description and location of the project; capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed one million dollars (\$1,000,000) and the anticipated sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans which indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project. *If the tourism attraction project is an entertainment destination center, the sales tax refund shall be dedicated to a public infrastructure purpose that shall relate to the tourism attraction project and shall be approved by the secretary of the Tourism Cabinet. The applicant shall submit the public infrastructure purpose with its application.* Based upon a review of these materials, if the secretary of the Tourism Cabinet determines that the eligible company and the tourism attraction project may reasonably satisfy the criteria for final approval in subsection (4) of this section, then the secretary of the Tourism Cabinet may submit a written request to the authority requesting that the authority consider a preliminary approval of the eligible company and the tourism attraction project.
- (4) After receiving a preliminary approval by the authority, the secretary of the Tourism Cabinet shall engage the services of a competent consulting firm to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project:
 - (a) Shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;
 - (b) Shall have costs in excess of one million dollars (\$1,000,000);
 - (c) Shall have a significant and positive economic impact on the Commonwealth considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in the Commonwealth and the amount by which increased tax revenues from the tourism attraction project will exceed the credit given to the approved company;
 - (d) Shall produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred (100) days per year; and
 - (e) Shall not adversely affect existing employment in the Commonwealth.

- (5) The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make its determination under subsection (4) of this section.
- (6) After a review of relevant materials, the consultant's report, and completion of other inquiries, the secretary of the Tourism Cabinet shall, by written notification to the authority, provide a recommendation to the authority regarding final approval of the tourism attraction project.

Section 3. KRS 154.29-040 is amended to read as follows:

- (1) The authority shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The authority shall consult with the secretary of the Tourism Cabinet when establishing standards to ensure that standards established pursuant to KRS 154.29-030(1) and subsection (1) of this section do not conflict.
- (3) At the written request of the secretary of the Tourism Cabinet, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.
- (4) *After the adoption of the authority's preliminary approval, an agent designated by the Tourism Cabinet shall hold at least one (1) public hearing to solicit public comments regarding the designation of an eligible company as a preliminarily approved company and the preliminary authorization for the undertaking of a tourism attraction project. Notice of the public hearing shall be given in accordance with KRS Chapter 424.*

~~(5)~~~~(4)~~ The authority shall review the report of the consultant prepared pursuant to KRS 154.29-030(4), the recommendation of the secretary of the Tourism Cabinet, *the report prepared by the agent documenting all comments, both written and oral, received at the public hearing required by subsection (4) of this section*, and other information that has been made available to the authority in order to assist the authority in determining whether the tourism attraction project will further the purposes of KRS 139.536 and KRS 154.29-010 to 154.29-060.

~~(6)~~~~(5)~~ The criteria for final approval of eligible companies and tourism attraction projects shall include, but not be limited to, the criteria set forth in KRS 154.29-030(4).

~~(7)~~~~(6)~~ After a review of the consultant's report, the recommendation of the secretary of the Tourism Cabinet and other information made available to the authority, the authority, by resolution, may give its final approval to the eligible company's application for a tourism attraction project and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.

~~(8)~~~~(7)~~ All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 4. KRS 154.29-050 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:
 - (a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company;
 - (b) A date certain by which the approved company shall have completed the tourism attraction project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority; and
 - (c) The following provisions:
 1. The term shall be ten (10) years from the later of:
 - a. The date of the final approval of the project; or

- b. The completion date specified in the agreement, if this completion date is within two (2) years of the date of the final approval of the project;
- 2. ~~In any fiscal year of the approved company during which an agreement is in effect, if the accrued sales tax credit granted to the approved company exceeds two and one-half percent (2.5%) of the approved costs then expended, then the approved company shall pay the excess to the Commonwealth as sales tax;~~
- 3. ~~Within forty-five (45) days after the end of each *half of each* fiscal year of the approved company, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 154.29-010 to 154.29-060. **Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section;** and~~
- 3. ~~4. The approved company shall not receive a *sales tax refund as prescribed by Section 6 of this Act* credit against the Kentucky sales tax imposed by KRS 139.200} with respect to any fiscal year if:

 - a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; or
 - b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days.~~
- (2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.
- (3) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, *excluding its lessees*, may be ~~granted~~~~permitted~~ a *sales tax refund under*~~credit as provided in~~ KRS 139.536 ~~from~~~~against~~ the Kentucky sales tax imposed by KRS 139.200 on the sales ~~by the approved company~~ generated by or arising ~~at~~~~from~~ the tourism attraction project as defined in KRS 154.29-010.

Section 5. KRS 131.183 is amended to read as follows:

- (1) All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate. The tax interest rate for tax liabilities that are assessed on or after July 1, 1982, shall be sixteen percent (16%). This tax interest rate shall apply until January 1, 1983, when the tax interest rate shall be adjusted as provided in this section. The secretary of revenue shall adjust the tax interest rate not later than November 15 of any year, beginning in 1982, if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent, and shall become effective on January 1 of the immediately succeeding year.
- (2) Interest shall be allowed and paid upon any overpayment in respect of any of the taxes provided for in Chapters 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of the Kentucky Revised Statutes at the rate provided in subsection (1) above. Except for the provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the due date of the return or the date the tax was paid, whichever is later, and in no case shall interest be paid in an amount less than five dollars (\$5).
- (3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the tax imposed under KRS Chapter 141 results from a carryback of a net operating loss or a net capital loss, the overpayment shall be deemed to have been made on the date the claim for refund was filed. Interest authorized under subsection (2) of this section shall begin to accrue ninety (90) days from the date the claim for refund was filed.
- (4) *No interest shall be allowed or paid on any sales tax refund as provided by Section 6 of this Act.*

Section 6. KRS 139.536 is amended to read as follows:

- (1) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, **excluding its lessees**, may be **granted a sales tax refund from** ~~permitted a credit against~~ the Kentucky sales tax imposed by KRS 139.200 on the sales ~~by the approved company~~ generated by or arising ~~at~~ ~~from~~ the tourism attraction project as defined in KRS 154.29-010. The approved company shall have no obligation to refund or otherwise return any amount of this **sales tax refund** ~~credit~~ to the persons from whom the sales tax was collected. The term of the agreement granting **the sales tax refund** ~~this credit~~ shall be ten (10) years, and this time period shall commence on the later of:
- (a) The final approval for purposes of the inducements; or
 - (b) The completion date specified in the agreement. ~~However, in no event shall credits accrue prior to July 1, 1997.~~
- (2) The total sales tax **refund** ~~credit~~ allowed to the approved company over the term of the agreement in subsection (1) of this section shall be equal to the lesser of the total amount of the sales tax liability **of the approved company and its lessees** or twenty-five percent (25%) of the approved costs. The **sales tax refund** ~~credit~~ shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost ~~and shall be allowed for each fiscal year of the approved company during the term of the agreement for which a sales tax return of the approved company is filed~~. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, ~~any~~ ~~an approved company may carry forward an~~ unused **inducements as set forth in subsection (9) of Section 1 of this Act** ~~accrued credit~~ from a previous year **may be carried forward** to any succeeding year ~~tax period~~ during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through **sales tax refunds** ~~credits~~. By October 1 of each year the Revenue Cabinet shall certify to the authority and the secretary of the Tourism Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 154.29-010 to 154.29-060, **and their lessees**, and the amount of **the sales tax refunds issued** ~~any sales tax credits taken~~ pursuant to subsection (1) of this section.
- (3) **Interest shall not be allowed or paid on any refund made under the provisions of this section.**
- ~~(4)~~ ~~(3)~~ The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of this section and KRS 154.29-010 to 154.29-060 ~~and the allowable sales tax credit which an approved company may retain under this section and KRS 154.29-010 to 154.29-060~~.

Section 7. If the reorganization of the Tourism Cabinet into the Tourism Development Cabinet is confirmed by this 1998 Regular Session of the General Assembly, references to the Tourism Cabinet in this Act shall be codified as the Tourism Development Cabinet.

Section 8. Whereas it is vital for the economic well-being of the Commonwealth to promote the development of the tourism industry, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 1, 1998

CHAPTER 239

(SB 264)

AN ACT relating to child abuse and domestic violence.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

The Governor's Office of Child Abuse and Domestic Violence Services is hereby created and established within the Office of the Governor. The office shall be headed by an executive director, who shall be appointed by the Governor pursuant to KRS 11.040 and shall serve at the pleasure of and under the direction of the Governor.

- (1) ***The office's duties, rights, and responsibilities shall include, but not be limited to, the following:***

- (a) *Provide coordinative functions so that no services funded or provided by state government agencies are duplicative so as to ensure the greatest efficiency in the use of resources and funding, and to ensure that a consistent philosophy underlies all efforts undertaken by the administration in initiatives related to child abuse, domestic violence, and rape or sexual assault.*
 - (b) *Coordinate the legislative efforts of the administration related to child abuse, domestic violence and rape or sexual assault which shall include drafting legislative proposals and providing input to the Governor on the impact of legislation proposed by other agencies and government branches.*
 - (c) *Provide training and consultation to programs provided or funded by the state which provide services to victims of child abuse, domestic violence, rape or sexual assault, and other crimes.*
 - (d) *In conjunction with staff from the Justice Cabinet and the Cabinet for Human Resources, and with input from direct service providers throughout Kentucky, develop standards of care for victim and offender services provided or funded by the state.*
 - (e) *Design and implement research programs which attend to the quality of victim-related services.*
 - (f) *Provide consultation on the development of budgets for the rape crisis, child abuse, and domestic violence programs funded by the state.*
 - (g) *Provide recommendations to the Governor and to the Secretaries of the Justice Cabinet and the Cabinet for Human Resources, related to the improvement and expansion of victim services provided or funded by these agencies.*
 - (h) *Undertake new and progressive initiatives to improve and enhance the delivery of services to victims of child abuse, domestic violence, and rape or sexual assault.*
- (2) *The Executive Director may, at the request of the Governor or any Secretary, serve as a designee on boards, commissions, task forces or other committees addressing child abuse, domestic violence and rape or sexual assault.*
- (3) *The First Lady of the Commonwealth shall serve as special advisor to the office.*

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

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

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department of Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs; ~~and~~
- (7) Coal Marketing and Export Council; *and*
- (8) *Governor's Office of Child Abuse and Domestic Violence Services.*

Section 3. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed in this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources in subsection (1) (d) and (g) of this Act shall be codified as the Cabinet for Families and Children and the Cabinet for Health Services.

Section 4. The General Assembly confirms both Executive Order 96-423, dated April 5, 1996 which created and established the Office of Sexual Abuse and Domestic Violence Services and Executive Order 96-1620, dated December 11, 1996 which changed the name of the Office of Sexual Abuse and Domestic Violence Services to the Governor's Office of Child Abuse and Domestic Violence Services to the extent they are not otherwise confirmed or superseded by this Act.

Approved April 1, 1998

CHAPTER 240

(HB 305)

AN ACT relating to minimum wage.

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

Section 1. KRS 337.275 is amended to read as follows:

- (1) Except as may otherwise be provided by this chapter, every employer shall pay to each of his employees wages at a rate of not less than *the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1). The minimum wage rates required under this chapter shall be adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption required in this subsection includes only the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this chapter*~~[four dollars and twenty five cents (\$4.25) an hour]~~.
- (2) *Notwithstanding the provisions of subsection (1) of this section*, for any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips from patrons or others, the employer may pay as a minimum *not less than the hourly wage rate required to be paid a tipped employee under the federal minimum hourly wage law as prescribed by 29 U.S.C. sec. 203. The employer shall*~~[fifty percent (50%) of the wage prescribed in this section if he can]~~ establish by his records that for each week where credit is taken, when adding tips received to wages paid, not less than the minimum rate prescribed in *29 U.S.C. sec. 203*~~[this section]~~ was received by the employee. No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum hourly wage as required by *29 U.S.C. sec. 203*~~[this section]~~. Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.

Approved April 1, 1998

CHAPTER 241

(HB 306)

AN ACT relating to the commissioner of workplace standards.

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

Section 1. KRS 336.050 is amended to read as follows:

The commissioner in person or by representative shall:

- (1) Investigate and ascertain the wages of all employees employed in this state.
- (2) Enter the place of business or employment of any employer of employees to examine and inspect all books, registers, payrolls, and other records that have a bearing upon the question of wages of employees and to ascertain whether the orders of the commissioner are complied with; and
- (3) Require from the employer a full and correct statement in writing when the commissioner or his representative considers it necessary, of the wages paid to all employees in his employment.

- (4) Upon complaint, prosecute any violation of any of the provisions of any law which it is his duty to administer or enforce. *The commissioner may enter into reciprocal agreements with the corresponding labor agency or official of any other state to collect in the other state claims assigned to the commissioner. To the extent allowed by a reciprocal agreement, the commissioner may maintain actions in the courts of another state to collect claims and judgments for wages and assign claims and judgments to the agency or official of another state for collection. If a reciprocal agreement extends a like comity to cases arising in the Commonwealth, the commissioner may maintain actions in the courts of the Commonwealth to collect claims and judgments for wages arising in the other state in the same manner and to the same extent that actions are authorized when arising in the Commonwealth.*

Approved April 1, 1998

CHAPTER 242

(SB 392)

AN ACT relating to title pledge loans.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 19 of this Act, unless the context requires otherwise:

- (1) *"Capital" means the assets of a business entity less the liabilities of that business entity. Assets and liabilities shall be measured according to generally accepted accounting principles or relevant pronouncements of the financial accounting standards board;*
- (2) *"Department" means the Department of Financial Institutions;*
- (3) *"Person" means any sole proprietorship, general partnership, corporation, limited liability company, or limited liability partnership duly qualified to do business in Kentucky;*
- (4) *"Pledgor" means any individual who executes a title pledge agreement as defined in subsection (5) of this section;*
- (5) *"Title pledge agreement" means a thirty (30) day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor, subject to the terms and conditions of Sections 1 to 19 of this Act. A pledgor shall have no personal liability on a title pledge agreement and a title pledge agreement shall not be considered a debt transaction for any purpose of law;*
- (6) *"Title pledge lender" means any person engaged in the business of making title pledge agreements;*
- (7) *"Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business; and*
- (8) *"Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state issued certificate of title but shall not include mobile homes.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *A title pledge lender licensed under Sections 1 to 19 of this Act may make loans of money on pledges of titled personal property in accordance with the provisions of Sections 1 to 19 of this Act.*
- (2) *Title pledge lenders exercising the authority set forth in Sections 1 to 19 of this Act shall not be deemed in violation of KRS Chapter 360. No action shall be brought by a pledgor against a title pledge lender in connection with the title pledge agreement more than five (5) years after the date of the alleged occurrence of any violation of Sections 1 to 19 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

No person shall engage in the business of a title pledge lender without having first obtained a license. Any person engaged in the business of title pledge lending on the effective date of this Act may continue to engage in the business without a license until the commissioner shall have acted upon his application for a license, if the application is filed within sixty (60) days after the effective date of this section.

SECTION 4. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

To qualify for a license, an applicant shall apply to the department and satisfy the following requirements:

- (1) *Be operating as a sole proprietorship, general partnership, limited liability partnership, corporation, or limited liability company duly qualified to do business in Kentucky;*
- (2) *Demonstrate the existence of initial capital of and the maintenance of, at least one hundred thousand dollars (\$100,000) for the security of all of the applicant's licensed title pledge offices within the Commonwealth;*
- (3) *Demonstrate the existence of a bond, with approved surety, in the amount of one hundred thousand dollars (\$100,000) for the security of all of the applicant's licensed title pledge offices within the Commonwealth. This bond shall be maintained for the benefit and security of the title pledge borrowers and for the benefit and security of the Commonwealth with respect to the civil and criminal penalties provided in Section 19 of this Act; and*
- (4) *Represent that the business will be operated lawfully, fairly, and ethically in accordance with Sections 1 to 19 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

Each application for a title pledge lending license shall be filed with the department and the application shall provide the following:

- (1) *The name of the beneficial owner if a sole proprietorship; or in the case of a corporation, all individuals serving as officers or directors; or in the case of a partnership or limited liability company, the members thereof;*
- (2) *The street address where the title pledge office is to be operated;*
- (3) *Proof of the capital and surety bond requirements set forth in Section 4 of this Act, accompanied by an unaudited financial statement from a certified public accountant;*
- (4) *An affidavit from each individual set forth in subsection (1) of this section stating that each individual has not been convicted of a felony within the ten (10) year period preceding the date of application;*
- (5) *Certified funds in the amount of five hundred dollars (\$500) payable to the department; and*
- (6) *Other information as required by the commissioner.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *Following verification by the department of the information contained in the application, every person having satisfied the provisions of Sections 1 to 19 of this Act and having paid the business taxes and any other taxes required by law shall be granted a license as set forth in this section. The license issued under this section shall state the name of the person to whom issued, the place of business, and street address where the title pledge office is located. The license shall entitle the person to do business at the place designated on the license. The license shall not be transferable from one (1) person to another but, upon approval of the commissioner, may be transferred from one (1) location to another within the county of the location originally licensed.*
- (2) *A title pledge lender license shall be renewed each year upon payment of an annual fee of five hundred dollars (\$500) and compliance with the provisions of Sections 1 to 19 of this Act.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *Every title pledge lender doing business under the laws of this Commonwealth shall be subject to inspection by the commissioner or by an examiner appointed by the commissioner in accordance with KRS 287.440. Examination shall be made of every title pledge lender at least once and not more than twice every twenty-four (24) months unless it appears from examination or from the report of the title pledge lender that it has failed to comply with laws or administrative regulations relating to title pledge lenders or has engaged in unsafe or unsound practices.*

- (2) *The commissioner, deputy commissioner, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the title pledge lender, or the lender's designee.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

In undertaking the examination of any title pledge lender, neither the Commonwealth, the commissioner, nor any examiner employed by the Commonwealth shall become liable to any pledgor of the title pledge lender if the examination or an omission in the examination fails to fully and effectively disclose the financial condition of the title pledge lender.

SECTION 9. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *Reports of examination, and correspondence that relates to the report of examination, of a title pledge lender shall be considered confidential information. No officer or director of a title pledge lender or employee of the department shall release any information contained in the examination, except if:*
- (a) *Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality have been issued by a court of competent jurisdiction; or*
 - (b) *The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the title pledge lender, or to outside persons for the purpose of evaluating the title pledge lender for possible acquisition. Reports of examination released to outside persons providing professional services to the title pledge lender or for the purpose of evaluating the title pledge lender for possible acquisition, shall require a written request from the outside person and prior approval by the board of directors or an executive committee of the title pledge lender.*
- (2) *The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.*
- (3) *Every official report concerning a title pledge lender, and every report of examination, shall be prima facie evidence of the facts stated therein for all purposes in any action in which the department or title pledge lender is a party.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

A fee shall be collected by the department for any examination as set forth in Section 7 of this Act. The fee shall be sufficient to cover the cost of the examination based upon fair compensation for time and actual expense.

SECTION 11. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *Every title pledge lender shall keep a consecutively numbered record of every title pledge agreement executed. A copy of the title pledge agreement shall be maintained for a period of two (2) years from the date the title pledge agreement was executed, and shall include the following:*
- (a) *A clear and accurate description of the titled personal property, including its vehicle identification number, license plate number, year, make, model, type, and color;*
 - (b) *The date of the title pledge agreement;*
 - (c) *The amount of the loan made in accordance with the title pledge agreement;*
 - (d) *The date of maturity of the loan; and*
 - (e) *The name, date of birth, social security number, and residence address of the pledgor, together with a photocopy of the pledgor's motor vehicle operator's license.*
- (2) *The pledgor shall sign the title pledge agreement, and shall be provided with a copy of the agreement. The title pledge agreement shall also be signed by the title pledge lender or the lender's employee or agent.*
- (3) *This information shall be maintained at the title pledge office location, approved by the department, and made available for inspection by the law enforcement agencies where the title pledge lender is located during the regular business hours of the title pledge office.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

The title pledge lender may record the lender's security interest in titled personal property by noting liens on the certificate of title for all title pledge transactions. The title pledge lender may require the pledgor to execute a

power of attorney at the time of the signing of the title pledge agreement permitting the title pledge lender to record the lien and effect a transfer of the certificate of title upon default.

SECTION 13. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *A title pledge lender shall be subject to the same fees, default, and deferment charges as provided in KRS 288.530.*
- (2) *Notwithstanding the provisions of Section 2 of this Act, or any law to the contrary, each title pledge lender shall issue to the pledgor a standardized consumer interest and fee notification and disclosure form in compliance with the Federal Truth in Lending Act, 15 U.S.C. sec. 1601 et seq., prior to entering into any title pledge agreement, if the pledged goods will consist of, or include, one (1) or more motor vehicles or water craft titled by this Commonwealth or any other state.*
- (3) *By agreement of the parties, the maturity date of the title pledge transaction may be renewed for additional thirty (30) day periods, however, the title pledge transaction shall not be renewed, rolled over, or otherwise consolidated more than three (3) times in succession. Each roll over period shall not be for less than thirty (30) days. All renewals of the title pledge transaction shall be evidenced in writing. No accrued interest or service charge shall be capitalized or added to the original principal of the title pledge transaction during any renewal.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Sections 1 to 19 of this Act, the pledgor, upon presentation of suitable identification shall be entitled to a release of the security interest and lien, if any are noted on the titled personal property or certificate of title described therein, upon satisfaction of all outstanding obligations in accordance with the title pledge agreement and Sections 1 to 19 of this Act. In addition, the power of attorney executed under Section 12 of this Act, if any, shall be stamped "void".

SECTION 15. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

The pledgor shall have no obligation to redeem the titled personal property, or to make any payment toward the title pledge agreement. If, however, upon the expiration of the title pledge agreement, or the final renewal, if any, the pledgor fails to pay all of the principal, interest, and fees owing to the title pledge lender, the title pledge lender may take possession of the titled personal property. In taking possession, the title pledge lender, or his agent, may proceed without judicial process if this can be done without breach of the peace, or may proceed by filing a civil action.

SECTION 16. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

After the title pledge lender has taken possession of the titled personal property in accordance with Section 15 of this Act, it shall hold the property for a period of not less than twenty (20) days prior to disposal. Interest and fees, other than storage fees under Section 13 of this Act, shall cease to accrue following repossession. During this holding period, the pledgor shall have the sole right to redeem the titled personal property by paying all principal, interest, and fees owing to the title pledge lender, including all repossession and storage fees in Section 13 of this Act. Following the expiration of the twenty (20) day period, the title pledge lender shall have a period of sixty (60) days in which to sell, in a commercially reasonable manner, the titled personal property. Notice of the proposed sale shall be given to the pledgor. Notice of the proposed sale shall also be given to any other secured party from whom the title pledge lender has received written notice prior to the notification sent to the pledgor, of a claim of interest in the titled personal property. The proceeds of the commercially reasonable sale shall be applied to the principal, interest, and all fees set forth in Section 13 of this Act owed by the pledgor to the title pledge lender. Any surplus amounts shall be remitted to the pledgor. There shall be no further interest charged to the pledgor from the commencement of the sixty (60) day period.

SECTION 17. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

If the pledgor fails to complete the obligations under the title pledge agreement by failing to pay all outstanding principal, interest, and fees during the twenty (20) day holding period, then the pledgor shall forfeit all right, title, and interest in and to the titled personal property and certificate of title to the title pledge lender, who shall thereby acquire by virtue of the terms of the title pledge agreement and power of attorney, an absolute right of title and ownership to the titled personal property subject to the obligation to sell the titled personal property in the manner described in Section 16 of this Act.

SECTION 18. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

A title pledge lender shall not:

- (1) *Accept a pledge from a person under eighteen (18) years of age, from anyone who appears to be intoxicated, or from any person known to the title pledge lender to have been convicted of larceny, burglary, or robbery;*
- (2) *Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default, and to sell the titled personal property;*
- (3) *Accept any waiver, in writing or otherwise, or any right or protection accorded a pledgor under Sections 1 to 19 of this Act;*
- (4) *Fail to exercise reasonable care to protect from loss or damage titled personal property or certificates of title in the physical possession of the title pledge lender;*
- (5) *Purchase pledged titled personal property in the operation of its business;*
- (6) *Maintain more than one (1) title pledge office per license;*
- (7) *Violate the provisions of Section 13 of this Act or any administration regulation promulgated by the department;*
- (8) *Operate a title pledge office on the same premises as a pawnbroker as defined in KRS 226; or*
- (9) *Lend moneys in excess of four thousand dollars (\$4,000) to any one (1) title pledge borrower at a given time.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 368 IS CREATED TO READ AS FOLLOWS:

- (1) *Every person who knowingly violates any of the provisions of Section 1 to 19 of this Act, is guilty of a Class A misdemeanor. Upon conviction of such a Class A misdemeanor the license of the title pledge lender may be suspended or revoked by the department.*
- (2) *Notwithstanding any other law to the contrary, apart from or in addition to any sanctions which may be imposed under subsection (1) of this section, upon an administrative finding by the department that a title pledge lender has violated the provisions of subsection (3) of Section 13 of this Act, the license of the title pledge lender may be revoked or suspended for a period, specified by the department, not to exceed forty-five (45) days. Notwithstanding the provisions of Section 2 of this Act, or any other law to the contrary, upon a finding by the department that a title pledge lender has repeatedly and persistently engaged in a pattern of violating the provisions of subsection (3) of Section 13 of this Act, the license of the title pledge lender may be revoked or suspended for a period specified by the department, of not less than ninety (90) days.*
- (3) *In addition to the sanctions which may be imposed under subsection (2) of this section, the department may impose a fine against any person for a violation of Sections 1 to 19 of this Act of no less than five hundred dollars (\$500) and no more than one thousand dollars (\$1,000) per violation.*
- (4) *During the period of any suspension or following any revocation, the title pledge lender shall not engage, in any county within this Commonwealth, in the business of making title pledge agreements with pledgors.*

Approved April 1, 1998

CHAPTER 243

(HB 62)

AN ACT relating to elections and declaring an emergency.

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

Section 1. KRS 116.055 is amended to read as follows:

Before a person shall be qualified to vote in a primary election, he shall possess all the qualifications required of voters in a regular election. In addition, he shall be a registered member of the party in whose primary election he seeks to vote, and shall have been registered as a member of that party *on December 31 immediately preceding the primary*~~at the time of the preceding regular~~ election, or, in the case of new registrations *made after December 31*

immediately preceding the primary election, he shall ~~[not involving a change of political affiliation made after the preceding regular election,]~~ have registered and remained registered as a member of that party. No person shall be allowed to vote for any party candidates or slates of candidates other than that of the party of which he is a registered member. The qualifications shall be determined as of the date of the primary, without regard to the qualifications or disqualifications as they may exist at the succeeding regular election, except that minors *seventeen (17) years of age* who will become eighteen (18) years of age on or before the day of the regular election shall be entitled to vote in the primary if otherwise qualified. However, any registered voter, whether registered as a member of a party or as an independent, shall be qualified to vote in primary elections for candidates listed in all nonpartisan races. Any voter eligible to vote in a primary election shall also be eligible to vote in a subsequent runoff primary if one shall be necessary.

Section 2. KRS 118.315 is amended to read as follows:

- (1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provisions of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate, nor shall any person be eligible to election as an independent candidate who was a registered member of a political party *on December 31 immediately preceding the regular election for which the person seeks to be a candidate* ~~[at the time of the last preceding regular election]~~. This restriction shall not apply to candidates to those offices specified in KRS 118.105(5), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.
- (2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include his residence, Social Security number or date of birth, and post-office address. Failure of a voter to include his Social Security number or date of birth and address shall result in his signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his signature is affixed.
- (3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.
- (4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

Section 3. KRS 117.045 is amended to read as follows:

- (1) The county board of elections shall in the manner prescribed by this section, not later than March 20 each year, *except in a year in which no primary and regular elections are scheduled*, appoint for each precinct in the county two (2) judges, one (1) clerk and one (1) sheriff of election. They shall serve in all elections held in the county during the year, except as provided in KRS Chapter 242. *If a special election is ordered to be held in a year in which no elections are scheduled, the county executive committee of each political party in each county in the territory affected by the special election shall, not later than twenty-eight (28) days preceding the date of the special election, submit a written list of nominees for precinct election officers to serve in the special election in a manner consistent with the provisions of subsection (2) of this section. The county board of elections in each county in the territory affected by the special election shall, not later than twenty-one (21) days preceding the date of the special election, appoint precinct election officers to serve in the special election in a manner consistent with the provisions of subsections (4), (5), and (6) of this section.*

The State Board of Elections shall promulgate an administrative regulation establishing evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct election officers.

- (2) The county executive committees of the two (2) political parties having representation on the State Board of Elections may, on or before March 15 each year, designate in writing to the county board of elections a list of not less than four (4) names for each precinct; except that, in any precinct where there are not as many as four (4) persons possessing the qualifications of an election officer belonging to the political party filing the list, a lesser number may be designated. If there are two (2) or more contending executive committees of the same party in any county, the one (1) recognized by the written certificate of the chairman of the state central committee of the party shall be the one (1) authorized to submit the lists. The lists shall contain the full name, address, phone number, and Social Security number, if available, of each person listed. The lists shall be accompanied by a signed statement from each person stating that he is willing to serve, has not failed to serve without excuse in the past, and has not been convicted of an election law offense or any felony, unless the person's civil rights have been restored by the Governor. The State Board of Elections shall prescribe by administrative regulation the form of the list.
- (3) The Attorney General shall notify each party state central committee of the duties of the party.
- (4) If lists are submitted, the county board of elections shall select one (1) judge at each voting place from each political party's list, and the county board shall select the sheriff from one (1) political party's list and the clerk from the other. If no lists are submitted, the two (2) members of the county board of elections who are appointed by the State Board of Elections may submit lists; and the county board shall select the sheriff and one (1) judge from one (1) list and the clerk and the other judge from the remaining list. If no lists are submitted, the county board shall select the sheriff and one (1) judge from the membership of one (1) party and the clerk and the other judge from the membership of the remaining party. The county board shall, when possible, also appoint an adequate number of alternate precinct election officers from names on the lists which were submitted but which were not selected by the county board as precinct election officers. If alternate precinct election officers are not appointed from the lists of nominees who were not selected as precinct election officers, the county board of elections shall submit its method of selecting alternate precinct election officers to the State Board of Elections for its approval.
- (5) If, after all reasonable efforts have been made, the county board of elections is unable to find two (2) qualified officers for each precinct who are affiliated with the two (2) political parties having representation on the State Board of Elections, the county board shall submit a list of emergency election officer appointments to the State Board of Elections. The county board shall also present, in writing, its efforts to recruit and appoint election officers as prescribed in subsection (4) of this section. The list of emergency appointments may include qualified voters not affiliated with the two (2) parties represented on the state board. The state board, after its review, may approve any or all of the emergency appointments submitted by the county board or may direct the county board to take other action. Any emergency appointment shall be made for the next ensuing election only.
- (6) ***In addition to precinct election officers appointed under subsection (1) of this section, a county board of elections may appoint up to two (2) additional precinct election officers per precinct with the approval of the State Board of Elections. The state board shall promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved.***
- (7) The county board of elections shall, within ten (10) days before the next ensuing election, give each election officer written notice of his appointment. The board may direct the sheriff of the county to serve the notice of appointment, if it deems the action is necessary.
- ~~(8)~~~~(7)~~ The State Board of Elections may require the county board of elections to submit its list of precinct officers for review. The State Board of Elections may, after a hearing, direct the removal of any election officer who the board finds would not fairly administer the state election laws. The state board shall replace any officer so removed. The board shall provide for the method and manner of the hearing by administrative regulation.
- ~~(9)~~~~(8)~~ An election officer shall be a qualified voter of the precinct; except that, where no qualified voter of the required political party is available within the precinct, the election officer shall be a qualified voter of the county. An election officer shall not be a candidate or the spouse, parent, brother, sister, or child of a candidate who is to be voted for at the election. An election officer shall not have changed his voter registration party affiliation for ***one (1) year***~~two (2) years~~ prior to his appointment. An election officer may be removed, for cause, at any time up to five (5) days before an election. Vacancies shall be filled by the county board with

alternate precinct election officers and the person appointed to fill the vacancy shall be of the same political party as the vacating officer, except for emergency appointments made as provided in subsection (5) of this section.

~~(10)(9)~~ If the county board of elections fails to appoint election officers, or if any officer is not present at the precinct at the time for commencing the election, or refuses to act, and if no alternate is available, the officer in attendance representing the political party of the absentee shall appoint a suitable person to act in his place for that election. If both representatives of the same political party are absent, qualified voters present affiliating with that party shall elect, viva voce, suitable persons to act in their places.

~~(11)(10)~~ Each election officer shall be paid a minimum of sixty dollars (\$60) per *election* day *served*, and such an additional amount as compensation as may be determined by the county board of elections, with the approval of the governing body which would be responsible for funding the election officers' pay, for each election in which the election officer serves, to be paid by the county. For delivering the election packets to the polls, the precinct election officers shall receive in addition the mileage reimbursement provided for state employees, for each mile necessarily traveled in the delivery of the packets to the polls, or a flat fee if the fee equals or exceeds that amount. For delivering election returns, the *precinct election*~~two (2)~~ judges shall receive in addition the mileage reimbursement provided for state employees for each mile necessarily traveled from the place of voting to and from the place of delivery, or a flat fee if the fee equals or exceeds that amount. The fee paid to the *precinct election*~~two (2)~~ judges for delivering election returns shall be paid by the county.

Section 4. KRS 117.075 is amended to read as follows:

- (1) Any qualified voter who has not been declared mentally disabled by a court of competent jurisdiction, and who, on account of age, disability or illness, is not able to appear at the polls on election day may vote in the following manner. At least seven (7) days prior to the date of the election and prior to the close of normal business hours, he shall present to the clerk by mail or in person his application for ~~an~~ ~~a paper~~ absentee ballot containing a verified statement that his inability to appear is due to age, disability, or illness. The request for the application may be made by telephone, facsimile machine, mail, or in person. Upon receipt of the application, the clerk shall immediately mail to the voter ~~an~~ ~~a paper~~ absentee ballot and envelopes, and the voter shall cast his vote in accordance with KRS 117.086. The ballot shall be returned by the voter to the county clerk by mail.
- (2) Ballots furnished pursuant to the provisions of this section shall include the names of all candidates for which the voter is entitled to vote.

Section 5. KRS 117.077 is amended to read as follows:

In case of a medical emergency within seven (7) days or less of an election, a registered voter may apply for ~~an~~ ~~a paper~~ absentee ballot. The application shall state that the emergency condition occurred within the seven (7) day period and shall be notarized. The application form shall be restricted to the use of the voter or the spouse, parents or children of the voter. If the voter has no spouse, parents or children, the application form shall be restricted to the use of the voter or the brother, sister, niece or nephew of the voter. Upon receipt of the application and verification, the county clerk shall issue ~~an~~ ~~a paper~~ absentee ballot.

Section 6. KRS 117.085 is amended to read as follows:

- (1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. All applications for an absentee ballot shall be transmitted only by mail or in person *at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application shall be restricted to the use of the voter or the spouse, parents, or children of the voter*~~as specifically provided by this section~~. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted *and persons who qualify under subparagraph 5. of paragraph (a) of this subsection*, ~~no~~ ~~paper~~ absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for ~~an~~ ~~a paper~~ absentee ballot as provided in this section and who is properly registered as stated in his application.

- (a) The following voters may apply to cast their votes by ~~paper~~ absentee ballot at any time not later than the close of business hours seven (7) days before the election:
1. Voters permitted to vote by ~~paper~~ absentee ballot pursuant to KRS 117.075 ~~or KRS 117.077~~;
 2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
 3. Students who *temporarily reside*~~live~~ outside the county of their residence and other voters who *temporarily reside*~~live~~ outside the state but who are still eligible to vote in this state; ~~and~~
 4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime; *and*
 5. *Persons who are prevented from voting in person at the polls on election day and from casting an absentee ballot in person in the county clerk's office on all days absentee voting is conducted prior to election day because their employment location requires them to be absent from the county all hours and all days absentee voting is conducted in the county clerk's office.*
- ~~[— Any other qualified voter in any county who is not permitted to vote by paper absentee ballot who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above. Requests for an application for a paper absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. All applications for a paper absentee ballot shall be made in person or by mail, at the option of the voter, except that the county clerk shall hand an application for a paper absentee ballot to a voter permitted to vote by paper absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The paper absentee ballot application shall be restricted to use of the voter or the spouse, parents, or children of the voter.]~~
- (b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for *an*~~a paper~~ absentee ballot by means of the federal post-card application. The application may be used to register, reregister, and to apply for *an*~~a paper~~ absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.
- (c) *Any other qualified voter in the county who is not permitted to vote by absentee ballot under paragraph (a) of subsection (1) of this section who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above.*
- (d) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on

the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.

- (e)~~(d)~~ The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.
- (f)~~(e)~~ Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.
- (2) The clerk shall type the name of the voter permitted to vote by ~~paper~~ absentee ballot on the application form for that person's use and no other. The ~~paper~~ absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for ~~an~~~~a paper~~ absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.
 - (3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive ~~an~~~~a paper~~ absentee ballot *by mail*, he shall mail to the voter ~~an~~~~a paper~~ absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed.
 - (4) ~~Paper~~ Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and ~~paper~~ absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.
 - (5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and *fifteen* ~~(15)~~~~ten~~~~(10)~~ days prior to each runoff primary.
 - (6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.
 - (7) Any person who has received ~~an~~~~a paper~~ absentee ballot *by mail* but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his ~~paper~~ absentee ballot and vote in person. He shall return his ~~paper~~ absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the ~~paper~~ absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent ~~paper~~ absentee ballots, and the voter may vote in the precinct in which he is properly registered.

Section 7. KRS 117.086 is amended to read as follows:

- (1) The voter returning his ~~paper~~ absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. In order to be counted, the ~~paper~~ ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.
- (2) Any voter who shall be absent from the county on election day, but who does not qualify to receive ~~an~~ ~~paper~~ absentee ballot by mail under the provisions of KRS 117.085, and all members of county boards of elections and precinct election officers qualified to vote prior to the election under the provisions of KRS 117.085, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:
 - (a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.
 - (b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.
- (3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."
- (4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.
- (5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.
- (6) The clerk shall deposit all of the ~~returned paper~~ absentee ballots **returned by mail** in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.
- (7) The clerk shall keep a list of all persons who return their ~~paper~~ absentee ballots **by mail** or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by ~~paper~~ absentee ballots **returned by mail** and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.

Section 8. KRS 117.0863 is amended to read as follows:

- (1) Except for those voters who have been certified as requiring assistance in voting on a permanent or annual basis, any person voting by means of ~~an~~ ~~paper~~ absentee ballot **by mail** or on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, as provided in this chapter who receives assistance in voting shall be required to complete the voter assistance form required by KRS 117.255.

- (2) Any person who assists another person in voting by use of ~~an~~ ~~a paper~~ absentee ballot **by mail** or on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall complete the voter assistance form required by KRS 117.255.
- (3) The detachable flap on all ~~paper~~ absentee **ballot envelopes**~~ballots~~ shall have printed upon it the voter assistance form required by KRS 117.255, as well as a notice of the penalty for failure to complete the form.
- (4) The State Board of Elections shall promulgate a voter assistance form which shall be in a form acceptable to the Attorney General.

Section 9. KRS 117.087 is amended to read as follows:

- (1) The challenge of ~~an~~ ~~a paper~~ absentee ballot **returned by mail** shall be in writing and in the hands of the county clerk before 3:00 p.m. on election day.
- (2) The county board of elections shall count the ~~paper~~ absentee ballots **returned by mail** and the votes cast on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. The board may appoint a central ballot counting board of not less than three (3) members, who shall be qualified voters and no more than two-thirds (2/3) of whom shall be members of the same political party, to count the ballots at the direction of the county board of elections.
- (3) Beginning at 3:00 p.m. on election day, the board shall meet at the clerk's office to count the ~~paper~~ absentee ballots **returned by mail** and the ballots cast on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. Candidates or their representatives shall be permitted to be present. The county board of elections shall authorize representatives of the news media to observe the counting of the ballots. The board shall open the boxes containing ~~paper~~ absentee ballots **returned by mail** and remove the envelopes one (1) at a time. As each envelope is removed, it shall be examined to ascertain whether the outer envelope and the detachable flap are in proper order and have been signed by the voter. All unsigned ~~paper~~ absentee ballots shall be rejected automatically. The chairman of the county board of elections shall compare the signatures on the outer envelope and the detachable flap with the signature of the voter that appears on the registration card. If the outer envelope and the detachable flap are found to be in order, the chairman shall read aloud the name of the voter. If the vote of the voter is not rejected on a challenge then made as provided in subsection (4) of this section, the chairman shall remove the detachable flap and place the inner envelope unopened in a ballot box which has been provided for the purpose.
- (4) When the name of a voter who cast ~~an~~ ~~a paper~~ absentee ballot **by mail** is read aloud by the chairman, the vote of the voter may be challenged by any board member or by the written challenge provided in subsection (1) of this section and the challenge may be determined and the vote accepted or rejected by the board as if the voter was present and voting in person; but if the outer envelope and the detachable flap are regular, and substantially comply with the provisions of this chapter, they shall be considered as showing that the voter is prima facie entitled to vote. If the vote of a voter is rejected pursuant to the challenge, the inner envelope shall not be opened, but returned to the outer envelope upon which the chairman shall write on the envelope the word "rejected".
- (5) After the challenges have been made and all the blank inner envelopes have been placed in a ballot box, the box shall be thoroughly shaken to redistribute the ~~paper~~ absentee ballots in the box. The board shall open the ballot box, remove the ~~paper~~ absentee ballots from the inner envelopes, and count the ballots.
- (6) The board shall unlock any voting equipment used to cast ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, as provided for in KRS 117.086 and a total of all ballots shall be made and recorded on the form provided by the State Board of Elections.
- (7) The county board of elections shall make public the ballot results determined as provided in this section after 6 p.m.

Section 10. KRS 117.187 is amended to read as follows:

- (1) The State Board of Elections shall regularly provide special training regarding the election laws and methods of enforcement to all members of county boards of elections, county attorneys, Commonwealth's attorneys, and certain members of the Kentucky State Police.

- (2) The county board of elections shall provide special training *before each primary and regular election* to all election officers, alternates, and certified challengers regarding their duties and the penalties for failure to perform. Election officers, including alternates, and certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency. Any person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years. The training provided by the county board of elections shall include, but not be limited to, the following:
- (a) Operation of the voting machine or ballot cards;
 - (b) Posting of necessary signs and notices at the polling place;
 - (c) Voter assistance;
 - (d) Maintaining precinct rosters;
 - (e) Confirmation of a voter's identity;
 - (f) Challenge of a voter;
 - (g) Completing changes of address or name at the polling place;
 - (h) Qualifications for voting in a primary election;
 - (i) Electioneering and exit polling;
 - (j) Write-in voting procedures;
 - (k) Persons who may be in the voting room;
 - (l) Election violations and penalties;
 - (m) Assistance which may be provided by law enforcement officers; and
 - (n) Election reports.
- (3) The county attorney shall attend the training session for election officers to assist in explaining the duties and penalties for failure to perform.
- (4) Compensation in the minimum amount of ten dollars (\$10) for reimbursement of actual expenses shall be paid by the county to the election officers for attending the training session.

Section 11. KRS 117.255 is amended to read as follows:

- (1) The voter shall be instructed by the officers of election, with the aid of the instruction cards and the model, in the use of the machine, if the voter so requests.
- (2) *Except for those voters who have been certified as requiring assistance on a permanent basis, no voter shall be permitted to receive any assistance in voting at the polls unless he makes and signs an oath that, because of blindness, other physical disability, or an inability to read English, he is unable to vote without assistance. The oath shall be upon a voter assistance form prescribed by the State Board of Elections. Any person assisting a voter shall complete the voter assistance form* ~~[Voters who require assistance in voting on a permanent basis due to a permanent disability, or who require assistance in voting on an annual basis because of an inability to read English or because of a temporary disability, may apply to the county board of elections for certification of that need for voting assistance. Application may be made when registering to vote or at any time prior to the close of the voter registration books prior to an election by completing the voter assistance form indicating that the reason for obtaining assistance is permanent or temporary. The county board of elections shall determine whether the applicant requires voting assistance on a permanent or annual basis. The county board of elections shall notify the county clerk of a certification of a need for voting assistance and the county clerk shall enter the appropriate certification on the voter's registration record. The State Board of Elections shall cause the precinct roster of voters to indicate those voters who are certified to receive assistance on a permanent or annual basis without completing voter assistance forms at the precinct on the day of an election].~~
- (3) *Upon making and filing the oath with the precinct clerk, the voter requiring assistance shall retire to the voting machine or ballot completion area with the precinct judges, and one (1) of the judges shall, in the presence of the other judge and the voter, operate the machine or complete the ballot as the voter directs. A voter requiring assistance in voting may, if he prefers, be assisted by a person of his own choice who is not*

an election officer, except that the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union shall not assist a voter ~~[A voter who requires assistance in voting may be assisted by a person of his choice, except that the voter's employer, an agent of that employer, or an officer or agent of that voter's union shall not assist the voter. If a voter who requires assistance in voting does not bring someone to the polls to assist him in voting, assistance shall be rendered as follows:~~

- (a) ~~A voter who has been certified as requiring assistance on a permanent or annual basis may select a person at the polls to assist him in voting or, if the voter does not do so, the two (2) election judges shall assist the voter; and~~
- (b) ~~A voter who has not been certified as requiring assistance on a permanent or annual basis shall be assisted by the two (2) election judges].~~
- (4) *The precinct election clerk shall swear a person assisting a voter in voting to operate the voting machine or complete the ballot in accordance with the directions of the voter, and the person sworn shall enter the voting booth or ballot completion area and operate the machine or complete the ballot for the voter as the voter directs* ~~[Except for those voters who have been certified as requiring assistance on a permanent or annual basis, no voter shall be permitted to receive any assistance in voting at the polls unless he makes and signs an oath that, by reason of an inability to read English, or by reason of disability he is unable to vote without assistance. The oath shall be upon a voter assistance form prescribed by the State Board of Elections. All persons assisting a voter shall execute the voter assistance form].~~
- (5) *A voter who requires voting assistance on a permanent basis because of blindness or other physical disability may apply to the county board of elections for certification. Application may be made when registering to vote or completing the voter assistance form by indicating that the reason for obtaining assistance is permanent. The county board of elections shall determine whether the applicant requires assistance on a permanent basis. The county board of elections shall notify the county clerk of persons certified as requiring permanent voting assistance and the county clerk shall enter the certification on the voter's registration record. The State Board of Elections shall indicate on the precinct roster of voters those voters who are certified to receive assistance permanently without signing the voter assistance form at the precinct* ~~[Upon making and filing with the judges the oath, if required, the voter shall retire to the voting machine or area provided for completing a ballot, with the person who will assist him in voting, and the person providing assistance shall operate the machine or complete the ballot as the voter directs].~~
- (6) ~~The precinct election clerk shall swear the person accompanying a voter with a disability or a voter who is unable to read English to operate the voting machine in accordance with the directions of the voter and the person sworn shall enter the voting booth or ballot completion area and the one sworn shall operate the machine or complete the ballot for the voter as the voter directs.~~
- (7) ~~"Voting booth" or "ballot completion area" means~~ ~~[shall mean]~~ an area in which a voter casts his vote or completes his ballot which is designed to insure the secrecy of the vote. No voter shall be assisted under this subsection unless the judges and the sheriff of election are satisfied of the truth of the facts stated in the oath. The voter shall state in his oath the specific reason that requires him to receive assistance.
- (7) ~~(8)~~ No voter shall be permitted to occupy the voting machine more than two (2) minutes if other voters are waiting to use it.
- (8) ~~(9)~~ In primary elections, before a voter is permitted to use the voting machine, a judge of the election shall adjust the machine so that the voter will only be able to vote for the persons for whom the voter is qualified to vote.
- (9) ~~(10)~~ If the machine is so constructed as to require adjustment after one person has voted before another person may vote, the judges of election shall adjust it after each person has voted.
- (10) ~~(11)~~ The election officers shall constantly maintain a watch in order to prevent any person from voting more than once.
- (11) ~~(12)~~ If supplemental paper ballots have been approved, as provided in KRS 118.215, the voter shall vote his ballot in privacy in a booth provided for that purpose by the county clerk. If the voter spoils his ballot, he shall return the spoiled paper ballot to an election official who shall stamp the ballot "Spoiled," initial and place the spoiled ballot in an envelope provided for that purpose. The voter shall be issued a second supplemental paper ballot. Upon completion of voting, the voter shall remove the numbered stub from the ballot, hand the stub to

an election official and deposit the voted ballot in the locked ballot box in the presence of precinct election officials.

~~(12)~~~~(13)~~ The election sheriff shall be responsible for reporting violations of this section.

Section 12. KRS 117.265 is amended to read as follows:

- (1) A voter may, at any regular or special election, cast a write-in vote for any person qualified as provided in subsection (2) or (3) of this section, whose name does not appear upon the ballot label as a candidate, by writing the name of his choice upon the appropriate device for the office being voted on provided on the voting machine as required by KRS 117.125. Any candidate for city office who is defeated in a partisan or nonpartisan primary election shall be ineligible as a candidate for the same office in the regular election. Any voter utilizing an absentee ballot *for a regular or special election* may write in a vote for any eligible person whose name does not appear upon the ballot, by writing the name of his choice under the office.
- (2) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate with the Secretary of State or county clerk, depending on the office being sought, not less than ten (10) days preceding the date of the regular or special election. The declaration of intent shall be on a form prescribed by the Secretary of State.
- (3) *A person shall be ineligible as a write-in candidate for more than one (1) office in a regular or special election.*
- (4) Persons who wish to run for President and Vice-President shall file a declaration of intent to be a write-in candidate, along with a list of presidential electors pledged to those candidates, with the Secretary of State not less than ten (10) days preceding the date of the regular election for those offices. Write-in votes cast for the candidates whose names appear on the ballot shall apply to the slate of pledged presidential electors, whose names shall not appear on the ballot.
- ~~(5)~~~~(4)~~ The county clerk shall provide to the precinct election officers certified lists of those persons who have filed declarations of intent as provided in subsections (2) and (3) of this section. Only write-in votes cast for qualified candidates shall be counted.
- ~~(6)~~~~(5)~~ Two (2) election officers of opposing parties shall upon the request of any voter instruct the voter on how to cast a write-in vote.
- ~~(7)~~~~(6)~~ The provisions of this section requiring the filing of a declaration of intent shall not apply to elections for municipal office in cities of the fifth or sixth class, and all write-in votes shall be counted, regardless of whether a declaration was filed.

Section 13. KRS 160.210 is amended to read as follows:

- (1) (a) In independent school districts, the members of the school board shall be elected from the district at large. In county school districts, members shall be elected from divisions.
 - (b) If no candidate files a petition of nomination for a local board of education opening pursuant to KRS 118.315 and 118.316, the chief state school officer shall fill the new term of office by appointing a member to the local board who meets the residency requirement and the qualifications for office provided in KRS 160.180. The local board of education may make nominations and any person may nominate himself or another for the office.
- (2) The board of education of each county school district shall, not later than July 1, 1940, divide its district into five (5) divisions containing integral voting precincts and as equal in population insofar as is practicable. In first dividing the county district into divisions the board shall, if more than one (1) of its members reside in one (1) division, determine by lot which member from that division shall represent that division, and which members shall represent the divisions in which no member resides. The members so determined to represent divisions in which no member resides shall be considered the members from those divisions until their terms expire, and thereafter the members from those divisions shall be nominated and elected as provided in KRS 160.200 and 160.220 to 160.250.
- (3) Any changes made in division boundary lines shall be to make divisions as equal in population and containing integral voting precincts insofar as is practical. No change may be made in division boundary lines less than five (5) years after the last change in any division lines, except in case of merger of districts,~~(or)~~ a change in territory due to annexation, *or to allow compliance with KRS 117.055(2).*

- (4) (a) Notwithstanding the provisions of subsection (3) of this section, if one hundred (100) residents of a county school district petition the Kentucky Board of Education stating that the school district divisions are not divided as nearly equal in population as can reasonably be expected, the chief state school officer shall cause an investigation to determine the validity of the petition, the investigation to be completed within thirty (30) days after receipt of the petition.
- (b) If the investigation reveals the school district to be unequally divided according to population, the Kentucky Board of Education, upon the recommendation of the chief state school officer, shall order the local board of education to make changes in school district divisions as are necessary to equalize population within the five (5) school divisions.
- (c) If any board fails to comply with the order of the Kentucky Board of Education within thirty (30) days or prior to August 1 in any year in which any members of the board are to be elected, members shall be elected from the district at large until the order of the Kentucky Board of Education has been complied with.
- (d) No change shall be made in the boundary of any division under the provisions of this subsection after August 1 in the year in which a member of the school board is to be elected from any division.
- (5) Notwithstanding the provisions of subsection (2) of this section, in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished, there shall be seven (7) divisions as equal in population as is practicable, with members elected from divisions. To be eligible to be elected from a division, a candidate must reside in that division. The divisions, based upon 1970 United States Census Bureau Reports on total population by census tracts for Jefferson County, Kentucky shall be as follows: Division One shall include census tracts 1-28; Division Two shall include census tracts 29-35, 47-53, 57-74, 80-84, 93, 129, 130; Division Three shall include census tracts 75-79, 85-88, 98-106, 107.01, 108; Division Four shall include census tracts 121.01, 123-128; Division Five shall include census tracts 36-46, 56, 90, 120, 121.02, 122; Division Six shall include census tracts 54, 55, 91, 92, 94, 95, 110.02, 113, 114, 117.01, 117.02, 118, 119; Division Seven shall include census tracts 89, 96, 97, 107.02, 109, 110.01, 111, 112, 115, 116, 117.03, 131, 132. The terms of the members to be elected, KRS 160.044 notwithstanding, shall be four (4) years and the election for the initial four (4) year terms shall be as follows: The election of the members from Divisions Two, Four and Seven shall be held at the next regular November election following the effective date of the merger pursuant to KRS 160.041, and the election of the members from Divisions One, Three, Five and Six shall be held at the regular November election two (2) years thereafter.
- (6) In counties containing cities of the first class, responsibility for the establishment or the changing of school board division boundaries shall be with the local board of education, subject to the review and approval of the county board of elections. Where division and census tract boundaries do not coincide with existing election precinct boundaries, school board divisions shall be redrawn to comply with precinct boundaries. In no instance shall precinct boundaries be redrawn nor shall a precinct be divided to accommodate the drawing of school board division lines. Precinct boundaries nearest existing school board division boundaries shall become the new division boundary. All changes under this statute shall be completed on or before January 1, 1979, and on or before January 1 in any succeeding year in which a member of the school board is to be elected from any division. A record of all changes in division lines shall be kept in the offices of the county board of education and the county board of elections. The board of education shall publish all changes pursuant to KRS Chapter 424. A copy of the newspaper in which the notice is published shall be filed with the chief state school officer within ten (10) days following its publication.

Section 14. The provisions of Section 1 of this Act shall be applied prospectively from the effective date of this Act. A voter who has changed political party affiliations on his voting registration record during the period beginning November 12, 1996, and ending at the close of business on the effective date of this Act shall be permitted to vote in the May, 1998 primary election for the political party with which the voter is affiliated on the effective date of this Act. A person who is not registered to vote on the effective date of this Act who completes a voter registration application during the period beginning with the effective date of this Act and ending at the close of business on April 27, 1998, shall be eligible to vote in the primary election to be held on May 26, 1998, if the person has registered as a member of a political party and has remained registered as a member of the same political party in whose primary election he seeks to vote since completing his voter registration application.

Section 15. Whereas the provisions of this Act are necessary to administer the May primary election in an effective and constitutional manner, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 1, 1998

CHAPTER 244

(SB 13)

AN ACT relating to law enforcement and fire protection.

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

Section 1. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

- (1) "Local unit of government" means any city or county, ~~or any~~ combination of cities and counties, ***state or public university, or county sheriff's office*** of the Commonwealth.
- (2) "Police officer" means a full-time member of a lawfully organized police department of county or city government, ***sheriff, or full-time deputy sheriff, including those providing court security, appointed pursuant to KRS 70.030, or state or public university police officer*** who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any ***sheriff who earns the maximum constitutional salary for his office, any special*** ~~elected officer, sheriff,~~ deputy sheriff ***appointed pursuant to KRS 70.045***, any constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
- (3) "Council" means the Kentucky Law Enforcement Council.
- (4) ***"Validated job task analysis" means the core job description which describes the minimum entry level requirements, qualifications, and training requirements for peace officers in the Commonwealth which is based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.***

Section 2. KRS 15.440 is amended to read as follows:

Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:

- (1) Employs one (1) or more police officers;
- (2) Pays every police officer ***at least the*** ~~at~~ ***minimum federal wage*** ~~annual salary of four thousand three hundred fifty dollars (\$4,350)~~;
- (3) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972, ***and for all sheriffs appointed or elected on or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed after the effective date of this Act***; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection, ***and that all sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to the effective date of this Act shall be deemed to have met the requirements of this subsection***;
- (4) Requires all police officers employed on or after July 1, 1972, ***and all sheriffs appointed or elected on or after the effective date of this Act, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998*** to successfully complete a basic training course of at least four hundred (400) hours' duration within one year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council. ***All sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998 shall be deemed to have met the requirements of this subsection. The council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than four hundred (400) hours based upon a training curriculum approved by the Kentucky Law***

Enforcement Council as determined by a validated job task analysis [~~notwithstanding the authority of any department or administrative agency of state government to promulgate administrative regulations, no such department or administrative agency may, by administrative action, increase the minimum number of hours for a basic training course specified in this subsection~~];

- (5) Requires all police officers, whether originally employed before or after July 1, 1972, **and all sheriffs appointed or elected before, on, or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed before, on, or after the effective date of this Act**, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council;
- (6) Requires compliance with all provisions of law applicable to local police, **state or public university police, or sheriffs and their deputies**, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;
- (7) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, **state or public university police department, or sheriff's office**, issued by the Justice Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;
- (8) Provided, however, that no local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department, **state or public university police department, or sheriff's office** actually begins and continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department, **state or public university police department, or sheriff's office** has substantially complied with subsections (6) and (7) of this section.

Section 3. KRS 15.460 is amended to read as follows:

- (1) Beginning **the effective date of this Act** [~~July 1, 1982~~], an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ~~seven~~**five** hundred ~~fifty~~ dollars **(\$2,750)** [~~(\$2,500)~~] for each qualified police officer it employs, **and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified police officer it employs**, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.
- (2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.
- (3)
 - (a) **Each qualified sheriff who receives the maximum salary allowed by Section 246 of the Constitution of Kentucky and KRS 64.527 shall not receive the supplement.**
 - (b) **Each qualified sheriff who does not receive the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527, exclusive of the expense allowance provided by KRS 70.170, shall upon final settlement with the fiscal court pursuant to KRS 134.310, receive that portion of the supplement that will not cause his compensation to exceed the maximum salary.**
 - (c) **Each qualified sheriff who seeks to participate in the fund shall forward a copy of the final settlement prepared pursuant to KRS 134.310 to the fund. The fund shall be reimbursed by the sheriff if an audit of the final settlement conducted pursuant to KRS 134.310 reflects that the sheriff received all or a portion of the supplement in violation of this section. A sheriff who fails to provide a copy of the final settlement to the fund or to reimburse the fund after correction by audit, if required, shall not be qualified to participate in the fund for a period of two (2) years.**

- (d) *Each qualified deputy sheriff shall receive the supplement from the sheriff if the sheriff administers his own budget or from the county treasurer if the sheriff pools his fees. The failure of a sheriff to comply with the provisions of this section shall not affect the qualification of his deputies for participation in the fund.*

Section 4. KRS 95A.250 is amended to read as follows:

- (1) Beginning July 1, 1982, an eligible local government shall be entitled to receive annually a supplement of two thousand ~~seven~~~~five~~ hundred **fifty** dollars ~~(\$2,750)~~~~(\$2,500)~~ for each qualified professional firefighter it employs, **and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified professional firefighter it employs**, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan, or to a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954 as amended, provided that the employer's contribution on the supplement to any of these plans shall not exceed that amount which is required of employers under the County Employees Retirement System pursuant to KRS Chapter 78, to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.
- (2) Each qualified professional firefighter, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by that local government the supplement which his qualifications brought to the local government. The supplement paid each qualified firefighter shall be in addition to his regular salary.

Section 5. KRS 95A.262 is amended to read as follows:

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Human Resources, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.
- (2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot ~~six~~~~five~~ thousand **five hundred** dollars ~~(\$6,500)~~~~(\$5,000)~~ annually to each qualifying department, **and beginning on July 1 of 1999, the commission shall allot seven thousand five hundred dollars (\$7,500) annually to each qualifying department**. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion

of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to *purchase* workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.
- (4) Applications for funding low-interest loans and firefighters training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.
- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:
 - (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
 - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
 - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
 - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
 - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;
 - (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

- (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.
- (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
- (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
- (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
- (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 6. KRS 42.190 is amended to read as follows:

- (1) On June 1, 1982, and then on or before the first day of each December, March, June, and September thereafter, the cabinet shall request in writing of the administrator of the Firefighters Foundation Program fund, which is established by KRS 95A.220, and of the administrator of the Law Enforcement Foundation Program fund, which is established by KRS 15.430, cost projections of their respective funds for the next quarter. Based on these projections, the cabinet shall determine the proportionate share of total insurance premium surcharge proceeds, prescribed in KRS 136.392, to accrue to each fund.
- (2) On or before the first day of each quarter, the cabinet shall certify to the State Treasurer a distribution schedule describing the proportionate share of total insurance premium surcharge proceeds accruing to each fund during such quarter, and the State Treasurer shall pay into each fund's trust and agency account its proportionate share of all deposited tax moneys as set forth and in the manner as prescribed in KRS 136.392.
- (3) Moneys deposited in the Firefighters Foundation Program fund's trust and agency account, and in the Law Enforcement Foundation Program fund's trust and agency account, shall be invested by the state in accordance with state investment practices, and all earnings from such investments shall accrue to, and be paid into the respective account from which such investments are made. All moneys remaining on deposit at the close of the state's fiscal year in the Firefighters Foundation Program fund's trust and agency account and all earnings from investments made from moneys in this account in excess of ~~three~~ million dollars (\$3,000,000)~~(\$1,000,000)~~, beginning with fiscal year 1994-95, **through June 30, 1999**, shall lapse, except that moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. All moneys remaining on deposit at the close of the state's fiscal year in the Law Enforcement Foundation Program fund's trust and agency account, and all earnings from investments made from moneys in this account, in excess of ~~three~~ million dollars (\$3,000,000)~~(\$1,000,000)~~, beginning with fiscal year 1994-95, **through June 30, 1999**, shall lapse. ***On and after July 1, 1999, moneys in these accounts shall not lapse.***

- (4) The cabinet shall provide monthly financial reports to the administrator of the Firefighters Foundation Program fund and the administrator of the Law Enforcement Foundation Program fund respecting the amount of funds received and on deposit in each fund and the amount of earnings accruing to each fund from their investment.

Section 7. KRS 15.430 is amended to read as follows:

- (1) There is hereby established the Law Enforcement Foundation Program fund consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. Any other funds, gifts, or grants made available to the state for distribution to local units of government in accordance with the provisions of KRS 15.410 to 15.510 also shall be made a part of this fund.
- (2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account, but, beginning with fiscal year 1994-95, **through June 30, 1999**, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. **On and after July 1, 1999, moneys in this account shall not lapse.**

Section 8. KRS 95A.220 is amended to read as follows:

- (1) There is established the "Firefighters Foundation Program Fund" consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds and earnings on the investments of those proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. The fund may also receive any other funds, gifts or grants made available to the state for distribution to local governments and volunteer fire departments in accordance with the provisions of KRS 95A.200 to 95A.300 and KRS 95A.262.
- (2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account. Beginning with the fiscal year 1994-95, **through June 30, 1999**, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. **On and after July 1, 1999, moneys in this account shall not lapse.**

Section 9. KRS 136.392 is amended to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the commissioner of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Revenue Cabinet, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Revenue Cabinet all premium surcharge moneys collected on a calendar year basis on or before the twentieth (20th) day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund (KRS 95A.220 and 95A.262) and the Law Enforcement Foundation Program fund (KRS 15.430).
- (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the secretary of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the

funds under applicable statutes as of January 1, 1994. To allow the secretary of revenue to calculate an appropriate rate, the secretary for the Public Protection and Regulation Cabinet and the secretary for the Justice Cabinet shall certify to the secretary of revenue, no later than January 1, of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the secretary of revenue shall advise the commissioner of insurance of the new rate and the commissioner shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.

- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, **through June 30, 1999**, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. **On and after July 1, 1999, moneys in this account shall not lapse.** Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, **through June 30, 1999**, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. **On and after July 1, 1999, moneys in this account shall not lapse.**
- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.

SECTION 10. A NEW SECTION OF KRS 70.260 TO 70.273 IS CREATED TO READ AS FOLLOWS:

- (1) ***When a county creates a deputy sheriff merit board, the board shall issue, and publish within forty-eight (48) hours after their adoption, rules that are not inconsistent with the provisions of KRS 70.260 to 70.273. The board shall provide a certified copy of the rules to:***
- (a) ***The sheriff of the county who shall additionally post a copy in a conspicuous place in the main office and in any branch offices where deputies are regularly assigned to work from;***
 - (b) ***The county judge/executive of the county; and***
 - (c) ***The legislative body of the county.***
- (2) ***The board shall, at a minimum, adopt a body of rules that addresses the following subjects:***
- (a) ***For deputy sheriffs:***
 1. ***Qualifications for initial and continued employment, which shall at a minimum include: citizenship, age, physical, mental, and educational requirements;***
 2. ***Grounds for temporary appointments;***
 3. ***Advancement requirements. Deputy sheriffs shall be employed for at least three (3) full years before being eligible for the rank of sergeant;***
 4. ***Factors that shall, or may, result in demotion, the procedures for determining whether or not to demote a deputy, and the procedures for executing a demotion;***
 5. ***Factors that shall, or may, result in fining, probation, suspension, or removal; and***
 6. ***Administrative procedures for the deputies in the office such as transfer, layoff, and reinstatement.***

- (b) *For the general administration of the board itself:*
1. *Organizational structure and conduct of meetings;*
 2. *Procedure and conduct of public hearings as a result of the board's actions; and*
 3. *Implementation and execution of written and oral examinations, and physical tests of fitness for appointment and promotion of deputies.*

- (3) *The subsequent issuance of additional rules, or of the repeal or amendment of existing rules shall follow the provisions indicated in subsection (1) of this section.*

SECTION 11. A NEW SECTION OF KRS 70.260 TO 70.273 IS CREATED TO READ AS FOLLOWS:

- (1) *Deputy sheriff merit boards shall employ a chief examiner who shall operate under the board's sole supervision.*
- (2) *The board shall only employ a person for this position who is qualified and experienced in the field of testing.*
- (3) *The examiner shall design, administer, and evaluate all written tests the board requires applicants for promotion to take for consideration for promotion. Each applicant for promotion shall be given an oral and written examination to determine the applicant's qualification for promotion.*
- (4) *The examiner shall select a panel of three (3) persons to conduct the oral portion of the exam battery. The panel shall be selected from an agency other than the local sheriff's office, and the panel members shall be of at least the same rank to which the applicant aspires and of the same field.*
- (5) *Unless the sheriff certifies that the applicant is not physically fit for promotion, physical fitness shall be presumed.*
- (6) (a) *The composite score of the examination battery shall be calculated as follows:*
1. *Sixty-five percent (65%) for the written examination; and*
 2. *Thirty-five percent (35%) for the oral examination.*
- (b) *An applicant shall receive one (1) seniority point to be added to the composite score for each full year over three (3) full years of service. No applicant shall receive more than ten (10) seniority points. No applicant shall receive a seniority point for serving less than a full year.*
- (7) *Testing and scoring methods shall not depart from, or be inconsistent with, those set out in this section.*
- (8) *The chief examiner shall deliver the final scores of the applicants for promotion, in a manner that will ensure complete privacy and confidentiality of the applicants and their scores, directly to the chair of the board. The chief examiner shall not release this information to anyone but the chair of the board.*
- (9) *Notice of the date, time, and place of examinations shall be given no later than ninety (90) days before the examination date.*
- (10) *Promotions shall be filled by the sheriff from a list of no more than three (3) of the candidates who obtained the highest combined scores on the written and oral examination, including any seniority points, and are physically fit to serve in the new capacity.*

Approved April 1, 1998

CHAPTER 245

(SB 120)

AN ACT relating to simulcasting in a geographic area containing more than one race track.

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

Section 1. KRS 230.377 is amended to read as follows:

- (1) Other provisions of the Kentucky Revised Statutes notwithstanding, a track may apply to the commission for simulcasting and intertrack wagering dates. Applications shall be submitted in accordance with KRS 230.300.

The commission shall not approve the establishment or relocation of a receiving track within a radius of seventy-five (75) miles of a race track duly licensed as of July 15, 1992, without the prior written consent of the licensed track within whose seventy-five (75) mile radius the new receiving track would be located.

- (2) On or before November 1 of each year, the commission shall meet and award intertrack wagering dates to all tracks for the entire succeeding calendar year. In *a geographic area*~~[counties]~~ containing more than one (1) track *within a fifty (50) mile radius of another track*, intertrack wagering *shall be limited to simulcasting and wagering on racing of the same breed of horse as the receiving track was licensed to race on or before the effective date of this Act*~~dates shall be awarded as follows:~~
 - ~~(a) A receiving track of the same breed as the host track's breed shall have the right to receive, on an exclusive basis, sixty percent (60%) of the available intertrack wagering days, which shall not include the days in subsection (4) of this section, if the receiving track was licensed to conduct racing of that breed on or before January 1, 1990; and~~
 - ~~(b) A receiving track of a different breed than the breed of the host track shall receive on an exclusive basis the remaining forty percent (40%) of the intertrack wagering dates not awarded by the commission under subsection (2)(a) of this section, and exclusive of days contained in subsection (4) of this section, if the receiving track was licensed to conduct racing of a different breed on or before January 1, 1990. Any unused intertrack wagering days or any intertrack wagering days not requested by and awarded to a receiving track of a different breed than the breed of the host track, shall be awarded to the receiving track of the same breed as the breed of the host track.~~
- (3) ~~[Except in extraordinary circumstances, such as the need to accommodate a receiving track's sales activities or special events, intertrack wagering dates shall be awarded in weekly increments.]~~The commission shall approve no more than nine (9) tracks for participation in *horse racing*, intertrack wagering, *and simulcasting*. Any approval by the commission of a change in location of these tracks shall be subject to the local-approval process contained in KRS 230.380.
- (4) A track may by administrative regulation be required to simulcast its races to one (1) or more receiving tracks approved for simulcasting and intertrack wagering, as a prerequisite for the issuance of a license pursuant to KRS 230.300, provided that:
 - (a) Each track shall be permitted to exempt one (1) day of racing from simulcasting to both receiving tracks and simulcast facilities, at its discretion;
 - (b) Tracks in a county containing a city of the first class and tracks in an urban-county government shall not be required to simulcast to each other or to any other facility in those counties. This provision shall not be construed as requiring tracks within the same county to simulcast to each other; and
 - (c) In the absence of a contract between a host track and a receiving track, the commission shall be split as provided for in KRS 230.378(3).
- (5) A track may receive simulcasts and conduct interstate wagering thereon subject to the following limitations which shall be in addition to the limitations set forth in KRS 230.3771:
 - (a) A track licensed to conduct thoroughbred racing may receive simulcasts and conduct interstate wagering on all thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., without further consents or approvals.
 - (b) A track licensed to conduct harness racing may receive simulcasts and conduct interstate wagering on all harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000) without further consents or approvals.
 - (c) A track which applies to the commission to receive an interstate race of a different breed than the breed for which it is licensed by the commission shall receive any simulcast of an interstate race through the intertrack wagering system upon approval by the commission.
 - (d) A track may receive simulcasts of special event races conducted in other states or foreign countries which are determined by the commission to be of sufficient national or international significance or interest to warrant interstate wagering and if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., the Kentucky Division of the Horseman's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness

Horsemen's Association for harness racing, and any track conducting live horse races of the same breed at the same time as the simulcast race.

- (e) A track may also receive simulcasts and conduct interstate wagering on thoroughbred horse races other than those described in paragraphs (a) and (d) of this section if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., and the Kentucky Horsemen's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association, or its successor, for harness racing.
- (f) The consent required by paragraph (e) of this subsection or by subsections (1)(g) and (2)(g) of KRS 230.3771 shall not be withheld:
 - 1. For any reason not specifically related to financial harm to live horse racing; or
 - 2. As a condition to the granting of any contractual or other concession not specifically related to the effects of interstate simulcasting on live horse racing in this Commonwealth, taken as a whole.
- (g) A host track located in this state may receive simulcasting of not more than two (2) full cards of racing from another state, if both tracks race horses of the same breed and if:
 - 1. The race date was previously granted by the Kentucky Racing Commission to conduct live racing at the track located in this state;
 - 2. Live racing was canceled due to weather conditions; and
 - 3. The consent required by subsection (5)(d) of this section is obtained.
- (h) The in-state track receiving the simulcast specified in paragraph (g) of this subsection shall offer that simulcast to all participating tracks and simulcast facilities in the intertrack wagering system.
- (i) All interstate simulcasting shall be conducted in accordance with applicable federal laws.
- (6) The commission may promulgate necessary and reasonable administrative regulations for the purpose of administering the conduct of intertrack or interstate wagering and regulating the conditions under which wagering shall be held and conducted. Administrative regulations shall provide for the prevention of practices detrimental to the public interest and to impose penalties for violations. All administrative regulations shall be in conformity with the provisions of KRS Chapter 13A, KRS 138.510, and this chapter.
- (7) Subsections (2) and (3) of this section shall apply only to intertrack wagering dates awarded for calendar year 1993 and thereafter, and any unresolved intertrack wagering dates for calendar year 1992 shall be awarded pursuant to applicable provisions of law in effect immediately prior to March 30, 1992.

Section 2. KRS 230.3771 is amended to read as follows:

- (1) A thoroughbred track licensed to conduct thoroughbred racing may receive interstate simulcasts of thoroughbred horse races and conduct interstate wagering thereon, subject to the following limitations:
 - (a) A thoroughbred receiving track may receive interstate simulcasts of thoroughbred races and conduct interstate wagering thereon at any time of day and during any live thoroughbred horse race meet conducted in the Commonwealth of Kentucky so long as the thoroughbred receiving track conducting interstate wagering remits to the thoroughbred host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
 - (b) A thoroughbred host track which receives interstate simulcasts and conducts interstate wagering thereon during the period of time from the first awarded day of its live meet through the last awarded day of its live meet shall offer the simulcasts to all thoroughbred receiving tracks, all harness tracks *not subject to the provisions of subsection (2) of Section 1 of this Act*, and all simulcast facilities through the intertrack wagering system.
 - (c) Except as otherwise prohibited by law, a receiving track shall conduct intertrack wagering on all live races of all thoroughbred host tracks on any day on which it receives an interstate simulcast for the purpose of conducting interstate wagering.

- (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
 - (e) If more than one (1) thoroughbred track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast of thoroughbred races unless all thoroughbred tracks conducting live racing at the same time of day agree upon all interstate simulcasts to be received and the division of the thoroughbred host track's commission. If more than one (1) thoroughbred track conducts live racing at different times on the same day, the thoroughbred host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and concludes ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
 - (f) Each thoroughbred track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the commission for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
 - (g) Notwithstanding subsection (f) of this subsection, any thoroughbred track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Horsemen's Benevolent and Protective Association and the Kentucky Thoroughbred Owners and Breeders Association, Inc.
 - (h) A separate accounting on all interstate simulcasting shall be submitted to the commission. The accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
 - (i) If the only simulcast or simulcasts a track participating as a host track makes available for interstate wagering through this state's intertrack wagering system on any race day are thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a thoroughbred host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
 - (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 - 2. Twenty-five percent (25%) to the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 - 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 - 4. Twenty-five percent (25%) to the purse program of the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, then an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
 - (k) A simulcast facility's commission on interstate wagering on thoroughbred racing, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (2) A harness track licensed to conduct harness racing may receive interstate simulcasts of harness horse races and conduct interstate wagering thereon subject to the following limitations:

- (a) A harness receiving track may receive interstate simulcasts of harness races and conduct interstate wagering thereon at any time of day and during the course of any live harness horse race meet conducted in the Commonwealth of Kentucky so long as the harness receiving track conducting interstate wagering remits to the harness host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
- (b) A harness host track which receives an interstate simulcast and conducts interstate wagering thereon during its live race meet shall offer the simulcasts to all thoroughbred receiving tracks *not subject to the provisions of subsection (2) of Section 1 of this Act*, all harness tracks, and all simulcast facilities through the intertrack wagering system.
- (c) Except as otherwise prohibited by law, a harness receiving track or a simulcast facility shall conduct intertrack wagering on all live races of a harness host track on any day it receives an interstate simulcast from a harness host track.
- (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
- (e) If more than one (1) harness track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast on harness races unless all harness tracks conducting live racing at that time of day agree upon the interstate simulcast to be received and the division of the harness host track's commission. If more than one (1) harness track conducts live racing at different times on the same day, the harness host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and conclude ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
- (f) Each harness track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the commission for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
- (g) Notwithstanding subsection (f) of this subsection, any harness track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Harness Horsemen's Association, or its successor.
- (h) A separate accounting on all interstate simulcasting shall be submitted to the commission. This accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
- (i) If the only simulcast or simulcasts a track participating as a harness host track makes available for interstate wagering through this state's intertrack wagering system on any race day are harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000), then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a harness host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
- (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 - 2. Twenty-five percent (25%) to the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;

3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 4. Twenty-five percent (25%) to the purse program of the harness host track designated by paragraphs (a) and (e) of this subsection (2). However, if no live meet is occurring, an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
- (k) A simulcast facility's commission on interstate wagering on harness races, after deduction of applicable taxes and any amount required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (3) A harness track may only receive interstate simulcasts of thoroughbred horse races and conduct interstate wagering thereon as provided in subsection (1)(b) of this section. A thoroughbred track may only receive interstate simulcasts of harness horse races and conduct interstate wagering thereon as provided in subsection (2)(b) of this section. A simulcast facility may only receive interstate simulcasts of thoroughbred and harness horse races and conduct interstate wagering thereon as provided in subsections (1)(b) and (2)(b) of this section.
- (4) Other provisions of the Kentucky Revised Statutes notwithstanding, any track in a *geographic area* ~~county~~ that contains more than one (1) track *within a fifty (50) mile radius of any other track* may only receive interstate simulcasts *on racing of the same breed of horse as the track was licensed to race on or before the effective date of this Act* ~~in accordance with the provisions of subsections (1) and (2) of this section, subject to the following additional limitations:~~
- ~~(a) All harness tracks in the county shall select interstate simulcasting dates before any thoroughbred track in the county in even numbered years;~~
 - ~~(b) All thoroughbred tracks in the county shall select interstate simulcasting dates before any harness track in the county in odd numbered years;~~
 - ~~(c) In selecting interstate simulcasting dates, the track with the right to select interstate simulcasting dates shall first select dates that correspond with the intertrack wagering dates awarded to that track by the commission for that year, including any intervening days. No track shall select dates that correspond with the sales dates of another track in the county. The selecting track shall choose dates in weekly increments, if possible;~~
 - ~~(d) Except as provided in subsection (1)(i) of this section, no harness track shall receive any interstate simulcast of any thoroughbred race during a live thoroughbred race meet conducted in the county;~~
 - ~~(e) Except as provided in subsection (2)(i) of this section, no thoroughbred track shall receive any interstate simulcast of any harness race during a live harness race meet conducted in the county;~~
 - ~~(f) From July 15, 1994, through December 31, 1994, all harness tracks in the county shall be entitled to thirty percent (30%) of the available interstate simulcast dates and all thoroughbred tracks in the county shall be entitled to seventy percent (70%) of the available interstate simulcast dates;~~
 - ~~(g) Beginning January 1, 1995, interstate simulcast wagering dates shall be determined by the following method:~~
 - ~~1. Determine the total gross handle for all harness tracks in the county during the immediate preceding calendar year;~~
 - ~~2. Determine the total gross handle for all thoroughbred tracks in the county during the immediate preceding calendar year;~~
 - ~~3. Determine the total gross handle for all tracks in the county during the immediate preceding calendar year;~~
 - ~~4. Interstate simulcast wagering dates shall be selected on a percentage basis, determined by dividing the gross handle for each track by the gross handle for all tracks;~~
 - ~~5. For purposes of this subsection, total gross handle includes live handle and intertrack wagering handle;~~

- ~~(h) During calendar year 1995, all harness tracks in the county shall be entitled to not less than thirty percent (30%) of the available interstate simulcast dates and all thoroughbred tracks in the county shall be entitled to not less than seventy percent (70%) of the available interstate simulcast dates;~~
- ~~(i) As used in subsections (4)(f) and (4)(h) of this section, "available interstate simulcast dates" means all dates, except those dates from the first awarded day of a live meet through the last awarded day of the same live meet for all live racing in the county;~~
- ~~(j) Interstate simulcasting and wagering conducted in accordance with KRS 230.377(5) shall not be subject to the limitations of this subsection.~~

Approved April 1, 1998

CHAPTER 246

(HB 36)

AN ACT relating to retirement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 78 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon retirement, a noncertified employee shall have his service credit earned after July 1, 1998, recalculated in accordance with KRS 78.615 except that the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounding any remainder to the next whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.*
- (2) *Each school board for whom the employee worked shall pay the cost of the additional months of service credited to the employee for school years reported by the school board. The cost shall be the member and employer contributions that would have been paid on the employee's average monthly salary for each school year plus interest at the actuarial rate. Payment shall be due at the retirement office within thirty (30) days of receipt of notice from the retirement system. If the school board does not make the payment within thirty (30) days, interest at the actuarial rate shall be added to the payment for each additional thirty (30) days after payment is due.*
- (3) *An employee who takes a refund, in accordance with KRS 61.625, of contributions made as an employee of a school board shall not be entitled to additional months service credit under subsection (1) of this section for the period covered by the refund. If the employee repays the refund as provided by KRS 61.552(1), the employee may have his service recalculated under the provisions of subsection (1) of this section for the period covered by the refund if the member pays the cost of the additional months prior to his retirement. The cost shall be the same as for the employer. The payment shall be credited to the member's account.*
- (4) *The Kentucky Retirement Systems shall adjust the service credit for all affected members who earned service credit for the school years 1996-97 and 1997-98 by recomputing the members' service based on the rounding method provided in subsection (1) of this section.*

Section 2. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:
 - (a) The commissioner of personnel shall serve as trustee for as long as he occupies the position of commissioner under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
 - (b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
 - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;

- (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
 - (e) Three (3) trustees, appointed by the Governor of the Commonwealth. ~~Of the three (3) trustees appointed by the Governor,~~ **Of the three (3) trustees appointed by the Governor,** one (1) ~~of whom~~ shall be knowledgeable about the impact of pension requirements on local governments.
- (2) The board is hereby granted the powers and privileges of a corporation, including, but not limited to, the following powers:
- (a) To sue and be sued in its corporate name;
 - (b) To make bylaws not inconsistent with the law;
 - (c) To conduct the business and promote the purposes for which it was formed;
 - (d) To contract for investment counseling, actuarial, auditing, and other professional services as its statutory purpose may require;
 - (e) To purchase fiduciary liability insurance;
 - (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage any such property as its purpose may require, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
 - (g) The board shall reimburse any trustee or officer for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3)
- (a) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board;
 - (b) The trustee to be elected by the members of the County Employees Retirement System who replaces the Attorney General on the board shall have an initial term expiring on March 31, 1977, and nominations for this position and the election process shall take place within ninety (90) days after March 26, 1974, with the Attorney General serving until the elected member has been duly qualified and administered the oath of office;
 - (c) The term of office of the trustee elected by the membership of the Kentucky Employees Retirement System which now expires on December 10, 1975, shall be succeeded by a term expiring on March 31, 1978.
- (4)
- (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board shall nominate, not less than six (6) months before a term of office of a trustee is due to expire, at least three (3) constitutionally-eligible individuals;
 - (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the general manager, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members;
 - (c) Within three (3) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the general manager shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes;
 - (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address;
 - (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected;
 - (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall record his Social Security number, sign, and mail the ballot at least thirty (30) days

prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot;

- (g) The board's contracted auditing firm shall report in writing the outcome to the chairman of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the commissioner of personnel resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of sixty dollars (\$60) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chairman or the general manager. It shall elect a chairman and a vice chairman. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) The board shall:
- (a) Appoint or contract for the services of a general manager and fix his compensation without limitation by the provisions of KRS Chapter 18A and KRS 64.640. The general manager shall be the chief administrative officer of the board;
 - (b) Authorize the general manager to appoint the employees he deems necessary. Appointees deemed to be in a policy making position shall be unclassified and their salaries shall be determined by the board. Other appointees shall be subject to the personnel classification system and salaries shall be subject to the commissioner of personnel;
 - (c) Require the general manager and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62;
 - (d) Establish a system of accounting;
 - (e) Expend funds for goods and services pursuant to the provisions of KRS Chapter 45A as they apply to state agencies, but if the board designates an emergency by letter to the secretary of the Finance and Administration Cabinet, the secretary shall within thirty (30) days of submission approve or reject a proposed personal service contract submitted to him by the board pursuant to KRS 45A.045. If the secretary rejects the proposed contract, he shall provide a detailed written statement of his reasons therefor. If the secretary fails or refuses to act within the thirty (30) day period, the proposed contract shall be deemed approved without further action pursuant to KRS 45A.045; and
 - (f) Do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852, necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 conform with federal statute or regulation. Provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 which conflict with federal statute or regulation shall not be available to the member. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation.

- (10) All employees of the board shall serve during its will and pleasure.
- (11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and shall receive the agenda, board minutes, and other information distributed to trustees of the board. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12.
- (12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the general manager of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system, including investment related expenditures, shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.
- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15)
 - (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
 1. In good faith;
 2. On an informed basis; and
 3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.
 - (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
 - (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
 2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
 3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
 - (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (c) of this section unwarranted.
 - (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
 1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
 2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.

- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraphs (e)1. and (e)2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
 - (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.
- (17) ***The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.***

Approved April 1, 1998

CHAPTER 247

(HB 249)

AN ACT relating to emergency medical services for children.

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

SECTION 1. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

The Kentucky General Assembly declares that the purpose of Sections 4 and 5 of this Act is to establish a comprehensive emergency medical services system for children, as an integral part of Kentucky's overall emergency medical services and trauma care system, in order to provide children with access to comprehensive emergency and critical care medical services, including preventive, prehospital, hospital, rehabilitation, and other posthospital care. The General Assembly recognizes the contributions of the federally funded Emergency Medical Services for Children program in Kentucky and desires to continue and expand the activities initiated by this program. The General Assembly finds that coordination of emergency services, additional training of emergency medical services personnel, communication among service providers, and enhanced data collection efforts will provide children with access to skilled emergency care, decrease unnecessary deaths from injury, decrease the overall costs of health care, and provide information as to the quality of emergency medical care for children.

Section 2. KRS 211.950 is amended to read as follows:

As used in KRS 211.952 to ~~211.956~~^{211.958}, unless the context otherwise requires:

- (1) ***"Advisory committee" means the Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council established under Section 5 of this Act.***
- (2) ***"Ambulance" means a vehicle which has been inspected and approved by the cabinet, including a helicopter or fixed wing aircraft, except vehicles or aircraft operated by the United States government, that are specially designed, constructed, or have been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being.***
- ~~(3)~~⁽²⁾ ***"Ambulance provider" means any individual or private or public organization, except the United States government, who is licensed by the Cabinet for Human Resources to provide medical transportation services as either basic life support or advanced life support and who may have a vehicle or vehicles, including ground vehicles, helicopters or fixed wing aircraft. An ambulance provider may be licensed as an air ambulance provider; as a Class I ground ambulance provider; as a Class II ground ambulance provider; or as a Class III ground ambulance provider.***
- (4) ***"Department" means the Department for Health Services.***

- (5) *"Emergency medical facility" means a hospital, trauma center, or any other institution licensed by the Cabinet for Human Resources that furnishes emergency medical services.*
- ~~(6)~~~~(3)~~ "Emergency medical services" means the services utilized in responding to the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury.
- (7) *"Emergency Medical Services for Children Program" or "EMSC Program" means the program established under Section 4 of this Act.*
- (8) *"Emergency medical services personnel" means persons, including physicians, certified or licensed, and trained to provide emergency medical services, whether on a paid or volunteer basis, as part of basic life support, advanced life support, prehospital, or hospital emergency care services or in an emergency department or critical care or specialized unit in a licensed hospital or other licensed emergency or critical care medical facility.*
- ~~(9)~~~~(4)~~ "Emergency medical services system" means a coordinated system of health care delivery that responds to the needs of ~~the~~ acutely sick and injured **adults and children**, and includes community education and prevention programs, centralized access and emergency medical dispatch, communications networks, trained **emergency medical services** personnel, medical first response, ground and air ambulance services, emergency medical facilities and specialty care hospitals, trauma care systems, mass casualty management, medical direction, and quality control and system evaluation procedures.
- (10) *"Prehospital care" means the provision of emergency medical services or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency or while transporting sick or injured persons to a hospital or other emergency medical facility.*
- ~~(11)~~~~(5)~~ "Regional emergency medical services system" means a system approved by the Cabinet for Human Resources which provides for the arrangement of personnel, facilities, equipment, or any of the above, for the effective and coordinated delivery of health care services in an appropriate geographical area.
- ~~(12)~~~~(6)~~ "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.
- ~~(13)~~~~(7)~~ "Trauma care system" means a subsystem within the emergency medical services system consisting of an organized arrangement of personnel, equipment, and facilities designed to manage the treatment of the trauma patient.

Section 3. KRS 211.952 is amended to read as follows:

- (1) The Cabinet for Human Resources shall maintain a program for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state.
- (2) The Cabinet for Human Resources shall establish and designate a single lead agency under the supervision and direction of the Commissioner of Health which will carry out all administrative functions related to the planning, development, improvement, and expansion of emergency medical services systems throughout the state. This will include:
 - (a) The training and certification of prehospital personnel;
 - (b) The promulgation of standards and regulations for emergency medical services personnel;
 - (c) The promulgation of administrative regulations for the licensing, inspection, and regulation of ambulance and medical first response providers. The administrative regulations shall address specific requirements for:
 1. Air ambulance providers which provide basic or advanced life support services;
 2. Class I ground ambulance providers, which provide basic life support or advanced life support services to all patients for both emergencies and scheduled ambulance transportation which is medically necessary;
 3. Class II ground ambulance providers, which provide only basic life support services but do not provide initial response to the general population with medical emergencies and which are limited to providing scheduled ambulance transportation which is medically necessary;

4. Class III ground ambulance providers, which provide mobile intensive care services at or above the level of advanced life support to patients with critical illnesses or injuries who must be transported between hospitals in vehicles with specialized equipment as an extension of hospital-level care; and
 5. Medical first response providers who provide prehospital basic life support services, or advanced life support services, but do not transport patients;
- (d) Planning and development of emergency medical services and trauma care systems;
 - (e) Promulgation of voluntary standards for trauma centers and other specialized emergency medical facilities;
 - (f) Provision of funding and technical assistance as shall become available; and
 - (g) Establishing minimum data reporting requirements, *including requirements specifically related to emergency medical services and trauma care of children*, for ambulance providers and trauma centers and other specialized emergency medical facilities and collection and analysis of data related to the provision of emergency medical services and trauma care; *and*
 - (h) *Establishing the Emergency Medical Services for Children Program with federal funds so designated plus any additional funds that may be appropriated by the General Assembly, or any other funds that may become available to the cabinet, including gifts, grants, or other sources.*
- (3) Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.
 - (4) ~~The cabinet shall transfer or otherwise make available to the lead emergency medical services agency necessary staff and funds required to carry out the purposes of this section, including regional emergency medical services advisors for any regional emergency medical services systems which shall be established by the cabinet, and shall~~ promulgate administrative regulations and perform the necessary functions to carry out the purpose of this section including:
 - (a) Delineation, by administrative order of the secretary, of the geographic boundaries of regional emergency medical services systems.
 - (b) Promulgation of administrative regulations providing for:
 1. Composition of regional emergency medical services advisory boards to serve in an advisory capacity to the Kentucky Emergency Medical Services Council;
 2. Terms of office of regional emergency medical services advisory board members;
 3. Appointment of regional emergency medical services advisory board members; and
 4. Such other matters relating to regional emergency medical services systems as may be necessary.
 - (c) Provision of technical assistance to regional emergency medical services advisory boards, units of local government, and others in planning for the development, coordination, and monitoring of emergency medical services.
 - (d) Development of a statewide plan for the implementation of emergency medical services systems and trauma care systems within the Commonwealth of Kentucky which specifically addresses the unique needs of rural areas.
 - (e) Issuance of a format for the development of regional emergency medical services plans consistent with goals and standards included in the statewide emergency medical services plan.
 - (f) Application for, receipt of, and disposition of federal, state, or private funds by grant, appropriation, donation, or otherwise for emergency medical services programs, personnel and equipment.
 - (g) Awarding of funds to regional emergency medical services systems to implement specific objectives delineated in regional emergency medical services plans, including assistance to local governments for their provision of ambulance service.

- (h) Development, monitoring, and encouragement of such other projects and programs which may be of benefit to emergency medical services in the Commonwealth.
 - (i) Conducting verification inspections to ensure compliance with voluntary standards established by the cabinet for trauma centers, emergency departments, and specialized hospital based services for which standards have been established by the cabinet for emergency medical services and trauma care systems.
- (5) The cabinet shall establish a Kentucky Emergency Medical Services Council which shall advise the cabinet on issues relating to the development, implementation, regulation, maintenance, and reimbursement of emergency medical services systems and providers. This council shall be broadly representative of individuals, providers, and public officials having expertise in emergency medical services. The council shall consult with the Kentucky Board of Medical Licensure to establish medically appropriate standards and protocols which will be utilized by emergency medical services personnel and to assist the Kentucky Board of Medical Licensure in meeting the requirements of KRS 311.654. The council shall consult with the Kentucky Board of Nursing to establish appropriate standards and protocols to meet the requirements of KRS 314.131 for nurses who practice in emergency medical service settings.
- (6) Data and records generated and kept by the single emergency medical services administrative agency, *the Kentucky Emergency Medical Services Council, the Emergency Medical Services for Children Advisory Committee, the Kentucky Emergency Medical Services for Children Program* or *their*^[its] contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth, *including the identities of patients, emergency medical services personnel, ambulance providers, medical first response providers, and emergency medical facilities*, shall be held confidential, *shall not be subject to disclosure under KRS 61.805 to 61.884*, shall not be admissible in court for any purpose, and shall not be subject to discovery; provided, however, that nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment which otherwise would be admissible or discoverable.
- (7) Nothing in this section shall limit, preclude, or otherwise restrict the practices of licensed personnel in carrying out their duties under the terms of their licenses.

SECTION 4. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established within the department's lead agency for emergency medical services an Emergency Medical Services for Children Program.*
- (2) *The cabinet may hire a coordinator for the EMSC Program who shall be assigned to the department's lead agency for emergency medical services. The authorized personnel cap for the department may be increased to include the coordinator and other positions for which funding is provided by the General Assembly or through any other sources, including gifts, grants, or federal funds.*
- (3) *The coordinator shall:*
 - (a) *Implement and oversee the EMSC Program described in this section, in consultation with the advisory committee established in Section 5 of this Act; and*
 - (b) *Serve as liaison for collaboration and coordination between the EMSC Program and other public and private organizations, including the department's lead emergency medical services agency, the state traffic safety office, the maternal and child health program, the Medicaid department, the state and local child fatality review and response teams, state and local professional organizations, private sector voluntary organizations, and consumer and community representatives.*
- (4) *The EMSC Program may include, but not be limited to, the establishment of the following:*
 - (a) *Guidelines for the approval of emergency medical services facilities for pediatric care, and designation of specialized regional pediatric critical care centers and pediatric trauma centers;*
 - (b) *Guidelines for referring children to the appropriate emergency medical facility;*
 - (c) *Guidelines for necessary prehospital and other pediatric emergency and critical care medical service equipment;*
 - (d) *Guidelines for developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care, or pediatric subspecialty care;*

- (e) *Guidelines and protocols for prehospital and hospital facilities encompassing all levels of pediatric emergency medical services, pediatric critical care, and pediatric trauma care;*
- (f) *Guidelines for rehabilitation services for critically ill or injured children;*
- (g) *A system for transferring critically ill or injured children between emergency medical facilities, services, and systems;*
- (h) *Initial and continuing professional education programs for emergency medical services personnel, which shall include training in the emergency care of infants and children;*
- (i) *A public education program concerning the EMSC Program, including information on emergency access telephone numbers;*
- (j) *The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency medical facilities for the purpose of quality improvement by these facilities, subject to the confidentiality requirements of subsection (6) of Section 3 of this Act;*
- (k) *The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency medical services;*
- (l) *Coordination and cooperation between the EMSC Program and other public and private organizations interested or involved in emergency and critical care for children, including those persons and organizations identified in subsection (3)(b) of this section; and*
- (m) *The scope of activities carried out by the EMSC Program shall be commensurate with the availability of funds.*

SECTION 5. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established an Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council to advise the council, the department, and the EMSC Program coordinator on all matters concerning emergency medical services for children.*
- (2) *The advisory committee shall be broadly representative of individuals and providers having expertise in pediatrics and emergency medical services for children, and shall also include members with nonmedical backgrounds who are parents of children who have received emergency medical services.*

SECTION 6. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

The commissioner of the department shall report in writing to the General Assembly every two (2) years regarding the status of the EMSC Program and its implementation. The report shall include a discussion of data collected under Section 4 of this Act, subject to the confidentiality requirements of Section 3 of this Act.

Section 7. This Act may be cited as the Emergency Medical Services for Children Act.

Approved April 1, 1998

CHAPTER 248

(HB 757)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 242.1292 is amended to read as follows:

- (1) The provisions of this section shall be applicable in any city of the second class notwithstanding any other provisions of this chapter relating to the discontinuance of prohibition in any county, city, or territory which may be to the contrary.
- (2) In any city of the second class in which prohibition is in effect in all or part of the city, and upon a determination that an economic hardship exists in one (1) or more of the voting precincts of the city in the manner prescribed in subsection (11)(10) of this section, the governing body of the city shall by ordinance designate ~~the~~ such precinct or precincts as a limited sale precinct or precincts and shall provide for an election

to be held in ~~the~~^{such} precinct or precincts to take the sense of the people of each ~~such~~ precinct as to the discontinuance of prohibition in ~~that~~^{such} precinct.

- (3) The election shall be held in ~~the~~^{such} precinct or precincts in the manner prescribed in KRS 242.010 to 242.040 and KRS 242.060 to 242.120. ~~The~~^{Such} election shall not be deemed to be an election in the "same territory" within the meaning of subsection (5) of KRS 242.030; ~~provided,~~ however, ~~that~~ no election on the same question shall be held in the same precinct or precincts more often than once every five (5) years.
- (4) The question shall be presented to the voters in conformance with the requirements of KRS 242.050 except that the form of the proposition shall be, "Are you in favor of the sale of alcoholic beverages in (official name and designation of precinct)?"
- (5) If a majority of the votes cast in any limited sale precinct in which an election is held ~~under~~^{pursuant to} this section are in favor of the sale of alcoholic beverages in that precinct, the governing body of the city shall by ordinance create or provide for the office of city alcoholic beverage control administrator. ~~and~~
- (6) **The governing body of the city** shall adopt ~~the~~^a comprehensive regulatory ordinance covering the licensing and operation of establishments for the sale of alcoholic beverages, **including, but not limited to, distilled spirits and malt beverages**, within a limited sale precinct **as set forth in this section. In relation to the ordinances established by a city of the second class under this subsection and subsection (7) of this section, review by the board, if any, shall be limited to a determination that the ordinances do not exceed the limits established for sale by statute, or administrative regulations promulgated by the board under those statutes.** In its discretion the governing body ~~shall~~^{may} provide **without review by the board** that:
 - (a) Only three (3) licenses permitting the package sale at retail of alcoholic beverages shall be granted within the territorial limits of any limited sale precinct.
 - (b) Only four (4) licenses to sell alcoholic beverages by the drink for consumption on the premises by the general public shall be granted in any one (1) limited sale precinct. One (1) ~~such~~ license in each limited sale precinct may be reserved for ~~grant to~~ any newly established hotel, motel, or inn containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons. The remaining three (3) licenses may be granted to a hotel, motel, or inn meeting the aforesaid requirements or to bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons. ~~and further provided that~~ Additional licenses to sell alcoholic beverages by the drink for consumption on the premises may be granted to social membership clubs established and maintained for the benefit of members ~~of~~^{only by} bona fide fraternal or veterans organizations.
- ~~(7)(6)~~ The governing body **of the city** may also incorporate in the regulatory ordinance ~~any~~^{such} other reasonable rules and regulations as **it deems**, ~~may be~~ necessary or desirable for the proper administration and enforcement of this section, ~~and~~ for the maintenance of public order in a limited sale precinct, and for the issuance of any licenses permitted by KRS 243.070; ~~provided that any rule or regulation adopted in the regulatory ordinance shall conform to the requirements of KRS 241.190.~~
- ~~(8)(7)~~ Notwithstanding any limitations imposed on the city's taxing or licensing power by KRS 243.070, upon the discontinuance of prohibition in any limited sale precinct, the governing body of the city is hereby authorized to impose a regulatory license fee upon the gross receipts of each establishment located therein and licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each city budget period at ~~the~~^{such} percentage rate as shall be reasonably estimated to fully reimburse the city for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. ~~The~~^{Such} regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, but a credit against ~~the~~^{such} fee shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070.
- ~~(9)(8)~~ Subject to the limitation imposed by subsection (3) of this section, no provision contained in this section providing for the establishment of a limited sale precinct shall preclude or abridge the right of the constitutionally qualified voters of ~~the~~^{such} precinct to petition for a subsequent election on the same question.
- ~~(10)(9)~~ If an election is held pursuant to other provisions of KRS Chapter 242 in the city or the county in which a limited sale precinct is located for the purpose of taking the sense of the voters upon the question of adopting

or repealing prohibition for the entire city or the entire county, the status of ~~that~~^{such} question in a limited sale precinct shall be determined in the following manner:

- (a) The status of a limited sale precinct shall not be affected by any election for the entire city or the entire county if ~~the~~^{such} limited sale precinct was established less than five (5) years prior to the date of the proposed election for the entire city or the entire county and in such case the voters of any limited sale precinct shall not vote in ~~the~~^{such} election.
 - (b) If ~~the~~^{such} limited sale precinct was established more than five (5) years prior to the date of the proposed election for the entire city or the entire county, the voters within each limited sale precinct shall be presented with the question, "Are you in favor of continuing the sale of alcoholic beverages in (official name and designation of precinct) as a limited sale precinct?" No other question shall be presented to the voters of any limited sale precinct.
 - (c) The votes of each limited sale precinct shall be counted separately, and, if a majority of the votes cast in the limited sale precinct are in favor of continuing the sale of alcoholic beverages therein as a limited sale precinct, then ~~the~~^{such} status shall continue within ~~the~~^{such} precinct, except that if the city or the county in which the limited sale precinct is located votes against prohibition in the remainder of the city or the county, the limited sale precinct status of any precinct may be terminated by the governing body of the city or the county and thereafter the status of such precinct shall be the same as that in effect for the remainder of the city or the county.
- (11)~~(10)~~ Any precinct located entirely within any city of the second class in which prohibition is in effect in all or part of the city shall be designated as a limited sale precinct by the governing body of the city; provided that:
- (a) The governing body determines to its satisfaction that the general trade, business, and economy of one (1) or more of the precincts within the city is substantially, adversely affected by ~~reason of~~ the legal sale of alcoholic beverages in any neighboring or adjoining state, county, city, town, district, or precinct. For the purpose of making ~~this~~^{such} determination, the governing body may hold ~~such~~ hearings, examine ~~such~~ witnesses, or receive ~~such~~ evidence as it believes necessary or desirable for ~~the~~^{such} purpose; or
 - (b) The governing body receives a petition signed by a number of constitutionally qualified voters of a precinct equal to thirty-three percent (33%) of the votes cast in the precinct at the last preceding general election requesting the governing body of the city to designate such precinct as a limited sale precinct. The petition may consist of one (1) or more separate units and shall be filed with the mayor of the city. In addition to the name of the voter, the petition shall also state his post office address and the correct date upon which his name is signed. Upon receipt of the petition, the mayor shall cause the same to be presented to the governing body of the city at its next regularly scheduled meeting and, after verifying that such petition is in compliance with the requirements of this section, the governing body shall forthwith by ordinance designate the precinct to be a limited sale precinct.

SECTION 2. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any law to the contrary, a precinct located in a city of the third class where the entire city is wet territory, may have an election to take the sense of the voters of the precinct on the application of KRS 242.220 to 242.430 in the precinct. The election shall be held in the precinct in the manner prescribed in KRS 242.010 to 242.040 and KRS 242.060 to 242.120. The election shall not be deemed to be an election in the "same territory" within the meaning of subsection (5) of KRS 242.030; however, no election shall be held in the same precinct more often than once every five (5) years. The question shall be presented to the voters in conformance with the requirements of KRS 242.050 except that the form of the proposition shall be "Are you in favor of the sale of alcoholic beverages in (official name and designation of precinct)?"

Approved April 1, 1998

CHAPTER 249

(SB 36)

AN ACT relating to protection of adults.

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

Legislative Research Commission PDF Version

Section 1. KRS 209.990 is amended to read as follows:

- (1) Anyone knowingly ***or wantonly***~~and willfully~~ violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.
- (2) Any caretaker who knowingly ~~and willfully~~ abuses ***or***~~,~~ neglects~~,~~ or exploits ~~an adult~~ ~~within the meaning of this chapter, and in so doing causes serious physical or mental injury or permanent disability to such an adult,~~ is guilty of a Class C felony~~, or if such abuse, neglect, or exploitation causes minor physical or mental injury or temporary disability to the adult, the caretaker is guilty of a Class A misdemeanor~~.
- (3) ***Any caretaker who wantonly abuses or neglects an adult is guilty of a Class D felony.***
- (4) ***Any caretaker who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.***
- (5) ***Any caretaker who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.***
- (6) ***Any caretaker who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.***
- (7) ***Any caretaker who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.***

Approved April 1, 1998

CHAPTER 250

(SB 205)

AN ACT relating to child custody.

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

Section 1. KRS 403.270 is amended to read as follows:

- (1) (a) ***As used in this chapter, and Section 6 of this Act, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Social Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.***
- (b) ***A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and Sections 2, 3, 4, 5, and 6 of this Act.***
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent ***and to any de facto custodian***. The court shall consider all relevant factors including:
 - (a) The wishes of the child's parent or parents, ***and any de facto custodian***, as to his custody;
 - (b) The wishes of the child as to his custodian;
 - (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
 - (d) The child's adjustment to his home, school, and community;
 - (e) The mental and physical health of all individuals involved;~~and~~
 - (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;~~and~~

- (g) *The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;*
- (h) *The intent of the parent or parents in placing the child with a de facto custodian; and*
- (i) *The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.*

~~(3)(2)~~ The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

~~(4)(3)~~ The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.

~~(5)(4)~~ The court may grant joint custody to the child's parents, *or to the child's parents and a de facto custodian*, if it is in the best interest of the child.

(6) *If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.*

Section 2. KRS 403.280 is amended to read as follows:

(1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary custody under the standards of KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under KRS 403.420(1)(a) or (b) is dismissed, any temporary custody order is vacated.

(4) *If a court determines by clear and convincing evidence that a person is a de facto custodian, the court shall join that person in the action, as a party needed for just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.*

Section 3. KRS 403.340 is amended to read as follows:

(1) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe *that:*

(a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; *or*

(b) *The custodian appointed under the prior decree has placed the child with a de facto custodian.*

(2) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with consent of the custodian; or

(c) The child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.; *or*

(d) *The custodian has placed the child with a de facto custodian.*

- (3) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
- (a) The interaction and interrelationship of the child with his parent or parents, *his de facto custodian*, his siblings, and any other person who may significantly affect the child's best interests;
 - (b) The mental and physical health of all individuals involved;
 - (c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;
 - (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (4) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 4. KRS 403.350 is amended to read as follows:

A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. ***If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.*** The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

Section 5. KRS 403.420 is amended to read as follows:

- (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:
- (a) This state is the home state of the child at the time of commencement of the proceeding, or had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state; or
 - (b) It is in the best interest of the child that a court of this state assume jurisdiction because the child and his parents, or the child and at least one (1) contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
 - (c) The child is physically present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or
 - (d) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.
- (2) Except under paragraphs (c) and (d) of subsection (1) of this section, physical presence in this state of the child, or of the child and one (1) of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.
- (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.
- (4) A child custody proceeding is commenced in the Circuit Court:
- (a) By a parent, by filing a petition:
 1. For dissolution or legal separation; or
 2. For custody of the child in the county in which he is permanently resident or found; or

- (b) By a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one (1) of his parents; *or*
- (c) ***By a de facto custodian of the child, by filing a petition for custody of the child in the county in which the child is permanently resident or found.***

Section 6. KRS 405.020 is amended to read as follows:

- (1) The father and mother shall have the joint custody, nurture, and education of their children who are under the age of eighteen (18). If either of the parents dies, the survivor, if suited to the trust, shall have the custody, nurture, and education of the children who are under the age of eighteen (18). The father shall be primarily liable for the nurture and education of his children who are under the age of eighteen (18) and for any unmarried child over the age of eighteen (18) when the child is a full-time high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years.
- (2) The father and mother shall have the joint custody, care, and support of their children who have reached the age of eighteen (18) and who are wholly dependent because of permanent physical or mental disability. If either of the parents dies, the survivor, if suited to the trust, shall have the custody, care, and support of such children.
- (3) ***Notwithstanding the provisions of subsections (1) and (2) of this section, a person claiming to be a de facto custodian, as defined in Section 1 of this Act, may petition a court for legal custody of a child. The court shall grant legal custody to the person if the court determines that the person meets the definition of de facto custodian and that the best interests of the child will be served by awarding custody to the de facto custodian.***
- (4) ***Notwithstanding the provisions of subsections (1) and (2) of this section, if either parent dies and at the time of death a child is in the custody of a de facto custodian, as defined in Section 1 of this Act, the court shall award custody to the de facto custodian if the court determines that the best interests of the child will be served by that award of custody.***

Approved April 1, 1998

CHAPTER 251

(SB 295)

AN ACT relating to the University of Kentucky board of trustees.

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

Section 1. KRS 164.131 is amended to read as follows:

- (1) (a) The government of the University of Kentucky is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky.
- (b) All persons appointed after May 30, 1997, shall be required to attend and complete an orientation program prescribed by the council under KRS 164.020, as a condition of their service.
- (c) The board shall periodically evaluate the institution's progress in implementing its missions, goals, and objectives to conform to the strategic agenda. Officers and officials shall be held accountable for the status of the institution's progress.
- (d) Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the council and a finding of fact by the council.
- (e) The board shall consist of sixteen (16) members appointed by the Governor, two (2) members of the faculty of the University of Kentucky, ***one (1) member of the University of Kentucky nonteaching personnel***, and one (1) member of the student body of the University of Kentucky. The voting members of the board shall select a chairperson annually.
- (2) (a) The terms of the appointed members shall be for six (6) years and until their successors are appointed and qualified; except the initial appointments shall be as follows:

1. Two (2) members shall serve one (1) year terms;
 2. Two (2) members shall serve two (2) year terms, one (1) of whom shall be a graduate of the university, selected from a list of three (3) names submitted by the alumni of the university according to rules established by the board of trustees;
 3. Three (3) members shall serve three (3) year terms;
 4. Three (3) members shall serve four (4) year terms, one (1) of whom shall be a graduate of the university, selected as under subparagraph 2. of this subsection;
 5. Three (3) members shall serve five (5) year terms; and
 6. Three (3) members shall serve six (6) year terms, one (1) of whom shall be a graduate of the university, selected as under subparagraph 2. of this subsection.
- (b) Three (3) of the appointments shall be graduates of the university and may include one (1) graduate of the institution who resides outside the Commonwealth; three (3) shall be representative of agricultural interests; and ten (10) shall be other distinguished citizens representative of the learned professions.
- (c) The Governor shall make the appointments so as to reflect proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration and to reflect no less than proportional representation of the minority racial composition of the Commonwealth.
- (d) Appointments to fill vacancies shall be made for the unexpired term in the same manner as provided for the original appointments.
- (3) The two (2) University of Kentucky faculty members shall be of the rank of assistant professor or above. They shall be elected by secret ballot by all University of Kentucky faculty members of the rank of assistant professor or above. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the board of trustees if they cease to be members of the faculty of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original elections.
- (4) *The nonteaching personnel member shall be any full-time staff member, excluding the president, vice-presidents, academic deans, and academic department chairpersons. The staff member shall represent all nonteaching university employees including, but not limited to, building facilities and clerical personnel. The staff member shall be elected by secret ballot by the nonteaching employees. The staff member shall serve a term of three (3) years and until a successor is elected and qualified. The staff member shall be eligible for reelection, but a staff member who ceases being an employee of the university shall not be eligible to continue to serve as a member of the board. Elections to fill vacancies shall be for the unexpired term and shall be held in the same manner as provided for the original election.*
- (5) The student member shall be the president of the student body of the university during the appropriate academic year and may be an out-of-state resident if applicable. If the student member does not maintain his position as student body president or his status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.
- ~~(6)~~~~(5)~~ The number of student and employee trustees of the University of Kentucky elected to the board shall not exceed four (4).
- ~~(7)~~~~(6)~~ No member of the administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with exception of compensation to the *two (2)*~~three (3)~~ faculty members, *and the one (1) nonteaching personnel member.*
- ~~(8)~~~~(7)~~ New appointees of the board shall not serve more than two (2) consecutive terms. Board members serving as of May 30, 1997, may be reappointed at the end of their existing terms and may serve two (2) additional full consecutive terms.

Approved April 1, 1998

CHAPTER 252**(SB 171)**

AN ACT relating to the fair and reliable imposition of capital sentences.

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

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

- (1) *No person shall be subject to or given a sentence of death that was sought on the basis of race.*
- (2) *A finding that race was the basis of the decision to seek a death sentence may be established if the court finds that race was a significant factor in decisions to seek the sentence of death in the Commonwealth at the time the death sentence was sought.*
- (3) *Evidence relevant to establish a finding that race was the basis of the decision to seek a death sentence may include statistical evidence or other evidence, or both, that death sentences were sought significantly more frequently:*
 - (a) *Upon persons of one race than upon persons of another race; or*
 - (b) *As punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.*
- (4) *The defendant shall state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision to seek a death sentence in his or her case. The claim shall be raised by the defendant at the pre-trial conference. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was the basis of the decision to seek the death sentence, the court shall order that a death sentence shall not be sought.*
- (5) *The defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision to seek the death penalty. The Commonwealth may offer evidence in rebuttal of the claims or evidence of the defendant.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

Section 1 of this Act shall not apply to sentences imposed prior to the effective date of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 3 of this Act shall be cited as the Kentucky Racial Justice Act.

Approved April 2, 1998

CHAPTER 253**(SB 128)**

AN ACT relating to children's health insurance and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds that:

- (1) *All citizens of the Commonwealth should have access to affordable health care; and*
- (2) *It is estimated by the Legislative Research Commission that one hundred twenty-five thousand (125,000) children in the Commonwealth have no health insurance coverage; and*
- (3) *Of the estimated one hundred twenty-five thousand (125,000) uninsured children in the Commonwealth, ninety-one thousand two hundred fifty (91,250) fall at or below two hundred percent (200%) of the federal poverty level; and*

- (4) *Uninsured children are of particular concern because of their need for preventative and primary care to develop into healthy adulthood; and*
- (5) *Measures not taken now to provide care for uninsured children will result in higher human and financial costs due to the development of more severe conditions; and*
- (6) *Eligible children in this Commonwealth should have access to cost-effective, primary health care programs if they or their parents are unable to afford it on their own; and*
- (7) *It is in the interest of the citizens of the Commonwealth for the General Assembly to foster the development of a children's health insurance program designed to provide basic services to eligible children at minimum cost.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

There is hereby created within the Cabinet for Human Resources the Kentucky Children's Health Insurance Program for the purposes of:

- (1) *Providing health care coverage and other coordinated services to children through the age of eighteen (18) years at or below two hundred percent (200%) of the federal poverty level and who are not otherwise eligible for health insurance coverage through either expansions of Medicaid services under Title XIX of the federal Social Security Act and through the provision of a separate health insurance program under Title XXI of the federal Social Security Act, or a combination of Medicaid program expansions and use of a separate health insurance program; and*
- (2) *Providing Medicaid coverage for children between the ages of fourteen (14) and eighteen (18) years up to one hundred percent (100%) of the federal poverty level.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Human Resources shall prepare a state child health plan meeting the requirements of Title XXI of the federal Social Security Act, for submission to the Secretary of the United States Department of Health and Human Services within such time as will permit the state to receive the maximum amounts of federal matching funds available under Title XXI. The cabinet shall by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the following:*
 - (a) *The eligibility criteria for children covered by the Children's Health Insurance Program. However, no person eligible for services under Title XIX of the Social Security Act 42 U.S.C. 1396 to 1396v as amended, shall be eligible for services under the Children's Health Insurance Program except to the extent that Title XIX coverage is expanded by Sections 1 to 7 and Section 8 of this Act;*
 - (b) *The schedule of benefits to be covered by the Children's Health Insurance Program, which shall include preventive services, vision services including glasses, and dental services including at least sealants, extractions, and fillings, and which shall be at least equivalent to one (1) of the following:*
 1. *The standard Blue Cross/Blue Shield preferred provider option under the Federal Employees Health Benefit Plan established by U.S.C. sec. 8903(1);*
 2. *A mid-range health benefit coverage plan that is offered and generally available to state employees; or*
 3. *Health insurance coverage offered by a health maintenance organization that has the largest insured commercial, non-Medicaid enrollment of covered lives in the state;*
 - (c) *The premium contribution per family of health insurance coverage available under the Children's Health Insurance Program with provisions for the payment of premium contributions by families of children eligible for coverage by the program based upon a sliding scale relating to family income. Premium contributions shall be based on a six (6) month period not to exceed:*
 1. *Ten dollars (\$10), to be paid by a family with income between one hundred percent (100%) to one hundred thirty-three percent (133%) of the federal poverty level;*
 2. *Twenty dollars (\$20), to be paid by a family with income between one hundred thirty-four percent (134%) to one hundred forty-nine percent (149%) of the federal poverty level; and*
 3. *One hundred twenty dollars (\$120), to be paid by a family with income between one hundred fifty percent (150%) to two hundred percent (200%) of the federal poverty level, and which*

may be made on a partial payment plan of twenty dollars (\$20) per month or sixty dollars (\$60) per quarter;

- (d) The level of copayments for services provided under the Children's Health Insurance Program that shall not exceed those allowed by federal law; and*
 - (e) The criteria for health services providers and insurers wishing to contract with the Commonwealth to provide the children's health insurance coverage. However, the cabinet shall provide, in any contracting process for the preventive health insurance program, the opportunity for a public health department to bid on preventive health services to eligible children within the public health department's service area. A public health department shall not be disqualified from bidding because the department does not currently offer all the services required by paragraph (b) of this subsection. The criteria shall be set forth in administrative regulations under KRS Chapter 13A and shall maximize competition among the providers and insurers. The Cabinet for Finance and Administration shall provide oversight over contracting policies and procedures to assure that the number of applicants for contracts is maximized.*
- (2) Within twelve (12) months of federal approval of the state's Title XXI child health plan, the Cabinet for Human Resources shall assure that a KCHIP program is available to all eligible children in all regions of the state. If necessary, in order to meet this assurance, the cabinet shall institute its own program.*
 - (3) KCHIP recipients shall have direct access without a referral from any gatekeeper primary care provider to dentists for covered primary dental services and to optometrists and ophthalmologists for covered primary eye and vision services.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) A "Children's Health Insurance Program Trust Fund" shall be established for the purpose of receiving all appropriated funds, premiums, or other revenue received by the Children's Health Insurance Program to be used for the payment of costs and services associated with the administration of the program. Appropriations made to the Children's Health Insurance Program trust fund shall not lapse at the end of a fiscal year but shall be carried forward in the trust fund account and shall be available for allotment for its particular purpose in the next fiscal year.*
- (2) The Children's Health Insurance trust fund may receive state appropriations, gifts, and grants, including federal funds. Any unallotted or unencumbered balances in the Children's Health Insurance Program trust fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the Children's Health Insurance Program trust fund account.*
- (3) The secretary of the Cabinet for Human Resources shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, provide for the administration of the trust fund.*
- (4) In administering the Children's Health Insurance Program, the administrative costs under the program shall be limited to no more than ten percent (10%) of applicable program costs.*
- (5) Notwithstanding the provisions of KRS 205.6336, the trust fund shall administer any savings from the implementation of the cabinet's Children's Health Insurance Program through managed care and shall use those savings to provide state matching funds for any enhanced federal funds available under Title XXI of the federal Social Security Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) The Kentucky Children's Health Insurance Program shall be administered by the Cabinet for Human Resources in terms of conducting eligibility determination and providing oversight over enrollment and claims payment.*
- (2) The program shall include a system of outreach and referral for children who may be eligible for the Children's Health Insurance Program. The program shall work with the Department for Medicaid Services, the Department for Social Insurance, schools, pediatricians, public health departments, and other entities interested in the health of children in developing the system of outreach and referral.*
- (3) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish a structure for quality assurance and utilization review under Sections 1 to 7 and Section 8 of this Act.*

- (4) *The Children's Health Insurance Program shall collect, analyze, and publicly disseminate comprehensive data on the number of children enrolled in the program, services received through the program, and the effect on health outcomes of children served by the program including the special health needs of minority children. The information collected by the program shall be subject to KRS 216.2927(1). The program shall have access to all data collected by the cabinet under KRS 216.2920 to 216.2929 and shall coordinate program data collection efforts with the data collection efforts of the cabinet under KRS 216.2920 to 216.2929.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *Within thirty (30) days of the effective date of this Act, the Governor shall appoint a seven (7) member advisory council to the Kentucky Children's Health Insurance Program to make recommendations on the implementation of Sections 1 to 7 and Section 8 of this Act. The appointed members shall serve at the pleasure of the Governor and shall be representative of health care providers, families with children eligible for services under Sections 1 to 7 and Section 8 of this Act and child advocacy groups.*
- (2) *Staff services for the advisory council shall be provided by the Cabinet for Human Resources.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 7 and Section 8 of this Act shall be known as the Kentucky Children's Health Insurance Program Act.

SECTION 8. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In no event shall more than ten percent (10%) of federal and state funds allocated to the Kentucky Children's Health Insurance Program be used for:*
- (a) *Children's health programs other than those targeted for low-income children as defined under Title XXI of the federal Social Security Act;*
 - (b) *Initiatives for improving the health of children except those low income children as defined under Title XXI of the federal Social Security Act or an approved Title XXI state plan (KCHIP);*
 - (c) *Outreach activities that inform families of children who are likely to be eligible for this program or other public or private health coverage programs allowed by the federal Social Security Act; and*
 - (d) *Other reasonable costs incurred by the state to administer the program.*
- (2) *The department shall use the insurer's or health maintenance organization's sales and marketing methods and may include the use of agents and payment of commissions, to inform families of the availability of the Kentucky Children's Health Insurance Program and assist them in obtaining coverage for children under the program.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *As permitted by federal law, in any plan submitted for federal Title XXI approval of a children's health insurance program for Kentucky, the cabinet shall include provisions for a preventive health insurance program for children with no copayment, deductible, coinsurance, or premium.*
- (2) *The plan referred to in subsection (1) of this section shall include preventive dental services, tooth extraction, and emergency dental services.*

Section 10. Whereas it is critical to meet the needs of children not otherwise eligible for health care except through the opportunities presented by Title XXI of the Social Security Act and the Kentucky Children's Health Insurance Program, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 2, 1998

CHAPTER 254

(HB 469)

AN ACT relating to teachers' salaries.

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

Section 1. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) ~~{The teachers' salaries allotment for each district from the public school fund and from local sources shall be used only for teachers holding properly authorized certificates.}~~ The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year ~~{or the allotment under KRS 157.390(3) shall be reduced by an amount equal to the amount by which the district failed to meet the salary requirements.}~~
- (2) The Kentucky Board of Education shall not approve any working budget or salary schedule ~~{summary}~~ for local boards of education for any school year ***unless the*** ~~{in which the total amount for}~~ one hundred eighty-five (185) ~~day~~ ~~{days on the}~~ salary schedule ***for certified staff has been adjusted over the previous year's salary schedule*** ~~{summary for salaries paid from the base funding is not equal to:~~
 - ~~(a) — the amount for one hundred eighty five (185) days on the district's salary schedule summary for instructional salaries paid with state funds the preceding year}~~ ***by the lesser of:***
 - (a) The percent increase in the average annual Consumer Price Index for all urban consumers between the two (2) most recent calendar years, as published by the United States Bureau of Labor Statistics and stated in the statutory budget memorandum and the biennial budget report; or***
 - (b) The percent increase of the base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320;*** ~~{plus~~
 - ~~(b) — The additional amount for instructional salaries to be received by the district under the biennial budget schedule for a one hundred eighty five (185) day school term by assuming the same rank and experience of teachers in the current year as in the preceding year.}~~
- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.
- (4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the chief state school officer in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:
 - (a) For direct payment of construction costs;
 - (b) For debt service on voted and funding bonds;
 - (c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
 - (d) For the retirement of any deficit resulting from over-expenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and

- (e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.
- (5) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the chief state school officer under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.
- (6) If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the chief state school officer, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.
- (7) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.
 - (a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.
 - (b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.
 - (c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.
- (8) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.

Approved April 2, 1998

CHAPTER 255

(HB 161)

AN ACT relating to child support.

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

Section 1. KRS 186.570 is amended to read as follows:

- (1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:
 - (a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.
 - (b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.
 - (c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability

of these persons. The board shall consist of licensed medical and rehabilitation specialists. The non-state government members of the Medical Review Board shall be paid a fee of one hundred dollars (\$100) per day plus reasonable expenses for performing this service.

- (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.
 - (e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.
 - (f) A person required by KRS 186.480 to take an examination has been issued a license without first having passed the examination.
 - (g) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.
 - (h) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.
 - (i) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
 - (j) That person has failed to provide proof of motor vehicle security pursuant to KRS 186A.040.
- (2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment *or failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings, as provided by 42 U.S.C. sec. 651 et seq.*; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied or suspended. The denial or suspension shall continue until the arrearage has been eliminated, ~~or~~ payments on the child support arrearage are being made in accordance with a court or administrative order, *or the person complies with the subpoena or warrant relating to paternity or child support*. Before the license may be reinstated, proof of elimination of the child support arrearage *or proof of compliance with the subpoena or warrant relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16)* from the *court where the action is pending or the* Cabinet for Human Resources shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for Human Resources and the Transportation Cabinet.
- (3) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by first class mail to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which if committed in this state would be grounds for the suspension or revocation of an operator's license. If a person so convicted is not the holder of a Kentucky operator's license, the cabinet shall deny him a license for the same period as if he had possessed a license and license had been suspended. The cabinet may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.
- (5) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a commercial driver's license.

- (6) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.
- (7) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

Section 2. KRS 205.175 is amended to read as follows:

- (1) All letters, reports, communications, and other matters, written or oral, to the cabinet or any of its agents, representatives, or employees, or to any board or official functioning under this chapter which have been written, sent or made in connection with the requirements and administration of the cabinet shall be absolutely privileged and shall not be the subject matter or basis for any suit for slander or libel in any court, but no person testifying before the secretary or his duly authorized representative shall be exempt from punishment for perjury.
- (2) Information ***received or transmitted***~~obtained~~ shall not be published or be open for public inspection, ***including instances in which the agency determines reasonable cause to believe evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the parent,*** except that necessary information and records may be furnished to:
 - (a) Public employees in the performance of their duties in connection with the administration of the public assistance or child support enforcement program pursuant to Part D of Title IV of the Social Security Act;
 - (b) All law enforcement agencies including county attorneys, Commonwealth's attorneys, District and Circuit Court Judges and grand juries in discovering and prosecuting cases involving fraud;
 - (c) Duly elected members of the General Assembly of the Commonwealth of Kentucky and the Congress of the United States in connection with their duties as members of such legislative bodies, but such information shall be limited to cases of individual constituents of the legislator, who have requested information regarding their application or grant, as specified in the inquiry by such legislator;
 - (d) Any interested party at a hearing before the secretary or his duly authorized representative to the extent necessary for the proper presentation of his case; provided, that any names or information obtained through access to such records shall not be used for any commercial or political purposes; and
 - (e) Any bank, savings and loan association, credit union, or other financial institution to the extent necessary to ascertain or confirm information submitted by the applicant or recipient and used to make eligibility or benefit determinations.
- (3) Information regarding a public assistance applicant or recipient may also be released, in the discretion of the secretary or those he may designate, to such individuals or agencies as meet the requirements of regulations promulgated by the secretary and who are supplying or cooperating in securing services, employment or training for the applicant or recipient of public assistance.
- (4) The unauthorized use by any employee of the cabinet of information obtained pursuant to KRS 205.835 is prohibited.

Section 3. KRS 205.595 is amended to read as follows:

If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the Commonwealth, the employer is required:

- (1) To permit the parent to enroll under family coverage any child who is otherwise eligible for the coverage, without regard to any enrollment season restrictions;
- (2) ***In the case where the noncustodial parent provides health care coverage and changes employment, to accept a notice of transfer of the provision to enroll from the Cabinet for Human Resources, the custodial parent or the noncustodial parent, and to enroll the child in the noncustodial parent's health care coverage, unless the noncustodial parent contests the notice pursuant to KRS Chapter 13B;***

- (3) If a parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application by the child's other parent, custodial parent, or by the Cabinet for Human Resources;
- (4)~~(3)~~ Not to disenroll or eliminate coverage of a child unless:
- (a) The employer is provided satisfactory written evidence that a court or administrative order requiring coverage of the child is no longer in effect, or that the child is or will be enrolled in comparable health coverage which will take effect no later than the effective date of the disenrollment; or
 - (b) The employer has eliminated family health coverage for all of its employees; and
- (5)~~(4)~~ To withhold from the employee's compensation the employee's share, if any, of premiums for health coverage, except that the amount withheld may not exceed the maximum amount permitted to be withheld under Section 303(b) of the Federal Consumer Credit Protection Act, and to pay the share of premiums to the insurer.

Section 4. KRS 205.710 is amended to read as follows:

As used in KRS 205.712 to 205.800, unless the context clearly dictates otherwise:

- (1) "Cabinet" shall mean the Cabinet for Human Resources;
- (2) "Secretary" shall mean the secretary of the Cabinet for Human Resources;
- (3) "Court order" shall mean any judgment, decree, or order of the courts of this state or any other state. For the purposes of KRS 205.715 to 205.800, 403.215, 405.405 to 405.520, and 530.050, it shall also include an order of an authorized administrative body;
- (4) "Dependent child" or "needy dependent child" shall mean any person under the age of eighteen (18), or under the age of nineteen (19) if in high school, who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and is a recipient of or applicant for services under Part D of Title IV of the Social Security Act;
- (5) "Duty of support" shall mean any duty of support imposed or imposed by law or by court order, decree, or judgment, whether interlocutory or final, and includes the duty to pay *spousal support that applies to spouses with a child even if child support is not part of the order* ~~maintenance when included in the child support order~~ or when *spousal support is* assigned to the cabinet and arrearages of support past due and unpaid in addition to medical support whenever health care coverage is available at a reasonable cost;
- (6) "Recipient" shall mean a relative or payee within the meaning of the Social Security Act and federal and state regulations who is receiving public assistance on behalf of a needy dependent child;
- (7) "Consumer reporting agency" means any person or organization which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;
- (8) "Obligor" means a parent who has an obligation to provide support;
- (9) "Employer" means any individual, sole proprietorship, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which hires and pays an individual for his services;
- (10) "Income" means but is not limited to any of the following:
 - (a) Commissions, *bonuses, worker's compensation awards attributable to lost wages, retirement and pensions, interest and disability*, earnings, salaries, wages, and other income due or to be due in the future from a person's employer and successor employers;
 - (b) Any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, proceeds derived from state lottery winnings, unemployment compensation, supplemental unemployment benefits, and workers' compensation; and

- (c) Any amount of money which is due to the obligor under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the obligor;
- (11) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and notwithstanding any other provision of law exempting such payments from garnishment, attachment, or other process to satisfy support obligations and specifically includes periodic payments from pension and retirement programs and insurance policies of any kind. Earnings shall include all gain derived from capital, from labor, or both, including profit gained through sale or conversion of capital assets and unemployment compensation benefits, or any other form of monetary gain. The term "disposable earnings" means that part of earnings remaining after deductions of any amounts required by law to be withheld;
- (12) "Enforce" means to employ any judicial or administrative remedy under KRS 405.405 to 405.420 and KRS 405.991(2) or under any other Kentucky law;
- (13) "Need" includes, but is not limited to, the necessary cost of food, clothing, shelter, and medical care. The amount determined under the suggested minimum support obligation scale shall be rebuttably presumed to correspond to the parent's ability to pay and the need of the child. A parent shall be presumed to be unable to pay child support from any income received from *public assistance under Title IV-A of the Social Security Act*~~[aid to families with dependent children]~~, or other continuing public assistance;
- (14) "Parent" means a biological or adoptive mother or father of a child born in wedlock or a father of a child born out of wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the laws of this or any other state, whose child is entitled to support, pursuant to court order, statute, or administrative determination; and
- (15) "Real and personal property" includes all property of all kinds, including but not limited to, all gain derived from capital, labor, or both; compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise; periodic payments from pension and retirement programs; and unemployment compensation and insurance policies.

Section 5. KRS 205.712 is amended to read as follows:

- (1) The Division of Child Support Enforcement is established in the Cabinet for Human Resources.
- (2) The duties of the division of child support *enforcement*, or its designee, shall include:
- (a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 to ~~669~~~~667~~;
- (b) Serve as the information agency as provided in the Uniform Interstate Family Support Act, KRS Chapter 407;
- (c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act;
- (d) *Serve as the agent for enforcement of international child support obligations, and respond to requests from foreign reciprocating countries;*
- (e) Establish and enforce an obligation upon receipt of a completed, notarized voluntary acknowledgment of paternity form;
- ~~(f)~~~~(e)~~ Enforce Kentucky child support laws, including collection of court-ordered or administratively ordered child support arrearages and prosecution of persons who fail to pay child support;~~and~~
- (g) *Publicize the availability of services and encourage the use of these services for establishing paternity and child support;*
- (h) *Pay the cost of genetic testing to establish paternity, subject to recoupment from the alleged father, when paternity is administratively or judicially determined; and obtain additional testing when an original test is contested, upon request and advance payment by the contestant;*

- (i)~~(4)~~ Establish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212;
- (j) *Administratively establish child support orders which shall have the same force and effect of law;*
- (k) *Issue an administrative subpoena to secure public and private records of utility and cable companies and asset and liability information from financial institutions for the establishment, modification, or enforcement of a child support obligation;*
- (l) *Impose a penalty for failure to comply with an administrative subpoena;*
- (m) *Provide notices, copies of proceedings, and determinations of support amounts to any parties or individuals who are applying for or receiving Title IV-D services, or who are parties to cases in which Title IV-D services are being provided;*
- (n) *Issue interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court where the individual or entity resides; and*
- (o) *May promulgate administrative regulations to implement this section and adopt forms or implement other requirements of federal law relating to interstate administrative subpoenas.*
- (3) *Effective September 30, 1999, the cabinet shall establish a system to receive and process all child support payments. The system shall include existing~~compatible~~ computer systems to record the payments. The automated system shall include a state case registry that contains records with respect to each case in which services are being provided by the cabinet and each child support order established or modified in the state on or after October 1, 1998.*
- (4) *The cabinet shall establish and operate a state disbursement unit for the collection, disbursement, and recording of payments under support orders for all Title IV-D cases and for all cases initially issued in the state on or after January 1, 1994, in which a wage withholding has been court ordered or administratively ordered, pursuant to Part D of Title IV of the Social Security Act. Establishment of the state unit may include the designation and continuation of existing local collection units to aid efficient and effective collection, disbursement, and recording of child support payments.*
- (5) After the establishment of the *disbursement unit*~~compatible computer~~ child support collection system, the cabinet or its designee~~[-]~~ shall serve as collector of all court-ordered or administratively-ordered child support payments pursuant to Part D of Title IV of the Social Security Act.
- (6)~~(4)~~ Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations. The local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met. When a cooperative agreement with a contracting official is cancelled for good cause, the cabinet may not offer that cooperative agreement to that official during the official's tenure.
- (7)~~(5)~~ Where the local county attorney, friend of the court, domestic relations agent, or other designee of the cabinet has been contracted for the purpose of administering child support enforcement pursuant to Title IV-D of the Social Security Act, the contracting official shall be deemed to be representing the cabinet and as such does not have an attorney-client relationship with the applicant who has requested services pursuant to Title IV-D of the Social Security Act nor with any dependent on behalf of *the individuals for* whom services are sought.
- (8) *The cabinet shall determine the name of each obligor who owes an arrearage of at least five thousand dollars (\$5,000). After notification to the obligor owing an arrearage amount of five thousand dollars*

(\$5,000), the cabinet shall transmit to the United States secretary of health and human services the certified names of the individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport. The cabinet shall notify the identified obligor of the determination and the consequences and provide an opportunity to contest the determination.

- (9) *The cabinet shall determine the name of an obligor owing an arrearage and shall indefinitely deny, suspend, or revoke a license or certification that has been issued if the person has a child support arrearage that equals or exceeds the amount that would be owed after one (1) year of nonpayment or fails, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).*
- (10) *The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.*
- (11) *The denial or suspension shall remain in effect until the child support arrearage has been eliminated or payments on the child support arrearage are being made in accordance with a court or administrative order, the person complies with the subpoena or warrant relating to paternity or child support proceedings, or the appeal of the denial or suspension is upheld and the license is reinstated.*
- (12) *Except for cases administered by the cabinet under 42 U.S.C. sec. 651 et seq. which shall be afforded the appeal process set forth by subsection (3) of Section 24 of this Act, an individual who has a license or certification denied, revoked, or suspended shall have the right to appeal to the licensing or certifying board.*
- (13) *A dispute hearing shall be conducted by the cabinet in accordance with Section 24 of this Act. The only basis for a dispute hearing shall be a mistake in fact.*
- (14) *The cabinet shall in its discretion enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in coordination with the financial institutions, a data match system. The financial institution shall be required to provide identifying information for each obligated parent who maintains an account at the institution and owes an arrearage, and who shall be identified by the cabinet. Assets held by the institutions on behalf of any obligated parent who is subject to a child support lien pursuant to Section 10 of this Act shall be encumbered or surrendered in response to a notice of lien or levy issued by the cabinet. The cabinet may pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual cost. The financial institution shall not be liable for encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the cabinet or for any other action taken in good faith to comply with the requirements of this subsection.*
- (15) *The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents that are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.*

Section 6. KRS 205.720 is amended to read as follows:

- (1) By applying for Title IV-D services or accepting public assistance for or on behalf of a needy dependent child, the recipient shall be deemed to have made an assignment to the cabinet of the right to any child support or maintenance owed up to the amount of public assistance paid by the cabinet to the recipient, including amounts which have accrued at the time the assignment is made **between October 1, 1997, and September 30, 2000**. The cabinet shall be subrogated to the right of the child or the person having custody to collect and receive all child support payments and to initiate any support action existing under the laws of this state.
- (2) ***The cabinet shall distribute all child support payments and assigned arrearages as required by 42 U.S.C. sec. 651 et seq.***
- (3) When Title IV-D services on behalf of a dependent child are terminated, current and past due court-ordered or administratively-determined child support owed the child shall be payable to the physical custodian of the dependent child for the period of time the dependent child was in the physical custody of that custodian.

Section 7. KRS 205.721 is amended to read as follows:

- (1) All services available to individuals receiving *public assistance under Title IV-A of the Social Security Act* ~~aid to families with dependent children (AFDC)~~ benefits shall also be available to individuals not receiving *public assistance* ~~(AFDC)~~ benefits, upon application by the individual with the cabinet.
- (2) The cabinet shall continue to provide IV-D services when a family ceases to receive public assistance without requiring a formal application and without payment of the application fee specified in subsection (3) of this section. IV-D services shall be discontinued upon the request of the recipient.
- (3) Except as provided in subsection (2) of this section, the cabinet may charge an application fee for the services based on a fee schedule, which shall take into account the applicant's net income. No application fee shall be required from individuals receiving public assistance.

Section 8. KRS 205.730 is amended to read as follows:

- (1) *Unless the cabinet has reason to believe allegations of child abuse or domestic violence and that the disclosure of the information could be harmful to the custodial parent or the child of the parent, the cabinet shall attempt to locate a noncustodial parent of a child described in KRS 205.725, and establish or set an amount of modification, and enforce the child support obligation.*
- (2) *Upon the request of a putative father and for the purpose of establishing paternity only, the cabinet shall attempt to locate a custodial parent of a child described in KRS 205.712 if the cabinet finds the action to be in the best interest of the child.*
- (3) *If paternity is established for a child described in KRS 205.725 as a result of the location of the custodial parent, the cabinet shall establish a child support obligation or a modification for a child support obligation and shall enforce the child support obligation if the cabinet finds the enforcement of the order to be in the best interest of the child.* ~~The cabinet shall attempt to locate absent responsible parents of children described in KRS 205.725, and upon request of a putative father, the cabinet shall attempt to locate custodial parents for the purpose of establishing paternity when the cabinet finds the attempt to be in the best interest of the child.~~

~~(4)(2)~~ The cabinet shall serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, and, upon request of a putative father, the location of a custodial parent, in order to establish paternity, to answer interstate inquiries concerning deserting parents or custodial parents, to coordinate and supervise any activity on a state level in search of an absent parent or custodial parent, to develop guidelines for coordinating activities of any governmental agency in providing information necessary for location of absent parents or custodial parents, ***to obtain information on the location of parents to enforce state and federal laws against parental kidnapping and to make or to enforce a child custody or visitation order,*** and is to process all requests received from an initiating county or an initiating state which has adopted the Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act.

~~(5)(3)~~ In order to carry out responsibilities imposed under this chapter, the cabinet may request information and assistance from any governmental agency. All state, county, and city agencies, officers, and employees shall cooperate with the cabinet in determining the location of parents who have abandoned or deserted children and shall cooperate with the cabinet in determining the location of custodial parents for the purpose of establishing paternity with all pertinent information relative to the location, income, ~~and~~ ***assets***, property, ***and debt*** of ~~the~~ ~~such~~ parents, notwithstanding any provision of state law making ~~the~~ ~~such~~ information confidential.

~~(6)(4)~~ The information which is obtained by the cabinet shall only be available to such governmental agency or political subdivision of any state for purposes of locating an absent parent to enforce the parent's obligation of support and for the purposes of location of custodial parents to establish paternity of putative fathers.

Section 9. KRS 205.735 is amended to read as follows:

All business concerns doing business in this state, to the extent that they have employees working within this state, or maintain personnel files within this state, or are incorporated under the laws of this state, shall provide the cabinet with the following information upon certification by the secretary that the information is for the purpose of locating a parent, ***and the establishment, modification, and enforcement of a child support and medical support order,*** and that the information obtained will be treated as confidential information by this cabinet or the agency or cabinet of any other state which administers the Child Support Enforcement Program pursuant to Part D of Title IV of the Social Security Act for the other state: full name, Social Security account number, date of birth, home address, wages, and number of dependents listed for tax purposes.

Section 10. KRS 205.745 is amended to read as follows:

- (1) A child support lien *or* levy in favor of the cabinet shall ***be enforceable against***~~attach to~~ all ***real***~~personal~~ and ***personal***~~real~~ property of the obligor if he has failed to make child support payment in an amount equal to support payable for one (1) month and the child support has been assigned to the cabinet. ***In accordance with subsection (4) of this section, the lien or levy shall have first priority over any other lien assigned by any other agency, association, or corporation.***
- (2) ***The cabinet shall file a notice of lien or levy with the county clerk of any county or counties in which the obligor has interest in property and the notice shall be recorded in the same manner as notices of lis pendens. The recordation shall constitute notice of both the original amount of child support due and all subsequent amounts due by the same obligor. Upon request, an authorized agent of the cabinet shall disclose the specific amount of liability to any interested party legally entitled to the information. The notice, when so filed, shall be conclusive to all persons of the lien or levy on the property having legal situs in that county. The lien or levy shall commence as to property of the obligor located in the Commonwealth at the time the notice is filed and shall continue until the original amount of child support due and any subsequent amounts, including interest, penalties, or fees, are fully paid. The lien or levy shall attach to all interest in real and personal property in the Commonwealth, then owned or subsequently acquired by the obligor. The clerk shall be entitled to a fee pursuant to KRS Chapter 64.***
- (3) ***The cabinet may force the sale of the property of the parent subject to the lien or levy for the payment of assigned child support, and distribute the proceeds in accordance with 42 U.S.C. sec. 651 et seq.***
- (4) ***The cabinet's lien or levy shall be superior to any mortgage or encumbrance created after the notice of lien or levy is recorded. The cabinet shall give full faith and credit to child support liens or levies created in other states without requirement of judicial notice or proceedings prior to enforcement, but the liens or levies shall subordinate to any child support lien or levy of the cabinet that relates to the same obligor and property.***
- (5) ***The cabinet shall not enforce the lien by foreclosure action on a principal residence of an obligor if to do so would deprive a minor child of the obligor of a homestead, unless the failure to enforce the lien by foreclosure would result in the loss of the home of the minor child of the custodial parent.***
- (6) ***In the event another lienholder initiates a foreclosure action against the property of the obligor, the cabinet may protect its interest in the property by filing an answer counterclaim and cross-claim and participate in the proceeds of any sale of the property as its interests may appear.***~~The lien shall be cumulative and shall include all unpaid child support then due and thereafter accruing until the lien is paid in full.~~
- ~~(2) The cabinet shall file its claim of lien within three (3) years from the time it attaches to the property of the parent. The claim of lien shall be filed with the county clerk of the county in which the property is located and shall state as follows: "The Commonwealth of Kentucky, by the Cabinet for Human Resources, claims a lien in the amount of plus all unpaid child support hereafter accruing, including interest, until paid in full on the (describe property) of (name of obligor) for child support owed to obligor's dependent children or for such public assistance moneys as may have been paid to obligor's children by the Cabinet for Human Resources."~~
- ~~(7)(3)~~ ***The cabinet shall notify the obligor of the filing of its claim of lien or levy and the opportunity to contest and appeal the action in accordance with the requirements of KRS Chapter 13B.***
- (8) ***Liens or levies resulting from actions provided by this section shall be inapplicable to an account maintained at a financial institution that is or may be subject to the data match system established by Section 43 of this Act, and is subordinate to any prior lien, levy, or security interest perfected by a financial institution or other legitimate lien or levy holder.***

Section 11. KRS 205.768 is amended to read as follows:

- (1) The cabinet shall ***periodically*** make information available to consumer reporting agencies~~upon their request~~ regarding the amount of overdue support owed by a parent~~in cases where the overdue support exceeds one thousand dollars (\$1,000)~~. Amounts~~less than one thousand dollars (\$1,000)~~ may be reported by the cabinet ~~to~~~~upon request by~~ the ***certified*** consumer reporting agency.
- (2) The cabinet shall provide advance notice to the obligor concerning the proposed release of the information to the ***certified*** consumer reporting agency and inform the obligor of the methods available to contest the accuracy of the information in compliance with due process of law.

- (3) The cabinet may charge the *certified* consumer reporting agency a fee not to exceed the actual cost of providing the information.

Section 12. KRS 205.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 205.170 or subsections (1) to (3) of KRS 205.175 shall be guilty of a Class A misdemeanor.
- (2) Any person who violates subsection (4) of KRS 205.175 shall be guilty of a Class D felony.
- (3) Any person who willfully violates any of the provisions of KRS 205.310, or any rule or regulation thereunder, shall be guilty of a Class B misdemeanor. Each failure or violation shall constitute a separate offense.
- (4) Any bank, savings and loan association, credit union, or other financial institution which fails to comply with the provisions of subsection (1) of KRS 205.835 or which submits fraudulent information to the cabinet shall be guilty of a Class A misdemeanor.
- (5) *Any bank, savings and loan association, credit union, investment company, savings institution, trust company, insurance or annuity company, pension or profit sharing trust company, or other financial institution failing to comply with provisions of subsection (11) of Section 22 of this Act, shall be subject to a penalty of five hundred dollars (\$500) for each failure to comply.*

Section 13. KRS 213.036 is amended to read as follows:

- (1) Each county in the Commonwealth shall constitute a registration district for the purposes of carrying out the provisions of this chapter.
- (2) The secretary shall, upon the recommendation of the state registrar, designate a local registrar in each registration district to aid in the efficient administration of the system of vital statistics. The local registrar shall be an employee of the local health department. The designation may be revoked by the secretary.
- (3) The local registrar may designate one (1) or more employees of the local health department as deputy registrar. The local registrar may also appoint persons as deputy registrars who are not employees of the local health department if, in the opinion of the cabinet, the appointments are necessary. All appointments shall be subject to the approval of the state registrar.
- (4) The local registrar shall supply blank forms of certificates to persons who require them. The local registrar shall carefully examine each certificate of birth or fetal death when presented for filing, to ensure the record has been properly completed. If the certificates are properly completed the local registrar shall sign as local registrar and attest to the date of filing. The local registrar shall also make a complete and accurate copy of each certificate to be filed and permanently preserved in the local registrar's office as the local record, in the manner directed by the Cabinet for Human Resources. ~~The local registrar shall transmit original certificates and affidavits of paternity to the Office of Vital Statistics as directed by the state registrar.~~ When a birth or fetal death certificate filed with a local registrar indicates the residence of the mother or the deceased to be in another county, the registrar shall mail a copy of the certificate to the local registrar of the county of residence.
- (5) *The local registrar shall provide for voluntary acknowledgment of paternity services in accordance with 42 U.S.C. sec. 651 et seq., and transmit original certificates and affidavits of paternity to the Office of Vital Statistics as directed by the State Registrar.*

Section 14. KRS 213.046 is amended to read as follows:

- (1) A certificate of birth for each live birth which occurs in the Commonwealth shall be filed with the local registrar within ten (10) days after such birth and shall be registered if it has been completed and filed in accordance with this section. A hearing risk certificate provided by the Commission for Children with Special Health Care Needs, with questions pertaining to hearing loss in newborn infants, shall accompany the certificate of birth for use pursuant to KRS 211.645 and 211.647. All certificates shall be typewritten. No certificate shall be held to be complete and correct that does not supply all items of information called for herein, or satisfactorily account for their omission except as provided in KRS 199.570(3). If a certificate of birth or the hearing risk certificate is incomplete, the local registrar shall immediately notify the responsible person and require that person to supply the missing items, if that information can be obtained.
- (2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or that person's designated representative, shall obtain the personal data, prepare the certificate, secure the signatures required,

and file the certificate as directed in subsection (1) of this section or as otherwise directed by the state registrar within the required ten (10) days. The physician or other person in attendance shall provide the medical information required for the certificate and certify to the fact of birth within ten (10) days after the birth. If the physician or other person in attendance does not certify to the fact of birth within the ten (10) day period, the person in charge of the institution shall complete and sign the certificate.

- (3) When a birth occurs in a hospital or en route thereto to a woman who is unmarried, the person in charge of the hospital or that person's designated representative shall immediately before or after the birth of a child, except when the mother or the alleged father is a minor:
- (a) Meet with the mother prior to the release from the hospital;
 - (b) Attempt to ascertain whether the father of the child is available in the hospital, and, if so, to meet with him, if possible;
 - (c) Provide written *materials and oral, audio, or video* materials about paternity;
 - (d) Provide forms necessary to voluntarily establish paternity;
 - (e) Provide a written *and an oral, audio, or video* description of the rights and responsibilities, *the alternatives to, and the legal consequences* of acknowledging paternity;
 - (f) Provide written materials and information concerning genetic paternity testing;
 - (g) Provide an opportunity to speak by telephone or in person with staff who are trained to clarify information and answer questions about paternity establishment;
 - (h) *If the parents wish to acknowledge paternity*, require the voluntary acknowledgment of paternity obtained through the hospital based program be signed by both parents and be authenticated by a notary public;
 - (i) Provide the unmarried mother, and, if possible, the father, with the affidavit of paternity form;
 - (j) Upon both the mother's and father's request, help the mother and father in completing the affidavit of paternity form;
 - (k) Upon both the mother's and father's request, transmit the affidavit of paternity to the local registrar in the county in which the birth occurred; and
 - (l) In the event that the mother or the alleged father is a minor, information set forth in this section shall be provided in accordance with Civil Rule 17.03 of the Kentucky Rules of Civil Procedure.

If the mother or the alleged father is a minor, the paternity determination shall be conducted pursuant to KRS Chapter 406.

- (4) The voluntary acknowledgment of paternity *forms designated by the Office of Vital Statistics shall be the only documents* ~~[form shall be the only document]~~ having the same weight and authority as a judgment of paternity.
- (5) The Cabinet for Human Resources shall:
- (a) Provide to all public and private birthing hospitals in the state written *materials and audio or video* materials concerning paternity establishment forms necessary to voluntarily acknowledge paternity;
 - (b) Provide copies of a written *description and an audio or video* description of the rights and responsibilities of acknowledging paternity; and
 - (c) Provide staff training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital based program.
- (6) When a birth occurs outside an institution, the certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:
- (a) The physician in attendance at or immediately after the birth; or, in the absence of such a person,
 - (b) Any other person in attendance at or immediately after the birth; or, in the absence of such a person,

- (c) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred or of the institution to which the child was admitted following the birth.
- (7) No physician, midwife, or other attendant shall refuse to sign or delay the filing of a birth certificate.
 - (8) If a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, and the place where the child is first removed shall be considered the place of birth. If a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, but the certificate shall show the actual place of birth insofar as can be determined.
 - (9) The following provisions shall apply if the mother was married at the time of either conception or birth or anytime between conception and birth:
 - (a) If there is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; however, if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has legal custody following birth.
 - (b) If the mother claims that the father of the child is not her husband and the husband agrees to such a claim and the putative father agrees to the statement, a three (3) way affidavit of paternity may be signed by the respective parties and duly notarized. The state registrar of vital statistics shall enter the name of a nonhusband on the birth certificate as the father and the surname of the child shall be any name chosen by the mother.
 - (c) If a question of paternity determination arises which is not resolved under paragraph (b) of this subsection, it shall be settled by the District Court.
 - (10) The following provisions shall apply if the mother was not married at the time of either conception or birth or between conception and birth or the marital relationship between the mother and her husband has been interrupted for more than ten (10) months prior to the birth of the child:
 - (a) The name of the father shall not be entered on the certificate of birth. The state registrar shall upon acknowledgment of paternity by the father and with consent of the mother pursuant to KRS 213.121, enter the father's name on the certificate. The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.
 - (b) If an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, any further modification of the birth certificate regarding the paternity of the child shall require an order from the District Court.
 - (c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.
 - (d) In all other cases, the surname of the child shall be any name chosen by the mother.
 - (11) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. In all cases, the maiden name of the gestational mother shall be entered on the certificate.
 - (12) Any child whose surname was restricted prior to July 13, 1990, shall be entitled to apply to the state registrar for an amendment of a birth certificate showing as the surname of the child, any surname chosen by the mother or parents as provided under this section.
 - (13) The birth certificate of a child born as a result of artificial insemination shall be completed in accordance with the provisions of this section.
 - (14) Each birth certificate filed under this section shall include all Social Security numbers that have been issued to the parents of the child.

- (15) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten (10) days prescribed in subsection (1) of this section.

Section 15. KRS 213.071 is amended to read as follows:

- (1) The state registrar shall establish a new certificate of birth for a person born in the Commonwealth when the state registrar receives the following:
- (a) A report of adoption as provided in KRS 213.066 or a report of adoption prepared and filed in accordance with the laws of another state or foreign country or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or
 - (b) A request that a new certificate be established as prescribed by administrative regulation and the evidence as required by administrative regulation proving that the person has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person, or that both parents have acknowledged the paternity of the person in which case the surname of the child shall be changed in accordance with KRS 213.046.
- (2) If paternity is determined in a court action, the clerk shall report the findings of the court to the state registrar on forms prescribed and furnished for that purpose. The reports shall be made no later than the fifteenth of the month following the date of the order.
- (3) If a new certificate is established, the actual place and date of birth shall be shown except in the case of adoption. If the adopted child is under eighteen (18) years of age, the birth certificate shall not contain any information revealing the child is adopted and shall show the adoptive parent or parents as the natural parent or parents of the child. The new birth certificate, when issued, shall not contain the place of birth, hospital, or name of the doctor or midwife. This information shall be given only by an order of the court in which the child was adopted. If the child was born in the Commonwealth, the new birth certificate shall show the residence of the adoptive parents as the birthplace of the child, and this shall be deemed for all legal purposes to be the birthplace of the child.
- (4) The new certificate shall be substituted for the original certificate of birth in the files, and the original certificate of birth and the evidence of adoption, paternity determination, or paternity acknowledgement shall not be subject to inspection except upon order of a court of competent jurisdiction.
- (5) If any judgment under this section is reversed, amended, modified, or vacated in any particular, the clerk of the court shall notify the state registrar of the reversal or modification, and the state registrar shall make the changes, if any, in the records as may be necessary by the reversal or modification, ***or if the voluntary acknowledgment of paternity pursuant to subsection (4) of Section 14 of this Act is rescinded, the state registrar shall make the changes, if any, in the records as may be necessary by the reversal, modification, or rescission of the voluntary acknowledgment of paternity.***
- (6) If a new certificate of birth is established by the state registrar, all copies of the original certificate of birth on file in the local health department shall be sealed and forwarded to the state registrar as the state registrar shall direct.
- (7) If no birth certificate is on file for an adopted child born in Kentucky, the state registrar shall prepare a certificate of birth in accordance with information furnished by the clerk of the Circuit Court which issued the adoption order. The state registrar shall furnish the clerks of the Circuit Courts the necessary forms to carry out the provisions of this section.

Section 16. KRS 403.090 is amended to read as follows:

- (1) The fiscal court of any county may, by resolution, authorize the appointment of a "friend of the court." If the Circuit Court of the county has but one (1) judge, the appointment shall be made by the judge. If the court has two (2) or more judges, the appointment shall be made by joint action of the judges, at the general term. The person appointed to the office of friend of the court shall serve at the pleasure of, and subject to removal by, the appointing authority. The person appointed shall be a licensed practicing attorney. The appointed person shall take the constitutional oath of office and shall give bond in such sum as may be fixed by the appointing judge or judges.

- (2) ***Except for those cases administered pursuant to 42 U.S.C. sec. 651 et seq.,*** it shall be the duty of the friend of the court to supervise and enforce the payment of sums ordered or adjudged by the Circuit Court in divorce actions to be paid for the care and maintenance of minor children. All persons who have been ordered or adjudged by the court, in connection with divorce actions, to make payments for the care and maintenance of children, shall, if so ordered by the court, make such payments to the friend of the court. ~~, and~~ The friend of the court shall see that the payments, ***except for those cases administered pursuant to 42 U.S.C. sec. 651 et seq.,*** are properly applied in accordance with the order or judgment. However, if the court so directs, the payments may be made through the juvenile session of District Court of the county; in such case the friend of the court shall render such assistance as may be required in keeping records concerning such payments and in the enforcement of delinquent payments, and the Circuit Court may direct that a designated amount or portion of the funds appropriated by the fiscal court for expenses of the friend of the court be paid to the juvenile session of District Court as reimbursement for the expenses incurred by the juvenile session of District Court in connection with the handling of such payments. The friend of the court shall promptly investigate all cases where payments have become delinquent, and when necessary shall cause the delinquent person to be brought before the court for the purpose of compelling payment. The friend of the court shall ascertain the facts concerning the care, custody, and maintenance of children for whom payments are being made, and shall report to the court all cases in which the children are not receiving proper care or maintenance, or in which the person having custody is failing to furnish proper custody. He shall make such other reports to the court as the court may require.
- (3) ***In the event that a waiver is granted under 42 U.S.C. sec. 651 et seq., allowing payment of wage withholding collections to be directed to the friend of the court, an obligor shall be given the option of payment either to the friend of the court or the centralized collection agency.***
- (4) In any action for divorce where the parties have minor children, the friend of the court, if requested by the trial judge, shall make such investigation as will enable the friend of the court to ascertain all facts and circumstances that will affect the rights and interests of the children and will enable the court to enter just and proper orders and judgment concerning the care, custody, and maintenance of the children. The friend of the court shall make a report to the trial judge, at a time fixed by the judge, setting forth recommendations as to the care, custody, and maintenance of the children. The friend of the court may request the court to postpone the final submission of any case to give the friend of the court a reasonable time in which to complete the investigation.
- ~~(4)~~ The friend of the court shall have authority to secure the issuance by the court of any order, rule, or citation necessary for the proper enforcement of orders and judgments in divorce actions concerning the custody, care and maintenance of children. In performing duties under subsection ~~(4)~~~~(3)~~ of this section the friend of the court shall attend the taking of depositions within the county, and shall have authority to cross-examine the witnesses. In the case of depositions taken on interrogatories, the friend of the court may file cross interrogatories. The friend of the court shall be duly notified of the time and place of the taking of depositions in all divorce actions where the parties have minor children, and shall attend the taking of all such depositions when the friend of the court deems it necessary for the protection of the minor children, or when the friend of the court may be directed by the court to attend.
- ~~(5)~~ The friend of the court shall not directly or indirectly represent any party to a divorce action except as herein authorized to represent the minor children of parties to a divorce action, but if an allowance is made for the support of a spouse and an infant child or children, may proceed to enforce the payment of the allowance made to the spouse also.
- ~~(6)~~ Where a friend of the court is acting as a designee of the cabinet pursuant to KRS 205.712 and an applicant for Title IV-D services pursuant to KRS 205.721 has requested a modification of an existing child support order pursuant to a divorce or other judicial order, the friend of the court shall seek the modification, providing all jurisdictional requirements are met. The friend of the court's representation shall extend only for the limited purpose of seeking a modification of an existing child support order consistent with the provisions of KRS 403.212.
- ~~(7)~~ The fiscal court of any county which has authorized the appointment of a friend of the court under this section shall, by resolution, fix a reasonable compensation for the friend of the court and make a reasonable allowance for necessary expenses, equipment and supplies, payable out of the general fund of the county, upon approval of the appointing judge or judges.

Section 17. KRS 403.150 is amended to read as follows:

- (1) All proceedings under this chapter are commenced in the manner provided by the Rules of Civil Procedure.
- (2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege the marriage is irretrievably broken and shall set forth:
 - (a) The age, occupation, *social security number*, and residence of each party and his length of residence in this state. If domestic violence and abuse, as defined in KRS 403.720, is alleged by either party, the party filing the petition shall certify the existence and status of any domestic violence protective orders. The party filing the petition and alleging the abuse may substitute the party's attorney's address as the address of the party and any minor children;
 - (b) The date of the marriage and the place at which it was registered;
 - (c) That the parties are separated and the date on which the parties separated;
 - (d) The names, ages, *social security numbers*, and addresses of any living infant children of the marriage, and whether the wife is pregnant;
 - (e) Any arrangements as to custody, visitation, and support of the children and the maintenance of a spouse; and
 - (f) The relief sought.
- (3) Either or both parties to the marriage may initiate the proceeding.
- (4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Rules of Civil Procedure and may file a verified response.
- (5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
- (6) The court may join additional parties proper for the exercise of its authority to implement this chapter.
- (7) When the wife is pregnant at the time the petition is filed, the court may continue the case until the pregnancy is terminated.

Section 18. KRS 403.160 is amended to read as follows:

- (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2)
 - (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. The motion shall be accompanied by an affidavit setting forth the number of children of the marriage and the information required to calculate the combined adjusted parental gross income set forth in KRS 403.212(2)(g), ***and the social security numbers of all parties subject to the motion***. The court shall, within fourteen (14) days from the filing of said motion, order an amount of temporary child support based upon the child support guidelines as provided by law, and the ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.
 - (b) Upon a showing of good cause, either party may move the court to enter an order for temporary child support without written or oral notice to the adverse party. After reviewing the affidavit required by paragraph (a) of this subsection, the court may issue a temporary child support order based upon the child support guidelines. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by paragraph (a) of this subsection. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.

- (3) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.
- (4) ***If the court or agent of the court is made aware that there is reasonable evidence of domestic violence or child abuse, the court shall determine whether disclosure to any other person of the information could be harmful to the parent or child, and if the court determines that disclosure to any person could be harmful, the court and its agents shall not make the disclosure.***
- (5) On the basis of the showing made and in conformity with KRS 403.200, the court may issue a temporary injunction or restraining order and an order for temporary maintenance in amounts and on terms just and proper in the circumstances.
- ~~(6)~~~~(5)}~~ A temporary order or temporary injunction:
 - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
 - (b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and
 - (c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 19. KRS 403.211 is amended to read as follows:

- (1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.
- (2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.
- (3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:
 - (a) A child's extraordinary medical or dental needs;
 - (b) A child's extraordinary educational, job training, or special needs;
 - (c) Either parent's own extraordinary needs, such as medical expenses;
 - (d) The independent financial resources, if any, of the child or children;
 - (e) Combined parental income in excess of the Kentucky child support guidelines;
 - (f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and
 - (g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.
- (4) "Extraordinary" as used in this section shall be determined by the court in its discretion.
- (5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.

- (6) The court shall allocate between the parents, in proportion to their adjusted gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.
- (7) (a) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:
1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include, but not be limited to, insurance coverage, payments of necessary health care deductibles or copayments; and
 2. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.
- (b) If health care insurance coverage is not reasonable and available at the time the request for the coverage is made, the court order shall provide for health care insurance coverage at the time it becomes reasonable and available.
- (8) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their adjusted gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of one hundred dollars (\$100) per child per calendar year. "Extraordinary medical expenses" includes, but is not limited to, the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.
- (9) ***The court order shall include the social security numbers of all parties subject to a support order.***
- (10) In any case administered by the Cabinet for Human Resources, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Human Resources may, upon application, enroll the child.
- (11) ***In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by Section 2 of this Act.***
- (12) ***In the case in which a noncustodial parent provides health care coverage, and changes employment, and the new employer provides health care coverage, the Cabinet for Human Resources shall transfer notice of the provision for coverage for the child to the employer which shall operate to enroll this child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice as specified by KRS Chapter 13B.***
- (13) ***Notwithstanding any other provision of this section, any wage or income shall not be exempt for attachment or assignment for the payment of current child support or owed or to be owed child support.***

Section 20. KRS 403.212 is amended to read as follows:

- (1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.
- (2) For the purposes of the child support guidelines:
 - (a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.
 - (b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, ***retirement and pension funds***, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but

not limited to *public assistance as defined under Title IV-A of the Social Security Act* [~~Aid to Families with Dependent Children (AFDC)~~], and food stamps.

- (c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.
- (d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility. Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.
- (e) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines.
- (f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed.
- (g) "Combined adjusted parental gross income" means the combined gross incomes of both parents, less any of the following payments made by the parent:
 1. The cost of health insurance coverage for the child;
 2. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;
 3. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and
 4. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.
- (3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their adjusted gross income.
- (4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars (\$60) per month.
- (5) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.
- (6) The child support guidelines table is as follows:

ACTS OF THE GENERAL ASSEMBLY

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE
\$ 0	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60
100	60	60	60	60	60	60
200	70	70	70	70	70	70
300	80	80	80	80	80	80
400	90	90	90	90	90	90
500	100	105	110	115	120	125
600	120	125	130	135	140	145
700	140	156	161	166	171	176
800	160	203	208	213	218	223
900	180	261	266	271	276	281
1,000	195	303	325	330	335	340
1,100	212	324	384	389	394	399
1,200	229	346	433	446	451	456
1,300	246	367	460	504	510	515
1,400	262	392	491	554	576	582
1,500	277	417	522	588	642	650
1,600	293	437	548	618	674	717
1,700	308	458	574	647	706	755
1,800	322	478	599	675	736	788
1,900	336	495	620	699	763	816
2,000	350	512	642	723	789	844
2,100	364	529	663	747	815	872
2,200	376	546	684	771	841	900
2,300	389	563	706	795	868	928
2,400	401	580	727	819	894	956
2,500	413	597	749	843	920	984
2,600	424	614	770	867	946	1,012
2,700	435	630	790	889	970	1,038
2,800	445	646	809	911	994	1,064
2,900	455	662	829	934	1,019	1,090
3,000	465	677	849	956	1,043	1,116

3,100	475	693	868	978	1,067	1,142
3,200	485	709	888	1,001	1,092	1,168
3,300	495	725	908	1,023	1,116	1,194
3,400	506	741	928	1,045	1,140	1,220
3,500	516	757	947	1,067	1,164	1,246
3,600	526	773	967	1,090	1,189	1,272
3,700	536	790	988	1,113	1,215	1,299
3,800	548	808	1,011	1,139	1,243	1,329
3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418
4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507
4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561
4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661
5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950
6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058

ACTS OF THE GENERAL ASSEMBLY

6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194
7,700	896	1,342	1,679	1,893	2,066	2,208
7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238
8,000	912	1,368	1,713	1,929	2,106	2,252
8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311
8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354
8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472
9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493
10,400	1,022	1,541	1,932	2,202	2,372	2,536
10,500	1,027	1,548	1,940	2,212	2,382	2,546
10,600	1,032	1,554	1,948	2,221	2,392	2,557
10,700	1,036	1,561	1,956	2,230	2,402	2,567
10,800	1,040	1,567	1,965	2,240	2,412	2,578
10,900	1,044	1,573	1,973	2,249	2,422	2,589

11,000	1,049	1,580	1,981	2,258	2,432	2,599
11,100	1,053	1,587	1,989	2,268	2,443	2,610
11,200	1,058	1,593	1,997	2,277	2,453	2,620
11,300	1,062	1,600	2,005	2,286	2,463	2,631
11,400	1,066	1,606	2,013	2,295	2,473	2,642
11,500	1,070	1,613	2,021	2,305	2,483	2,652
11,600	1,075	1,619	2,029	2,314	2,493	2,663
11,700	1,079	1,626	2,037	2,323	2,503	2,673
11,800	1,084	1,633	2,046	2,333	2,513	2,684
11,900	1,088	1,639	2,054	2,342	2,523	2,695
12,000	1,093	1,646	2,062	2,351	2,533	2,705
12,100	1,097	1,653	2,070	2,361	2,544	2,716
12,200	1,102	1,659	2,078	2,370	2,554	2,726
12,300	1,106	1,666	2,086	2,379	2,564	2,737
12,400	1,110	1,672	2,094	2,388	2,574	2,748
12,500	1,114	1,679	2,102	2,398	2,584	2,758
12,600	1,119	1,685	2,110	2,407	2,594	2,769
12,700	1,123	1,692	2,118	2,416	2,604	2,779
12,800	1,128	1,699	2,127	2,426	2,614	2,790
12,900	1,132	1,705	2,135	2,435	2,624	2,801
13,000	1,137	1,712	2,143	2,444	2,634	2,811
13,100	1,141	1,719	2,151	2,454	2,645	2,822
13,200	1,146	1,725	2,159	2,463	2,665	2,832
13,300	1,150	1,732	2,167	2,472	2,665	2,843
13,400	1,154	1,738	2,175	2,481	2,675	2,854
13,500	1,158	1,745	2,183	2,491	2,685	2,864
13,600	1,163	1,751	2,191	2,500	2,695	2,875
13,700	1,167	1,758	2,199	2,509	2,705	2,885
13,800	1,172	1,765	2,208	2,519	2,715	2,896
13,900	1,176	1,771	2,216	2,528	2,725	2,907
14,000	1,181	1,778	2,224	2,537	2,735	2,917
14,100	1,185	1,785	2,232	2,547	2,746	2,928
14,200	1,190	1,791	2,240	2,556	2,756	2,938
14,300	1,194	1,798	2,248	2,565	2,766	2,949
14,400	1,198	1,804	2,256	2,574	2,776	2,960
14,500	1,202	1,811	2,264	2,584	2,786	2,970
14,600	1,207	1,817	2,272	2,593	2,796	2,981
14,700	1,211	1,824	2,280	2,602	2,806	2,991

14,800	1,216	1,831	2,289	2,612	2,816	3,002
14,900	1,220	1,837	2,297	2,621	2,826	3,013
15,000	1,225	1,844	2,305	2,630	2,836	3,023

Section 21. KRS 405.465 is amended to read as follows:

- (1) This section shall apply only to those child support, medical support, maintenance, and medical support insurance orders that are established, modified, or enforced by the Cabinet for Human Resources or those court orders obtained in administering Part D, Title IV of the Federal Social Security Act.
- (2) All child support orders and medical support insurance orders being established, modified, or enforced by the Cabinet for Human Resources, or those orders obtained pursuant to the administration of Part D, Title IV of the Federal Social Security Act, shall provide for income withholding which shall begin immediately.
- (3) The court shall order either or both parents who are obligated to pay child support, medical support, or maintenance under this section to assign to the Cabinet for Human Resources ~~or the domestic relations clerk of the court or other officer designated by the court to receive the payment,~~ that portion of salary or wages of the parent due and to be due in the future as will be sufficient to pay the child support amount ordered by the court.
- (4) The order shall be binding upon the employer or any subsequent employer upon the service by certified mail of a copy of the order upon the employer and until further order of the court. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order.
- (5) The employer shall notify the cabinet when an employee, for whom a wage withholding is in effect, terminates employment and provide the terminated employee's last known address and the name and address of the terminated employee's new employer, if known.
- (6) Any assignment made pursuant to court order shall have priority as against any attachment, execution or other assignment, unless otherwise ordered by the court.
- (7) No assignment under this section by an employee shall constitute grounds for dismissal of the obligor, refusal to employ, or taking disciplinary action against any obligor subject to withholding required by this section.

Section 22. KRS 405.430 is amended to read as follows:

- (1) ***When a parent presents himself to the cabinet for the voluntary establishment of paternity and clear evidence of parentage is not present, the cabinet shall pay when administratively ordered the cost of genetic testing to establish paternity, subject to recoupment from the alleged father when paternity is established.***
- (2) ***The cabinet shall obtain additional testing in any case if an original test is contested, upon request and advance payment by the contestant.***
- (3) ***In a contested paternity case, the child, the mother, and the putative father shall submit to genetic testing upon a request of any of the parties, unless the person or guardian of the person who is requested to submit to genetic testing shows good cause, taking into account the best interests of the child, why the genetic tests cannot be performed. The request shall be supported by a sworn statement of the party, requesting that the test be performed, which shall include the information required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).***
- (4) When a parent who fails to support a child is not obligated to provide child support by court order, the cabinet may administratively establish a child support obligation based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter 406, the parent's minimum monthly child support obligation and proportionate share of child care costs incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education or vocational training which will lead to employment. The monthly child support obligation shall be determined pursuant to the Kentucky child support guidelines set forth in KRS 403.212. The actual cost of child care shall be reasonable and shall be allocated between the parents in the same proportion as each parent's gross income, as determined under the guidelines, bears to the total family gross income.
- ~~(5)(2)~~ The cabinet shall recognize a voluntary acknowledgment of paternity as a basis for seeking a support order, irrespective of the alleged father's willingness to consent to a support order.
- ~~(6)(3)~~ ***When in the best interest of the child, the cabinet may review and adjust***~~modify~~ a parent's child support obligation or child care obligation as established by the cabinet, ***upon a request of the cabinet when***

an assignment has been made, ~~on its own~~ or upon either ~~a~~ parent's petition if the amount of the child support awarded under the order differs from the amount that would be awarded in accordance with Section 20 of this Act. The cabinet shall notify parents at least once every three (3) years of the right to a review ~~, but only upon a finding of the conditions described for judicial modification of a support order.~~

- (7)~~(4)~~ In establishing or modifying a parent's monthly child support obligation, the cabinet may *use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the adjustment to eligible orders in accordance with Section 20 of this Act. The cabinet shall utilize information, including financial records, about the parent and child which it has good reason to believe is reliable and may require the parents to provide income verification.*
- (8) *In cases in which past due support is owed for a child receiving public assistance under Title IV-A of the Federal Social Security Act, the cabinet shall issue an administrative order, or seek a judicial order, requiring the obligated parent to participate in work activities, unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.*
- (9) *The cabinet may disclose financial records only for the purpose of establishing, modifying, or enforcing a child support obligation of an individual. A financial institution shall not be liable to any individual for disclosing any financial record of the individual to the cabinet attempting to establish, modify, or enforce a child support obligation.*
- (10) *The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.*
- (11) *In any case where a person or entity fails to respond to a subpoena within the specified time frame, the cabinet shall impose a penalty.*
- (12)~~(5)~~ No person shall knowingly make, present, or cause to be made or presented to an employee or officer of the cabinet any false, fictitious, or fraudulent statement, representation, or entry in any application, report, ~~or~~ document, *or financial record* used in determining child support or child care obligations.
- (13) *If a person knowingly or by reason of negligence discloses a financial record of an individual, that individual may pursue civil action for damages in a federal district court or appropriate state court. No liability shall arise with respect to any disclosure which results from a good faith, but erroneous, interpretation. In any civil action brought for reason of negligence of disclosure of financial records, upon finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to:*
- (a) *The sum of the greater of one thousand dollars (\$1,000) for each act of unauthorized disclosure of financial records; or*
 - (b) *The sum of the actual damages sustained by the plaintiff resulting from the unauthorized disclosure; plus*
 - (c) *If willful disclosure or disclosure was a result of gross negligence, punitive damages, plus the costs, including attorney fees, of the action.*

Section 23. KRS 405.060 is amended to read as follows:

- (1) Any sale or conveyance made to a purchaser with notice or for the benefit of any religious society, if made in fraud or hindrance of the right of wife or child to maintenance, shall be void as against the wife or child.
- (2) *In any case where an obligor transfers income or property to avoid payment to a child support creditor, the transfer shall be indicia of fraud. Indicia of fraud creates a prima facie case that the transfer of income or property was to avoid payment of child support. Indicia of fraud shall be set forth by administrative regulation.*
- (3) *In any case in which the cabinet knows of a transfer by a child support obligor with respect to which a prima facie case is established, the cabinet shall:*
 - (a) *Seek to void the transfer; or*

(b) Obtain a settlement in the best interests of the child support creditor.

Section 24. KRS 405.450 is amended to read as follows:

- (1) A hearing officer appointed by the secretary shall conduct dispute hearings in the county of the child or parent's residence or any other location acceptable to the parent, which shall be scheduled within sixty (60) days of the parent's request for a hearing. The dispute hearing proceedings shall be conducted in accordance with KRS Chapter 13B.
- (2) The parent's obligation to pay minimum monthly support shall be stayed until his receipt of the final order.
- (3) The parent or the cabinet may file an appeal in the Circuit Court in the county of the parent's or the child's residence in accordance with KRS Chapter 13B.
- (4) The parent shall, during the pendency of his appeal from the final order, absent a showing of indigency or need exceeding the child's need, pay the minimum monthly support obligation to the cabinet, which shall, if the parent's appeal is successful, return his money together with interest at the legal rate for judgments.
- (5) ***If the cabinet elects to conduct the modification review as specified in subsection (6) of Section 22 of this Act, either party may contest the adjustment to the obligation amount within thirty (30) days after the date of the notice of the adjustment by requesting a review under subsection (1) of this section, and if appropriate, a request for adjustment of the order as permitted by this chapter.***

Section 25. KRS 405.467 is amended to read as follows:

- (1) All support orders issued by the Cabinet for Human Resources, including those issued pursuant to Part D, Title IV of the Federal Social Security Act, shall provide for immediate withholding of earnings of the parent or parents obligated to pay child support and medical support as is necessary to pay the child support obligation, except where one (1) of the parties demonstrates, and the court or administrative order finds that there is good cause not to require immediate income withholding, or a written agreement is reached by both parties which provides for an alternative arrangement.
- (2) In any case in which a ***support order was issued in the state prior to October 1, 1994, and in which a*** parent is required to pay court ordered or administratively determined child support, medical support, maintenance, and medical support insurance, ***and*** wage withholding is not in effect, and an arrearage accrues that is equal to the amount of support payment for one (1) month, upon request of the absent parent, request of the custodial parent, or upon administrative determination, the secretary shall issue an order for withholding of earnings of the parent as is necessary to comply with the order plus interest at the legal rate on the arrearage, if any, ***without the need for a judicial or administrative hearing.***
- (3) In any case in which a parent is required either by court order or administrative order to provide medical insurance coverage for the child and the parent has failed to make application to obtain coverage for the child, the secretary shall issue an order for withholding of the employee's share, if any, of premiums for health coverage and to pay the share of premiums to the insurer, ***without the need for a judicial or administrative hearing.***
- (4) ***The cabinet shall advise the obligated parent that a wage withholding has commenced by sending a copy of the order to withhold at the same time that the order is sent to the employer***~~[Advance notice shall be sent to the obligor prior to the issuance of the order to withhold earnings].~~ The only basis for contesting the withholding shall be a mistake of fact or law. If the parent contests the withholding, the cabinet shall give the obligor an opportunity to present his or her case at an administrative hearing conducted in accordance with KRS Chapter 13B and decide if the withholding will ***continue***~~occur, based on an evaluation of the facts within forty five (45) days from the date of the advance notice. The cabinet shall notify the obligor of the decision of whether the withholding is to occur, the date on which it will begin, and shall furnish the obligor with the information contained in any order served on the employer with respect to the withholding].~~
- (5) The cabinet shall combine any administrative or judicial wage withholding order, or multiple administrative or judicial orders for child support and medical support into a single wage withholding order when payable through the cabinet to a single family or to multiple family units.
- (6) The cabinet shall serve the order to withhold earnings or notice of multiple wage withholding orders specifying wage withholding requirements on the employer of an obligor by certified mail, return receipt requested. The order shall state the amount to be withheld, or the requirement to enroll the child under the health insurance coverage, including amounts to be applied to arrearages, plus interest at the legal rate on the arrearage, if any,

and the date the withholding is to begin. The total amount to be withheld, including current support and payment on arrearages plus interest, and medical insurance coverage may not exceed the limit permitted under the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b).

- (7) If there is more than one (1) notice for child support withholding against a single absent parent, the cabinet shall allocate amounts available for withholding, giving priority to current child support, up to the limits imposed under Section 303(b) of the Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b). The allocation by the cabinet shall not result in a withholding for one (1) of the support obligations not being implemented. Amounts resulting from wage withholding shall be allocated on a proportionate basis between multiple family units. Any custodial parent adversely affected by the provisions of this subsection shall have standing to challenge any proportionate allocations and, for good cause shown, a District Court, Circuit Court, or Family Court of competent jurisdiction may set aside the cabinet's proportional allocations as to the custodial parent.
- (8) If the amounts to be withheld preclude collection of the total amount of combined child support and medical support due to the limits of the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b), the actual amount received shall be applied first to the current monthly child support obligation amount. Any payment exceeding the current monthly child support obligation shall then be applied by the cabinet to the administratively-ordered or judicially-ordered medical support obligation.
- (9) *The employer shall forward to the Cabinet for Human Resources that portion of salary or wages of the parent due and to be due in the future as will be sufficient to pay the child support amount ordered.*
- (10) The employer shall be held liable to the cabinet for any amount which the employer fails to withhold from earnings due an obligor following receipt of an order to withhold earnings.
- ~~(11)(10)~~ Any order to withhold earnings under this section shall have priority as against any attachment, execution, or other assignment, notwithstanding any state statute or administrative regulation to the contrary.
- ~~(12)(11)~~ No withholding under this section shall be grounds for discharging from employment, refusing to employ, or taking disciplinary action against any obligor subject to withholding required by this section.
- ~~(13)(12)~~ The remedies provided for in this section shall also be available for applicable support orders issued in other states.
- ~~(14)(13)~~ Interstate requests for withholding of earnings shall be processed by the cabinet.

Section 26. KRS 406.021 is amended to read as follows:

- (1) Paternity may be determined upon the complaint of the mother, putative father, child, person, or agency substantially contributing to the support of the child. The action shall be brought by the county attorney or by the Cabinet for Human Resources or its designee upon the request of complainant authorized by this section.
- (2) Paternity may be determined by the District Court when the mother and father of the child, either:
 - (a) Submit affidavits in which the mother states the name *and social security number* of the child's father and the father admits paternity of the child; or
 - (b) Give testimony before the District Court in which the mother states the name *and social security number* of the child's father and the father admits paternity of the child.
- (3) If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the father may be enforced in the same or other proceedings by the mother, child, person, or agency substantially contributing to the cost of pregnancy, confinement, education, necessary support or funeral expenses. *Bills for testing, pregnancy, and childbirth without requiring third party foundation testimony shall be regarded as prima facie evidence of the amount incurred.* An action to enforce the liabilities shall be brought by the county attorney upon the request of such complainant herein authorized. An action to enforce the liabilities of the cost of pregnancy, birthing costs, child support, and medical support shall be brought by the county attorney or by the Cabinet for Human Resources or its designee.
- (4) Voluntary acknowledgment of paternity pursuant to KRS 213.046 shall create a rebuttable presumption of paternity.

- (5) Upon a showing of service of process on the defendant and if the defendant has made no pleading to the court or has not moved to enter evidence pursuant to KRS 406.091, the court shall order paternity to be established by default.

Section 27. KRS 406.025 is amended to read as follows:

- (1) Upon completion of a signed, notarized, voluntary acknowledgment of paternity affidavit by the mother and alleged father, obtained through the hospital-based paternity program, and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for ***the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order***~~one (1) year following the child's birth~~.
- (2) Upon completion of a signed, notarized, voluntary acknowledgment of paternity affidavit by the mother and alleged father obtained outside of the hospital and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for ***the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order***~~one (1) year~~ following the date of signatures on the notarized affidavit.
- (3) ***Pending an administrative or judicial determination of parentage, or upon a signed, notarized, voluntary acknowledgment of paternity form having been transmitted by the local registrar and received by the Office of Vital Statistics, a temporary support order shall be issued upon motion of any party if paternity is indicated by genetic testing or other clear and convincing evidence.***
- (4) ***The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.***
- (5) ***The court shall, within fourteen (14) days from the filing of the motion, order an amount of temporary child support based upon the child support guidelines as provided by Section 20 of this Act. The ordered child support shall be retroactive to the date of the filing of the motion to move the court to enter an order for temporary child support without written or oral notice to the adverse party. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by subsection (2)(a) of Section 18 of this Act. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.***
- (6) ***Unless good cause is shown, court or administratively ordered child support shall continue until final judicial or administrative determination of paternity.***

Section 28. KRS 406.035 is amended to read as follows:

- (1) If paternity has been determined under the provisions of subsection (1) or (2) of KRS 406.021, the court shall make a written order of paternity.
- (2) ***Information concerning this action received or transmitted shall not be published or be open for public inspection, including where the cabinet determines reasonable evidence of domestic violence or child abuse, if the disclosure of the information could be harmful to the custodial parent or the child of the parent.***
- (3) Such orders are to be kept separately and shall not be open for public inspection except that they may be inspected by employees of governmental agencies in the performance of their duties, all law enforcement agencies including county attorneys, Commonwealth's attorneys, District and Circuit Court Judges, and anyone else under order of the court expressly permitting inspection. Either party to an action under this chapter or attorneys of a party to an action under this chapter shall be permitted to inspect the order entered in the action to which he is a party.

Section 29. KRS 406.061 is amended to read as follows:

To the extent necessary to conform to federal law, 42 U.S.C. sec. 666(a)(5)(I), except to the extent that it is required under Section 7 of the Constitution of Kentucky, no party shall be entitled to a trial by a jury in a paternity action~~Either party to an action commenced under the provisions of this chapter may demand a jury trial of the facts in issue, or the court upon its own motion may grant a jury trial, in accordance with the provisions of the Rules of Civil Procedure~~.

Section 30. KRS 406.091 is amended to read as follows:

- (1) ***An unchallenged acknowledgment of paternity shall be ratified under KRS Chapter 213 without the requirement for judicial or administrative proceedings.*** If a genetic test is required, the court shall direct that inherited characteristics be determined by appropriate testing procedures, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret results and to report to the court.
- (2) ***In a contested paternity case, the child and all other parties shall submit to genetic testing upon a request of any such party which shall be supported by a sworn statement of the party, except for good cause.***
- (3) Genetic test results are admissible and shall be weighed along with other evidence of the alleged father's paternity.
- (4)~~(3)~~ Any objection to genetic testing results shall be made in writing to the court within twenty (20) days ***of receipt of genetic test results***~~[before a hearing at which the results may be introduced into evidence].~~ If the results of genetic tests or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that an additional test be made by the same laboratory or independent laboratory at the expense of the party requesting additional testing. If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.
- (5)~~(4)~~ Verified documentation of the chain of custody in transmitting the blood specimens is competent evidence to establish the chain of custody.
- (6)~~(5)~~ A verified expert's report shall be admitted at trial unless the expert is called by a party or the court as a witness to testify to his findings.
- (7)~~(6)~~ ***Except where the Cabinet for Human Resources administratively orders genetic testing,*** all costs associated with genetic testing shall be paid by the parties in proportions determined by the court.
- (8) ***When administratively ordered, the cabinet shall pay the cost of genetic testing to establish paternity, subject to recoupment from the alleged father when paternity is established. The cabinet shall obtain additional testing in any case if an original test is contested, upon request and advance payment by the contestant.***

Section 31. KRS 427.120 is amended to read as follows:

No part of any police or firefighters' pension fund established in a city of the first, second or third class shall, before or after its order for distribution to any person entitled thereto, be seized or levied upon by any writ or decree for the payment of any debt, claim or judgment against the beneficiary of the fund, ***except for the payment of court or administratively ordered current child support, or child support owed, or to be owed.***

Section 32. KRS 427.125 is amended to read as follows:

No portion of a pension fund created under KRS 95.761 to 95.785 shall, before or after its order for distribution by the board of trustees to the persons entitled thereto, be held, seized, taken, subjected to or detained or levied upon by virtue of any attachments, execution, injunction, writ, interlocutory, or other order, or decree, or any process or proceeding whatever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand or judgment against the beneficiary of said fund, ***except for court or administratively ordered child support, or owed or to be owed child support,*** but said fund shall be held and distributed for the purpose of KRS 95.761 to 95.785, and for no other purpose whatever.

Section 33. KRS 67A.620 is amended to read as follows:

The right to a retirement annuity, disability annuity, survivor's annuity or benefit, death benefit, or any other benefit under the provision hereof, by whatever name called, or refund, is personal with the recipient thereof, and the assignment, garnishment, execution, or transfer of such benefit or any part thereof shall be void, except as herein provided. Any such annuity, benefit, or refund shall not answer for debts contracted by the person receiving the same, and it is the intention of this section that they shall not be attached or affected by any judicial proceeding, ***except for court or administratively ordered current child support, or owed child support, or to be owed child support.***

Section 34. KRS 95.620 is amended to read as follows:

- (1) Except *for court or administratively ordered current child support, or owed child support, or to be owed child support, and except* as provided in KRS 65.156 and subsections (2), (3) and (4) of this section, the policemen's and firefighters' pension fund in cities of the third or fourth class shall be held and distributed for the purpose of paying pensions and benefits, and for no other purpose.
- (2) From July 15, 1982, and thereafter, the board of trustees of the pension fund shall, upon the request of a member, refund a member's contributions, including contributions picked up by the employer pursuant to KRS 65.155, upon that member's withdrawal from service prior to qualifying for pension. The member shall be entitled to receive a refund of the amount of contributions made by the member, including contributions picked up by the employer pursuant to KRS 65.155, after the date of establishment, without interest.
- (3) Any member receiving a refund of contributions shall thereby ipso facto forfeit, waive, and relinquish all accrued rights and benefits in the system, including all credited and creditable service. The board may, in its discretion, regardless of cause, withhold payment of a refund for a period not to exceed six (6) months after receipt of an application from a member.
- (4) Any member who has received a refund shall be considered a new member upon subsequent reemployment if such person qualifies for membership under the provisions hereof. After the completion of at least five (5) years of continuous membership service following his latest reemployment, such member shall have the right to make a repayment to the system of the amount or amounts previously received as refund, including six percent (6%) interest from the dates of refund to the date of repayment. Such repayments shall not be picked up by the employer pursuant to KRS 65.155. Upon the restoration of such refunds, as herein provided, such member shall have reinstated to his account all credited service represented by the refunds of which repayment has been made. Repayment of refunds by any member shall include all refunds received by a member prior to the date of his last withdrawal from service and shall be made in a single sum.

Section 35. KRS 61.690 is amended to read as follows:

- (1) All retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and the accumulated contributions and cash securities in the funds created under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, are hereby exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, or any other process, and an assignment thereof shall not be enforceable in any court. Except retirement benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (2) A retirement allowance, a disability allowance, a member's accumulated contributions, or any other benefit under the system shall not be classified as marital property pursuant to KRS 403.190(1) in an action for dissolution of marriage if the property of the other party to the action is exempted from a marital property classification pursuant to KRS 161.700(2).
- (3) Qualified domestic relations *and child support orders for current, owed, or to be owed child support, [orders]* issued by a court *or administrative agency* shall be honored by the retirement systems if the orders are in compliance with the regulation adopted by the board pursuant to KRS 61.645(9)(e).

Section 36. KRS 161.700 is amended to read as follows:

- (1) The right of a teacher to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under the retirement system, and the money in the various funds of the retirement system are exempt from any state or municipal tax, are not subject to execution, garnishment, attachment, or other process, and are unassignable except as provided in this chapter, *and except for court or administratively ordered current child support, owed child support, or to be owed child support*. Except retirement benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (2) Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be classified as marital property pursuant to KRS 403.190(1). Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d).

Section 37. KRS 95.878 is amended to read as follows:

Except for court or administratively ordered current child support, owed child support, or to be owed child support, the right to a retirement annuity, disability annuity, survivors annuity or benefit, death benefit, or any other benefit under the provision hereof, by whatever name called, or refund, is personal with the recipient thereof, and the assignment, or transfer of such benefit or any part thereof shall be void, except as herein provided. Any such annuity, benefit, or refund shall not answer for debts contracted by the person receiving the same, and it is the intention of this section that they shall not be attached or affected by any judicial proceeding.

SECTION 38. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

It is the intent of the General Assembly that requirements relating to child support or paternity established by KRS Chapters 205, 403, 405, 406, and 407 shall be in compliance with the provisions of 42 U.S.C. sec. 651 et seq.

SECTION 39. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall have authority to issue an administrative subpoena commanding information and records relating to the establishment, enforcement, and collection of child support.*
- (2) *All public and private entities including financial institutions shall comply with a subpoena issued under this section within a reasonable time period. Financial institutions may deduct twenty dollars (\$20) from the account on which the subpoenaed information has been issued.*
- (3) *The cabinet may enforce compliance by filing an action in the Franklin Circuit Court.*
- (4) *The subpoena shall be issued by a person designated by the secretary.*

SECTION 40. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall request information from a certified consumer reporting agency only when a full credit report is needed for the purpose of establishing an individual's capacity to make child support payments or to determine the obligation amount, and paternity has been established or acknowledged.*
- (2) *The cabinet shall provide at least ten (10) days prior notice by certified mail to the obligor whose report shall be requested from a certified consumer reporting agency and inform the obligor of the methods available to contest the accuracy of the information in compliance with due process of law, and 15 U.S.C. sec. 1681(i).*
 - (a) *The report will be kept confidential and be used solely for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of the payments; and*
 - (b) *The report will not be used in connection with any other civil, administrative, or criminal proceeding or for any other purpose.*
- (3) *Methods by which an obligor may contest the accuracy of the information shall be set forth by administrative regulations promulgated by the cabinet.*

SECTION 41. A NEW SECTION OF KRS 405.405 TO 405.520 IS CREATED TO READ AS FOLLOWS:

- (1) *An employer or labor organization in the Commonwealth of Kentucky shall provide information to the Cabinet for Human Resources when that employer or labor organization hires an employee who resides or works in the Commonwealth, or rehires or permits the return to work of an employee who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, unless the reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission as determined by the secretary of human resources.*
- (2) *The employer shall provide the information within twenty (20) days of the hiring or return to work of the employee. The information shall include:*
 - (a) *The employee's name, address, and social security number; and*
 - (b) *The employer's name, address, and, if the employer has been assigned one, federal and state employer identification numbers.*
- (3) *An employer shall report the required information by submitting a copy of the employee's W-4 form or, at the option of the employer, an equivalent form provided by the Cabinet for Human Resources as prescribed by administrative regulation promulgated by the Cabinet for Human Resources in accordance with KRS Chapter 13A.*

- (4) *The Cabinet for Human Resources shall enter all new hire information into the database of the cabinet within five (5) business days.*
- (5) *An employer shall not be required to report the information when the hiring, rehiring, or returning to work involves:*
 - (a) *An employee to whom the employer pays wages of less than three hundred dollars (\$300) each month; or*
 - (b) *An employee who is under eighteen (18) years of age.*
- (6) *The Cabinet for Human Resources may promulgate administrative regulations in accordance with KRS Chapter 13A if the Cabinet for Human Resources determines exceptions are needed to reduce unnecessary or burdensome reporting or are needed to facilitate cost-effective operation of the cabinet under this section.*
- (7) *The Cabinet for Human Resources shall use the information collected pursuant to this section for the location of noncustodial parents, establishment, modification, and enforcement of child support and any other matter related to paternity or child support.*
- (8) *If the employer fails to report as required by this section, the Cabinet for Human Resources shall give the employer written notice of the provisions of this section, including the penalty for failure to report.*
- (9) *If the employer has not filed a report within twenty (20) days from the date that the written notice is sent to him, the Cabinet for Human Resources shall send a second written notice.*
- (10) *If the employer fails to file a W-4 or equivalent form within twenty (20) days from the date that the second written notice is sent, or supplies a false or incomplete report, and the failure is a result of a conspiracy between the employee and the employer to prevent the proper information from being filed within twenty (20) days from the date that the second written notice is sent, the Cabinet for Human Resources shall send the employer by certified mail, return receipt request, notice of an administrative fine. The fine shall be two hundred fifty dollars (\$250) per calendar month per person for any violation occurring after the second notice has been given, and continuing until a W-4 or equivalent form is received by the Cabinet for Human Resources. No fine shall be imposed for any period of less than one (1) full calendar month.*
- (11) *The employer shall have ten (10) days after receipt of the administrative fine notice to request a hearing before the Cabinet for Human Resources on whether the administrative fine was properly assessed. If a timely request for a hearing is received, the Cabinet for Human Resources shall schedule and conduct a hearing in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.*

SECTION 42. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *Financial institutions doing business in the Commonwealth shall enter into cooperative agreements with the cabinet or its designee to operate a data match system. Pursuant to the agreements, the financial institution shall be required to provide identifying information each calendar quarter for each obligated parent who maintains an account at the institution and who owes an arrearage, and who shall be identified by the cabinet.*
- (2) *The cooperative agreement shall include provisions for financial institutions to encumber or surrender assets held by the institutions on behalf of any obligated parent who is subject to a child support lien pursuant to Section 48 of this Act.*
- (3) *The financial institution shall be paid a fee for conducting data matches from the obligor's account, not to exceed the actual cost.*
- (4) *No liability shall arise for the Commonwealth or the financial institution under this section with respect to any disclosure of financial records for the establishment, modification, or enforcement of a child support obligation of the individual.*
- (5) *The financial institution shall not be liable for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the cabinet, for any other action taken in good faith to comply with the requirement of this section.*
- (6) *"Financial institution" means:*

- (a) *A depository institution and an institution-affiliated party as defined by 12 U.S.C. sec. 1813(c) and (u);*
- (b) *Any federal or state credit union, including an institution-affiliated party of that credit union, as defined by 12 U.S.C. sec. 1752 and 12 U.S.C. sec. 1786(r);*
- (c) *Any benefit association, insurance company, safe deposit company, money market mutual fund, brokerage firm, trust company, or similar entity authorized to do business in the Commonwealth.*

(7) *The cabinet may promulgate administrative regulations to implement the requirements of this section.*

SECTION 43. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Human Resources shall design, develop, implement, and operate a wage reporting and financial institution match system for the purpose of identifying the financial assets of individuals as identified by cabinet agencies, for the purpose of administering the child support enforcement program of the Commonwealth. The Cabinet for Human Resources may promulgate administrative regulations to implement this section.*
- (2) *Each financial institution in the Commonwealth shall enter into an agreement with the Cabinet for Human Resources to develop and operate a data match system to facilitate identification of financial assets of individuals identified by cabinet agencies for the purpose of administering the child support enforcement programs of the Commonwealth.*

SECTION 44. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

The cabinet may coordinate with other state agencies and cabinets to develop a system for the effective and efficient collection of child support payments.

SECTION 45. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

No employee or agent of the Commonwealth shall divulge any information referred to in KRS 205.715 to 205.800, except in the manner prescribed in KRS 205.715 to 205.800 to any public or private agency or individual; provided, however, that information may be disclosed and shared by and between any employee of the Cabinet for Human Resources and any designee, local administering agency, or any local housing authority for the purpose of verifying eligibility and detecting and preventing fraud, error, and abuse in the programs included in the reporting system. Unauthorized disclosure of any information shall be a violation that is punishable by a fine of one hundred dollars (\$100) per offense; except that the unauthorized release of the information about any individual shall be a separate offense from information released about any other individual.

SECTION 46. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

Nothing in KRS 205.715 to 205.800 shall be construed to prevent the release by the Cabinet for Human Resources of wage and financial institution information data to the United States Social Security Administration or the agencies of other states who administer federally funded welfare and unemployment compensation programs.

SECTION 47. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *A financial institution furnishing a report or providing asset information of an individual owing past due support to the Cabinet for Human Resources under either subsection (1) or subsection (2) of Section 43 of this Act shall not disclose to a depositor or an account holder that the name of that person has been received from or furnished to the Cabinet for Human Resources. An institution may disclose to its depositors or account holder that under the financial institution match system the Cabinet for Human Resources has the authority to request certain identifying information on certain depositors or account holders.*
- (2) *If a financial institution willfully violates the provisions of this section by releasing asset information of an individual owing child support to the Cabinet for Human Resources, the institution shall pay to the Cabinet for Human Resources the lesser of one thousand dollars (\$1000) or the amount on deposit or in the account of the person to whom the disclosure was made.*
- (3) *A financial institution shall incur no obligation or liability to a depositor or account holder or any other person arising from the furnishing of a report or information to the Cabinet for Human Resources under Section 43 of this Act, or from the failure to disclose to a depositor or account holder that the name of the*

person was included in a list furnished by the financial institution to the Cabinet for Human Resources, or in a report furnished by the financial institution to the Cabinet for Human Resources.

- (4) *Regardless of whether the action was specifically authorized or described in KRS 205.715 to 205.800 or an agreement, a financial institution shall not be liable for providing or disclosing of any information; for encumbering, holding, refusing to release, surrendering or transferring any account balance or asset; or any other action taken by a financial institution pursuant to this Act or agreement as required by Section 43 of this Act.*
- (5) *A financial institution shall not give notice to an account holder or customer of the financial institution that the financial institution has provided information or taken any action pursuant to KRS 205.715 to 205.800 or the agreement and shall not be liable for failure to provide that notice; provided however, that a financial institution may disclose to its depositors or account holders that, under the data match system, the cabinet has the authority to request certain identifying information on certain depositors or account holders. The Cabinet shall notify, not less than annually, affected depositors or account holders who have not otherwise received notification.*
- (6) *A financial institution may charge an account levied on by the Cabinet for Human Resources a fee of not more than twenty dollars (\$20) which may be deducted from the account prior to remitting any funds to the Cabinet for Human Resources.*

SECTION 48. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *When the cabinet determines that the name, record address, and either social security number or taxpayer identification number of an account with a financial institution matches the name, record address, and either the social security number or taxpayer identification number of a noncustodial parent who owes past due support, a lien or levy shall, subject to the provision of subsection (3) of this section, arise against the assets in the account at the time of receipt of the notice by the financial institution at which the account is maintained. The cabinet shall provide a notice of the match, the lien or levy arising therefrom, and the action to be taken to block or encumber the account with the lien or levy for child support payment to the individual identified and the financial institution holding the account. The financial institution shall have no obligation to hold, encumber, or surrender assets in any account based on a match until it is served with a notice of lien or order to withhold and deliver.*
- (2) *The cabinet shall provide notice to the individual subject to a child support lien or levy on assets in an account held by a financial institution by sending them a notice of the lien or levy to withhold and deliver within two (2) business days of the date that notice is sent to the financial institution.*
- (3) *A financial institution ordered to block or encumber an account shall be entitled to collect its normally scheduled account activity fees to maintain the account during the period of time the account is blocked or encumbered.*
- (4) *Any levy issued on an identified account by the Cabinet for Human Resources for past due child support shall have first priority over any other lien or levy issued by the Revenue Cabinet or any other agency, corporation, or association.*

SECTION 49. A NEW SECTION OF KRS 205.715 TO 205.800 IS CREATED TO READ AS FOLLOWS:

- (1) *An interstate lien may be created and a notice of interstate lien may be filed on all of an obligor's real and personal property that is located in another state to enforce a child support obligation which has been judicially or administratively established in the Commonwealth. The lien shall be filed in the appropriate offices of the state or county where the property of the obligor is located. All aspects of the lien, including its priority and enforcement, are governed by the law of the state where the property is located and shall remain until released by the authorized agent of the party which filed the lien, or in accordance with the laws of the state of filing.*
- (2) *A lien to enforce a child support obligation which is created in another state shall be enforceable against all real and personal property of the obligor located in this state upon the filing of a notice of interstate lien with the county clerk of any county or counties in which the obligor has interest in property, and the notice shall be recorded in the same manner as notices of lis pendens. The recordation shall constitute notice of both the original amount of child support due and all subsequent amounts due by the same obligor. Upon request, an authorized agent of the party which filed the notice of interstate lien shall disclose the specific amount of liability to any interested party legally entitled to that information. The notice, when so filed, shall be conclusive notice to all persons of the lien on the property having legal situs in that county. The*

lien shall commence as to property of the obligor located in the Commonwealth at the time the notice is filed and shall continue until the original amount of child support due and any subsequent amounts, including interest, penalties, or fees, are fully paid. The lien shall attach to all interest in the real and personal property in the Commonwealth, then owned or subsequently acquired by the obligor. The clerk shall be entitled to a fee of ten dollars (\$10) for filing the lien and the same fee for releasing the lien.

- (3) *A child support lien created in another state shall be on a parity with state, county, and municipal ad valorem tax liens, and superior to the lien of any mortgage or other encumbrance created after the notice of interstate lien is recorded; however, it shall be subordinate to any child support lien which has been filed by the cabinet as to the same obligor and property.*
- (4) *The authority by which the child support lien is created in another state and filed in this state shall be certified on the notice of interstate lien by a person who is authorized to certify on behalf of the party that is filing the notice of interstate lien.*
- (5) *The secretary of the cabinet may promulgate administrative regulations under the provisions of KRS Chapter 13A to implement this section.*

Section 50. KRS 403.215 is amended to read as follows:

After July 15, 1990, any new or modified order or decree which contains provisions for the support of a minor child or minor children, shall provide for a wage assignment which shall begin immediately except for good cause shown, **and which shall be paid based upon the payment schedule of wages of the employer to whom the wage assignment is directed, and at a minimum, on a monthly basis.** If good cause is shown, the wage assignment shall take effect when an arrearage accrues that is equal to the amount of support payable for one (1) month, pursuant to KRS 405.465.

Section 51. KRS 405.991 is amended to read as follows:

- (1) Any person or corporation violating the provisions of KRS 405.465 or 405.467 shall be fined not more than five hundred dollars (\$500) or be imprisoned in the county jail for not more than one (1) year, or both.
- (2) A person who violates KRS 405.490(2) shall pay the cabinet the value of the property ordered to be held or the delinquent child support, whichever is lesser, plus interest thereon at the legal rate for judgments, court costs and reasonable attorney's fees.
- (3) A person who violates KRS 405.430(12)~~((5))~~ shall be guilty of a Class A misdemeanor and, in addition to any other penalties provided by law, shall be responsible for payment of any difference between the amount of child support calculated using the correct information and the prior calculation using the false information.

Section 52. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, references in this Act to the Cabinet for Human Resources shall be codified as the Cabinet for Families and Children, unless the context clearly requires otherwise.

Approved April 2, 1998

CHAPTER 256

(SB 202)

AN ACT relating to postsecondary education and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the intent of the General Assembly to establish a scholarship program to provide eligible Kentucky students the opportunity to attend an accredited osteopathic school of medicine located in the Commonwealth and become certified practitioners rendering medical service in the Commonwealth.*
- (2) *The Kentucky Higher Education Assistance Authority may award scholarships, to the extent funds are available for that purpose, to persons who declare an intent to become osteopaths and practice in the Commonwealth and who are eligible under subsection (4) of this section.*

- (3) *The authority may award scholarships to students who meet the following criteria:*
- (a) *Kentucky residents who are United States citizens as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;*
 - (b) *Students who are enrolled or accepted for enrollment in an eligible program of study accredited by the Bureau of Professional Education of the American Osteopathy Association or its successor, on a full-time basis, or eligible students have a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. sec. 12131 et seq., certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability;*
 - (c) *Students who agree to render one (1) year of qualified service in the Commonwealth for each year the scholarship was awarded. "Qualified service" means a full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in the fields of family practice, general practice, general internal medicine, general pediatrics, general obstetrics, or gynecology, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. sec. 12131 et seq., whose disability, certified by another licensed physician, prevents him or her from practicing full-time, shall be deemed to perform qualified service by practicing the maximum time permitted by the attending physician; and*
 - (d) *Students who sign a promissory note as evidence of the scholarship awarded and the obligation to repay the scholarship amount or render medical service as agreed in lieu of payment.*
- (4) *The amount of the scholarship awarded to an eligible student by the authority shall be equal to the difference between the prevailing amount charged for in-state tuition at the University of Kentucky School of Medicine and the University of Louisville School of Medicine and the prevailing amount charged for tuition at the osteopathic school of medicine in which the student is enrolled.*
- (5) *The authority shall require a promissory note to be executed by the student as evidence of the obligation. The recipient shall render one (1) year of qualified service for each year the scholarship was awarded. Upon completion of each year of qualified service, the authority shall cancel the appropriate number of promissory notes. Promissory notes shall be canceled by qualified service in the order in which the promissory notes were executed. Service credit shall not include residency service. In the event a recipient fails to complete an eligible program of study, or fails to render qualified medical service as a primary care physician as agreed in subsection (3) of this section, the recipient shall be liable for the total repayment of the amount of the scholarship awarded.*
- (6) *A scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.*
- (7) *A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of executing the promissory note.*
- (8) *Failure to meet repayment obligations imposed by this section shall be cause for the revocation of the scholarship recipient's license to practice medicine, subject to the procedures set forth in KRS Chapter 311.*
- (9) *Notwithstanding KRS 164.753(3), the authority shall establish by administrative regulation procedures for the administration of this program, including the execution of appropriate contracts and promissory notes, cancellation of the obligation, repayment of outstanding debt, and the priority of awarding scholarships if funds are insufficient to honor all requests.*
- (10) *Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.*
- (11) (a) *The "Osteopathic Medicine Scholarship Program" is hereby created as a special trust fund in the State Treasury administered by the Kentucky Higher Education Assistance Authority for the purpose of providing funds for scholarships to eligible students studying osteopathic medicine in schools in the Commonwealth.*

- (b) *Funding shall be transferred to the special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each Kentucky resident eligible under subsection (3) of this section to be awarded a scholarship in the amount established under subsection (4) of this section. No more than four percent (4%) of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. To the extent this appropriation and other funds are available, the authority shall award scholarships to all renewal applicants and eligible students in accordance with the formula for determining the amount of the scholarship award established in this section.*
- (c) *The trust fund may also receive state appropriations, gifts, and grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this section.*
- (12) *On or before August 1 of each year, sixty-five percent (65%) of the amount of funding provided in subsection (11)(b) of this section shall be transferred to the special trust fund and the remaining thirty-five percent (35%) shall be transferred on or before December 1 of each year. The revenue transfers shall be based upon the revenue estimates prevailing at the time each transfer is due.*
- (13) *The calculation and transfer of funds under subsection (11) of this section shall be made only after the quarterly installment of the annual nineteen million dollars (\$19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any statute to the contrary, no funds appropriated by the General Assembly for the purposes of student financial assistance shall be awarded or disbursed to students enrolled in a program of study at a school of osteopathic medicine or a college, business school, school of nursing, or vocational school, as defined in KRS 164.740, located within the Commonwealth, unless the educational institution:

- (1) *Submits existing student grievance policies as a licensed institution to the Council on Postsecondary Education for evaluation and institutional revision as necessary to assure due process procedures are consistent with the Constitution of the United States and the Constitution of Kentucky; and*
- (2) *Awards at least as much student financial assistance from institutional funds to residents of the Commonwealth as the institution awards from institutional funds to nonresidents of the Commonwealth for undergraduate programs of study, excluding reciprocal tuition agreements and athletic scholarships or provides a report to the Kentucky Higher Education Assistance Authority on its headcount enrollment, both resident and nonresident, and the amount of student financial assistance awarded from institutional funds to residents and nonresidents.*

Approved April 2, 1998

CHAPTER 257

(HB 779)

AN ACT relating to education.

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

Section 1. KRS 156.040 is amended to read as follows:

~~{(1)—}~~The members of the Kentucky Board of Education shall have the same qualifications as school board members, except that members shall be at least thirty (30) years of age **and shall have at least an associate degree or its equivalent**. Appointments shall be made without reference to occupation, political affiliation, or similar considerations. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.

~~{(2) The members of the Kentucky Board of Education shall have the same qualifications as local board members pursuant to KRS 160.180, except the members of the Kentucky Board of Education shall be at least thirty (30) years of age and shall have a bachelor's degree from an accredited college or university.}~~

Section 2. KRS 160.352 is amended to read as follows:

- (1) For purposes of this section the term "minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in a local school district.
- (2) Each board of education shall appoint a superintendent of schools after receiving the recommendations of a screening committee. A screening committee shall be established within thirty (30) days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent, except that when the board determines a vacancy will not occur before six (6) months from the date of determination, the board shall establish a screening committee at least ninety (90) days before the first date on which the position may be filled.
- (3) A screening committee shall be composed of:
 - (a) Two (2) teachers, elected by the teachers in the district;
 - (b) One (1) board of education member, appointed by the board chairman;
 - (c) One (1) principal, elected by the principals in the district;
 - (d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district;~~and~~
 - (e) **One (1) classified employee, elected by the classified employees in the district; and**
 - (f) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more, as determined by the enrollment on the preceding October 1, the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the parents in an election conducted by the local school board. Parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.
- (4) Prior to appointing a superintendent of schools, the board of education shall consider the recommendations of the screening committee, but the board shall not be required to appoint a superintendent from the committee's recommendations.

Approved April 2, 1998

CHAPTER 258

(HB 13)

AN ACT relating to marriage.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 402 IS CREATED TO READ AS FOLLOWS:

- (1) ***A marriage between members of the same sex which occurs in another jurisdiction shall be void in Kentucky.***
- (2) ***Any rights granted by virtue of the marriage, or its termination, shall be unenforceable in Kentucky courts.***

Section 2. KRS 402.020 is amended to read as follows:

- (1) Marriage is prohibited and void:
 - (a) With a person who has been adjudged mentally disabled by a court of competent jurisdiction;
 - (b) Where there is a husband or wife living, from whom the person marrying has not been divorced;
 - (c) When not solemnized or contracted in the presence of an authorized person or society;
 - (d) ***Between members of the same sex;***

(e) ***Between more than two (2) persons; and***

~~(f)(4)~~ When at the time of marriage, the person is under eighteen (18) years of age, if the marriage is without the consent of:

1. The father or the mother of the person under eighteen (18), if the parents are married, the parents are not legally separated, no legal guardian has been appointed for the person under eighteen (18), and no court order has been issued granting custody of the person under eighteen (18) to a party other than the father or mother;
2. Both the father and the mother, if both be living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) has been issued and is in effect;
3. The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) was issued prior to the death of either the father or mother, which order remains in effect;
4. The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the person under eighteen (18) has not been ordered; or
5. Another person having lawful custodial charge of the person under eighteen (18), ~~but~~;

~~Provided, however, that~~ in case of pregnancy, the male and female, or either of them, under the ages ~~herein~~ specified ***in this paragraph*** may apply to a District Court Judge for permission to marry, which application may be granted, in the discretion of the judge. There shall be a fee of five dollars (\$5) for hearing each such application. ~~†~~

- (2) For purposes of this section, "parent," "father," or "mother" means the natural parent, father, or mother of a child under eighteen (18) unless an adoption takes place pursuant to legal process, in which case the adoptive parent, father, or mother shall be considered the parent, father, or mother to the exclusion of the natural parent, father, or mother, as applicable.

Section 3. KRS 402.040 is amended to read as follows:

- (1) If any resident of this state marries in another state, the marriage shall be valid here if valid in the state where solemnized, ***unless the marriage is against Kentucky public policy.***
- (2) ***A marriage between members of the same sex is against Kentucky public policy and shall be subject to the prohibitions established in Section 1 of this Act.***

SECTION 4. A NEW SECTION OF KRS CHAPTER 402 IS CREATED TO READ AS FOLLOWS:

As used and recognized in the law of the Commonwealth, "marriage" refers only to the civil status, condition, or relation of one (1) man and one (1) woman united in law for life, for the discharge to each other and the community of the duties legally incumbent upon those whose association is founded on the distinction of sex.

Section 5. KRS 402.030 is amended to read as follows:

Courts having general jurisdiction may declare void any marriage obtained by force or fraud or, at the instance of any next friend, may declare any marriage void where the person was under eighteen (18) years of age at the time of the marriage, and the marriage was without the consent required by KRS ~~402.020(1)(e)~~~~402.020(1)(d)~~ and has not been ratified by cohabitation after that age.

Section 6. KRS 402.210 is amended to read as follows:

If either of the parties is under eighteen (18) years of age and not before married, no license shall issue without the consent required by KRS ~~402.020(1)(e)~~~~402.020(1)(d)~~, personally given or certified in writing to the clerk over the signature of the person consenting in accordance with KRS ~~402.020(1)(e)~~~~402.020(1)(d)~~, attested by two (2) subscribing witnesses and proved by the oath of one (1) of the witnesses, administered by the clerk. If the parties are personally unknown to the clerk, a license shall not issue until bond, with good surety, in the penalty of one hundred dollars (\$100) is given to the Commonwealth, with condition that there is no lawful cause to obstruct the marriage.

Section 7. KRS 402.260 is amended to read as follows:

If any person under eighteen (18) years of age marries without the consent required by KRS ~~402.020(1)(e)~~~~[402.020(1)(d)]~~, the court having general jurisdiction in the county of his residence shall, on the petition of a next friend, commit his estate to a receiver, who, upon giving bond, shall hold his estate and, after deducting a reasonable compensation for his services, pay out the rents and profits to his separate use during his infancy, under the direction of the court. When the person arrives at the age of eighteen (18), the receiver shall deliver his estate to him, unless the court considers it for his benefit to continue it in the hands of the receiver.

Approved April 2, 1998

CHAPTER 259

(HB 703)

AN ACT relating to regulation of athlete agents.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act, unless the context requires otherwise:

- (1) *"Agent contract" means any contract or agreement pursuant to which an athlete authorizes or empowers an athlete agent to negotiate or solicit on behalf of the athlete with one (1) or more professional sports teams for the employment of the athlete by one (1) or more professional sports teams, or to negotiate or solicit on behalf of the athlete for the employment of the athlete as a professional athlete;*
- (2) *"Athlete" means a student athlete or any person who is employed or seeks to be employed under a professional sports services contract with a professional sports team or as a professional athlete;*
- (3) *"Athlete agent" means:*
 - (a) *Any person who, as part of a business enterprise or as an independent contractor, directly or indirectly recruits or solicits any athlete to enter into any agent contract or professional sports services contract, or for a fee procures, offers, promises, or attempts to obtain employment for any athlete with a professional sports team or as a professional athlete;*
 - (b) *Any member of the state bar of Kentucky or the bar of any other jurisdiction when advising athlete clients and when attempting to negotiate a professional sports services contract for that client; or*
 - (c) *Other than for registration purposes, any agent, subagent, employee, or runner of an athlete agent who receives compensation directly or indirectly to recruit any athlete to enter into any contract or negotiates any contract, or for a fee procures, offers, promises, or attempts to obtain employment for any athlete with a professional sports team or as a professional athlete.*

Athlete agent does not include an employee or other representative of a professional sports team;
- (4) *"Division" means the Division of Occupations and Professions;*
- (5) *"Player association" or "buyer organization" means any association or organization that represents professional athletes in collective bargaining with management of professional sports teams;*
- (6) *"Professional sports services contract" means a contract or agreement, written or oral, pursuant to which an athlete is employed or agrees to render services as a player on a professional sports team or as a professional athlete; and*
- (7) *"Student athlete" means any one of the following:*
 - (a) *A student who resides in Kentucky and has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics program and is eligible to do so;*
 - (b) *A student who does not reside in Kentucky, but has informed, in writing, a college or university in Kentucky of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics program and is eligible to do so; or*
 - (c) *A student who is enrolled and participates in a sport at a secondary school, college, or university in Kentucky.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The Division of Occupations and Professions shall provide administrative services and logistical support as may be necessary to carry out the provisions of Sections 1 to 9 of this Act. The cost of these services shall be paid from moneys deposited in the revolving fund established in subsection (2) of this section.*
- (2) *All registration fees, other moneys received by the division under the provisions of Sections 1 to 9 of this Act, and accrued interest shall be deposited in the State Treasury to the credit of a revolving fund. The revolving fund shall be used only for valid expenditures incurred by the division in the registration and regulation of athlete agents. No part of this revolving fund shall revert to the general fund of the Commonwealth.*
- (3) *The division shall publish annually a directory of all athlete agents registered in the Commonwealth of Kentucky.*
- (4) *The division may promulgate administrative regulations as may be necessary to carry out the provisions of Sections 1 to 9 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall engage in business as an athlete agent or represent himself or herself as an athlete agent unless he or she is registered with the Division of Occupations and Professions under this section.*
- (2) *To register as an athlete agent, a person shall:*
 - (a) *Complete and submit to the division an application on forms provided by the division;*
 - (b) *Pay a registration fee and an annual renewal fee to be established by the division but not to exceed three hundred dollars (\$300);*
 - (c) *Submit evidence to the division that one (1) of the following is in full force and effect:*
 1. *A surety bond payable to the State Treasurer in the sum of one hundred thousand dollars (\$100,000); or*
 2. *Malpractice insurance in effect with a minimum of one hundred thousand dollars (\$100,000) coverage per incident; or*
 3. *Cash, a certificate of deposit, bearer bonds, other negotiable instruments, or an assigned savings account in the amount of one hundred thousand dollars (\$100,000) deposited with or assigned to the commission; and*
 4. *Affirm in the application that he or she will comply with the provisions of Sections 1 to 9 of this Act and all administrative regulations duly promulgated thereunder.*
- (3) *A person shall be denied registration as an athlete agent if he or she:*
 - (a) *Fails to comply with subsection (2) of this section;*
 - (b) *Has been convicted within the last ten (10) years of any felony or any misdemeanor that would render the applicant unfit to be an athlete agent; or*
 - (c) *Has had a license, certificate, or registration denied or revoked by any other state for reasons that would constitute grounds for denial or revocation of registration in Kentucky.*
- (4) *A registered athlete agent shall establish complete financial and business records and maintain them for a period of at least four (4) years. All financial and business records shall be made available to division staff upon request and at reasonable hours.*
- (5) *A registered athlete agent shall submit to the division annual contact reports on his or her activities within the Commonwealth.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

No athlete agent shall engage in the following acts:

- (1) *Making false or misleading statements of a material nature in his or her application for registration.*

- (2) *Misappropriating funds, or engaging in other specific acts such as embezzlement, theft, or fraud, which would render him or her unfit to serve in a fiduciary capacity.*
- (3) *Engaging in other conduct that significantly impacts adversely on his or her credibility, integrity, or competence to serve in a fiduciary capacity, including failure to disclose to a student athlete:*
 - (a) *Any financial interest in any entity that is directly involved in the same sport as a student athlete with whom he or she has entered into a contractual relationship; or*
 - (b) *Any financial interest that the athlete agent has in any entity in which he or she has advised a student athlete to invest.*
- (4) *Engaging in conduct which violates or causes a student athlete to violate any rule or regulation promulgated by an intercollegiate sports governing body.*
- (5) *Failure to include the agent's name in any advertising relating to the business of an athlete agent. Advertising shall not include clothing or novelty items.*
- (6) *Publishing or causing to be published false or misleading information or advertisements, or giving any false information or making false promises to a student athlete concerning employment or financial services.*
- (7) *Offering anything of value to a student athlete or to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete. Negotiation regarding the agent's fee shall not, however, be considered an inducement.*
- (8) *Accepting as a client a student athlete referred by, or in exchange for, any consideration made to an employee of, or a coach for, a college or university.*
- (9) *Committing mismanagement or misconduct as an agent which causes financial harm to a student athlete or college or university.*
- (10) *Sending a student athlete written materials without simultaneously sending an identical copy of the written materials to the athletics director, or the director's designee, of the college or university in which the student athlete is enrolled or to which the student athlete has provided written intent to participate in intercollegiate athletics.*
- (11) *Contacting a student athlete without having given prior notice to the college or university in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate athletics.*
- (12) *Engaging in conduct which results in an athlete losing eligibility to participate in intercollegiate athletics as a member of a sports team of an institution of higher education.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this section, all contracts to be utilized by athlete agents shall contain in prominent type the following: "This athlete agent is registered with the Kentucky Division of Occupations and Professions. Registration does not imply approval by the division of the terms and conditions of this contract or the competence of the athlete agent."*
- (2) *An athlete agent who negotiates or enters into an oral or written agent contract with a student athlete or provides any monetary or in-kind benefits to a student athlete who is subject to the rules and regulations of an intercollegiate sports governing body shall notify the athletic director or the president of the college or university in which the student athlete is enrolled that the athlete agent negotiated or has entered into a contract or has provided monetary or in-kind benefits to a student athlete. Written notification of the contract, regardless of the legal enforceability of the contract under this chapter or any other provision of law, or of accepting any benefits from an athlete agent shall be given before the student athlete practices for, or participates in, an athletic event on behalf of a college or university or within seventy-two (72) hours after entering into the contract or providing the benefits, whichever occurs first.*
- (3) *An agent contract between a student athlete and an athlete agent shall have a notice printed near the space for the student athlete's signature which shall contain the following statement in ten (10) point bold face type:*

"Warning: If you as a student athlete sign this contract, you may lose your eligibility to compete in intercollegiate athletics. Under Kentucky law, you are required to notify the athletic director or president or

your college or university in writing before practicing for, or participating in, an athletic event on behalf of a college or university or within seventy-two (72) hours after entering into this contract, whichever occurs first. Failure to provide this notice is a criminal offense. Do not sign this contract until you have read it and filled in any blank spaces. You may cancel this contract by notifying the athlete agent in writing of your desire to cancel not later than the fifteenth day after the date you sign this contract. However, even if you cancel this contract, the intercollegiate athletic association or conference to which your college or university belongs may not restore your eligibility to participate in intercollegiate athletics."

- (4) *An agent contract which does not meet the requirements of subsections (1) and (3) of this section is void and unenforceable.*
- (5) *Postdating of agent contracts is prohibited, and a postdated contract is void and unenforceable. Subsections (1) and (3) of this section are applicable to postdated contracts even though these contracts may be void and unenforceable. Execution of a postdated contract is a violation of this section, and an athlete agent committing the violation is subject to the penalty provisions of Sections 8 and 9 of this Act. A student athlete committing the violation is subject to the penalty provisions of subsection (4) of Section 9 of this Act.*
- (6) *Within fifteen (15) days after the date on which the contractual relationship between the athlete agent and the student athlete arises or after notification of the contractual relationship is received by the athletic director or president of the college or university in which the student is enrolled, whichever occurs later, the student athlete has the right to rescind the contract or any contractual relationship with the athlete agent by giving notice in writing of his or her intent to rescind. The rescission is effective upon repayment by the student athlete to the athlete agent of any monetary amounts paid to the student athlete by the athlete agent, exclusive of travel, lodging, meals, and entertainment, or reimbursement for these items, furnished by the athlete agent to the student athlete. The student athlete may not effect a waiver of his or her right to rescind, and an attempt to do so is prohibited and unenforceable.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *A student athlete who is subject to the rules and regulations of an intercollegiate sports governing body, who has not competed in his or her last intercollegiate contest, including postseason games, for the applicable sport, and who negotiates for or enters into an oral or written agent contract with an athlete agent or a contract under which a student athlete is employed as a professional athlete, or accepts any monetary or in-kind benefit from an athlete agent, shall notify the athletic director or the president of the college or university in which he or she is enrolled that he or she has commenced negotiations or entered into a contract or has accepted these benefits. Written notification of negotiation or entering into a contract, regardless of the legal enforceability of the contract under this chapter or any other provision of law, or accepting any benefits from an athlete agent shall be given before practicing for or participating in an athletic event on behalf of a college or university within seventy-two (72) hours after commencing negotiations or entering into the contract, whichever occurs first.*
- (2) *In addition to any other penalty of law provided, a student athlete who fails to provide this notification shall perform a minimum of seventy (70) hours of community service.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *A student athlete and athlete agent who negotiate or enter into an agent contract or accept any monetary or in-kind benefits and fail to provide the notification required by this section are liable for actual damages to the college or university in which the student athlete is enrolled that results from the student athlete's subsequent ineligibility.*
- (2) *For purposes of subsection (1) of this section, a college or university suffers actual damages if, because of activities of the person, the college or university is penalized or is disqualified or suspended from participation in intercollegiate athletics by a national association for the promotion and regulation of intercollegiate athletics, by an intercollegiate athletic conference, or by self-imposition and, because of that penalty, disqualification, or suspension, one of the following occurs to the institution:*
 - (a) *Loses revenue from media coverage of a sports contest;*
 - (b) *Loses the right to grant an athletic scholarship;*
 - (c) *Loses the right to recruit an athlete;*
 - (d) *Is prohibited from participating in postseason athletic competition;*

- (e) *Forfeits an athletic contest; or*
 - (f) *Suffers an adverse financial impact.*
- (3) *An institution that prevails in a suit brought under this section may recover the following:*
- (a) *Actual damages;*
 - (b) *Punitive damages;*
 - (c) *Court costs; and*
 - (d) *Reasonable attorney's fees.*
- (4) *In actions seeking relief under this section, the claim shall not have been considered as having accrued until the discovery by the aggrieved college or university of the alleged violation by the student athlete or the athlete agent, after which the college or university shall have two (2) years to bring an action.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Any complaint against an athlete agent shall be referred to the appropriate college or university or athletic regulatory body for review and investigation. If upon investigation an athlete agent has been found to have committed a violation of Sections 1 to 9 of this Act or any administrative regulation promulgated thereunder, the college or university or athletic regulatory agency involved may recommend to the division that the athlete agent's registration be suspended or revoked. Upon receipt of that recommendation, the division shall take action with the type of action to be commensurate with the nature and severity of the violation. Administrative action authorized in this section shall be in addition to any criminal penalties provided in Section 9 of this Act or under other provisions of law.*
- (2) *Any suspension or revocation imposed by the division under this section may be appealed by the aggrieved party within thirty (30) days of receipt of notice, and upon appeal an administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. In an administrative hearing conducted under this subsection, the responsibility for presenting the case in support of the suspension or revocation shall be the responsibility of the college or university or athletic regulatory agency upon whose recommendation the action was taken. Upon appeal, a disciplinary action may be stayed pending final disposition of the appeal, except for denial of registration or an emergency suspension imposed under KRS 13B.125, but only if the division determines, with the advice of the affected college or university or athletic regulatory agency, that a stay does not pose a threat to the honesty and integrity of intercollegiate sports in Kentucky, or cause damage to any college or university in Kentucky.*
- (3) *The suspension of a registration shall be for a specified period of time not to exceed two (2) years. Revocation shall not be time specific, and an athlete agent may apply for reinstatement but not within a period of three (3) years from the date of revocation. Reinstatement shall be based on the fitness of the applicant to perform in accordance with the provisions of Sections 1 to 9 of this Act and administrative regulations promulgated thereunder, and an affirmative recommendation from the college or university or athletic regulatory agency that precipitated the revocation.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who engages in the business of an athlete agent or represents himself or herself as an athlete agent without being registered in accordance with Sections 1 to 8 of this Act shall be guilty of a Class A misdemeanor.*
- (2) *Any registered athlete agent who knowingly and willfully commits a prohibited act contained in Section 4 of this Act shall be guilty of a Class D felony.*
- (3) *Any registered athlete agent who knowingly and willfully violates any provision of Section 5 of this Act shall be guilty of a Class D felony.*
- (4) *A student athlete who knowingly and willfully violates any provision of Section 6 of this Act or subsection (5) of Section 5 of this Act shall be guilty of a Class A misdemeanor.*
- (5) *Any registered athlete agent or athlete who fails to make restitution to a college or university that prevails in a suit brought under Section 7 of this Act shall be guilty of a Class D felony.*

Section 10. KRS 518.010 is amended to read as follows:

The following definitions apply in this chapter, unless the context otherwise requires:

- (1) ~~"Agent contract" means any contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one (1) or more professional sports teams for the employment of the person as a professional athlete.~~
- (2) "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.
- (3) ~~"Contractual relationship" means an agreement between a sports agent and student athlete under which the sports agent agrees to:~~
- (a) ~~Obtain or attempt to obtain employment for the student athlete with a professional sports team or as a professional athlete;~~
 - (b) ~~Provide loans, advances of money, services, or other material goods to further the student athlete's pursuit of a career in professional sports; or~~
 - (c) ~~Represent the student athlete in any manner related to the student athlete's pursuit of a career in professional sports or as a professional athlete.~~
- (4) ~~"Eligibility" means the period of time during which a student athlete is enrolled as a student at an institution and is permitted to compete in intercollegiate athletic events. A student athlete shall remain eligible unless he is rendered ineligible or declares his intent in writing, to forego any remaining eligibility.]~~
- (2)(5) "Event" means a sports contest or other public performance to which the general public is not admitted without consideration.
- (6) ~~"Institution" means a public or private institution that offers educational services at or beyond the secondary level.~~
- (7) ~~"Professional sport services contract" means a contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sports team or as a professional athlete.]~~
- (3)(8) "Public performance" means any form of entertainment other than a sports contest involving machines, persons, animals, or objects that is viewed by the public.
- (9) ~~"Sports agent" means a person who solicits, personally or through an agent or employee, a student athlete to enter into a contractual relationship. "Sports agent" does not include an attorney acting as legal counsel for the student athlete.]~~
- (4)(10) "Sports contest" means any professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, animals, or objects that is viewed by the public.
- (5)(11) "Sports official" means any person who acts or expects to act in a sports contest as an umpire, referee, or judge, or otherwise to officiate at a sports contest.
- (6)(12) "Sports participant" means any person who participates or expects to participate in a sports contest as a player, contestant, or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant, or team.
- (13) ~~"Student athlete" means a student who competes individually or as a member of a team at an institution or who is eligible and competes individually or as a member of a team in intercollegiate athletic events.]~~

Section 11. The following KRS section is repealed:

518.080 Unauthorized sports agency practices.

Approved April 2, 1998

CHAPTER 260

(SB 198)

AN ACT relating to city police and fire departments.

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

Section 1. KRS 95.869 is amended to read as follows:

- (1) The responsibility for the proper operation of the fund and the direction of its policies shall be vested in a board of trustees. If there are no active members of the fund, the board of trustees shall consist of four (4) members who shall be: (a) the mayor ex officio; (b) the city treasurer ex officio; and (c) one (1) retired member of each department who shall be elected by ballot by the retired members of the respective departments. ***The mayor ex officio and the city treasurer ex officio***~~and~~ shall serve for terms of one (1) year under rules adopted by the board. ***The two (2) retired members of the police and fire department shall serve for terms of at least one (1) year with a maximum of two (2) years under rules adopted by the board.*** If there are active members of the fund, there shall be two (2) additional board members who shall be one (1) active member of the fund from each department elected by ballot by the active members of the fund from the respective departments and who shall serve for terms of ***at least one (1) year with a maximum of two (2) years***~~one (1) year~~ under rules adopted by the board. If all of the active members or all of the retired members are from one (1) department, then both of the active-member board members or both of the retired board members shall be elected from that department. In the event of a vacancy of an elected member, the pension board may fill the vacancy by appointment until the next regular election.
- (2) The board of trustees membership shall be restructured according to the provisions of this section at the time of the next scheduled election of board members after July 15, 1994.
- (3) Any member of the board convicted of an offense relating to mismanagement or embezzlement of the fund created pursuant to KRS 95.852 shall be removed from the board, and shall be prohibited from serving on the board. If the board member removed is an ex officio member, the city council shall appoint a replacement until another person shall fill the office entitled to a seat on the board. If the board member removed is an active policeman or firefighter, the board shall fill the vacancy by appointment of another active policeman or firefighter until the next regular election.

Section 2. KRS 95.870 is amended to read as follows:

- (1) Subject to the foregoing provisions, there shall be held on the first Wednesday after the first Tuesday of September of each year an election among the active members for trustee of the fund. ***Under KRS 95.869, if there are two (2) additional active board members of the fund serving from each department, their terms shall be for at least one (1) year with a maximum of two (2) years under rules adopted by the board.***
- (2) On or before August 10 preceding, nominations for candidates in the election shall be filed with the chief of the police department and the chief of the fire department. The nominations shall be in writing and shall be signed by not less than twenty-five percent (25%) of the members. Within five (5) days after the close of nominations, the chiefs of the respective departments shall certify in writing to all districts and bureaus of the departments the names of those placed in nomination.
- (3) On the first Wednesday after the first Tuesday in September beginning at the hour of 12 noon on Wednesday and continuing thereafter for a forty-eight (48) hour period, an election shall be held under the supervision of the commanding officers of the districts and bureaus. Each member shall vote at the district or bureau of which he is a member, except those members who are not assigned to a specific district or bureau, who shall vote at the office of the chief of police or chief of the fire department, as the case may be. At the close of voting, the commanding officer of each district or bureau, shall in the presence of the nominees or their duly authorized agents, open the ballot box and count the votes. He shall then make a certificate of the count and send the certificate with the ballots in a sealed envelope to the mayor, who shall, on the following Wednesday, open all the certificates so received and after counting all the returns, certify the results to the board. On the third Wednesday after the first Tuesday in September the candidate or candidates receiving the most votes shall assume office.

Section 3. KRS 95.560 is amended to read as follows:

- (1) In cities of the third class, any member of the police or fire department having served twenty (20) years or longer in the police or fire department may petition the board of trustees for retirement; and if his petition is granted, the board may order paid to him monthly fifty percent (50%) of his monthly salary at the time of retirement.
- (2) In order to adjust retirement benefits to the purchasing power of the dollar, the board ***shall if it is actuarially feasible***~~may~~ annually order an increase in benefits paid pursuant to this section and KRS 95.550. The board ***shall if it is actuarially feasible***~~may~~ order an increase in benefits by ***an***~~any~~ amount ***equal***~~up~~ to the increase in the ***cost-of-living increase for a recipient of Social Security***~~consumer price index calculated~~

~~pursuant to KRS 64.527], but the annual increase shall not exceed five percent (5%). [The board may grant the first increase in 1990.]~~

- (3) The board may provide a group hospital and medical insurance plan for retirees and their spouses who have not reached the age to qualify for federal Medicare, if providing insurance will not jeopardize the capacity of the board to pay retirement and survivor benefits. No insurance shall be provided for persons who are entitled to Medicare benefits or are receiving Medicare benefits.

Section 4. KRS 95.624 is amended to read as follows:

- (1) In cities of the third class, any member of the police or fire department having served twenty (20) years or longer in the police or fire department may petition the board of trustees for retirement; and if his petition is granted, the board may order paid to him monthly fifty percent (50%) of his monthly salary at the time of retirement. If this petition for retirement is denied, any policeman or firefighter has the right of appeal in accordance with the Rules of Civil Procedure.
- (2) The pension payable for periods of service between twenty (20) and twenty-five (25) years shall be fifty percent (50%) of salary plus two percent (2%) of salary for each year in excess of twenty (20). The pension payable for twenty-five (25) years of service shall be sixty percent (60%) of salary. The pension payable for periods of service between twenty-five (25) and thirty (30) years shall be sixty percent (60%) of salary plus three percent (3%) of salary for each year in excess of twenty-five (25). The pension payable for thirty (30) years of service shall be seventy-five percent (75%) of salary.
- (3) The pensions or benefits paid for disability or death from the policemen's and firefighter's pension fund in cities of the third class shall be as follows:
- (a) If any member of the police and fire department becomes temporarily totally disabled, physically or mentally, the board of trustees of the pension fund shall order paid to him monthly, during his disability, until he has recovered and returned to active duty, a sum of not more than one-half (1/2) his salary per month, the amount to be determined by the board. This provision shall not apply if a salary is paid during the same period.
- (b) If any member of the police or fire department becomes permanently disabled, physically or mentally, so as to render necessary his retirement from service in the department, the board of trustees shall retire him from service and order paid to him monthly fifty percent (50%) of his monthly salary at the time of his retirement.
- (c) If any member of the police or fire department is killed or dies as the result of an injury received in the performance of duty, or dies of any disease contracted by reason of his occupation, or dies while in the service from any cause as a result of his service in the department, or dies in service or while on the retired list from any cause after one (1) year of service in the department and leaves a widow or a child under eighteen (18) years of age, the board of trustees shall order a pension paid to the widow, while unmarried, of one-half (1/2) of salary per month and for each child until it reaches the age of eighteen (18) years, twenty-four dollars (\$24) per month. The board may provide a minimum benefit of no more than four hundred dollars (\$400) per month, initially, to the surviving spouse if the benefit can be supported on an actuarially-sound basis by the fund. The board may increase the minimum benefit pursuant to the terms of subsection (4) of this section. If the deceased member was unmarried and childless, a pension shall be paid to his dependent father and mother of one-fourth (1/4) of salary per month. If one (1) parent is dead, the other shall receive the entire one-fourth (1/4) salary.
- (4) In order to adjust retirement benefits to the purchasing power of the dollar, the board ***shall if it is actuarially feasible***~~may~~ annually order an increase in benefits paid pursuant to this section. The board ***shall if it is actuarially feasible***~~may~~ order an increase in benefits by ~~an~~***any*** amount ~~equal~~***up*** to the increase in the ***cost-of-living increase for a recipient of Social Security***~~consumer price index calculated pursuant to KRS 64.527], but the annual increase shall not exceed five percent (5%). [The board may grant the first increase in 1990.]~~

- (5) The board may provide a group hospital and medical insurance plan for retirees and their spouses who have not reached the age to qualify for federal Medicare, if providing insurance will not jeopardize the capacity of the board to pay retirement and survivor benefits. No insurance shall be provided for persons who are entitled to Medicare benefits or are receiving Medicare benefits.

Approved April 3, 1998

CHAPTER 261

(SB 250)

AN ACT relating to mediation.

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

Section 1. KRS 13B.070 is amended to read as follows:

- (1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to ~~explore~~~~[deal with exploration of]~~ jurisdictional matters, **mediation and** settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.
- (2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.
- (3) Except to the extent precluded by another provision of law, **mediation or** informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies that employ informal settlement procedures shall establish by administrative regulation the specific procedures to be used. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures when the right to an administrative hearing is conferred.

Section 2. KRS 446.010 is amended to read as follows:

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

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- (7) "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (8) "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (9) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (10) "Directors," when applied to corporations, includes managers or trustees;
- (11) "Domestic," when applied to corporations, means all those incorporated or formed by authority of this state;
- (12) "Domestic animal" means any animal converted to domestic habitat;
- (13) "Federal" refers to the United States;
- (14) "Foreign," when applied to corporations, includes all those incorporated or formed by authority of any other state;

- (15) "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (16) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (17) "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (18) "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (19) "Legatee" and "devisee" convey the same idea;
- (20) "May" is permissive;
- (21) "Month" means calendar month;
- (22) "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (23) "Owner" when applied to any animal, means any person having a property interest in such animal;
- (24) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (25) "Penitentiary" includes all of the state penal institutions except the houses of reform;
- (26) "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, registered limited liability partnerships, joint stock companies, and limited liability companies;
- (27) "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- (28) "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- (29) "Shall" is mandatory;
- (30) "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- (31) "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- (32) "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- (33) "United States" includes territories, outlying possessions, and the District of Columbia;
- (34) "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- (35) "Violate" includes failure to comply with;
- (36) "Will" includes codicils; "last will" means last will and testament;

- (37) "Year" means calendar year;
- (38) "City" includes town; and
- (39) Appropriation-related terms are defined as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
 - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
 - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in an executive, judicial, or legislative branch budget bill as provided for in KRS Chapter 48; *and*
- (40) *"Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

It is the policy of this Commonwealth to encourage the peaceable resolution of disputes and the early, voluntary settlement of litigation through negotiation and mediation. To the extent it is consistent with other laws, the courts and state governmental agencies are authorized and encouraged to refer disputing parties to mediation before trial or hearing.

Approved April 3, 1998

CHAPTER 262

(SB 320)

AN ACT relating to the County Employees Retirement System.

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

Section 1. KRS 78.616 is amended to read as follows:

- (1) Any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees may purchase service credit with the retirement system for up to six (6) months of unused sick-leave for each retiring employee.
- (2) Participation under this section shall be at the option of each participating employer. The election to participate shall be made by the governing authority of the participating employer and shall be certified in writing to the system on forms prescribed by the board. The certification shall provide for equal treatment of all employees *participating under this section.*
- (3) Upon the member's notification of retirement as prescribed in KRS 61.590, the employer shall certify the retiring employee's unused, accumulated sick-leave balance to the system. The member's sick-leave balance, expressed in days, shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. A maximum of six (6) months of the member's sick-leave balance, expressed in months, shall be added to his service credit for the purpose of determining his annual retirement allowance under KRS 78.510 to 78.852 and for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 78.510 to 78.852. Accumulated sick-leave in excess of six (6) months shall be added to the member's service credit if the member pays to the retirement system the value of the additional service credit based on the formula adopted by the board.
- (4) The system shall compute the cost of the sick-leave credit of each retiring employee and bill the employer accordingly. The employer shall remit payment within thirty (30) days from receipt of the bill.
- (5) As an alternative to subsections (1), (3), ~~and~~ (4), *and* (6) of this section, any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees, *or administered to a majority of eligible employees in accordance with*

subsection (6) of this section, shall, at the time of termination, compensate the employee for unused sick-leave days the employee has accumulated which it is the uniform policy of the agency to allow. The rate of compensation for each unused sick-leave day shall be based on the daily salary rate calculated from the employee's current rate of pay. Payment for unused sick-leave days shall be incorporated into the annual salary of the final year of service, if the employee and employer make the regular employee and employer contributions, respectively, on the sick-leave payment. The number of sick-leave days for which the employee is compensated shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. This number of months shall be added to the employee's total service credit and to the number of months used to determine creditable compensation, pursuant to KRS 78.510, but no more than sixty (60) months shall be used to determine final compensation.

- (6) *Any city of the first class that has two (2) or more sick leave programs for its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee who participates in the sick leave program administered to a majority of the eligible employees of the city. An employee participating in a sick leave program administered to a minority of the eligible employees shall become eligible for the purchase of service credit under this subsection when the employee commences participating in the sick leave program that is administered to a majority of the eligible employees of the city.*

Approved April 3, 1998

CHAPTER 263

(SB 354)

AN ACT relating to the motor vehicle commission.

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

Section 1. KRS 190.058 is amended to read as follows:

- (1) The Motor Vehicle Commission is hereby created as an agency of the Commonwealth to carry out the functions and duties conferred upon it by this section.
- (2) The commission shall consist of twelve (12) members, eleven of whom shall be appointed by the Governor and the twelfth shall be the commissioner of the Department of Vehicle Regulation. The appointed members shall be:
 - (a) One (1) representative of an automobile manufacturer;
 - (b) One (1) representative of automobile wholesalers;
 - (c) One (1) representative of consumers who shall have no direct financial interest in the industry;
 - (d) Four (4) new motor vehicle dealers, but no more than two (2) shall represent the same automobile manufacturer as a franchise dealer;
 - (e) Four (4) used motor vehicle dealers.
- (3) In addition to the requirements of membership on the commission in subsection (2), the following requirements shall apply to the composition of the commission:
 - (a) No more than seven (7) members shall be from the same political party; and
 - (b) From the eight (8) members specified in subsection (2)(d) and (e), seven (7) shall be from separate Supreme Court districts.
- (4) Each member shall serve for a term of three (3) years. The staggered terms of membership dating from the gubernatorial appointments of July 15, 1982, shall remain in effect.
- (5)
 - (a) Members of the commission shall qualify by taking the constitutional oath of office which shall, with the certificate of appointment, be evidence of the authority of the member to act.
 - (b) Each member of the commission shall be entitled to two hundred dollars (\$200) per day for each day actually engaged in the duties of the office, including time spent in necessary travel to and from

meetings and otherwise, together with all travel and other necessary expenses incurred while performing official duties.

- (6) The commission shall hold a regular annual meeting in September of each year and elect a chairman and vice chairman to serve for the ensuing year. The commission shall have regular meetings as the majority of the members specifies and special meetings at the request of any five (5) members. Reasonable notice of all meetings shall be given as commission administrative regulations prescribe. ~~[A majority of the commission, including the public member, shall constitute a quorum.]~~
- (7) ***A member of the commission shall not participate in the deliberations of the commission and shall not vote on any matter before the commission in which the member has a financial interest or is an interested party. A member shall voluntarily disqualify himself or herself from deliberating or voting upon matters that affect the member, but shall not be required to disqualify from matters of general interest affecting the member, the member's employer, or a business unit in which the member has a financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission.***
- (8) ***A majority of the commissioners, excluding any disqualified commissioner, shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. A vacancy in the commission, whether due to disqualification or otherwise, shall not impair the right of the remaining commissioners to exercise all the powers of the commission.***
- (9) The commission shall employ an executive director who shall be the chief administrative officer of the commission. He shall maintain all minutes of the commission proceedings and shall be custodian of the files and records of the commission. The executive director shall employ the staff authorized by the commission. The commission may, by interagency contract, utilize assistance of any state agency.
- ~~(10)(8)~~ The commission shall deposit all moneys received by it from license fees paid under this law with the State Treasurer, who shall keep them in a separate fund to be known as the "Motor Vehicle Commission Fund." The commission may use this fund for salaries, wages, per diem, professional and consulting fees, grants, loans, contracts, travel expenses, equipment, office rent and expenses, and other necessary expenses incurred in carrying out its duties under this section as provided by legislative appropriation. At the close of each biennium, the unexpended balance remaining in the motor vehicle commission fund shall be transferred to the general fund.
- ~~(11)(9)~~ The commission shall administer the provisions of this section, establish the qualifications of manufacturers and dealers, and insure that the distribution and sale of new motor vehicles is conducted as provided in this chapter, and under the commission's administrative regulations.
- ~~(12)(10)~~ The commission may issue orders and make determinations necessary to carry out the provisions of KRS 190.010 to 190.080. The orders shall set forth the findings on which the order is based, and the reason for the particular action taken. All orders shall be signed by the chairman or vice chairman and attested by the executive director.
- ~~(13)(11)~~ The commission may hold hearings that shall be conducted in accordance with KRS Chapter 13B. ***A member of the commission shall not participate in the deliberations of the commission and shall not vote on any matter if the member has been disqualified on any of the grounds under KRS 13B.040.***
- ~~(14)(12)~~ The commission may cause legal proceedings to be instituted to enforce the provisions of this section and its administrative regulations, orders, and decisions. If it appears from any investigation of a possible violation of any other law or administrative regulation that a violation of the provisions of KRS 190.010 to 190.080 may have occurred, the matter shall be referred to the commission to determine whether proceedings under KRS 190.010 to 190.080 are appropriate. The commission may make contracts and execute instruments necessary or convenient to the exercise of its power or performance of its duties.
- ~~(15)(13)~~ The availability of administrative procedures under this section shall not preclude the utilization of other remedies for violation of the provisions of this chapter which are available to the affected parties, including actions for injunctive relief.

Section 2. KRS 190.067 is amended to read as follows:

If the commission fails to perform ***or is unable to perform*** any of its official duties within the time prescribed in this chapter, the department may perform ~~these [the]~~ duties ~~[and certify its actions to the commission].~~

Approved April 3, 1998

CHAPTER 264**(HB 45)**

AN ACT relating to sales and use tax.

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

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;

- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.
- (16) Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:
 - (a) "Gasoline" is defined as in KRS 138.210(4);
 - (b) "Special fuels" is defined as in KRS 138.560(3);
 - (c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and
 - (d) "Agricultural purposes" is defined as in KRS 138.343(4);
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business

of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000;{
and}

- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000; **and**

- (27) ***Buffalos to be used as beasts of burden or in an agricultural pursuit for the production of hides, breeding stock, meat, and buffalo by-products, and the following items used in this pursuit:***
- (a) ***Feed and feed additives;***
 - (b) ***Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;***
 - (c) ***On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.***

Section 2. This Act takes effect August 1, 1998.

Approved April 3, 1998

CHAPTER 265

(HB 122)

AN ACT relating to aquaculture.

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

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;

- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.
- (16) Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:
 - (a) "Gasoline" is defined as in KRS 138.210(4);
 - (b) "Special fuels" is defined as in KRS 138.560(3);
 - (c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and
 - (d) "Agricultural purposes" is defined as in KRS 138.343(4);
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;

- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000;{
~~and~~}
- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000; ~~and~~;

- (27) *Aquatic organisms sold directly to or raised by a person regularly engaged in the business of producing products of aquaculture, as defined in Section 2 of this Act, for sale, and the following items used in this pursuit:*
- (a) *Feed and feed additives;*
 - (b) *Water;*
 - (c) *Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; and*
 - (d) *On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities and, any gasoline, special fuels, liquified petroleum gas, or natural gas used to operate the facilities. The*

exemption shall apply, but not be limited to: waterer and feeding systems; ventilation, aeration, and heating systems; processing and storage systems; production systems such as ponds, tanks, and raceways; harvest and transport equipment and systems; and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

Section 2. KRS 260.960 is amended to read as follows:

- (1) The General Assembly recognizes the importance of **aquaculture**~~{fish farming}~~ to the agricultural economy of the state.
- (2) "**Aquaculture**" means *the science, art, and business of producing and raising aquatic organisms under controlled or semicontrolled conditions*~~{Farm raised fish" means native or exotic fish species spawned or raised under controlled conditions in private waters for commercial purposes}~~.
- (3) The State Department of Agriculture shall promote the development of markets for **aquacultural products**~~{farm raised fish}~~. The department shall work cooperatively with Kentucky State University's aquaculture program utilizing its expertise in the area of **aquaculture**~~{fish farming}~~. The department also shall work cooperatively with other state agencies in assisting **aquacultural producers**~~{fish farmers}~~ to obtain the necessary permits.
- ~~{(4) This section shall not affect the powers of the Fish and Wildlife Resources Commission or the Department of Fish and Wildlife Resources as contained in KRS Chapter 150.}~~

Section 3. This Act takes effect August 1, 1998.

Approved April 3, 1998

CHAPTER 266

(HB 141)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents (\$0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents (\$0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$0.45) upon each one hundred dollars

(\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

- (2) (a) An annual ad valorem tax for state purposes of one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
 1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
 2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
 3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
 4. Tobacco base allotments.
- (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.
- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$0.30) of the thirty-one and one-half cents (\$0.315) state tax rate on real property and thirty cents (\$0.30) of the forty-five cents (\$0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994,

shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570 except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.

- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.
- (12) ***An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.***

Section 2. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture. Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
- (8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;

- (11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;
- (13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460 based on the vehicle's fair market value at the time of sale;
- (14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;
- (16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; ~~and~~
- (17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800; *and*
- (18) *Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs.*

Approved April 3, 1998

CHAPTER 267

(HB 166)

AN ACT relating to property.

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

Section 1. KRS 381.120 is amended to read as follows:

Joint tenants may be compelled to make partition, and when a joint tenant dies, *the joint tenant's* ~~his~~ part of the joint estate, real or personal, shall descend to *the joint tenant's* ~~his~~ heirs, or pass by devise, or go to *the joint tenant's* ~~his~~ personal representative, subject to debts, curtesy, dower, or distribution.

Section 2. KRS 381.130 is amended to read as follows:

- (1) KRS 381.120 shall not apply to any estate which joint tenants hold as executors or trustees, nor, *except as provided in subsection (2) of this section*, to an estate conveyed or devised to persons in their own right, when it manifestly appears, from the tenor of the instrument, that it was intended that the part of the one dying should belong to the others, neither shall it affect the mode of proceeding on any joint contract or judgment.
- (2) (a) 1. *Except as provided in paragraph (b) of this subsection, one (1) or more joint tenants of real property may partition their interest in the real property during their lifetime by deed or other instrument.*
- 2. *The deed or other instrument shall express the intent of the joint tenant to partition the joint tenant's interest in the real property and shall be recorded at the office of the county clerk in the county where the real property or any portion of the real property is located.*
- 3. *The partitioning shall be effective at the time the deed or other instrument is recorded.*
- (b) *Residential real property that is owned exclusively by husband and wife as joint tenants with a right of survivorship and actually occupied by them as a principal residence shall not be partitioned as provided in paragraph (a) of this subsection.*
- (c) *The deed or other instrument shall convert the partitioning joint tenant's interest in the real property into a tenancy in common with the remaining joint tenants. If there are two (2) or more*

nonpartitioning joint tenants, the interests of the nonpartitioning joint tenants in relation to each other shall be governed pursuant to the terms of the instrument creating the interest.

Section 3. KRS 394.610 is amended to read as follows:

- (1) *As used in this section, the "legal representative of a living person" includes the person's conservator, limited conservator, guardian, limited guardian, and attorney-in-fact.*
- (2) A **living** person, or the **legal** representative of a **living**~~[an incapacitated or protected]~~ person, who is an heir, next of kin, devisee, legatee, **joint tenant**, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written disclaimer under KRS 394.610 to 394.670. The right to disclaim shall survive the death of the person having it and may be exercised by the personal representative of such person's estate **without authorization of the court having jurisdiction over the estate of the person**. The instrument shall:
 - (a)~~{(1)}~~ Describe the property or interest disclaimed;~~{,}~~
 - (b)~~{(2)}~~ Declare the disclaimer and extent thereof;~~{,}~~ and
 - (c)~~{(3)}~~ Be signed by the disclaimant.
- (3) *No disclaimer by a living person's legal representative, except for the person's attorney-in-fact, shall be made unless the court having jurisdiction of the estate of the disabled, incapacitated, or protected person has authorized the disclaimer. No disclaimer by the person's attorney-in-fact shall be made unless the instrument governing the attorney-in-fact's authority expressly authorizes a disclaimer.*

Approved April 3, 1998

CHAPTER 268

(HB 257)

AN ACT relating to teachers' retirement.

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

SECTION 1. A NEW SECTION OF KRS 161.220 TO 161.716 IS CREATED TO READ AS FOLLOWS:

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a federal Head Start agency, operated under Title 42, United States Code, secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by paying to the Teachers' Retirement System the full cost of the service credit purchased, as determined by the system. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

Approved April 3, 1998

CHAPTER 269

(HB 336)

AN ACT relating to probation and parole officers.

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

Section 1. KRS 196.076 is amended to read as follows:

The department shall establish a probation and parole officer salary improvement program consisting of the following elements:

- (1) Probation and parole officer I with less than five (5) years of service shall receive no salary improvement.

- (2) Probation and parole officer II with five (5) but less than ten (10) years of service shall receive a salary improvement of five percent (5%).
- (3) Probation and parole officer III with ten (10) *but less than fifteen (15)*~~[or more]~~ years of service shall receive a salary improvement of ten percent (10%).
- (4) *Probation and parole officer IV with fifteen (15) or more years of service shall receive a salary improvement of ten percent (10%) or two thousand five hundred dollars (\$2,500), whichever is less.*
- (5) Salary improvements under this section shall be in addition to all other increments or other salary increases authorized by law but shall only be paid if the probation and parole officer has attained a favorable work-performance rating for four (4) of the previous five (5) years.
- ~~(6)~~~~(5)~~ The service requirement shall be satisfied only by service as a Kentucky probation and parole officer.
- ~~(7)~~~~(6)~~ At the time of implementation, officers who already meet the performance rating and service time requirements shall be awarded the respective position title and salary improvement. Officers who have not yet met those requirements shall be awarded the position title and salary improvements only upon meeting the requirements.
- ~~(8)~~~~(7)~~ Probation and parole seniors, coordinators, and supervisors shall be included in the appropriate progression series level for salary improvement based upon the work performance rating and respective service time requirement attained. However, the progression series titles shall not apply to probation and parole seniors, coordinators and supervisors.
- ~~(9)~~~~(8)~~ The department shall make the administrative regulations necessary for the administration of this section.

Approved April 3, 1998

CHAPTER 270

(HB 426)

AN ACT relating to vehicles.

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

Section 1. KRS 189.010 is amended to read as follows:

As used in this chapter:

- (1) "Department" means the Department of Highways.
- (2) "Crosswalk" means:
- (a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or
 - (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.
- (3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700.
- (4) "Intersection" means:
- (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or
 - (b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate

intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection.

- (5) "Manufactured home" has the same meaning as defined in KRS 186.650.
- (6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds.
- (7) "Operator" means the person in actual physical control of a vehicle.
- (8) "Pedestrian" means any person afoot, *or in a wheelchair*.
- (9) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.
- (10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively.
- (11) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
- (12) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.
- (13) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit.
- (14) "Sharp curve" means a curve of not less than thirty (30) degrees.
- (15) "State Police" includes any agency for the enforcement of the highway laws established pursuant to law.
- (16) "Steep grade" means a grade exceeding seven percent (7%).
- (17) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand (1,000) pounds.
- (18) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards.
- (19) (a) "Vehicle" includes:
 1. All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and
 2. All vehicles passing over or upon the highways.(b) "Motor vehicle" includes all vehicles, as defined in paragraph (a) of this subsection except:
 1. Road rollers;
 2. Road graders;
 3. Farm tractors;
 4. Vehicles on which power shovels are mounted;
 5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways;
 6. Vehicles that travel exclusively upon rails;

7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality; and
 8. Vehicles propelled by muscular power.
- (20) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.
 - (21) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.
 - (22) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.
 - (23) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area.
 - (24) "All-terrain vehicle" means any motor vehicle for off-road use, which is fifty (50) inches or less in width; has a dry weight of six hundred (600) pounds or less; travels on three (3) or more low pressure tires; is designed for operator use only with no passengers; and has a seat or saddle designed to be straddled by the operator, and handle bars for steering control.

Approved April 3, 1998

CHAPTER 271

(HB 457)

AN ACT relating to health insurance.

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

Section 1. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer as defined in KRS 304.17A-100, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:
 - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
 - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
 - (c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.
- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.
- (3) ***It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health care provider from the insurer .***
- (4) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by ~~subsections (1) and (2)~~ of this section.

Approved April 3, 1998

CHAPTER 272

(HB 490)

AN ACT relating to the transportation of incarcerated persons.

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

Section 1. KRS 605.080 is amended to read as follows:

- (1) ***Any child ordered to be transported, by a committing court, shall be transported by the sheriff or the jailer of that county. Any other law enforcement agency may enter into agreements with the court, sheriff, or jailer to transport juveniles.***
- (2) Any peace officer who conveys a child from the committing court or from the detention facility of the committing court to a residential treatment facility or other facility operated by the Department of Juvenile Justice or the cabinet shall be allowed an amount prescribed by regulation adopted by the Finance and Administration Cabinet calculated by the nearest traveled route, and shall be paid for all necessary expenses for feeding, lodging, and transporting the child. The officer shall make out a full account of all expenses so incurred by him and give the distance traveled. The account shall be verified by the officer upon oath before the District Court and certified by the circuit clerk to ***the Department of Juvenile Justice or the cabinet, as appropriate***, for payment out of funds appropriated to the Department of Juvenile Justice or the cabinet for this purpose. The child's presence shall be necessary at a postdispositional proceeding only as required by court order ***for good cause. Transportation shall be provided as in subsection (1) of this section and*** expenses for transportation of a child to ~~such~~ a proceeding from a residential treatment facility or other facility operated by the Department of Juvenile Justice or the cabinet shall be paid out of the State Treasury.
- ~~(3)(2)~~ No child shall be transported to any residential treatment facility or other facility, pursuant to order of any court or direction of the cabinet, unless accompanied by an attendant of the same gender, or, when authorized in writing by the court, the Department of Juvenile Justice, or the cabinet, by a parent, grandparent, or adult brother or sister.
- ~~(4)(3)~~ The agent of any residential treatment facility or other facility which receives a child transported to the facility shall report any violation of subsection (2) of this section to the Commonwealth's attorney of the judicial circuit in which the facility is located.
- ~~(5)(4)~~ The Department of Juvenile Justice or the cabinet may pay the necessary traveling expenses of children committed to it for care and treatment from their homes to the residential treatment facility or other facility or home to which they are committed, and the traveling expenses of such children from the facility or home to their homes when discharged or placed on supervised placement.

Section 2. KRS 70.130 is amended to read as follows:

The sheriff shall, by himself or deputy, convey all persons to the penitentiary ***or juvenile facility*** condemned to confinement therein, and execute the sentence of the court in other criminal and penal cases. But the court may order the coroner or jailer to act in the place of the sheriff in the discharge of those duties.

Section 3. KRS 605.990 is amended to read as follows:

- (1) Any person who intentionally violates any provision of this chapter, other than KRS 605.080~~(4)(3)~~, shall be guilty of a Class B misdemeanor.
- (2) Any person who intentionally violates KRS 605.080~~(4)(3)~~, shall be guilty of a violation.

Approved April 3, 1998

CHAPTER 273

(HB 623)

AN ACT relating to employee criminal background checks.

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

Section 1. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, *or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources*, to the applicant for initial employment in a nursing facility or in a position funded by the Department for Social Services of the Cabinet for Human Resources and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form *or through a process* approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant *or state agency* in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Approved April 3, 1998

CHAPTER 274

(HB 654)

AN ACT relating to hunting and fishing licenses.

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

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

- (1) Except as provided in the following subsections of this section, and subject to administrative regulations promulgated under this chapter, no person, resident or nonresident, shall do any act authorized by any kind of license or permit, or assist in any way any person in doing any act provided for in this chapter with respect to wildlife unless he holds the kind of license or permit, resident or nonresident, that authorizes the act. It shall be the specific purpose of this chapter to prohibit the taking or pursuing of any wildlife, protected or unprotected, or the fishing in any stream or body of water whether public or private, without first procuring the license provided for in KRS 150.175, except to the extent as may be otherwise provided in this section.
- (2) A person under sixteen (16) years of age may, without a sport fishing license, take fish by angling, or take minnows by the use of a minnow seine, minnow trap, or dip net.
- (3) The resident owner of farmlands, his spouse, or dependent children, shall, without procuring any sport hunting or sport fishing licenses, have the right to take fish or hunt during the open season, except trapping, on the farmlands of which they are bona fide owners. Tenants or their dependent children residing upon these farmlands shall have the same privilege.
- (4) Residents or nonresidents observing and participating in any field trial as authorized by the department may observe and participate without obtaining a hunting license so long as game is not taken.
- ~~(5) Any resident who is sixty five (65) years of age or older may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry upon his person an affidavit stating the year of his birth and place of residence.~~
- ~~(6) Any resident serviceman on furlough of more than three (3) days in this state may, without any Kentucky sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry on his person proper identification and papers showing his furlough status.~~
- ~~(7) Any disabled American veteran who is at least fifty percent (50%) disabled as a result of a service connected disability who is residing in Kentucky may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses, but while doing so shall carry the card provided for by this subsection in order to be exempt from hunting or fishing license requirements. A disabled veteran shall obtain a copy of his disability rating from the Veterans Administration. He shall forward the copy to the director of the Division of Law Enforcement of the Department of Fish and Wildlife Resources. The division shall mail a card certifying his disability and exemption from license requirements, and shall retain a copy of the certification.~~
- ~~(8) Any resident who is declared totally and permanently disabled by:

 - ~~(a) The Federal Social Security Administration;~~~~

~~(b) The State Department of Workers' Claims; or~~

~~(c) The United States Railroad Retirement Board~~

~~may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses.]~~

~~(6)(9)~~ Resident landowners, their spouses, or dependent children who kill or trap on their lands any wildlife causing damage to the lands or any personal property situated thereon shall not be required to have a hunting or trapping license. Tenants or their dependent children residing upon the lands shall also have the same privilege. Upon destruction of any wildlife by the above-specified individuals, the act shall be reported to the department or the resident conservation officer for the proper disposition of the carcass.

~~(7)(10)~~ If a reciprocal agreement is entered into by the commissioner, with the approval of the commission, and promulgated as an administrative regulation by the department and similar action is taken by the appropriate authority in Missouri, Tennessee, Virginia, West Virginia, Indiana, Ohio, or Illinois, persons holding a resident or nonresident fishing or a resident or nonresident hunting license issued in these states shall be permitted to perform the acts authorized by the license upon certain contiguous waters and land areas adjacent to the common boundaries of the above-mentioned states and the State of Kentucky. A resident of the State of Kentucky shall purchase a proper Kentucky license to conform with the reciprocal agreement.

Section 2. KRS 150.175 is amended to read as follows:

(1) The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:

- (a) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, giggering, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;
- (b) A short-term sport fishing license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;
- (c) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;
- (d) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;
- (e) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;
- (f) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;
- (g) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;
- (h) A junior statewide hunting license, which may be issued to a person before he has reached his sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;

- (i) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his own lands or upon the lands of another person, if the holder of the license shall have first obtained a written consent as provided in KRS 150.092;
- (j) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;
- (k) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;
- (l) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;
- (m) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;
- (n) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;
- (o) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;
- (p) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license or a nonresident shooting preserve license;
- (q) A special license to nonresidents for the purpose of hunting on licensed hunting preserves. This license shall be good only for the preserve for which it was issued and shall remain in effect only for one (1) year. These licenses shall be issued in ink by the preserve manager, and he shall ensure that each hunter is properly licensed before going into the field. When the hunter owns either a nonresident or resident statewide hunting license for the current year, the special license shall not be required. The commissioner, with the approval of the commission, may establish and regulate hunting preserves, either private or commercial;
- (r) A big game permit and a junior big game permit, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue deer, bear, or wild turkey, in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;
- (s) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;
- (t) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;
- (u) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;
- (v) A short-term hunting license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide hunting license, except for hunting big game species for which an annual nonresident hunting license shall be required, and according to the provisions of the laws and administrative regulations of the department;

- (w) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;
- (x) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;
- (y) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged; and
- (z) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds.
- (aa) *A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:*
 1. *Sixty-five (65) years of age or older;*
 2. *An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or*
 3. *Declared permanently and totally disabled by the Federal Social Security Administration, the Department of Workers' Claim, or its equivalent from another state, or the United States Railroad Retirement Board.*

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license.

Section 3. Sections 1 and 2 of this Act take effect March 1, 1999.

Approved April 3, 1998

CHAPTER 275

(HB 717)

AN ACT relating to the Department of Fish and Wildlife Resources.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

A person whose privilege to hunt or fish has been suspended or revoked by any jurisdiction within the United States or Canada shall not purchase or possess a license to hunt or fish nor shall that person perform any act permitted by the license in Kentucky during the period of suspension or revocation.

Section 2. KRS 150.160 is amended to read as follows:

Sixty percent (60%) of a ~~any~~ fine imposed for the violation of this chapter or Chapter 235 shall, when collected, be paid into the game and fish fund.

Section 3. KRS 150.225 is amended to read as follows:

- (1) The Department of Fish and Wildlife Resources shall, by its commission *and through administrative regulation promulgated in accordance with KRS Chapter 13A*, prescribe reasonable ~~license~~ fees *for the licenses, permits, and registrations authorized by KRS Chapters 150 and 235* ~~relating to hunting, fishing, and trapping. Provided, however, the department shall set no private license fee at less than one dollar (\$1) nor more than two hundred dollars (\$200), and no commercial license fee at less than two dollars (\$2) nor more than fifteen hundred dollars (\$1,500).~~

- (2) *A person who collects, receives, possesses, or manages fees for the department's licenses and permits acts in a fiduciary capacity for the Commonwealth, and all moneys collected from the sale of licenses and permits, except agent fees for selling licenses or permits, shall be held in trust for the department.*

Section 4. KRS 150.645 is amended to read as follows:

An owner, lessee or occupant of premises who gives permission to another person to hunt, fish, trap, camp or hike upon ~~the~~^{such} premises shall owe no duty to keep the premises safe for entry or use by ~~the~~^{such} person or to give warning of any hazardous conditions on ~~the~~^{such} premises, and ~~the~~^{such} owner, lessee, or occupant, by giving ~~his~~^{such} permission, does not thereby extend any assurance that the premises are safe for such purpose, or constitute the person to whom permission is granted an invitee to whom a duty of care is owed. The owner, lessee, or occupant giving permission for any of the purposes stated above shall not be liable for any injury to any person or property caused by the negligent acts of any person to whom permission is granted. This section shall not limit the liability which would otherwise exist for willful and malicious failure to guard, or to warn against, a dangerous condition, use, structure, or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, or hike was granted for a consideration other than the consideration, if any, *as set forth in subsection (1)(d) of Section 12 of this Act*, paid to said owner, lessee, or occupant by the state. The word "premises" as used in this section includes lands, private ways, and any buildings and structures thereon. Nothing in this section limits in any way any liability which otherwise exists.

Section 5. KRS 150.990 is amended to read as follows:

- (1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any *administrative* regulation ~~promulgated~~^{adopted} by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.
- (2) Any person who violates any of the provisions of this chapter or any *administrative* regulations ~~promulgated~~^{adopted} by the commission thereunder may, in addition to the penalties provided in subsection (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license, and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any *administrative* regulation which has been or may be ~~promulgated~~^{adopted} by the commission under any provisions of this chapter ~~or which is adopted to supplement, explain, carry out, or limit any provision of this chapter,~~ shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the *administrative* regulation is ~~promulgated~~^{adopted} ~~or which the regulation supplements, explains, carries out, or limits~~.
- (3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.603, subsection (1) of KRS 150.235, subsection (2) of KRS 150.330 or 150.470, or any of the provisions of this chapter or any *administrative* regulation ~~promulgated~~^{adopted} by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).
- (4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.445, 150.485, 150.600, 150.630, 150.660, subsection (1) of KRS 150.450, 150.470, the provisions of KRS 150.195(5) to (8), or subsection (3) of KRS 150.660 shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700.
- (5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, subsection (1) of KRS 150.330, or subsections (2), (3), or (4) of KRS 150.235 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months or both.
- (7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than six (6) months, or both, and

in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed.

- (8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall, for the first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000); and shall for a second offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1500); and for any subsequent offense, be fined two thousand dollars (\$2000).
- (9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of subsection (9) shall be in addition to the penalties for violation of subsection (8).
- (10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates any of the provisions of KRS 150.390, or subsection (4) of KRS 150.092 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (4) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages.
- (12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter, ***KRS Chapter 235***, or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.
- (13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter, ***KRS Chapter 235***, or the administrative regulations issued thereunder shall be subject to the penalties specified for ~~the~~^{such} offense under KRS Chapter 507 or 508, as appropriate.
- (14) A person shall be guilty of a Class B misdemeanor upon the first ***conviction for a*** violation of KRS 150.710. A subsequent ***conviction***~~[violation]~~ shall be a Class A misdemeanor.
- (15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); for the second offense, be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and for subsequent offenses, shall forfeit the license, or if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars (\$1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions.

SECTION 6. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

Sixty percent (60%) of a fine imposed for the violation of this chapter or KRS Chapter 150 shall, when collected, be paid into the game and fish fund.

Section 7. KRS 235.080 is amended to read as follows:

- (1) The annual registration fee for motorboats shall be ***set by the department by administrative regulation.***~~[based upon the following:~~

With electric motors as the sole source of propulsion	\$5.00
1 foot through 15 feet 11 inches	10.00
16 feet through 25 feet 11 inches	14.00
26 feet through 39 feet 11 inches	20.00
40 feet and over	24.00

~~All inboards and inboard/outboards.....24.00}~~

Every application for registration or renewal of registration shall be accompanied by the registration fee ~~above set out~~ in addition to a one dollar (\$1) fee which shall be deposited in a trust and agency account for use by the Transportation Cabinet in defraying the cost of implementing and operating the boat titling and registration program.

- (2) The annual registration fee for motorboats for hire from a livery shall be the registration fees set forth in subsection (1) of this section. Owners of a livery shall apply for licenses or certificates in the manner provided in this chapter, but the Transportation Cabinet may promulgate special administrative regulations relating to their certification and registration.

Section 8. KRS 235.220 is amended to read as follows:

- (1) Every manufacturer of, or dealer in motorboats in this state shall register with the cabinet at Frankfort, Kentucky, and pay an annual registration fee ***as set by the department by administrative regulation*** ~~of twenty-five dollars (\$25) to the department~~. Upon receipt of this fee, the department shall issue to the manufacturer or dealer a certificate of number and a plate bearing the number assigned, which plate shall be so designed that it can be transferred from boat to boat. Every manufacturer or dealer registered under this section shall be furnished additional dealer certificates of number and plates upon the payment of two dollars (\$2) for each additional certificate of number desired. A motorboat bearing dealer's plates and carrying a dealer's certificate of number may be used only by a member of the firm registered or by a bona fide salesman or employee of the firm for any purpose reasonably connected with the sale or demonstration for sale and delivery of the dealer's motorboat or by any manufacturer or dealer, licensed as provided above, in transporting any motorboat over the waters of this state to his place of retail business for the manufacturer or wholesale dealer in motorboats and for no other purpose.
- (2) Every motorboat dealer or manufacturer who acquires a used motorboat for cash, trade-in, or in any other manner, shall within fifteen (15) days from date of acquisition have the registration assigned to himself. The dealer shall execute his application for assignment upon documents designated by the cabinet to the county clerk of the county in which he maintains his principal place of business and pay the transfer fee. The clerk shall enter the assignment upon the automated system.
- (3) The dealer shall retain the properly assigned certificate of title received from his transferor, and may make any reassignments thereon until the forms for dealer assignment on the certificate of title are exhausted. The cabinet may, if it deems warranted, provide a special document to allow for additional dealer assignments without requiring system generated documents.
- (4) If the dealer assigns the motorboat to a purchaser for use, he shall deliver the properly assigned certificate of title to the purchaser, who shall make application for registration and a certificate of title thereon, pursuant to KRS 235.050.
- (5) The cabinet shall insure that the automated system is capable of accepting instructions from the county clerk that a certificate of title shall not be produced under a dealer registration situation.
- (6) The license of any dealer or manufacturer may be suspended or revoked by the cabinet for a violation of any section of this statute. Such persons shall be afforded a full opportunity to defend themselves against any charges at a hearing set by this department.

Section 9. KRS 235.330 is amended to read as follows:

- (1) All moneys collected under the provisions of ***Section 7 of this Act, KRS 235.130, and Section 8 of this Act*** ~~(this chapter)~~, except that specified for distribution to the county clerks or Transportation Cabinet, shall be paid into the State Treasury in the manner prescribed by law, and credited to a trust and agency account to be used by the Division of Water Patrol.
- (2) Appropriations for the operation of the Division of Water Patrol may also be made from the general expenditure fund.

Section 10. KRS 235.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100).

- (2) Any person failing to obey a citation issued in accordance with KRS 235.315 shall be guilty of a separate offense and shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100).
- (3) *Any person who resists, obstructs, interferes with, threatens, attempts to intimidate, or in any other manner interferes with any officer in the discharge of his duties, other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 150, or the administrative regulations issued under either of these chapters, shall be guilty of a Class A misdemeanor.*
- (4) *Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 150, or the administrative regulations issued under either of these chapters shall be subject to the penalties specified for the offense under KRS Chapter 507 or 508, as appropriate.*

Section 11. KRS 30A.190 is amended to read as follows:

All fees, fines, forfeitures, and costs in any District Court or Circuit Court case shall be collected and accounted for by the Circuit Court clerk and paid into the State Treasury, except that sixty percent (60%) of any fines imposed for the violation of KRS Chapter 150 *or KRS Chapter 235* shall when collected be paid into the fish and game fund.

Section 12. KRS 411.190 is amended to read as follows:

- (1) As used in this section:
 - (a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
 - (b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.
 - (c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
 - (d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land *but does not include fees for general use permits issued by a government agency for access to public lands if the permits are valid for a period of not less than thirty (30) days.*
- (2) The purpose of this section is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.
- (3) Except as specifically recognized by or provided in subsection (6) *of this section*, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on ~~the~~_[such] premises to persons entering for such purposes.
- (4) Except as specifically recognized by or provided in subsection (6) *of this section*, an owner of land who either directly or indirectly invites or permits without charge any person to use ~~the~~_[such] property for recreation purposes does not thereby:
 - (a) Extend any assurance that the premises are safe for any purpose.
 - (b) Confer upon ~~the~~_[such] person the legal status of an invitee or licensee to whom a duty of care is owed.
 - (c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of ~~those~~_[such] persons.
- (5) Unless otherwise agreed in writing, the provisions of subsections (3) and (4) *of this section* shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.
- (6) Nothing in this section limits in any way any liability which otherwise exists:
 - (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
 - (b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for ~~the~~_[such] lease shall not be deemed a charge within the meaning of this section.

- (7) Nothing in this section shall be construed to:
- (a) Create a duty of care or ground of liability for injury to persons or property.
 - (b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of ~~the [such]~~ land and in his activities thereon, or from the legal consequences of failure to employ such care.

Approved April 3, 1998

CHAPTER 276

(HCR 77)

A CONCURRENT RESOLUTION directing the Legislative Research Commission to establish a special interim study committee to study the feasibility, benefits, and implementation of a strategy for a Rails to Trails Program throughout the Commonwealth.

WHEREAS, the conversion of abandoned or unused railroad right-of-way to pedestrian and nonmotorized vehicle roadways has become national policy through the National Trails Systems Act; and

WHEREAS, the Commonwealth of Kentucky has an abundance of abandoned and unused railroads; and

WHEREAS, Kentucky ranks 47th in the United States with only four miles of rail trails. Currently there are 1.65 miles at Cadiz, KY and 2 miles at Louisville. Significant opportunities are being lost; and

WHEREAS, the conversion of abandoned or unused railroads to trails has been shown to benefit tourism, business development, preservation of transportation options, historic preservation, recreation opportunities, health, and other public benefits;

NOW, THEREFORE,

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

Section 1. The Legislative Research Commission shall establish a special interim study committee to study the feasibility, benefits, and implementation strategy for a Rails to Trails Program throughout the Commonwealth of Kentucky. The study committee shall be composed of fifteen members of the General Assembly with Senate and House co-chairs appointed by the Legislative Research Commission. The study committee shall include the Chair of the Senate Economic Development and Labor Committee, and the Chairs of both the House Economic Development Committee, and the House Tourism Development and Energy Committee.

Section 2. The special interim study committee shall report its findings and recommendations to the Legislative Research Commission by July 30, 1999.

Section 3. Staff services to be utilized in completing this study are estimated to cost \$15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 3, 1998

CHAPTER 277

(HJR 75)

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on US 460 crossing the Levisa Fork of the Big Sandy River at Millard the "Veterans Memorial Bridge" and to erect appropriate highway signs.

WHEREAS, it is the Armed Forces that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless servicemen have sacrificed their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, our veterans deserve our gratitude and recognition for their devotion and service to our Commonwealth and our nation;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name the bridge on US 460 over the Levisa Fork of the Big Sandy River at Millard in Pike County the "Veterans Memorial Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Veterans Memorial Bridge" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Pikeville, Kentucky.

Approved April 3, 1998

CHAPTER 278

(SB 72)

AN ACT relating to Citizen Foster Care Review Boards.

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

Section 1. KRS 620.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

- (1) "Case permanency plan" means a document identifying decisions made by the cabinet, for both the biological family and the child, concerning action which needs to be taken to assure that the child in foster care expeditiously obtains a permanent home;
- (2) "Case progress report" means a written record of goals that have been achieved in the case of a child;
- (3) "Case record" means a cabinet file of specific documents and a running record of activities pertaining to the child;
- (4) "Foster care" means the provision of temporary twenty-four (24) hour care for a child for a planned period of time when the child is:
 - (a) Removed from his parents or person exercising custodial control or supervision and subsequently placed in the custody of the cabinet; and
 - (b) Placed in a foster home or private child-caring facility or child-placing agency but remains under the supervision of the cabinet;
- (5) "Local *citizen* foster care review board" means a citizen board which provides periodic permanency reviews of children placed in the custody of the cabinet by a court order of temporary custody or commitment under this chapter;
- (6) "Multidisciplinary teams" means local teams operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse pursuant to KRS 431.600;
- (7) "Permanence" means a relationship between a child and an adult which is intended to last a lifetime, providing commitment and continuity in the child's relationships and a sense of belonging;
- (8) "Preventive services" means those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family;
- (9) "Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home;

- (10) "Reunification services" means remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family; and
- (11) "State *citizen* foster care review board" means a board created by KRS 620.310.

Section 2. KRS 620.070 is amended to read as follows:

- (1) A dependency, neglect, or abuse action may be commenced by the filing of a petition by any interested person in the juvenile session of the District Court.
- (2) After a petition has been filed, the clerk of the court shall issue, and the sheriff or other authorized agent shall serve, a copy of the petition and a summons to the parent or other person exercising custodial control or supervision, unless their identity or location is unknown, in which case the petition and summons shall be served on the nearest known adult relative.
- (3) The summons shall include an explanation of the importance of the petition and an explanation of the rights of the parent or other person exercising custodial control in any subsequent proceedings. The summons shall emphasize the importance of immediately contacting the court about legal representation and to be advised of the date, time, and place when the parent or other person exercising custodial control or supervision is to appear before the court. The summons shall include written notification that the case may be reviewed by a local *citizen* foster care review board and the report of the board review shall become part of the court record.

Section 3. KRS 620.190 is amended to read as follows:

- (1) There shall be established within each judicial district a *citizen* foster care review board to be appointed by the Chief District Judge *or family court judge*. The Chief District Judge *or family court judge* may authorize the creation of additional local *citizen* foster care review boards as needed.
- (2) Each local *citizen* foster care review board shall consist of not less than three (3) members and shall be appointed according to the following guidelines:
- (a) All members shall have an interest in foster care or child welfare;
 - (b) At least two (2) members of each local *citizen* foster care review board shall, as far as practicable, be chosen from among the following professions: law, medicine, psychology, social work, and education;
 - (c) Each local *citizen* foster care review board shall, as far as practicable, include a foster parent;
 - (d) All members of each local *citizen* foster care review board shall, as far as practicable, be representative of the socioeconomic, racial, and ethnic composition of the area served;
 - (e) Employees of the cabinet shall be prohibited from serving on the local *citizen* foster care review board;
 - (f) All appointed board members shall serve a term of three (3) years, except that if a vacancy occurs, a successor shall be appointed to serve the unexpired term. The term of each member shall expire on August 1 of the appropriate year. Members may be reappointed and shall continue to serve until a successor is appointed; and
 - (g) All members shall be certified prior to appointment by the state *citizen* foster care review board or its designee. For the purposes of this section, "certified" means acknowledgment of completion of initial training approved by the state *citizen* foster care review board.
- (3) Local *citizen* foster care review board members may be removed for nonparticipation, failure to meet training requirements, or other cause as determined by the state *citizen* foster care review board in compliance with its constitution and bylaws.
- (4) Each local *citizen* foster care review board shall annually elect a chairman and vice chairman to serve in the absence of the chairman.
- (5) Each local *citizen* foster care review board shall meet, at a place designated by the Chief District Judge *or family court judge*, as often as is deemed necessary to carry out the duties of the board. The local *citizen* foster care review board shall meet no less than four (4) times annually.

Section 4. KRS 620.200 is amended to read as follows:

- (1) Secretarial and support services for each local *citizen* foster care review board may be provided by the District Court, or circuit clerk, or both, as ordered by the Chief District Judges *or family court judges*.
- (2) Local *citizen* foster care review boards may receive state and federal funding to insure total or partial funding of the board's activities.

Section 5. KRS 620.210 is amended to read as follows:

- (1) Training shall be established, approved, and provided by the state *citizen* foster care review board and its staff as provided by KRS 620.320.
- (2) During the training session, each local *citizen* foster care review board member shall promise by oath given by the Chief District Judge *or family court judge* or a member of the court of justice to keep confidential the information reviewed by the board and its actions and recommendations in individual cases pursuant to the authority mandated to other officers of the court in KRS Chapter 522. Members of the local *citizen* foster care review boards shall be subject to the same penalties as officers of the court pursuant to KRS Chapter 522.

Section 6. KRS 620.220 is amended to read as follows:

- (1) The clerk of the court shall forward to the Administrative Office of the Courts *Citizen* Foster Care Review Board Program a copy of each temporary custody order and commitment order on the form prescribed by the Administrative Office of the Courts within fourteen (14) days of the date the order is issued.
- (2) When a child is voluntarily committed to the cabinet, the cabinet shall forward a copy of the placement agreement to the Administrative Office of the Courts *Citizen* Foster Care Review Board Program within fourteen (14) days of the time the child is placed.

Section 7. KRS 620.230 is amended to read as follows:

- (1) For each child placed in the custody of the cabinet by an order of commitment, the cabinet shall file a case permanency plan for the child with the court and send a copy to the Administrative Office of the Courts *Citizen* Foster Care Review Board Program as soon as the plan is prepared but no later than thirty (30) days after the effective date of the order. Notwithstanding the provisions of KRS 620.090(5), if a child remains in the temporary custody of the cabinet for longer than forty-five (45) days and if a request is submitted by the Administrative Office of the Courts *Citizen* Foster Care Review Board Program, the cabinet shall provide a copy of the case permanency plan for the child.
- (2) The case permanency plan shall include, but need not be limited to:
 - (a) A concise statement of the reasons why the child is in the custody of the cabinet;
 - (b) A statement of the actions which have been taken with regard to the child to the date of the plan;
 - (c) A statement of the proposed actions which may be taken or are contemplated with regard to the child during the next six (6) months and during the entire duration of the time the child is in the custody of the cabinet;
 - (d) Contemplated placements for the child;
 - (e) If the child is placed outside the home, reasons why the child cannot be protected adequately in the home, the harms the child may suffer if left in the home, factors which may indicate when the child can be returned to the home, and efforts the cabinet or others are making to return the child to the home;
 - (f) If the child is placed outside the home, the steps that the cabinet will take to minimize the harm to the child as a result of the action, both at the time of removal and on a long-term basis;
 - (g) A description of the type of home, child-caring facility, child-placing agency or facility in which the child is to be placed or has been placed, and a statement why the placement is appropriate for the child, including but not limited to:
 1. Age;
 2. Educational needs;
 3. Medical needs;
 4. Emotional needs;

5. Relationship with parents; and
6. Number of children the home is authorized to care for and the number of children currently residing in the home;
- (h) If the placement is outside the child's original county of residence, documentation that no closer placement is appropriate or available, and the reasons why the placement made was chosen;
- (i) A description of the services for the child and his family to be provided or arranged by the cabinet to facilitate the return of the child to his own home or to another permanent placement;
- (j) A list of objectives and specific tasks, together with specific time frames for each task, for which the parents have agreed to assume responsibility, including a schedule of regular visits with the child;
- (k) A projected schedule of time intervals by which each of the services, objectives, and tasks outlined in the case permanency plan should be accomplished and a schedule of time intervals which have already been accomplished or are in the process of accomplishment;
- (l) If the child is to remain at home, a description of the potential harm which could befall the child and measures that are being taken to prevent or minimize such harm; and
- (m) If the child is to remain at home, reasons why he cannot be placed in foster care or why such care is not needed.

Section 8. KRS 620.240 is amended to read as follows:

The cabinet shall file for each child a case progress report at least once every six (6) months with the court and the Administrative Office of the Courts *Citizen* Foster Care Review Board Program. The first case progress report after the child is placed in the custody of the cabinet by an order of temporary custody or commitment shall be mailed to the Administrative Office of the Courts *Citizen* Foster Care Review Board Program and subsequent case progress reports shall be provided to the local *citizen* foster care review board within the case file. The case progress report shall include but is not limited to:

- (1) The length of time the child has been in the custody of the cabinet;
- (2) The number, location, and date for each placement during the time the child has been in the custody of the cabinet;
- (3) A description of the services and assistance provided or arranged by the cabinet to the parents since the last case permanency plan or case progress report, and results achieved;
- (4) A description of the efforts and progress of the parents since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parents' communication with the child;
- (5) The barriers, familial and institutional, to returning the child home or releasing the child from the custody of the cabinet and services that are not currently available in the community;
- (6) An evaluation of the child's current placement and services provided to the child;
- (7) Recommendations for necessary services required to release the child from the custody of the cabinet, to return the child home, or to facilitate another permanent placement;
- (8) A timetable for the child's return home or other permanent placement; and
- (9) If return home is not recommended, a specific recommendation for a permanent placement, including termination of parental rights if appropriate. If continued foster care is recommended, an explanation as to why another permanent placement is not appropriate.

Section 9. KRS 620.250 is amended to read as follows:

- (1) Each local *citizen* foster care review board shall have access to all information and records of the cabinet pertinent to the parents or person exercising custodial control or supervision of the child assigned to the local board for review. Information and records shall include, but not be limited to, case permanency plans, case progress reports, and case records.

- (2) Each local *citizen* foster care review board shall have access to all information and records of the court, the cabinet, and public and private child-caring facilities when pertinent to the child assigned to the local board for review. Information and records shall include, but not be limited to, case permanency plans, case progress reports, and case records.
- (3) All requested information or records, or both, not already before the local *citizen* foster care review board at the time of the six (6) months review shall be submitted by the agency or organization in possession of the information or records, or both, no later than five (5) working days after the receipt of the request.
- (4) If the local *citizen* foster care review board is denied access to any public or private information or records, or both, it may request the court to hold a hearing, at which time the court may require the agency or organization in whose possession the information or records, or both, are held to show cause as to the reasons why the information or records, or both, shall not be ordered surrendered pursuant to its authority.

Section 10. KRS 620.260 is amended to read as follows:

Local *citizen* foster care review board members who have a conflict of interest shall not participate in such review.

Section 11. KRS 620.270 is amended to read as follows:

- (1) Subject to the provisions of KRS 620.230, the local *citizen* foster care review board shall review the case of each child placed in the custody of the cabinet by an order of temporary custody or commitment by the court in the county or counties which the local board serves. The review shall occur at least once every six (6) months until the child is no longer in the custody of the cabinet or until an adoption proceeding becomes final.
- (2) During each six (6) month review, the local *citizen* foster care review board shall review:
 - (a) The past, current, and future status of the child and his placement as shown through the case permanency plan, case record, case progress reports submitted by the cabinet, and other information as the board may require;
 - (b) The efforts or adjustment the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time considering the age of the child;
 - (c) The efforts of the cabinet to locate and provide services to the biological parents of the child;
 - (d) The efforts of the cabinet and other agencies to facilitate the return of the child to the home or to find an alternative permanent placement if reunion with the parent or previous custodian is not feasible. The cabinet shall report to the board all factors which either favor or mitigate against any decision or alternative with regard to these matters; and
 - (e) Any problems, solutions, or alternatives which may be capable of exploration, or other matters with regard to the child as the cabinet or the board determine to be explored with regard to the best interests of the state or of the child.
- (3) Upon completion of a training curriculum developed and provided jointly by the Administrative Office of the Courts and by the Department for Social Services and approved by the state review board in regard to child sexual abuse, the local *citizen* foster care review board may review, at the discretion of the board, a sample of all petitions filed in the District Court of the county served by the board alleging sexual abuse of any child, not to exceed two hundred (200) petitions per year statewide, in order to determine the adequacy of the investigation, and the appropriateness of findings, adjudication, and disposition of the court. The board shall have access to all records of the cabinet, medical professionals, and law enforcement agencies pertaining to these cases. The board shall provide the cabinet and the court a full report of the findings and recommendations concerning the review.

Section 12. KRS 620.280 is amended to read as follows:

Each local *citizen* foster care review board may request in writing employees of the cabinet or other agencies or organizations, on five (5) working days' notice, to appear at local board meetings when necessary to determine the progress made in placing the child in a permanent home. Should an employee fail to appear at such a meeting, the local *citizen* foster care review board may request that the court hold a hearing at which time the court, if the request for the hearing is granted, shall require the employee to show cause as to why he should not be compelled to appear.

Section 13. KRS 620.290 is amended to read as follows:

The local *citizen* foster care review board shall submit to the court within fourteen (14) days of the six (6) month review its findings and recommendations. The findings and recommendations for each child under review shall include but need not be limited to:

- (1) Whether there is a plan for permanence;
- (2) Whether the plan is progressing; and
- (3) The appropriateness of the current placement or plan for permanence.

Section 14. KRS 620.310 is amended to read as follows:

- (1) There is hereby established a State *Citizen* Foster Care Review Board. The State *Citizen* Foster Care Review Board shall consist of all chairmen of the local foster care review boards.
- (2) The State *Citizen* Foster Care Review Board shall annually elect a chairman and vice chairman to serve in the absence of the chairman.
- (3) The State *Citizen* Foster Care Review Board shall meet at least annually, and more frequently upon the call of the chairman, or as the board shall determine.
- (4) Members of the State *Citizen* Foster Care Review Board may only receive compensation for travel mileage cost and overnight lodging at a rate consistent with that provided to state employees as provided under the law of the Commonwealth.

Section 15. KRS 620.320 is amended to read as follows:

The duties of the State *Citizen* Foster Care Review Board shall be to:

- (1) Establish, approve, and provide training programs for local *citizen* foster care review board members;
- (2) Review and coordinate the activities of local *citizen* foster care review boards;
- (3) Establish reporting procedures to be followed by the local *citizen* foster care review boards and to provide information on the effectiveness of such local *citizen* foster care review boards; and
- (4) Evaluate and make annual recommendations to the Supreme Court, Governor, and the Legislative Research Commission regarding:
 - (a) Laws of the Commonwealth;
 - (b) Practices, policies, and procedures within the Commonwealth affecting permanence for children in out-of-home placement and the investigation of allegations of abuse and neglect; and
 - (c) The effectiveness or lack thereof and reasons therefor of local *citizen* foster care review of children in the custody of the cabinet in bringing about permanence for the Commonwealth's children.

Section 16. KRS 620.330 is amended to read as follows:

- (1) Secretarial and support services for the State *Citizen* Foster Care Review Board may be provided by the Administrative Office of the Courts.
- (2) The State *Citizen* Foster Care Review Board may receive state and federal funds to insure total or partial funding of the board's activities.

Section 17. KRS 620.340 is amended to read as follows:

Each local *citizen* foster care review board shall forward annually to the State *Citizen* Foster Care Review Board a report and any recommendations regarding:

- (1) The policies and practices of the cabinet, the court, and other child-caring facilities and child-placing agencies which affect permanence for children in out-of-home placement; and
- (2) The process of local *citizen* foster care review.

Section 18. KRS 620.505 is amended to read as follows:

- (1) For the purpose of providing an independent, efficient, and thorough representation for children who enter the court system as a result of dependency, abuse, and neglect, there may be established a court-appointed special advocate program by the Chief District Judge *or family court judge* within each judicial district.
- (2) Local CASA programs shall be governed by a local board of directors. For new CASA programs, the board shall initially be appointed by the Chief District Judge *or family court judge* within each judicial district. Members shall be selected by the existing board members thereafter. Each board shall include at least fifteen (15) members. Each board member shall have a demonstrated interest in child welfare issues and commitment to the purpose and role of the court-appointed special advocate volunteers. Cabinet employees shall not be eligible to serve as officers of the board. Members shall, as far as practicable, be representative of the racial and ethnic composition of the area served by the CASA program. The board shall:
 - (a) Determine major personnel, organization, fiscal, and program policies including, but not limited to, the following:
 1. Measures to be taken to safeguard the CASA program's information relating to children, their families, and the CASA volunteers;
 2. The procedures for the recruitment, screening, training, and supervision of CASA volunteers; and
 3. The procedure for and circumstances warranting dismissal of a CASA volunteer from the CASA program;
 - (b) Determine overall plans and priorities for the CASA program, including provisions for evaluating progress against performance;
 - (c) Approve the program budget;
 - (d) Enforce compliance with all conditions of all grants contracts;
 - (e) Determine rules and procedures for the governing board;
 - (f) Select the officers and the executive committee, if any, of the governing board;
 - (g) Meet at least four (4) times each year;
 - (h) Submit an annual report to the state Court-Appointed Special Advocate Association in the uniform manner required which shall include, but need not be limited to, the following information:
 1. Number of CASA volunteers in the program;
 2. Number of program staff;
 3. Number of children served;
 4. Number of volunteers receiving initial training;
 5. Number of and topics for in-service training; and
 6. Other information as deemed appropriate.
- (3) Local CASA programs shall comply with the National CASA Association Standards for Programs. Local programs shall ensure that CASA volunteers are adequately supervised by providing at least one (1) supervisory staff person for every fifty (50) cases to which CASA volunteers have been appointed by the court and assigned by the program director. Each local CASA program shall be managed by a qualified director whose service may be voluntary or who may be paid a salary. The program director's duties shall include:
 - (a) Administration of the CASA program as directed by the governing board;
 - (b) Recruitment, screening, training, and supervision of CASA volunteers and other program staff;
 - (c) Facilitation of the performance of the court-appointed special advocates' duties; and
 - (d) Ensuring that the security measures established by the governing board for safeguarding the information relating to children, their families, and the CASA volunteers are maintained.
- (4) CASA volunteers shall, as far as practicable, be representative of the socioeconomic, racial, and ethnic composition of the area served.

- (5) CASA volunteers may be removed by the court for nonparticipation or other cause or by the program director pursuant to subsection (2) of this section.
- (6) All written court-appointed special advocate reports submitted pursuant to KRS 620.525 shall become part of the cabinet's record of the child.
- (7) Employees of the cabinet shall not become volunteers or employees of the court-appointed special advocate program.
- (8) Each CASA volunteer, program director, and other program staff shall take an oath, administered by a member of the Court of Justice, to keep confidential all information related to the appointed case except in conferring with or reports to the court, parties to the case, the cabinet, the *Citizen* Foster Care Review Board, others designated by the court, and as provided by law.
- (9) CASA volunteers shall be appointed by the presiding judge to represent the best interest of the child, subject to judicial discretion, and only after confirmation from the program director that the CASA volunteer has been properly screened and trained.

Approved April 3, 1998

CHAPTER 279

(SB 77)

AN ACT relating to administrative hearings.

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

Section 1. KRS 13B.040 is amended to read as follows:

- (1) A person who has served as an investigator or prosecutor in an administrative hearing or in its preadjudicative stage shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be construed as preventing a person who has participated as a hearing officer in a determination of probable cause or other equivalent preliminary determination from serving as a hearing officer in the same proceeding.
- (2)
 - (a) A hearing officer, agency head, or member of an agency head who is serving as a hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. ***A request for the disqualification of a hearing officer shall be answered by the agency head within sixty (60) days of its filing.*** The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Requests for disqualification of a hearing officer shall be determined by the agency head. Requests for disqualification of a hearing officer who is a member of the agency head shall be determined by the majority of the remaining members of the agency head.
 - (b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:
 1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;
 2. Participating in an ex parte communication which would prejudice the proceedings;
 3. Having a pecuniary interest in the outcome of the proceeding; or
 4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

Approved April 3, 1998

CHAPTER 280

(SB 88)

AN ACT relating to the release of liens.

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

Section 1. KRS 382.365 is amended to read as follows:

- (1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.
- (2) A proceeding may be filed in ***District Court or*** Circuit Court against a lienholder that violates subsection (1) of this section. A proceeding filed under this section shall be given precedence over other matters pending before the court.
- (3) Upon proof ***to the court***~~[of satisfaction]~~ of the lien being ***satisfied***~~[introduced]~~, the court ***shall***~~[may]~~ enter a judgment releasing the lien. A lienholder that violates subsection (1) of this section shall also be liable to the owner of the real property for fifty dollars (\$50) and any actual expense including a reasonable attorney's fee incurred by the owner in securing the release of real property by such violation. The judgment shall be with costs including reasonable attorneys' fees.
- (4) The former holder of a lien on real property shall send by regular mail a copy of the lien release to the property owner at his last known address within seven (7) days of the release. A former lienholder that violates this subsection shall be liable to the owner of the real property for fifty dollars (\$50) and any actual expense incurred by the owner in obtaining documentation of the lien release.

Approved April 3, 1998

CHAPTER 281

(SB 135)

AN ACT relating to health insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***An insurer that offers a managed care plan shall disclose to an enrollee, in writing, in a manner consistent with KRS 304.14-420 to 304.14-450, and any risk-bearing managed care plan shall disclose to an enrollee, in writing, at the time of enrollment and thereafter upon request, and as new providers are contracted with by the plans, or as the directory may change, a current participating provider directory providing information on a covered person's access to primary care physicians and specialists, optometrists, chiropractors, and hospitals, including available participating physicians, optometrists, chiropractors, and hospitals, by provider category or specialty and by county. The directory shall include the following:***
 - (a) ***Professional office addresses and telephone numbers for all participating:***
 1. ***Primary care physicians;***
 2. ***Optometrists;***
 3. ***Chiropractors;***
 4. ***Hospitals; and***
 5. ***Other health care providers as defined under KRS 304.17A-010(11);***
 - (b) ***Information about drug formularies and their restrictions, limitations, and procedures for authorization outside the formularies;***
 - (c) ***The benefits for each provider type;***

- (d) *General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and*
 - (e) *Grievance procedures available under the plans for complaint resolutions.*
- (2) *The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider.*
 - (3) *The provisions of this section shall be implemented prior to any open enrollment period for which the effective date of coverage will be January 1, 1999, or for which the effective date shall commence after an open enrollment period, and shall continue for each open enrollment period thereafter.*

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans shall provide coverage for cochlear implants for persons diagnosed with profound hearing impairment.

Approved April 3, 1998

CHAPTER 282

(SB 147)

AN ACT relating to reorganization.

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

Section 1. KRS 164A.050 is amended to read as follows:

- (1) There is hereby created and established an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a body corporate and politic to be known and identified as the Kentucky Higher Education Student Loan Corporation.
- (2) The Kentucky Higher Education Student Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential governmental and public functions and purposes in improving and otherwise promoting the educational opportunities of the citizens and inhabitants of the Commonwealth of Kentucky and other qualified students by a program of financing, making, and purchasing of insured student loans.
- (3) The corporation shall be governed by a board of directors consisting of **eleven (11)**~~seven (7)~~ members, **eight (8)**~~four (4)~~ of whom shall be chosen from the general public residing in the Commonwealth of Kentucky and three (3) of whom shall be the chairman of the Council on Postsecondary Education, the secretary of the Finance and Administration Cabinet, and the chairman of the Kentucky Higher Education Assistance Authority.
- (4) The Governor shall appoint the **eight (8)**~~four (4)~~ directors from *nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005*~~the general public~~ to take office and to exercise all powers thereof immediately. ~~The~~~~Of the new members of the corporation so appointed, two (2) shall continue in office for a term of four (4) years, and two (2) shall continue in office for a term of three (3) years. All succeeding~~ terms **shall be staggered and** shall be for a period of four (4) years each. Each director shall serve for the appointed term and until a successor has been appointed and has duly qualified.
- (5) In the event of a vacancy, the Governor may appoint a replacement director *from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005* who shall hold office during the remainder of the term so vacated.
- (6) The Governor may remove any director from the general public in case of incompetency, neglect of duties, gross immorality, or malfeasance in office; and may thereupon declare such office vacant and may appoint a person to fill such vacancy as provided in other cases of vacancy.
- (7) The board shall elect from its voting membership a chairman, secretary, and treasurer. The executive director of the Kentucky Higher Education Assistance Authority shall serve as executive director of the corporation.

- (8) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary may copy all minutes and other records and documents of the corporation and give certificates under the official seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.
- (9) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies in respect of the board of directors.
- (10) Official actions may be taken by the corporation at meetings duly called by the chairman upon three (3) days' written notice to each director or upon the concurrence of at least a majority of the directors.
- (11) Directors shall receive no compensation for their services but shall be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under this chapter.
- (12) The Kentucky Higher Education Assistance Authority, the "guarantee agency", shall provide technical, clerical, and administrative assistance to the corporation, together with necessary office space and personnel, and shall assist the corporation in all ways by the performance of any and all actions which may be useful or beneficial to the corporation in the performance of its public functions as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky charged with the responsibility of financing, making, and purchasing of insured student loans. The corporation shall enter into such contracts with the guarantee agency as shall be proper and appropriate in respect of such services which may include, but not by way of limitation, servicing and collection of insured student loans.

Section 2. The General Assembly confirms Executive Orders 96-917 and 96-1138, relating to the increase in membership of the Kentucky Higher Education Student Loan Corporation, to the extent they are not otherwise confirmed by this Act.

Approved April 3, 1998

CHAPTER 283

(SB 160)

AN ACT relating to reorganization.

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

Section 1. KRS 153.215 is amended to read as follows:

- (1) There is established the Kentucky Arts Council (hereinafter referred to as "the council") which shall perform functions pursuant to KRS 153.210 to 153.235.
- (2) The purpose of the council shall be to develop and promote a broadly conceived state policy of support for the arts in Kentucky pursuant to KRS 153.210 to 153.235.
- (3) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the arts. On July 1, 1972, the Governor shall appoint not more than four (4) members for a term of one (1) year; not more than four (4) members for a term of two (2) years; not more than four (4) members for a term of three (3) years; and not more than four (4) members for a term of four (4) years. Thereafter the Governor shall make all appointments for a term of four (4) years.
- (4) Council members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual and necessary expenses incurred in the performance of their duties under KRS 153.210 to 153.235.
- (5) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.
- (6) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.

- (7) The council shall be attached to the ~~Office of the Secretary for~~ Education, *Arts*, and Humanities *Cabinet as an independent administrative body* ~~for administrative purposes~~.
- (8) *The council shall be headed by an executive director appointed by the Secretary of the Education, Arts, and Humanities Cabinet upon recommendation of the council.*

Section 2. The General Assembly hereby confirms Executive Order 96-920, dated July 15, 1996, to the extent it is not otherwise confirmed or superseded by this Act.

Approved April 3, 1998

CHAPTER 284

(SB 164)

AN ACT relating to reorganization.

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

Section 1. KRS 224.60-115 is amended to read as follows:

As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;
- (2) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- (4) ~~"Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;~~
- ~~(5)~~ "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;
- ~~(5)~~~~(6)~~ "Dealer" means a person required to be licensed as a gasoline or special fuels dealer as defined in KRS 138.210(2);
- ~~(6)~~~~(7)~~ "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- ~~(7)~~~~(8)~~ "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- ~~(8)~~~~(9)~~ "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- ~~(9)~~~~(10)~~ "Fund" means the petroleum storage tank environmental assurance fund established pursuant to KRS 224.60-140;
- ~~(10)~~~~(11)~~ "Gasoline" means gasoline as defined in KRS 138.210(4);
- ~~(11)~~~~(12)~~ "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, that is typically used in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based substance typically used in the operation of a motor vehicle, including used motor vehicle lubricants and oils;

~~(12)~~~~(13)~~ "Occurrence" means a release, or releases, of an accidental nature, requiring corrective action, from a petroleum storage tank or tanks located at the same facility, due to continuous or repeated exposure to conditions. An additional release or releases at the same facility in which the area requiring remedial action is separate from a previous remediation area or areas shall be considered a separate occurrence;

(13)"Office" means the Office of Petroleum Storage Tank Environmental Assurance Fund;

(14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, the state, a municipality, commission, or political subdivision of the state. The term includes a consortium, a joint venture, the United States government, or a commercial entity;

(15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels, lubricants, and used oil;

(16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-100, which contains petroleum or petroleum products but, for the purpose of participation or eligibility for the fund, shall only include tanks containing motor fuels and shall not include petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;

(17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;

(18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;

(19) "Received" means the same as defined in KRS 138.210(5);

(20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;

(21) "Special fuels" means special fuels as defined in KRS 138.210(4); and

(22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

Section 2. KRS 12.020 is amended to read as follows:

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

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

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
4. Department of Law.

- (a) Attorney General.
 - 5. Department of the Treasury.
 - (a) Treasurer.
 - 6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 - 7. Superintendent of Public Instruction.
 - 8. Auditor of Public Accounts.
 - 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
- 1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 - 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.

- (n) Kentucky African-American Heritage Commission.
- 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
- 4. Transportation Cabinet:
 - (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
- 5. Cabinet for Economic Development:
 - (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.

- (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
 - (m) ***Office of Petroleum Storage Tank Environmental Assurance Fund.***
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.

- (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.

- (e) Department for Employment Services.
- (f) State Board for Adult and Technical Education.
- (g) Governor's Council on Vocational Education.
- (h) The State Board for Proprietary Education.
- (i) The Foundation for Adult Education.
- (j) The Kentucky Job Training Coordinating Council.
- (k) Office of General Counsel.
- (l) Office of Communication Services.
- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 3. KRS 224.60-130 is amended to read as follows:

- (1) ***There is created within the Public Protection and Regulation Cabinet, Office of the Secretary, the Office of Petroleum Storage Tank Environmental Assurance Fund***~~[The commission shall be created within sixty (60) days from April 9, 1990].~~
- (2) The ***Office of Petroleum Storage Tank Environmental Assurance Fund***~~[commission]~~ shall:
 - (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the ***office***~~[commission]~~ may distinguish between types, classes, and ages of petroleum storage tanks. The ***office***~~[commission]~~ shall establish a range of amounts to be paid from the fund and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the ***office***~~[commission]~~ for reimbursement from the fund for the performance of corrective action. At a minimum, the ***office***~~[commission]~~ shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the ***office***~~[commission]~~ shall obligate funds necessary to meet these requirements;
 - (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the fund and receive reimbursement from the fund. The ***office***~~[commission]~~ may establish eligibility criteria based upon the financial ability of the petroleum storage tank owner or operator. In promulgating

administrative regulations to carry out this section, the ~~office~~~~commission~~ may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;

- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal government for petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The amount to be maintained in this account shall be established by the ~~office~~~~commission~~. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the ~~office~~~~commission~~;
- (d) Establish a small operator assistance account within the fund which may be used by the ~~office~~~~commission~~ to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. This account shall not be used to compensate third parties for bodily injury and property damage. The ~~office~~~~commission~~ shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the ~~office~~~~commission~~ shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the ~~office~~~~commission~~ regarding the payment of claims from the fund in accordance with KRS Chapter 13B;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform an actuarial study, no less than every two (2) years, that recommends to the ~~office~~~~commission~~ an actuarially sound entry level to the fund prior to two (2) years from April 9, 1990. The ~~office~~~~commission~~ shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund and the procurement of legal services; *and*
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the ~~office~~~~commission~~ may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks~~;~~ ~~and~~
- ~~(k) Be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes.~~

~~{(3) The commission shall hold at least four (4) regular meetings each calendar year at a place and time to be fixed by the commission. The commission shall also meet at the request of the chairman of the commission or upon a written request of three (3) members of the commission. Six (6) members constitute a quorum, and a quorum may act for the commission in all matters.}~~

~~(3){(4)}~~ The ~~office~~~~commission~~ may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.

~~(4){(5)}~~ The ~~office~~~~commission~~ may sue and be sued in its own name.

Section 4. KRS 224.60-120 is amended to read as follows:

- (1) Each petroleum storage tank owner or operator shall establish and maintain evidence of financial responsibility, as provided for in this section, for taking corrective action and for compensating third parties for bodily injury and property damage.
 - (a) For petroleum storage tank owners or operators of eleven (11) or more tanks, the level of financial responsibility to be established and maintained shall be twenty-five thousand dollars (\$25,000) per occurrence for taking corrective action and twenty-five thousand dollars (\$25,000) per occurrence for compensating third parties for bodily injury and property damage.
 - (b) For petroleum storage tank owners or operators of six (6) to ten (10) tanks who have not been issued a closure letter from the cabinet, the level of financial responsibility to be established and maintained shall be five thousand dollars (\$5,000) per occurrence for taking corrective action and five thousand (\$5,000) dollars per occurrence for compensating third parties for bodily injury and property damage.
 - (c) For petroleum storage tank owners or operators of five (5) or less tanks who have not been issued a closure letter from the cabinet, the level of financial responsibility to be established and maintained shall be one thousand dollars (\$1,000) per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage.
- (2) Evidence of financial responsibility may be established by any combination of the following:
 - (a) Commercial or private insurance, including risk retention groups;
 - (b) Qualification as a self-insurer;
 - (c) A guarantee, surety bond, or letter of credit; or
 - (d) Any other reasonable and economically practicable means in a form acceptable to the ~~office~~~~commission~~.
- (3) To qualify as a self-insurer the petroleum storage tank owner or operator shall demonstrate a net worth in excess of the amounts specified in subsection (1) of this section. "Net worth" shall mean the monetary value of assets that remain after deducting liabilities. "Assets" shall mean all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
- (4) The total liability of any guarantor under KRS 224.60-105 to 224.60-160 is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the petroleum storage tank owner or operator pursuant to this section. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to a petroleum storage tank owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. "Guarantor" shall mean any person, other than the petroleum storage tank owner or operator, who provides evidence of financial responsibility for a petroleum storage tank owner or operator pursuant to this section.
- (5) It is the intent of the General Assembly that the fund established pursuant to KRS 224.60-140, combined with the financial responsibility required by this section, may be used by petroleum storage tank owners or operators to demonstrate their compliance with any financial responsibility requirements promulgated under federal regulations.
- (6) The ~~office~~~~commission~~ shall promulgate administrative regulations to implement this section. In promulgating administrative regulations, the ~~office~~~~commission~~ shall not restrain or limit the use of any of the means of establishing financial responsibility specified in this section.

Section 5. KRS 224.60-137 is amended to read as follows:

- (1) The ~~office~~~~commission~~ shall have a study performed to identify appropriate standards for corrective action for a release into the environment from a petroleum storage tank. The study shall address, but not be limited to, standards for levels of petroleum contamination, including lead, requiring corrective action to adequately protect human health, safety, and the environment consistent with accepted scientific and technical principles and federal law. The standards shall take into account distances to environmentally sensitive features, including surface waters, wetlands, nature preserves, protected ecological areas, springs and wells used for domestic water supply, and well head protection areas. The ~~office~~~~commission~~ shall contract with a person or persons to

perform the study qualified in the areas of engineering, hydrogeology, geology, toxicology, epidemiology, biology, public health, chemistry, and risk assessment. The ~~office~~~~commission~~ shall provide for the October 18, 1993 study performed by the University of Kentucky to be completed within one hundred twenty (120) days of April 11, 1994, to comply with the requirements of this subsection.

- (2) The ~~office~~~~commission~~ shall contract with the University of Kentucky, or another person or persons having the qualifications established in subsection (1) of this section, to recommend revisions or amendments to the study based upon new information or changes in federal law, and to review and comment to the ~~office~~~~commission~~ upon the consistency with the completed study of administrative regulations proposed by the cabinet pursuant to subsection (3) of this section. The person contracted with to recommend revisions or amendments to the study shall identify in writing any inconsistencies of the draft administrative regulations required by subsection (4) of this section with the completed study. The cabinet shall comment to the ~~office~~~~commission~~ on the completed study report and any proposed revisions or amendments to the study. The ~~office~~~~commission~~ shall approve the completed study report and any revisions or amendments to the study.
- (3) The cabinet shall, by administrative regulation, establish standards for corrective action for a release into the environment from a petroleum storage tank. The administrative regulations shall adequately protect human health, safety and the environment, and shall incorporate the study performed for the ~~office~~~~commission~~, except as necessary to comply with federal law or as provided in subsection (4) of this section.
- (4) Within ninety (90) days of the receipt of the completed study report the cabinet shall prepare draft administrative regulations for submission to and review by the person performing the study. The comments required pursuant to subsection (2) of this section shall be filed with the ~~office~~~~commission~~ and the cabinet within sixty (60) days of receipt of the draft administrative regulations by the ~~office~~~~commission~~. If any inconsistencies are identified, the person conducting the review and the cabinet shall confer to resolve the inconsistencies, and report to the ~~office~~~~commission~~ within sixty (60) days. If the person conducting the review and the cabinet are unable to resolve the inconsistencies, the cabinet and the ~~office~~~~commission~~ shall appoint an independent peer review group to resolve the inconsistencies and recommend amendments to the draft administrative regulations within sixty (60) days of appointment. The peer review group shall be appointed by agreement of the cabinet and the ~~office~~~~commission~~. The cabinet shall amend the draft administrative regulations to incorporate the amendments recommended by the peer review group and file the administrative regulations with the Legislative Research Commission within sixty (60) days of receipt. The administrative regulations shall be promulgated pursuant to the provisions of KRS Chapter 13A.
- (5) Notwithstanding any provisions of law or KRS Chapter 13A to the contrary, the emergency administrative regulations filed by the cabinet in February 1994 shall remain in effect until the administrative regulations required by subsection (3) of this section are adopted and effective pursuant to the provisions of KRS 13A.330.

Section 6. KRS 224.60-140 is amended to read as follows:

- (1) There is hereby created the petroleum storage tank environmental assurance fund. The fund shall be maintained as a separate and distinct interest-bearing account. All of the following amounts shall be deposited in the fund:
 - (a) Any interest earned upon money deposited in the fund;
 - (b) Money appropriated by the General Assembly for deposit in the fund;
 - (c) Any money recovered by the fund pursuant to this section; and
 - (d) Any money collected in the form of penalties levied pursuant to KRS 224.60-155.
- (2) Money in the fund may be used by the ~~office~~~~commission~~ for the following purposes:
 - (a) To reimburse petroleum storage tank owners or operators for the costs, expenses, and other obligations incurred for corrective action as the result of a release into the environment from a petroleum storage tank;
 - (b) For payment of or reimbursement for third-party claims for bodily injury and property damage which are asserted against a petroleum storage tank owner or operator as a result of a release into the environment from a petroleum storage tank;
 - (c) To pay the reasonable costs incurred by the ~~office~~~~commission~~ in administering the fund;
 - (d) Payment to the cabinet of the costs of implementing the tank registration required by KRS 224.60-142; and

- (e) To operate the small operators' assistance account pursuant to KRS 224.60-130(2)(d) and the small operators' tank removal account pursuant to KRS 224.60-130(2)(j).
- (3) The use of the fund shall not exceed one million dollars (\$1,000,000) per occurrence for corrective action and one million dollars (\$1,000,000) per occurrence for compensating third parties for bodily injury and property damage.
- (4) Money in the fund may be used by the cabinet for costs incurred by the cabinet for corrective action taken pursuant to KRS 224.60-135(2) and (4).
- (5) The fund shall be used to guarantee payment of reasonable costs and expenses to a contractor performing corrective action under contract with a petroleum storage tank owner or operator subject to entry level amounts payable by the petroleum storage tank owner or operator. Money in the fund shall be obligated to secure the guarantee.
- (6) A petroleum storage tank owner or operator may apply to the ~~office~~~~commission~~ for reimbursement from the fund of costs to perform corrective action, except that the petroleum storage tank owner or operator shall be responsible for and shall not be reimbursed for an amount equal to the entry level into the fund as set pursuant to administrative regulation of the ~~office~~~~commission~~.
- (7) The ~~office~~~~commission~~ or its designated agent shall issue all decisions made on claims filed pursuant to this section in writing, with notification to all appropriate parties, within ninety (90) days after submission of the claim, unless all parties to the claim agree in writing to an extension of time.
- (8) Except as provided in subsection (9), any costs incurred and payable from the fund for corrective action taken pursuant to KRS 224.60-135(2) shall be recovered by the ~~office~~~~commission~~ from the petroleum storage tank owner or operator which released the petroleum or petroleum products into the environment.
- (9) The liability of a petroleum storage tank owner or operator subject to a cost recovery under this section shall not exceed an amount equal to the entry level into the fund, the ~~office's~~~~commission's~~ cost incurred in the cost recovery, and any penalties applied in accordance with KRS 224.60-155. This amount shall include any expenditures made by the petroleum storage tank owner or operator for the release into the environment from the petroleum storage tank that is the subject of the cost of recovery.
- (10) The amount of costs determined pursuant to subsection (8) of this section shall be recoverable in a civil action. This subsection does not deprive a party of any defense the party may have.
- (11) Money recovered by the ~~office~~~~commission~~ pursuant to this section shall be deposited in the fund.
- (12) Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures recoverable pursuant to this section.
- (13) (a) Any party found liable for any costs or expenditures recoverable under this section who establishes that only a portion of those costs or expenditures are attributable to their actions, shall pay only for that portion.
- (b) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection (12) of this section, the court shall apportion those costs or expenditures, to the extent practicable according to equitable principles among the defendants.
- (c) The fund shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under paragraphs (a) and (b) of this subsection.
- (14) (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for costs recoverable under this section. This subsection shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under KRS 224.60-105 to 224.60-160.
- (b) The entry of judgment against any party to the action shall not bar any future action by the fund against any other person who is later discovered to be potentially liable for costs paid from the fund.
- (c) Payment of any claim by the fund pursuant to KRS 224.60-105 to 224.60-160 shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the release.

- (15) This section shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.
- (16) The cabinet shall attempt, to the maximum extent practicable, to secure or obtain funds that may be available for corrective actions under federal laws. However, nothing in this subsection shall prevent the cabinet from expending any funds available under KRS 224.60-105 to 224.60-160 if such federal funds are determined to be unavailable.
- (17) The fund shall not be used for corrective action, reimbursement, or third-party liability resulting from releases from petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel oil tanks used exclusively for storage of fuel used for the purposes of powering locomotives.

Section 7. KRS 224.60-145 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.
- (2) All deductions detailed in KRS 138.240(2), gasoline and special fuels sold for agricultural purposes, and special fuels sold exclusively to heat a personal residence are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.
- (3) The fee shall be reported and paid to the Revenue Cabinet at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.
- (4) The petroleum environmental assurance fee shall be set at a rate up to but not to exceed one and four-tenths cent (\$0.014) for each gallon.
- (5) The ~~office-commission~~ shall review the unobligated fund balance at least quarterly and report to the Revenue Cabinet the rate of the fee to be applied for the next quarter.
- (6) All provisions of law related to the Revenue Cabinet's administration and enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Revenue Cabinet by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.
- (7) The Revenue Cabinet shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).

Section 8. The following KRS section is repealed:

224.60-125 Petroleum Storage Tank Environmental Assurance Fund Commission.

Section 9. Executive Order 96-485, as modified and superseded by Executive Order 96-591, dated May 13, 1996, is confirmed to the extent that it is not otherwise confirmed by this Act.

Approved April 3, 1998

CHAPTER 285

(SB 261)

AN ACT relating to auctioneers and auction house operators.

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

Section 1. KRS 330.020 is amended to read as follows:

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

- (1) "Apprentice auctioneer" means any person who is employed *or supervised*, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (2);
- (2) "Auctioneer" *or "principal auctioneer"* means any person who offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or of

any other commodity which may lawfully be kept or offered for sale by or at public auction, or who sells the same at auction *and who is allowed to supervise one (1) or more apprentice auctioneers*;

- (3) "Board" means the Board of Auctioneers;
- (4) "Goods" means any chattels, goods, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;
- (5) "Persons" includes individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation;
- (6) "Auction house" means any commercial establishment at which goods are regularly or customarily offered for sale or sold at public auction, or at which goods are customarily or regularly deposited and accepted, on consignment or otherwise, for sale at public auction at a fixed location, except those establishments which limit goods sold to thoroughbred horses or any interests therein, including, but not limited to, shares and seasons, or tobacco and certified fixed-base livestock markets;
- (7) "Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated.
- (8) "Livestock auctioneer" means any auctioneer ~~whose [limiting his]~~ professional activities *are limited* to the sale of livestock at fixed based livestock yards operating under the control and guidance of the United States of America pursuant to the Federal Packers and Stockyards Act.
- (9) "Tobacco auctioneer" means any auctioneer ~~whose [limiting his]~~ professional activities *are limited* to the sale of tobacco at fixed based tobacco warehouses operating under the control and guidance of the United States of America through its Department of Agriculture.

Section 2. KRS 330.050 is amended to read as follows:

- (1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board consisting of five (5) members, all of whom immediately prior to the date of their appointment have been residents of the Commonwealth of Kentucky for five (5) years, and four (4) whose vocation for a period of at least five (5) years has been that of an auctioneer. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the board shall be for three (3) years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term.
- (2) At no time shall there be more than three (3) members of the same political faith on the board. Whenever there is a vacancy on the board, the Kentucky Auctioneer Association shall recommend to the Governor at least three (3) names for each auctioneer vacancy, and such appointment or appointments shall be made from the recommendations of the association.
- (3) The board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairman.
- (4) Each member of the board shall receive the sum of *twelve thousand dollars (\$12,000) per year, payable twice monthly*, ~~[one hundred dollars (\$100) per day as full compensation for each day actually spent on the work of the board]~~ and *reimbursement for [his]* actual and necessary expenses incurred in the performance of *official duties* ~~[pertaining to his office]~~.
- (5) The board shall have full authority to employ, and discharge, any personnel, including counsel, as it may deem necessary to efficiently administer and enforce the provisions of this chapter, and it shall outline the duties and fix the compensation of such persons, provided that compensation shall be comparable to the salaries paid other state employees, if any, which the board may deem to be doing similar work. The board shall obtain office space, furniture, stationery, and any other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter. If any items deemed to be reasonably necessary by or which are required by the board are available through vendors under contract with the Commonwealth of Kentucky at less cost than if obtained otherwise, then the items shall be acquired pursuant to the contract. The board shall have full authority to obtain for its members, staff, and employees complete insurance coverage, including, but not limited to, liability and errors and omissions insurance, so long as such insurance concerns the business of the board.

- (6) All fees and charges collected by the board under the provisions of this chapter shall be paid into the State Treasury through the Finance and Administration Cabinet and shall be credited to an agency fund account for the Board of Auctioneers under the provisions of KRS 45.253 and shall be withdrawn or expended as provided in that section, if such payment, credit, withdrawal, or expense provisions do not conflict with any provision of this chapter. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, fines, penalties, and other income imposed under the provisions of this chapter and paid into the state treasury. The board shall be financially self-sustaining, and if funds permit it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of all licensees who have paid fees pursuant to this chapter.
- (7) The board shall annually publish a list of the names and addresses of all auctioneers, apprentice auctioneers, livestock auctioneers, tobacco auctioneers, and auction house operators licensed by it pursuant to this chapter. This list shall also contain the names of all persons whose licenses have been suspended or revoked within the preceding year, as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.
- (8) The board may from time to time promulgate necessary administrative regulations.

Section 3. KRS 330.060 is amended to read as follows:

- (1) Any licenses issued pursuant to this chapter shall be granted only to persons who are found to be of good repute, trustworthy, and competent to transact the business for which the license was granted in such a manner as to safeguard the interest of the public.
- (2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.
- (3) In addition to proof of honesty, truthfulness, and good reputation, an examination, conducted by the board or its authorized representative shall be held four (4) times each year, and an examination fee of seventy-five dollars (\$75) shall be collected from each applicant for apprentice auctioneer and an examination fee of one hundred dollars (\$100) shall be collected from each applicant for auctioneer and from each applicant for livestock auctioneer, tobacco auctioneer, and auction house operator. Examination fees shall be nonrefundable and shall defray the expenses of processing the application and of conducting the examination. The examinations for auctioneer and apprentice auctioneer shall include questions on ethics, reading, writing, spelling, *mathematics*~~[elementary arithmetic]~~, elementary principles of land economics, and a general knowledge of the statutes of Kentucky relating to~~[the bulk sales law,]~~ deeds, mortgages, contracts of sale, agency, leases, auctions, brokerage, and the provisions of this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The examination for auction house operator license shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking to operate auction houses. The examinations for livestock auctioneer and tobacco auctioneer shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking a professional license to operate in those limited fields.
- (4) However, no examination shall be required for the renewal of any present or future license, unless such license has been revoked, suspended, or is allowed to expire without renewal. In any of these cases, the board may, in its discretion, require the applicant to take and pass the written examination before a new license may be issued.

~~{(5) The provisions of subsection (3) of this section requiring applicants to pass a written examination to obtain a license shall not apply to an auctioneer or apprentice auctioneer furnishing satisfactory proof to the board that he actively engaged in the auction business for a period of at least one (1) year prior to June 14, 1962, and that he has been the principal auctioneer in at least five (5) auctions of either real or personal property during this period of time. Such an applicant shall file his application and proof with the board no later than October 1, 1962, and the application and proof shall be accompanied by a bond and license fee in accordance with the provisions of this chapter; provided, however, that a nonresident tobacco auctioneer may qualify by December 1, 1962.~~

~~(6) The provisions of subsection (3) of this section requiring applicants for auction house operator to pass a written examination shall not apply to an auction house operator furnishing satisfactory proof to the board that he was actively engaged as an auction house operator at a fixed location for a period of at least two (2) years prior to January 1, 1991, at which at least twenty (20) auction sales were conducted during that period. Such an applicant shall file his application and proof with the board no later than February 1, 1991.]~~

Section 4. KRS 330.070 is amended to read as follows:

- (1) In addition to the other qualifications provided for by this chapter, every applicant for any license issued by the board shall be at least eighteen (18) years of age **and hold a high school diploma or equivalent**. In addition, but subject to the provisions of KRS 330.090, an applicant for an auctioneer's license shall possess a current Kentucky apprentice auctioneer's license and shall have served a bona fide apprenticeship for a period of two (2) years as an apprentice auctioneer in Kentucky, provided that any applicant for auctioneer's license whose apprentice license was granted prior to August 1, 1992, shall be required to serve an apprenticeship of but one (1) year. An applicant for an auctioneer's license who has previously held an auctioneer's license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license. ~~In addition, every applicant for auctioneer's license shall have been the recipient of an accredited high school diploma or the equivalent.~~
- (2) Every application for a license, whether as an auctioneer, apprentice auctioneer, livestock auctioneer, tobacco auctioneer, or auction house operator, shall be submitted on forms prepared by the board. **Each**
- ~~(2) In addition to other requirements imposed by this chapter, Any~~ applicant shall furnish pertinent background data as outlined on **those**~~the application~~ forms ~~furnished by the board~~.
- ~~(3)(a)~~ The issuance fee for each license issued pursuant to this chapter shall be not more than one hundred dollars (\$100) and the annual renewal fee for each license shall be not more than one hundred dollars (\$100). All licenses shall expire on June thirtieth of each year. In the absence of any reason or condition which might warrant the refusal of the renewing of the license, and upon timely receipt of the written request of the applicant and the annual fee therefor, the board shall issue a new license for each ensuing year.
- ~~(4)(b)~~ Beginning with the renewal of licenses expiring on or after June 30, 1993, the board may require as a condition precedent to the renewal of any license, that all licensees complete continuing auction education up to ten (10) hours per year per licensee. The board may impose different continuing auction education requirements, or none, upon different classifications of licensees under this chapter. The continuing auction education requirements provided for in this subsection shall not apply to those individual auctioneers licensed prior to January 1, 1980.
- ~~(5)(4)~~ The board shall prepare and deliver to each licensee a license ~~certificate~~ and pocket card. ~~The certificate shall be displayed conspicuously at all times in the office of the licensee.~~ The **license** ~~certificate~~ and pocket card of the apprentice auctioneer shall contain the name and address of **his or her principal**~~the~~ auctioneer ~~under whose supervision he is employed~~.
 - (a) **Auction house operators shall display their licenses conspicuously and at all times in their place of business. All other licenses shall be kept on file in the licensee's place of business.**
 - (b) **All licensees shall carry their pocket cards with them when performing auctioneering tasks, to be shown upon request.**
 - (c) **Lost licenses or pocket cards will each be replaced upon request by the licensee and payment of a replacement fee of fifteen dollars (\$15).**
- ~~(6)(5)~~ When any apprentice auctioneer is discharged or terminates ~~his~~ employment with the auctioneer for any reason, it shall be the immediate duty of the **principal** auctioneer to deliver or mail by certified mail, return receipt requested, to the board the license of the apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter either directly or indirectly, under authority of his **or her** license, until the apprentice auctioneer receives a new license bearing **a new principal auctioneer's**~~the~~ name and address ~~of his new employer~~. No more than one (1) license shall be issued to any apprentice auctioneer for the same period of time.
- (7) **A licensee may place his or her license in escrow with the board if the licensee does not engage in any auctioneering activity or auction house operations and continues to pay the annual renewal fees during the term of escrow.**
 - (a) **For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund described in KRS 330.192(1)(b) and the continuing education requirement described in subsection (4) of this section.**

- (b) **To reactivate a license in escrow, the licensee must meet the current year's continuing education requirement described in subsection (4) of this section and pay a reactivation fee of one hundred dollars (\$100).**

~~(8)(6)~~ Notice in writing shall be given to the board by each licensee of any change of principal business location or of residence address within ten (10) days of such change. In the event of change of business location address, the board shall issue a new license for the unexpired period. A change of business location without notification to the board within ten (10) days shall automatically suspend or revoke the license of such licensee, as may be ordered in the discretion of the board. Changing a business location or a residence location on its records shall entitle the board to collect ten dollars (\$10).

Section 5. KRS 330.090 is amended to read as follows:

- (1) A nonresident may become a licensee by conforming to all the conditions of this chapter.
- (2) In every instance the nonresident shall pay the issuance fee and the annual renewal fee by this chapter. The nonresident shall also pay the annual fee to the education, research, and recovery fund pursuant to KRS 330.192 and, in addition, any fee required by KRS 330.095, whether or not the examination requirement is waived by the board pursuant to this chapter.
- (3) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth, by the service of any summons, process, or pleadings authorized by law on the secretary of the board. The consent shall stipulate and agree that the service of such process, summons, or pleadings on the secretary shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon the secretary of the board, it shall be by duplicate copies, one of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against which the summons, process, or pleadings may be directed.
- (4) In the event a nonresident applicant for ~~an~~~~principal~~ auctioneer's license *resides*~~should reside~~ in a state which does not prescribe qualifications for licensing as set out in KRS 330.095, the board may waive the apprenticeship requirement set out in KRS 330.070(1) *if the*~~provided that said~~ nonresident nonreciprocal applicant:
 - (a) Resides so far away as to *preclude*~~prevent his~~ serving a bona fide apprenticeship under a licensed Kentucky auctioneer; ~~and further provided that such applicant must exhibit~~
 - (b) *Demonstrates* to the board by affidavit or by other evidence as required by it that his *or her* experience and competency *meet the qualifications*~~are sufficient to qualify him~~ to take the examination for ~~principal~~ auctioneer.

Section 6. KRS 330.095 is amended to read as follows:

Any nonresident applicant who is a licensee in and who resides in another state or country where the qualifications prescribed at the time of licensing were, in the opinion of the board, equal to those prescribed in the Commonwealth of Kentucky at the date of application, and where reciprocal licensing privileges satisfactory to the board are granted to licensees and residents of the Commonwealth, may be granted a license without an examination.~~A fee of one hundred dollars (\$100)~~ In addition to the fees set out in KRS 330.090, *a reciprocal licensee fee* shall be collected from each applicant meeting the above requirements. *The fee shall be the amount of the fee charged by the applicant's state or country to a Kentucky resident applying for a reciprocal license or one hundred dollars (\$100), whichever is greater.*

Section 7. KRS 330.110 is amended to read as follows:

The board may suspend for a period up to four (4) years or revoke the license of any licensee, or levy fines not to exceed five hundred dollars (\$500) against any licensee, or place any licensee on probation for a period of up to three (3) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;

- (3) Pursuing a continued and flagrant course of misrepresentation or ***intentionally*** making false promises ***or disseminating misleading information*** through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his ***or her principal***~~[employer]~~ auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into ***the licensee's***~~[his]~~ possession, commingling funds of others with ***the licensee's***~~[his]~~ own, or failing to keep such funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;
- (8) Violation of any administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by the auctioneer, apprentice auctioneer, or auction house operator;
- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) Failing prior to the sale at public auction or prior to publicly advertising any goods for sale or offering any goods for sale to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives the property for sale;
- (13) After January 1, 1993, failure of any licensee to insert in any advertising pertaining to a particular sale the name of the auctioneer.

Section 8. KRS 330.120 is amended to read as follows:

- (1) The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any licensee, or auction house operator, or any person who assumes to act as a licensee if the complaint, or complaint together with other evidence presented in connection with it, makes out a prima facie case of a violation of this chapter. ***If a prima facie case is not established or the violation is deemed inconsequential, the board may immediately dismiss the complaint.***
- (2) ***If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.***

Section 9. KRS 330.192 is amended to read as follows:

- (1) (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
- (b) In addition to the license fees provided for in KRS 330.070, upon renewal of every license issued pursuant to this chapter, the board shall charge every licensee an amount not to exceed thirty dollars (\$30) per year to be included in the auctioneer's education, research, and recovery fund. Every original applicant for apprentice or~~[principal]~~ auctioneer's license, and every applicant for an auction house operator's license on and after July 15, 1982, shall likewise submit to the board an additional fee of thirty dollars (\$30) to be deposited in the auctioneer's education, research, and recovery fund and shall also be subjected thereafter to an annual renewal fee as of the regular renewal date.
- (c) In addition to the license fees provided for in KRS 330.070, the board, based upon its own discretion as to need, may assess each licensee upon renewal an amount equal to or less than thirty dollars (\$30) per year, or nothing, but not more. Each original applicant shall pay the original amount of thirty dollars (\$30), but upon renewal shall pay the same fee as other licensees.

- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows:
- (a) When a licensee has been duly found guilty of violating any one (1) or more of the provisions of KRS 330.110, or any one (1) or more of the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is authorized to pay to the aggrieved person or persons an aggregate amount not to exceed ~~fifty~~^{thirty} thousand dollars ~~(\$50,000)~~~~(\$30,000)~~ against any one (1) licensee, provided that the licensee has refused to pay such claim within a period of twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.
 - (b) The board shall maintain a minimum level of ~~five~~^{four} hundred thousand dollars ~~(\$500,000)~~~~(\$400,000)~~ for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, will be maintained so that there will be money available to satisfy any and all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.
 - (c) The board, in its discretion, may use any funds in excess of the ~~five~~^{four} hundred thousand dollar ~~(\$500,000)~~~~(\$400,000)~~ level, regardless of whether it is from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:
 1. To carry out the advancement of education and research in the auction field for the benefit of those licensed under the provisions of this chapter and the improvement and making even more efficient the auction industry as such;
 2. To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of auctioneer licensees;
 3. To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making such courses available to licensees and the general public who may seek same on a college or university level;
 4. To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
 5. To sponsor, contract for, and to underwrite any and all other educational and research projects of a similar nature having to do with the advancement of the auction field in Kentucky;
 6. To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of the auctioneer licensees of Kentucky; and
 7. To increase the level of the auctioneer's education, research, and recovery fund above ~~five~~^{four} hundred thousand dollars ~~(\$500,000)~~~~(\$400,000)~~;
 8. To augment the regular trust and agency account of the board.
- (3) (a) In the event that a licensee is found guilty of one (1) or more provisions of KRS 330.110 or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by a Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.
- (b) If such an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall make a finding as to the monetary damages growing out of the aforesaid violation or violations.
- (c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid such amount or amounts in the aggregate not to exceed ~~fifty~~^{thirty} thousand dollars ~~(\$50,000)~~~~(\$30,000)~~ by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until such time as the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.

- (d) When, upon the final order of the court, the board has paid from the auctioneer's education, research and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the commission.
 - (e) Any funds in excess of the ~~five~~^{four} hundred thousand dollar ~~(\$500,000)~~^(\$400,000) level and which are not being currently used, may be invested and reinvested as set forth in subsection (2)(b) of this section, or, in the discretion of the board, may be utilized for any of the purposes enumerated in subsection (2)(c) of this section.
 - (f) All the claims for monetary damages or relief from the auctioneer's education, research, and recovery fund must be made in writing on a proof of loss form submitted to the board within six (6) months of the act of the auctioneer giving rise to the loss. Failure to file such claims within the six (6) month period shall bar the claim. Additional evidence will be submitted by the claimant if required by the board.
 - (g) Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than ~~fifty~~^{thirty} thousand dollars ~~(\$50,000)~~^(\$30,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.
 - (h) No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.
- (4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.
 - (5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

Approved April 3, 1998

CHAPTER 286

(SB 276)

AN ACT relating to probation and parole.

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

Section 1. KRS 439.315 is amended to read as follows:

- (1) A person placed by a releasing authority on probation, parole, or other form of release subject to supervision by the Department of Corrections and all persons supervised pursuant to KRS 439.560 shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release.
- (2) The fees shall be as follows:
 - (a) For a felony, not less than ten dollars (\$10) per month while on active supervision nor more than two thousand five hundred dollars (\$2,500).
 - (b) For a misdemeanor, not less than ten dollars (\$10) per month while on active supervision nor more than five hundred dollars (\$500), except as provided in subsection (13) of this section.
- (3) The releasing authority shall order the fee paid in a lump sum or installments. If the fee is to be paid in a lump sum, the person shall not be released from custody until the fee is paid in full.

- (4) Upon the failure of a person to pay an installment on a fee set forth in a release agreement, the releasing authority shall hold a hearing to determine why the installment has not been paid. Failure without good cause to pay an installment pursuant to a release agreement shall be grounds for the revocation of probation, parole, conditional release, or other form of release upon which the person has been released as provided in KRS 533.050.
- (5) The releasing authority shall hold a hearing to determine the ability of the defendant to make the payments; and in making this determination, the releasing authority shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. In counties containing a city of the first class or an urban-county form of government, the releasing authority may waive the payment of the fee in whole or in part for defendants placed under the supervision of the adult misdemeanor probation and work release program, if it finds that any of the factors in subsection (6) of this section exist.
- (6) The releasing authority shall not waive any fee unless the commissioner of the Department of Corrections or his designee petitions the releasing authority in written form for the waiver. The Department of Corrections shall not petition unless:
 - (a) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of student status shall be supplied to the releasing authority by the educational institution in which the offender is enrolled. In such case, the fee may be postponed until completion of education but shall be paid thereafter.
 - (b) The offender has an employment disability, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the releasing authority.
- (7) At any time during the pendency of the judgment or order rendered according to the terms of this section, a defendant may petition the releasing authority to modify or vacate its previous judgment or order on the grounds of change of circumstances with regard to the defendant's ability to pay the fee. The releasing authority shall advise the defendant of this right at the time of the rendering of the judgment or order placing the defendant on probation, parole, or other supervised release.
- (8) All sums paid by the defendant pursuant to this section shall be paid into the general fund, except as provided in subsection (13) of this section.
- (9) When granting a release of any defendant by way of probation, parole, or otherwise, the releasing authority shall make the payment of this fee a condition of release, unless the fee has been waived, reduced, or delayed as provided in this section. Nonpayment shall be grounds for revocation of the release as provided in KRS 533.050.
- (10) The releasing authority, if the Department of Corrections petitions the releasing authority to modify the fee, shall consider the petition and may waive the payment of the fee in whole or in part, delay payment of the fee, increase the fee, or deny the petition.
- (11) All fees fixed under the provisions of this section shall be collected by the circuit clerk of the county where the defendant is supervised, except as provided in subsection (13) of this section.
- (12) The Department of Corrections and the Division of Probation and Parole shall, for each person released under its supervision, keep an account of all payments made and report delinquencies to the releasing authority.
- (13) In ~~counties containing~~ a city, **county, charter county**, ~~of the first class~~ or an urban-county ~~form of~~ government, persons placed by a releasing authority on probation, parole, or other release subject to supervision by the adult misdemeanor probation and work release program of the county, ~~containing a~~ city, **charter county**, ~~of the first class~~ or urban-county government shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release. The fees shall be assessed by the releasing authority in accordance with the provisions of this section. The fee for a misdemeanor defendant placed under the supervision of an adult misdemeanor probation and work release program of a county, ~~containing a~~ city, **charter county**, ~~of the first class~~ or an urban-county government shall be not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). All sums paid by the defendant under this subsection shall be paid into the general fund of the county, ~~containing a~~ city, **charter county**, ~~of the first class~~ or urban-county government in lieu of the payment specified in subsection (8) of this section. All fees fixed under this subsection shall be collected by the circuit clerk of the county ~~containing a city of the first class~~ or urban-county involved. The adult misdemeanor probation and work release program of the county, ~~containing a~~ city, **charter county**, ~~of the first class~~ or urban-county government shall, for each person released under its

supervision, keep an account of all payments made, maintain copies of all receipts issued by the circuit clerk, and report delinquencies to the court.

Approved April 3, 1998

CHAPTER 287

(HB 372)

AN ACT relating to operator's licenses.

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

SECTION 1. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

For the purposes of KRS 186.400 to 186.640, an original hospital birth certificate signed by the attending physician shall be acceptable as certifying the birth date of an applicant for an instruction permit or operator's license.

Approved April 3, 1998

CHAPTER 288

(SB 122)

AN ACT relating to motor vehicles.

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

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

Any person eligible for an accessible parking registration plate under KRS 186.042 who has been issued, or is eligible for, a special license plate shall make application to the cabinet by September 1 of the preceding registration year that the special plate be made to display the international symbol of access adopted by Rehabilitation International in 1969. The fee for a plate issued under this section shall be the same as for the special plate that the person is eligible for. All privileges granted by KRS 186.042 shall apply to license plates issued under this section.

Approved April 3, 1998

CHAPTER 289

(SB 106)

AN ACT relating to motorboat registration.

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

Section 1. KRS 235.050 is amended to read as follows:

- (1) Except as otherwise provided in this chapter, before the owner or operator of each motorboat required to be registered and numbered by KRS 235.040 may operate it or permit its operation upon the waters of this state, the owner shall apply for title and registration to the county clerk of the county in which he resides, except, if the motorboat is to be operated principally in a county other than the county of the owner's residence the owner may apply for title and registration to the county clerk of the county in which the motorboat is to be principally operated. A motorboat last titled and registered in another state and purchased by a person for operation in this state shall be first titled and registered in this state by and in the name of the purchaser and not in the name of the seller. The application for title and registration shall be accompanied by:
 - (a) A bill of sale, if the application is for registration of a new motorboat; or
 - (b) The owner's registration receipt if the motorboat was last registered in this state; or
 - (c) A bill of sale and the previous registration receipt if last registered in another state; and

- (d) The annual registration fee.
- (2) Motorboats shall be registered annually. *If an application for title and registration is filed with the county clerk prior to the annual registration date established by the Transportation Cabinet, the registration period shall include less than twelve (12) consecutive months and registration fees shall be computed at a rate of one-twelfth of the appropriate annual registration fee set out in KRS 235.080 per month of the remaining registration period.*

Section 2. KRS 186A.015 is amended to read as follows:

- (1) *Except as provided for in Section 1 of this Act*, the titling and registration of motorboats as defined in KRS 235.010 shall be administered through the automated motor vehicle and trailer registration and titling system developed and implemented under the provisions of KRS 186A.010.
- (2) The Transportation Cabinet, the Natural Resources and Environmental Protection Cabinet, the Revenue Cabinet, and all other agencies of state government affected by the system are hereby directed to cooperate in the orderly implementation of this system.
- (3) The Transportation Cabinet, as far as practicable, and not inconsistent with the provisions of KRS Chapter 235, shall promulgate administrative regulations requiring the procedures for boat titling and registration to be consistent with motor vehicle titling and registration. These administrative regulations may pertain but shall not be limited to the following:
- (a) Conditions and characteristics of certificate of title forms;
 - (b) Comparison and identification of hull identification numbers;
 - (c) Application for title or registration;
 - (d) Processing of title applications;
 - (e) Form of certificate of title;
 - (f) Notation of security interests or title;
 - (g) Title lien statements;
 - (h) Transfer of boat ownership;
 - (i) Duplicate certificate of title or registration; and
 - (j) Salvage titles.

Approved April 3, 1998

CHAPTER 290

(SB 102)

AN ACT relating to motor vehicle usage tax.

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

Section 1. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

- (1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;
- (2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;
- (3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

- (4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;
- (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;
- (6) Motor vehicles previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;
- (7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;
- (8) Motor vehicles transferred to a corporation from a proprietorship *or limited liability company, to a limited liability company from a corporation or proprietorship*, or from a corporation *or limited liability company* to a proprietorship, within six (6) months from the time that the business is incorporated, *organized*, or dissolved;
- (9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were previously registered in Kentucky;
- (10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (11) *Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;*
- (12) The interest of a partner in a motor vehicle when other interests are transferred to him;
- ~~(13)~~~~(12)~~ Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(4). The reposessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle; and
- ~~(14)~~~~(13)~~ Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only.

Section 2. The amendment contained in Section 1 of this Act shall apply for motor vehicles transferred after July 31, 1998.

Approved April 3, 1998

CHAPTER 291

(SB 78)

AN ACT relating to county funds.

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

Section 1. KRS 68.310 is amended to read as follows:

Except in case of an emergency concerning which the county judge/executive, the fiscal court and the state local finance officer unanimously agree in writing, **and, except for encumbrances or expenditures from the county's road fund**, no county ~~shall~~^{may}, during the first half of any fourth fiscal year, beginning with the fiscal year ~~1998-1999~~^[1941-1942], encumber or expend more than sixty-five percent (65%) ~~in any fund~~^{of all its current funds, taken as a unit,} budgeted for that fiscal year, not counting as current funds any budgetary allotments for or payments of principal and interest of bonded indebtedness. **Prior to encumbering or expending any funds from the road fund during the first half of any fourth fiscal year which exceed sixty-five percent (65%) of the amount budgeted, the fiscal court shall assure that there are sufficient funds remaining in the general fund to provide for the excess encumbrance or expenditure from the road fund on a dollar for dollar basis. Those excess funds shall remain in the general fund until on or after January 1 of that fiscal year.**

Approved April 3, 1998

CHAPTER 292

(SB 352)

AN ACT relating to Article 3 of the Uniform Commercial Code.

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

Section 1. The following KRS sections are repealed:

- 355.3-701 Letter of advice of international sight draft.
- 355.3-801 Drafts in a set.
- 355.3-802 Effect of instrument on obligation for which it is given.
- 355.3-803 Notice to third party.
- 355.3-804 Lost, destroyed or stolen instruments.
- 355.3-805 Instruments not payable to order or to bearer.

Section 2. The General Assembly finds and declares that in enacting the Revised Article 3 of the Uniform Commercial Code in 1996 Ky. Acts Chapter 130, effective January 1, 1997, it was the intent of the General Assembly to repeal those sections of the former Article 3 that are now being repealed in Section 1 of this Act but that these sections were inadvertently omitted and further finds and declares that this situation has been properly described in the Legislative Research Commission Note that was appended to each of these statutes in the Kentucky Revised Statutes. For these reasons, this Act is retroactive to January 1, 1997, the effective date of the repeal of the former Article 3.

Approved April 3, 1998

CHAPTER 293

(HB 188)

AN ACT relating to child abuse.

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

Section 1. KRS 532.045 is amended to read as follows:

- (1) As used in this section:
 - (a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, **classified school employee, certified school employee**, counselor, staff or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

- (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
 - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
 - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
 - (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
 - (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
 - (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
 - (f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
 - (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
 - (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
 - (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.
- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of

time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It shall not be necessary to disclose the sources of confidential information.

- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Approved April 3, 1998

CHAPTER 294

(HB 2)

AN ACT relating to elementary and secondary education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) *The General Assembly finds the following:*

- (a) *Judicial decisions concerning religion, free speech, and public education are widely misunderstood and misapplied;***
- (b) *Confusion surrounding these decisions has caused some to be less accommodating of the religious liberty and free speech rights of students than permitted under the First Amendment to the United States Constitution;***
- (c) *Confusion surrounding these decisions has resulted in needless conflicts and litigation;***
- (d) *The Supreme Court of the United States has ruled that the establishment clause of the First Amendment to the United States Constitution requires that public schools neither advance or inhibit religion. Public schools should be neutral in matters of faith and should treat religion with fairness and respect;***
- (e) *Neutrality to religion does not require hostility to religion. The establishment clause does not prohibit reasonable accommodation of religion, nor does the clause prohibit appropriate teaching about religion;***
- (f) *Accommodation of religion is required by the free speech and free exercise clauses of the First Amendment to the United States Constitution; and***
- (g) *Setting forth the religious liberty rights of students in a statute would assist students and parents in the enforcement of the religious liberty rights of students and would provide impetus to efforts in public schools to accommodate religious belief in feasible cases.***

- (2) *The purpose of Sections 1 to 7 of this Act is to create a safe harbor for schools desiring to avoid litigation and to allow the free speech and religious liberty rights of students to the extent permissible under the establishment clause.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Establishment clause" means the portion of the First Amendment to the United States Constitution that forbids laws respecting an establishment of religion;***
- (2) *"Free exercise clause" means the portion of the First Amendment to the United States Constitution that forbids laws prohibiting the free exercise of religion;***
- (3) *"Free speech clause" means the portion of the First Amendment to the United States Constitution that forbids laws abridging the freedom of speech;***
- (4) *"Public school" means any school that is operated by the state, a political subdivision of the state, or a governmental agency within the state; and***
- (5) *"Student" means an individual attending a public school.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *A student shall have the right to carry out an activity described in any of paragraphs (a) to (d) of subsection (2) of this section, if the student does not:*
- (a) *Infringe on the rights of the school to:*
 1. *Maintain order and discipline;*
 2. *Prevent disruption of the educational process; and*
 3. *Determine educational curriculum and assignments;*
 - (b) *Harass other persons or coerce other persons to participate in the activity; or*
 - (c) *Otherwise infringe on the rights of other persons.*
- (2) *Subject to the provisions of subsection (1) of this section, a student shall be permitted to voluntarily:*
- (a) *Pray in a public school, vocally or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate, or speak on nonreligious matters alone or with other students in the public school;*
 - (b) *Express religious viewpoints in a public school to the same extent and under the same circumstances as a student is permitted to express viewpoints on nonreligious topics or subjects in the school;*
 - (c) *Speak to and attempt to discuss religious viewpoints with other students in a public school to the same extent and under the same circumstances as a student is permitted to speak to and attempt to share nonreligious viewpoints with other students. However, any student may demand that this speech or these attempts to share religious viewpoints not be directed at him or her;*
 - (d) *Distribute religious literature in a public school, subject to reasonable time, place, and manner restrictions to the same extent and under the same circumstances as a student is permitted to distribute literature on nonreligious topics or subjects in the school; and*
 - (e) *Be absent, in accordance with attendance policy, from a public school to observe religious holidays and participate in other religious practices to the same extent and under the same circumstances as a student is permitted to be absent from a public school for nonreligious purposes.*
- (3) *No action may be maintained under Sections 1 to 7 of this Act unless the student has exhausted the following administrative remedies;*
- (a) *The student or the student's parent or guardian shall state his or her complaint to the school's principal. The principal shall investigate and take appropriate action to ensure the rights of the student are resolved within seven (7) days of the date of the complaint;*
 - (b) *If the concerns are not resolved, then the student or the student's parent or guardian shall make a complaint in writing to the superintendent with the specific facts of the alleged violation;*
 - (c) *The superintendent shall investigate and take appropriate action to ensure that the rights of the student are resolved within thirty (30) days of the date of the written complaint; and*
 - (d) *Only after the superintendent's investigation and action, may a student or the student's parent or legal guardian pursue any other legal action.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 1 to 7 of this Act shall be construed to affect, interpret, or in any way address the establishment clause.*
- (2) *The specification of religious liberty or free speech rights in Sections 1 to 7 of this Act shall not be construed to exclude or limit religious liberty or free speech rights otherwise protected by federal, state, or local law.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 7 of this Act shall be construed to support, encourage, or permit a teacher, administrator, or other employee of the public schools to lead, direct, or encourage any religious or anti-religious activity in violation of the portion of the First Amendment of the United States Constitution prohibiting laws respecting an establishment of religion.

SECTION 6. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The Department of Education shall send copies of Sections 1 to 7 of this Act to each local school board and school-based decision making council in Kentucky on an annual basis.

SECTION 7. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 7 of this Act may be cited as the Nicole Hadley, Jessica James, and Kayce Steger Act.

Approved April 3, 1998

CHAPTER 295

(SB 70)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 243.200 is amended to read as follows:

- (1) A distilled spirits and wine transporter's license shall authorize the licensee to transport distilled spirits and wine to or from the licensed premises of any licensee under KRS 243.020 to 243.670 if both the consignor and consignee in each case are authorized by the law of the states of their residence to sell, purchase, ship or receive the alcoholic beverages.
- (2) A distilled spirits and wine transporter's license shall be issued only to persons authorized by proper certificate from the Department of Vehicle Regulation to engage in the business of common carrier.
- (3) No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, unless expressly authorized to do so by law.
- (4) Distilled spirits and wine may be transported by the holder of any license authorized by KRS 243.030 from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine.
- (5) *A licensed alcoholic beverage store operator may move, within the same county, alcoholic beverages from one of the operator's licensed stores to another without a transporter's license. However, the licensed store operator shall keep and maintain in one (1) of his or her stores in that county, adequate books and records of the transactions involved in transporting alcoholic beverages from one (1) licensed store to another in accordance with standards established in administrative regulations promulgated by the board. The records shall be available to the department and the Revenue Cabinet upon request.*

Approved April 3, 1998

CHAPTER 296

(SB 59)

AN ACT relating to the definition of "sportsman."

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

Section 1. KRS 150.022 is amended to read as follows:

- (1) The Department of Fish and Wildlife Resources Commission shall consist of nine (9) members, one (1) from each wildlife district, as set out by the commissioner with the approval of the commission, and not more than five (5) of the same political party.
- (2) The Governor shall appoint the members of the commission. Each of ~~the~~^{such} members shall be appointed for a term of four (4) years.
- (3) Vacancies through the expiration of terms of the members of the commission shall be filled by appointment by the Governor from a list of five (5) names from each wildlife district, recommended and submitted by the sportsmen of each respective district. When the term of a member expires, the commissioner shall call a meeting of the sportsmen in that district not later than thirty (30) days prior to the expiration of ~~the~~^{such}.

member's term. Notice of the meeting shall be given by publication pursuant to KRS Chapter 424. At ~~the~~^{such} meeting, the sportsmen in attendance shall select and submit to the Governor a list of five (5) residents and citizens of the district who are well informed on the subject of wildlife conservation and restoration. Each sportsman may vote for one (1) candidate only, and the list submitted to the Governor shall be made up of the names of the five (5) candidates receiving the five (5) highest vote totals. The Governor shall appoint a successor to the member whose term is about to expire within sixty (60) days following the submission to him of the list ~~hereinabove~~ referred to *in this subsection*, and in no event later than August 13.

- (4) Upon appointment to the commission of the Department of Fish and Wildlife Resources, each commissioner shall execute a bond of one thousand dollars (\$1,000) in favor of the Department of Fish and Wildlife Resources, the premium on ~~this~~^{said} bond to be paid out of department funds.
- (5) In the event of vacancies other than by expiration, the Governor shall fill the vacancy for the unexpired part of the term from the names remaining on the list previously submitted for the district from which the vacancy arose.
- (6) Each member of the commission shall take the constitutional oath of office.
- (7) The Governor may remove any member of the commission for inefficiency, neglect of duty, or misconduct in office; but shall first deliver to ~~the~~^{such} member a copy of all charges in writing and afford to him an opportunity of being publicly heard in person or by counsel in defense of ~~the~~^{such} charges, upon not less than ten (10) days' notice. If a member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against ~~the~~^{such} member and his findings thereon, together with a complete record of the proceedings.
- (8) Each member of the commission shall be entitled to reimbursement for actual and necessary traveling and other expenses incurred by him in the discharge of his official duties and to be paid from the game and fish fund.
- (9) A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power vested in the commission.
- (10) The department shall have its principal office in Franklin County, and is authorized to purchase all supplies, equipment, and printed forms and to issue ~~any~~^{such} notices and publications as the commissioner may deem necessary to carry out the provisions of this chapter.
- (11) The word "sportsman" as used in this section shall mean a resident hunter or fisherman who has been licensed, *or a resident who has registered a motorboat*, in Kentucky for each of the past two (2) consecutive years.

Approved April 3, 1998

CHAPTER 297

(SB 68)

AN ACT relating to retail food establishments.

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

Section 1. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) *"Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;*
- (2) *"Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act;*
- (3) *"Cabinet" means the Cabinet for Human Resources or its designee;*
- (4) *"Color" means but is not limited to black, white, and intermediate grays;*
- (5) *"Color additive" means a material that:*

- (a) *Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or*
- (b) *When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;*
- (6) *"Cosmetic" means:*
 - (a) *Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and*
 - (b) *Articles intended for use as a component of those articles, except that the term shall not include soap;*
- (7) *"Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;*
- (8) *"Device," except when used in subsection (41) of this section, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, subsection (3) of KRS 217.095, and subsection (10) of KRS 217.175, means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:*
 - (a) *For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or*
 - (b) *To affect the structure or any function of the body of man or other animals;*
- (9) *"Drug" means:*
 - (a) *Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;*
 - (b) *Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;*
 - (c) *Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and*
 - (d) *Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;*
- (10) *"Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;*
- (11) *"Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;*
- (12) *"Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. sec. 1451 et seq., and all amendments thereto;*
- (13) *"Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. sec. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;*
- (14) *"Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not*

condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

- (15) *"Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;*
- (16) *"Food" means:*
- (a) *Articles used for food or drink for man or other animals;*
 - (b) *Chewing gum; and*
 - (c) *Articles used for components of any such article;*
- (17) *"Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:*
- (a) *A pesticide chemical in or on a raw agricultural commodity;*
 - (b) *A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;*
 - (c) *A color additive; or*
 - (d) *Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. sec. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;*
- (18) *"Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments;*
- (19) *"Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;*
- (20) *"Food storage warehouse" means any establishment in which food is stored for subsequent distribution;*
- (21) *"Immediate container" does not include package liners;*

- (22) *"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:*
- (a) *The number of potential illnesses or injuries; or*
 - (b) *The nature, severity, and duration of the anticipated illness or injury;*
- (23) *"Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;*
- (24) *"Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;*
- (25) *"Labeling" means all labels and other written, printed, or graphic matter:*
- (a) *Upon an article or any of its containers or wrappers; or*
 - (b) *Accompanying the article;*
- (26) *"Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. sec. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;*
- (27) *"New drug" means:*
- (a) *Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or*
 - (b) *Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;*
- (28) *"Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;*
- (29) *"Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;*
- (30) *"Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;*
- (31) *"Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act; 21 U.S.C. sec. 451 et seq., Public Law 85-172, 71 Stat. 441, and any amendments thereto;*
- (32) *"Practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;*
- (33) *"Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;*
- (34) *"Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;*
- (35) *"Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;*

- (36) *"Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;*
- (37) *"Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;*
- (38) *"Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recovering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;*
- (39) *"Secretary" means the secretary of the Cabinet for Human Resources;*
- (40) *"Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;*
- (41) *If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;*
- (42) *The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;*
- (43) *The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment*

~~(1) The term "secretary" means the secretary of the Cabinet for Human Resources;~~

~~(2) The term "cabinet" means the Cabinet for Human Resources or its designee;~~

~~(3) The term "person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;~~

~~(4) The term "food" means:~~

~~(a) Articles used for food or drink for man or other animals;~~

~~(b) Chewing gum; and~~

~~(c) Articles used for components of any such article;~~

~~(5) The term "drug" means:~~

~~(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;~~

~~(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;~~

- ~~(c) — Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and~~
- ~~(d) — Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;~~
- ~~(6) — The term "device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments, apparatus and contrivances, including their components, parts and accessories, intended:
 - ~~(a) — For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or~~
 - ~~(b) — To affect the structure or any function of the body of man or other animals;~~~~
- ~~(7) — The term "cosmetic" means:
 - ~~(a) — Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and~~
 - ~~(b) — Articles intended for use as a component of any such articles, except that such term shall not include soap;~~~~
- ~~(8) — The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;~~
- ~~(9) — The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;~~
- ~~(10) — The term "immediate container" shall not include package liners;~~
- ~~(11) — The term "labeling" means all labels and other written, printed or graphic matter:
 - ~~(a) — Upon an article or any of its containers or wrappers; or~~
 - ~~(b) — Accompanying the article;~~~~
- ~~(12) — If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;~~
- ~~(13) — The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;~~
- ~~(14) — The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;~~
- ~~(15) — The term "new drug" means:
 - ~~(a) — Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or~~
 - ~~(b) — Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;~~~~

- (16) ~~The term "contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;~~
- (17) ~~The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;~~
- (18) ~~The term "federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);~~
- (19) ~~The term "flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self rising flour, self rising white flour, self rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;~~
- (20) ~~The term "enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;~~
- (21) ~~The terms "bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;~~
- (22) ~~The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;~~
- (23) ~~The term "practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;~~
- (24) ~~The term "prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropractic, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;~~
- (25) ~~The term "Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);~~
- (26) ~~The term "Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85 172; 71 Stat. 441, including any amendments thereto;~~
- (27) ~~The term "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;~~
- (28) ~~The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide,~~

~~Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;~~

- ~~(29) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;~~
- ~~(30) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:~~
- ~~(a) A pesticide chemical in or on a raw agricultural commodity; or~~
 - ~~(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or~~
 - ~~(c) A color additive; or~~
 - ~~(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;~~
- ~~(31) (a) The term "color additive" means a material which:~~
- ~~1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or~~
 - ~~2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;~~
- ~~(b) The term "color" shall include, but not be limited to black, white, and intermediate grays;~~
- ~~(c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.~~
- ~~(32) The term "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;~~
- ~~(33) The term "retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;~~
- ~~(34) The term "food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready to eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;~~
- ~~(35) The term "temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;~~
- ~~(36) The term "retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of~~

~~purchase, are offered for sale to the consumer, and intended for off premises consumption, but shall not include establishments which handle only prepackaged, snack type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;~~

- ~~(37) The term "salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;~~
- ~~(38) The term "salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;~~
- ~~(39) The term "food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and~~
- ~~(40) The term "food storage warehouse" means any establishment in which food is stored for subsequent distribution}.~~

Section 2. KRS 217.126 is amended to read as follows:

- (1) *The cabinet shall suspend the permit to operate a retail food establishment immediately upon notice to the permit holder without a conference when:*
- (a) *An inspection of an establishment reveals that any of the following conditions are present:*
1. *Sewage is standing in the food preparation, food storage, utensil washing, or storage areas;*
 2. *Gross rodent or insect activity exists resulting in contamination of food or food equipment;*
 3. *The water supply is contaminated or cut off with no approved alternative plan;*
 4. *The establishment is operating in blatant disregard for safe cooking or holding temperatures for potentially hazardous foods; or*
 5. *There is an infiltration of toxic or noxious gases, dust, or other irritants or contaminants causing apparent illness of employees or patrons; or*
- (b) *The permit holder or authorized agent has interfered, as defined in subsection (23) of Section 1 of this Act, with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves and the interference has been verified by the inspector's supervisor;*
- (c) *An inspection of an establishment reveals a rating score of less than sixty (60); or*
- (d) *An inspection reveals that an imminent health hazard as defined in subsection (22) of Section 1 of this Act still exists and the hazard has been verified by the agent's supervisor.*
- (2) *In all other instances not covered by subsection (1) of this section*~~{The cabinet or local health department concerned}~~, after notice to the applicant or holder of a permit to operate and after an opportunity for a hearing as provided by administrative regulations of the secretary, *the cabinet or local health department concerned* may deny, suspend, or revoke a permit to operate in any case where it finds that there has been a failure to comply with the requirements of KRS 217.005 to 217.215 *or the administrative*~~and~~ regulations of the secretary. Any administrative hearing conducted under this section shall be conducted in accordance with KRS Chapter 13B.

Section 3. KRS 217.992 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 217.175 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for not more than thirty (30) days, or both; but if the violation is committed after a conviction of the person under this section has become final, the person shall be subject to a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or by imprisonment for not more than ninety (90) days, or both.

- (2) No person shall be subject to the penalties of subsection (1) of this section, for having violated KRS 217.175(1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect that the article is not adulterated or misbranded within the meaning of KRS 217.005 to 217.215, designating KRS 217.005 to 217.215.
- (3) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of the false advertisement, unless he has refused, on the request of the cabinet to furnish the cabinet the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States who causes him to disseminate the advertisement.
- (4) Any person who operates a **retail food establishment, food processing establishment,**~~service~~ food storage warehouse, salvage distributor, or salvage processing plant~~establishment~~, without a permit as provided in KRS 217.005 to 217.215 or who fails to comply with any regulation adopted thereto shall be guilty of a misdemeanor and shall on conviction be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for not more than thirty (30) days, or both, but if the violation is committed after a conviction of the person under this section has become final, the person shall be subject to a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or by imprisonment for not more than ninety (90) days, or both.
- (5) Any person who violates any provision of KRS 217.005 to 217.215, for which a specific penalty is not otherwise provided, or any regulation adopted under the provision of KRS 217.005 to 217.215, or who fails to comply with an order of the cabinet issued pursuant thereto, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day of violation or noncompliance shall constitute a separate offense.

Section 4. KRS 315.010 is amended to read as follows:

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;
- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;
- (6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;
- (7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;
- (8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;
- (9) "Drug" means any of the following:

- (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or
 - (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or
 - (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
 - (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;
- (10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:
- (a) Evaluation of prescription drug orders and patient records for:
 - 1. Known allergies;
 - 2. Rational therapy contraindications;
 - 3. Appropriate dose and route of administration;
 - 4. Appropriate directions for use; or
 - 5. Duplicative therapies.
 - (b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;
 - (c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or
 - (d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;
- (11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;
- (12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;
- (13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;
- (14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;
- (15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (16) "Pharmacist intern" means a natural person who is:
- (a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;
 - (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
 - (d) An individual participating in a residency or fellowship program approved by the board for internship credit;

- (17) "Pharmacy" means every place where:
- (a) Drugs are dispensed under the direction of a pharmacist;
 - (b) Prescription drug orders are compounded under the direction of a pharmacist; or
 - (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;
- (18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;
- (19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection, administration of medication in the course of dispensing or maintaining a prescription drug order, and drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;
- (20) "Practitioner" has the same meaning given in KRS 217.015(32)~~(23)~~;
- (21) "Prescription drug" means a drug which:
- (a) Under federal law is required to be labeled with either of the following statements:
 1. "Caution: Federal law prohibits dispensing without prescription"; or
 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or
 - (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;
- (22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;
- (23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;
- (24) "Society" means the Kentucky Society of Health-Systems Pharmacists;
- (25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and
- (26) "Wholesaler" means any person within the Commonwealth who legally buys drugs for resale or distribution to persons other than patients or consumers.

Approved April 3, 1998

CHAPTER 298

(HJR 60)

A JOINT RESOLUTION directing the Department of Insurance to conduct a comprehensive study of credit health and credit life insurance.

WHEREAS, it is the responsibility of the General Assembly to guarantee the efficient regulation of the insurance industry within the Commonwealth for the protection of the citizens of the Commonwealth; and

WHEREAS, there have been major changes in the insurance industry since the passage of the current insurance code, KRS Chapter 304, pertaining to credit life and health insurance, as well as a development in consumer issues in credit health and life insurance coverage, all of which require that the current provisions be studied in order to assure the sound regulation of the insurance industry and the efficient protection of the public;

NOW, THEREFORE,

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

Section 1. The Department of Insurance is directed to conduct a comprehensive study of the issue of credit health insurance and credit life insurance, including a review of KRS Chapter 304 Subtitle 19, for the purposes of identifying the need to revise or amend Subtitle 19 of KRS Chapter 304.

Section 2. The Department of Insurance shall report the results of its review to the Interim Joint Committee on Banking and Insurance no later than 180 days prior to the convening of the Kentucky General Assembly's regular session in the year 2000.

Section 3. The commissioner shall establish a task force to review and advise the commissioner concerning the comprehensive study of credit life insurance and credit health insurance.

- (1) The task force shall consist of the commissioner and twelve (12) members appointed by the commissioner. The commissioner shall serve as chair of the task force.
- (2) The twelve (12) persons appointed by the commissioner shall be:
 - (a) One (1) representative of banks;
 - (b) One (1) representative of automobile dealers;
 - (c) One (1) representative of finance companies;
 - (d) One (1) retailer that offers credit life insurance or credit health insurance to customers;
 - (e) Two (2) consumers;
 - (f) One (1) agent holding a resident license issued by the department;
 - (g) Two (2) insurers offering credit life insurance or credit health insurance;
 - (h) Two (2) attorneys whose legal practice consists primarily of litigating insurance matters; and
 - (i) The commissioner of the Department of Financial Institutions.

Approved April 3, 1998

CHAPTER 299

(SB 43)

AN ACT relating to county financial management.

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

Section 1. KRS 68.275 is amended to read as follows:

- (1) Claims against the county that are within the amount of line items of the county budget and arise pursuant to contracts duly authorized by the fiscal court shall be paid by the county judge/executive by a warrant drawn on the county and co-signed by the county treasurer.
- (2) The county judge/executive shall present all claims to the fiscal court for review prior to payment and the court, for good cause shown, may order that a claim not be paid.
- (3) *The fiscal court may adopt an order, called a standing order, to preapprove the payment of recurrent monthly payroll and utility expenses. No other expenses shall be preapproved pursuant to this subsection without the written consent of the state local finance officer. All standing orders adopted by the fiscal court shall be renewed annually and submitted to the state local finance officer by July 1 of each fiscal year with the submission of the county budget if the fiscal court wishes to continue the standing order. Otherwise, after July 1, the standing order shall expire and no more payments designated in the standing order shall be preapproved unless a new order is adopted by the fiscal court according to the provisions of this subsection.*

Approved April 3, 1998

CHAPTER 300

(HB 250)

AN ACT relating to hazardous duty retirement.

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

Section 1. KRS 61.592 is amended to read as follows:

- (1) "Hazardous position" means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. Hazardous positions shall include positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.
- (2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.
- (3)
 - (a) An employee *participating in the Kentucky Employees Retirement System who is* determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, seven percent (7%) of his creditable compensation. *An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation;*
 - (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;
 - (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost in order that the nonhazardous service be credited as hazardous service, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.
- (4) *Except for the employee contribution by members of the Kentucky Employees Retirement System, the normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652. The employee contribution for a member of the Kentucky Employees Retirement System shall be seven percent (7%).*

- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

Section 2. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7), 61.555, and 78.530;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, and fees paid to the employee as a result of services performed for the employer, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts that are

not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

- (14) "Final compensation"~~[of a member]~~ means:
- (a) ***For a member who is employed in a nonhazardous position, as provided in Section 1 of this Act, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;***
 - (b) ***For a member who is employed in a hazardous position, as provided in Section 1 of this Act, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-eight (28), one (1) or more additional fiscal years shall be used;***
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2080) hours for eight (8) hour workdays, nineteen hundred fifty (1950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;
 - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
 - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;

- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort; and
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434.

Section 3. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of State Police, or its successor;
- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided in KRS 61.555;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;
- (8) "Creditable compensation" means all salary and wages paid to the employee as a result of services performed for the employer, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4); living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

- (9) "Final compensation" at any time means the creditable compensation of a member during the *three (3)*~~*five (5)*~~ fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the *three (3)*~~*five (5)*~~ year period, multiplied by twelve (12); the *three (3)*~~*five (5)*~~ years may be fractional and need not be consecutive. If the number of months of service credit during the *three (3)*~~*five (5)*~~ year period is less than *twenty-eight (28)*~~*forty-eight (48)*~~, one (1) or more additional fiscal years shall be used;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;
- (15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959. A member of the State Police Retirement System, a member of the County Employees Retirement System or a member of the Kentucky Employees Retirement System covered by this section with twenty (20) or more years of service credit, at least fifteen (15) of which are current may declare his "normal retirement date" to be some date prior to his fifty-fifth birthday;
- (16) "Disability retirement date" means the first day of the month following total and permanent disability or hazardous disability;
- (17) "Dependent child" means a child en ventre sa mere and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of duty;
- (20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary does not mean an estate, trust, or trustee;

- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month; and
- (31) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically-demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically-acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests.

Section 4. KRS 16.545 is amended to read as follows:

- (1) Except for members over age fifty-five (55) on July 1, 1958, who shall not be required to contribute, each member shall, commencing on July 1, ~~1998~~~~1968~~, contribute for each pay period for which he receives compensation, ~~eight~~~~seven~~ percent (~~8%~~~~(7%)~~) of his creditable compensation.
- (2) The employer shall cause to be deducted from the compensation of each member for each and every payroll period subsequent to July 1, 1958, the contributions payable by such member as provided in KRS 16.510 to 16.652.
- (3) Every member shall be deemed to consent to deductions made as provided herein; and the payment of salary or compensation less such deduction shall be a full and complete discharge of all claims for services rendered by such person during the period covered by such payment, except as to any benefits provided by KRS 16.510 to 16.652.
- (4) Each employer shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010(10). These contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. Each employer shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 16.510 to 16.652 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

Approved April 3, 1998

CHAPTER 301**(HB 115)**

AN ACT relating to drugs.

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

Section 1. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) The term "secretary" means the secretary of the Cabinet for Human Resources;
- (2) The term "cabinet" means the Cabinet for Human Resources or its designee;
- (3) The term "person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (4) The term "food" means:
 - (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (5) The term "drug" means:
 - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (6) The term "device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments, apparatus and contrivances, including their components, parts and accessories, intended:
 - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;
- (7) The term "cosmetic" means:
 - (a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of any such articles, except that such term shall not include soap;
- (8) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (9) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (10) The term "immediate container" shall not include package liners;
- (11) The term "labeling" means all labels and other written, printed or graphic matter:

- (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (12) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (13) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (14) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;
- (15) ***The term "legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";***
- ~~(16)(15)~~ The term "new drug" means:
- (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- ~~(17)(16)~~ The term "contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;
- ~~(18)(17)~~ The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;
- ~~(19)(18)~~ The term "federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);
- ~~(20)(19)~~ The term "flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- ~~(21)(20)~~ The term "enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;
- ~~(22)(21)~~ The terms "bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;
- ~~(23)(22)~~ The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance

of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

- (24) *The term "dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;*
- (25) *The term "dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;*
- (26)~~(23)~~ The term "practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;
- (27)~~(24)~~ The term "prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (28) *The term "prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;*
- (29) *The term "second or subsequent offense" has the same meaning as it does in KRS 218A.010;*
- (30) *The term "traffic" has the same meaning as it does in KRS 218A.010;*
- (31) *The term "ultimate user" has the same meaning as it does in KRS 218A.010;*
- (32)~~(25)~~ The term "Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);
- (33)~~(26)~~ The term "Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85-172; 71 Stat. 441, including any amendments thereto;
- (34)~~(27)~~ The term "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;
- (35)~~(28)~~ The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide, Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;
- (36)~~(29)~~ The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (37)~~(30)~~ The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based

on common use in food to be safe under the conditions of its intended use; except that the term does not include:

- (a) A pesticide chemical in or on a raw agricultural commodity; or
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;
- ~~(38)~~~~(31)~~ (a) The term "color additive" means a material which:
- 1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or
 - 2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;
- (b) The term "color" shall include, but not be limited to black, white, and intermediate grays;
- (c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.
- ~~(39)~~~~(32)~~ The term "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;
- ~~(40)~~~~(33)~~ The term "retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- ~~(41)~~~~(34)~~ The term "food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;
- ~~(42)~~~~(35)~~ The term "temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- ~~(43)~~~~(36)~~ The term "retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but shall not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- ~~(44)~~~~(37)~~ The term "salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- ~~(45)~~~~(38)~~ The term "salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged

food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;

- ~~(46)~~~~(39)~~ The term "food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and
- ~~(47)~~~~(40)~~ The term "food storage warehouse" means any establishment in which food is stored for subsequent distribution.

SECTION 2. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of theft of a legend drug when he unlawfully takes or exercises control over a legend drug that is not a controlled substance, belonging to another person, with the intent to deprive him thereof.*
- (2) *Theft of a legend drug is:*
- (a) *For a first offense a Class D felony, if the legend drug has a value of three hundred dollars (\$300) or less; or*
- (b) *For a second or subsequent offense, or a value of greater than three hundred dollars (\$300), a Class C felony.*

SECTION 3. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.*
- (2) *A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he possesses a prescription blank with the intent to make or utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.*
- (3) *A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a legend drug.*
- (4) *The knowing, with intent to violate KRS Chapter 217, possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a legend drug, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of making or uttering a forged prescription or for sale or transfer to another person for that purpose.*
- (5) *Any person who violates any subsection of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.*

SECTION 4. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a legend drug when completed.*
- (2) *Forgery of a prescription is:*
- (a) *For a first offense, a Class D felony.*
- (b) *For a second or subsequent offense, a Class C felony.*

SECTION 5. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he possesses a forged prescription.*
- (2) *Criminal possession of a forged prescription is:*
- (a) *For a first offense, a Class A misdemeanor.*
- (b) *For second or subsequent offense, a Class D felony.*

SECTION 6. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *A pharmacist, practitioner, or other person authorized by law to dispense legend drugs, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or possessed in violation of Section 3, 4, or 5 of this Act.*
- (2) *Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or illegally possessed.*
- (3) *If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or stolen, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.*

SECTION 7. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 3, 4, and 5 of this Act, the definitions found in KRS 516.010 apply.

SECTION 8. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *A duly licensed manufacturer, distributor, or wholesaler may sell or distribute a legend drug to any of the following:*
 - (a) *A manufacturer, wholesaler, or distributor;*
 - (b) *A pharmacy;*
 - (c) *A practitioner;*
 - (d) *The administrator in charge of a hospital, but only for use by or in that hospital; and*
 - (e) *A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.*
- (2) *A pharmacist may sell or distribute a legend drug:*
 - (a) *Pursuant to a prescription that conforms to the requirements of this chapter; or*
 - (b) *To a person licensed to administer, dispense, distribute, or possess a legend drug.*
- (3) *A practitioner may:*
 - (a) *Administer, dispense, or prescribe a legend drug for a legitimate medical purpose and in the course of professional practice; or*
 - (b) *Distribute a legend drug to a person licensed to administer, dispense, distribute, or possess a legend drug.*
- (4) *Possession or control of legend drugs obtained as authorized by this section shall be lawful if it occurred in the regular course of business, occupation, profession, employment, or duty of the possessor.*
- (5) *No person shall traffic in any legend drug except as authorized by this section.*
- (6) *No person shall dispense, prescribe, distribute, or administer any legend drug except as authorized by this section.*
- (7) *No person shall possess any legend drug except as authorized by this section.*
- (8) *Unless another specific penalty is provided in KRS 217.005 to 217.215, any person who violates any provision of subsections (1) to (6) of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses.*
- (9) *Unless another specific penalty is provided in this Act, any person who violates the provision of subsection (7) of this section shall be guilty of a Class B misdemeanor.*
- (10) *A person to whom or for whose use a legend drug has been prescribed or dispensed may lawfully possess it.*

Section 9. KRS 514.030 is amended to read as follows:

- (1) *Except as otherwise provided in Section 2 or 15 of this Act, a person is guilty of theft by unlawful taking or disposition when he unlawfully:*
 - (a) *Takes or exercises control over movable property of another with intent to deprive him thereof; or*

- (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.
- (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony.

SECTION 10. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 506 shall apply to offenses under KRS 217.005 to 217.215.

SECTION 11. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

- (1) *All police officers and deputy sheriffs, directly employed full-time by state, county, city, or urban-county governments, the State Police, the Cabinet for Human Resources, the offices of all city, county, and Commonwealth's attorneys, the Office of the Attorney General, and any of their officers and agents, within their respective jurisdictions, shall enforce Sections 2, 3, 4, 5 or 8 of this Act relating to legend drugs and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to legend drugs.*
- (2) *Designated agents of the Cabinet for Human Resources and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any prescription or other legend drug record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record and a copy of the records seized shall be returned to the pharmacist within a reasonable amount of time.*

Section 12. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
- (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
- (b) The patient or research subject at the direction and in the presence of the practitioner.
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.
- (3) *"Cabinet" means the Cabinet for Human Resources.*
- (4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.
- (5)~~(4)~~ (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:
1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
1. Any substance for which there is an approved new drug application;
 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.
- ~~(6)~~~~(5)~~ "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- ~~(7)~~~~(6)~~ "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (8) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.**
- ~~(9)~~~~(7)~~ "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- ~~(10)~~~~(8)~~ "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories.
- ~~(11)~~~~(9)~~ "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
- ~~(12)~~~~(10)~~ "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.
- ~~(13)~~~~(11)~~ "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.
- ~~(14)~~~~(12)~~ "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.
- ~~(15)~~~~(13)~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

- (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in ~~paragraph~~~~subsection (13)~~ (a) of this ~~subsection~~~~section~~, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) *of this subsection*.
- (16)~~(14)~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
- (17)~~(15)~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- (18)~~(16)~~ "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (19)~~(17)~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (20)~~(18)~~ "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.
- (21)~~(19)~~ "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- (22) *"Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.*
- (23) *"Prescription blank," with reference to a controlled substance, means a document that meets the requirements of Section 14 of this Act and KRS 217.216.*
- (24)~~(20)~~ "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (25)~~(21)~~ "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.
- (26)~~(22)~~ "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.
- (27)~~(23)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

- (28)~~(24)~~ "Traffic" means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.
- (29)~~(25)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.
- (30)~~(26)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SECTION 13. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Human Resources shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy licensed by the Kentucky Board of Pharmacy.*
- (2) *A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.*
- (3) *Every dispenser within the Commonwealth or who is licensed by the Kentucky Board of Pharmacy shall report to the Cabinet for Human Resources the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:*
 - (a) *A drug administered directly to a patient; or*
 - (b) *A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.*
- (4) *Data for each controlled substance that is dispensed shall include but not be limited to the following:*
 - (a) *Patient identifier;*
 - (b) *Drug dispensed;*
 - (c) *Date of dispensing;*
 - (d) *Quantity dispensed;*
 - (e) *Prescriber; and*
 - (f) *Dispenser.*
- (5) *The data shall be provided in the electronic format specified by the Cabinet for Human Resources unless a waiver has been granted by the cabinet to an individual dispenser.*
- (6) *The Cabinet for Human Resources shall be authorized to provide data to:*
 - (a) *A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;*
 - (b) *A state, federal, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;*
 - (c) *A state-operated Medicaid program;*
 - (d) *A properly convened grand jury pursuant to a subpoena properly issued for the records;*
 - (e) *A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient; or*
 - (f) *A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction.*

- (7) *The Cabinet for Human Resources, all law enforcement officers, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.*
- (8) *The data and any report obtained therefrom shall not be a public record.*
- (9) *Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.*
- (10) *Knowing disclosure of transmitted data to a person not authorized by subsection (6) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promulgate administrative regulations in accordance with KRS Chapter 13A that establish security requirements for all prescriptions written by practitioners. The administrative regulations shall include a procedure to obtain a waiver for prescription blanks that provide substantially equivalent protection against forgery.

SECTION 15. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of theft of a controlled substance when he unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.*
- (2) *Theft of a controlled substance is:*
 - (a) *For a first offense a Class D felony if the controlled substance has a value of three hundred dollars (\$300) or less.*
 - (b) *For a second or subsequent offense, or value greater than three hundred dollars (\$300), a Class C felony.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a controlled substance when completed.*
- (2) *Forgery of a prescription is:*
 - (a) *For a first offense, a Class D felony.*
 - (b) *For a second or subsequent offense, a Class C felony.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he utters or possesses a forged prescription for a controlled substance.*
- (2) *Criminal possession of a forged prescription is:*
 - (a) *For a first offense, a Class D felony.*
 - (b) *For a second or subsequent offense, a Class C felony.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 16 and 17 of this Act, the definitions found in KRS 516.010 apply.

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

- (1) *A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.*
- (2) *A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he possesses a prescription blank with the intent to utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.*

- (3) *A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a controlled substance.*
- (4) *The knowing, with intent to violate KRS Chapter 218A, possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a controlled substance, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of uttering a forged prescription or for sale or transfer to another person for that purpose.*
- (5) *Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.*

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

- (1) *A pharmacist, practitioner, or other person authorized by law to dispense controlled substances, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or deceitful in violation of Section 16, 17, or 22 of this Act.*
- (2) *Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or deceitful.*
- (3) *If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or deceitful, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.*

SECTION 21. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 506 shall apply to offenses under this chapter.

Section 22. KRS 218A.140 is amended to read as follows:

- (1) (a) No person shall obtain or attempt to obtain a *prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner* ~~[controlled substance, or procure or attempt to procure the administration of a controlled substance by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of a prescription, or by the concealment of a material fact, or by the use of a false name or the giving of a false address].~~
- (b) *No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.*
- (c) *No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.*
- (d) No person shall *knowingly* ~~[willfully]~~ make a false statement regarding any prescription, order, report, or record required by this chapter.
- (e)~~[(e)]~~ No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.
- (f) *In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter*
- ~~[(d) No person shall make or utter any false or forged prescription].~~
- (g)~~[(e)]~~ No person shall affix any false or forged label to a package or receptacle containing any controlled substance.
- (2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.
- (3) Any person who violates any subsection of this section shall be guilty of a Class D felony for a first offense and a Class C felony for subsequent offenses.

Section 23. KRS 218A.170 is amended to read as follows:

- (1) A duly licensed manufacturer, **distributor**, or wholesaler may sell ~~or~~~~and~~ distribute controlled substances, other than samples, to any of the following persons:
 - (a) To a manufacturer, wholesaler, or pharmacy;
 - (b) To a practitioner;
 - (c) To the administrator in charge of a hospital, but only for use by or in that hospital;
 - (d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes;
 - (e) To a person registered pursuant to the federal controlled substances laws.
- (2) **A pharmacist may sell or distribute a controlled substance:**
 - (a) **Pursuant to a prescription that conforms to the requirements of this chapter; or**
 - (b) **To a person registered pursuant to the federal controlled substances laws.**
- (3) **A practitioner may:**
 - (a) **Administer, dispense, or prescribe a controlled substance only for a legitimate medical purpose and in the course of professional practice; or**
 - (b) **Distribute a controlled substance to a person registered pursuant to the federal controlled substance laws.**
- (4) All sales and distributions shall be in accordance with **KRS 218A.200 and** the federal controlled substances laws, including the requirements governing the use of order forms.
- (5)~~(3)~~ Possession of or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

Section 24. KRS 218A.180 is amended to read as follows:

- (1) Except when dispensed directly by a practitioner to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. **No prescription for a controlled substance in Schedule II shall be valid after sixty (60) days from the date issued.** No **prescription for a** controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.
- (2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written, **electronic**, or oral prescription by a practitioner. ~~{All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute compliance with this subsection.}~~ The prescription shall not be filled or refilled more than six (6) months after the date **issued**~~{thereof}~~ or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written, **electronic**, or oral shall be required.
- (3)
 - (a) **To be valid, a prescription for a controlled substance shall be issued only for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. Responsibility for the proper dispensing of a controlled substance pursuant to a prescription for a legitimate medical purpose is upon the pharmacist who fills the prescription.**
 - (b) **A prescription shall not be issued for a practitioner to obtain a controlled substance for the purpose of general dispensing or administering to patients.**
- (4) All written prescriptions for controlled substances shall be dated~~{as of}~~ and signed by the practitioner on the date~~{when}~~ issued and shall bear the full name and address of the patient, **drug name, strength, dosage form, quantity prescribed, directions for use**, and the name, address and registration number of the practitioner.~~{All prescriptions for controlled substances shall be retained for a period of two (2) years.}~~
- (5) **All oral or electronic prescriptions shall include the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.**

- (6) *All oral or electronic prescriptions shall be immediately reduced to writing, dated, and signed by the pharmacist. A prescription contained in a computer or other electronic format shall not be considered writing.*
- (7) *A pharmacist refilling any prescription shall record on the prescription or other equivalent record the date, the quantity, and the pharmacist's initials. The maintenance of prescription records under the federal controlled substances laws and regulations containing substantially the same information as specified in this subsection shall constitute compliance with this subsection.*
- (8)~~(4)~~ The pharmacist filling a written, **electronic**, or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.
- (9) *Any person who violates any provision of this section shall:*
- (a) *For the first offense, be guilty of a Class A misdemeanor.*
- (b) *For a second or subsequent offense, be guilty of a Class D felony.*

Section 25. KRS 218A.200 is amended to read as follows:

- (1) Every practitioner who is authorized to administer or professionally use controlled substances, shall keep a record of ~~such~~ substances received by him, and a record of all ~~such~~ substances administered, dispensed, or professionally used by him otherwise than by prescription. *Every such record shall be kept for a period of five (5) years.*
- (2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all controlled substances received and disposed of by them. *Every such record shall be kept for a period of two (2) years.*
- (3) Pharmacists shall keep records of all controlled substances received and disposed of by them. *Every such record shall be kept for a period of five (5) years.*
- (4) The record of controlled substances received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity. ~~Every such record shall be kept for a period of two (2) years.~~
- (5) The keeping of a record under the federal controlled substances laws, containing substantially the same information as is specified herein, shall constitute compliance with this section.
- (6) A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the Cabinet for Human Resources as soon as practical.
- (7) (a) *Every manufacturer, distributor, wholesaler, repacker, practitioner, pharmacist, or other person authorized to possess controlled substances shall take an inventory of all controlled substances in his possession at least every two (2) years.*
- (b) *A substance which is added to any schedule of controlled substances and which was not previously listed in any schedule shall be initially inventoried within thirty (30) days of the effective date of the statute or administrative regulation which adds the substance to the provisions of this chapter. Thereafter, the substance shall be included in the inventory required by paragraph (a) of this subsection.*
- (8) *Any person who violates any provision of this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for subsequent offenses.*

Section 26. KRS 218A.240 is amended to read as follows:

- (1) *All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments*~~[It is hereby made the duty of all Peace officers within this state]~~, the State Police, the Cabinet for Human Resources, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the

Attorney General, within their respective jurisdictions, ~~shall~~^{to} enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Human Resources shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Human Resources.
- (4) Designated agents of the Cabinet for Human Resources and the Kentucky Board of Pharmacy are empowered to remove from the files of ~~a~~^{any} pharmacy or ~~the~~^{other} custodian *of records for that pharmacy* any controlled substance prescription *or other controlled substance record* upon tendering a receipt ~~therefor~~. *The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.*
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
 - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
 - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
 - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.
 - (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) ~~It shall be the duty of~~The Cabinet for Human Resources ~~shall~~^{to} make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether ~~or not~~ any provision ~~thereof~~ has been violated.

Section 27. KRS 315.010 is amended to read as follows:

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;
- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual

combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

- (6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;
- (7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;
- (8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;
- (9) "Drug" means any of the following:
 - (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or
 - (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or
 - (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
 - (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;
- (10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:
 - (a) Evaluation of prescription drug orders and patient records for:
 1. Known allergies;
 2. Rational therapy contraindications;
 3. Appropriate dose and route of administration;
 4. Appropriate directions for use; or
 5. Duplicative therapies.
 - (b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;
 - (c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or
 - (d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;
- (11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;
- (12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;
- (13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;
- (14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;
- (15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;

- (16) "Pharmacist intern" means a natural person who is:
- (a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;
 - (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
 - (d) An individual participating in a residency or fellowship program approved by the board for internship credit;
- (17) "Pharmacy" means every place where:
- (a) Drugs are dispensed under the direction of a pharmacist;
 - (b) Prescription drug orders are compounded under the direction of a pharmacist; or
 - (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;
- (18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;
- (19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection, administration of medication in the course of dispensing or maintaining a prescription drug order, and drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;
- (20) "Practitioner" has the same meaning given in KRS 217.015(26){(23)};
- (21) "Prescription drug" means a drug which:
- (a) Under federal law is required to be labeled with either of the following statements:
 - 1. "Caution: Federal law prohibits dispensing without prescription"; or
 - 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or
 - (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;
- (22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;
- (23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;
- (24) "Society" means the Kentucky Society of Health-Systems Pharmacists;
- (25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and
- (26) "Wholesaler" means any person within the Commonwealth who legally buys drugs for resale or distribution to persons other than patients or consumers.

SECTION 28. A NEW SECTION OF KRS CHAPTER 217 IS CREATED TO READ AS FOLLOWS:

The provisions of this chapter shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing legend drugs, or to any of their employees acting within the scope of their employment; or to public officers or their employees in the performance of their official duties requiring possession or control of legend drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

Approved April 3, 1998

CHAPTER 302

(HB 131)

AN ACT relating to tuberculosis testing of children.

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

Section 1. KRS 214.034 is amended to read as follows:

Except as otherwise provided in KRS 214.036:

- (1) All parents, guardians, and other persons having care, custody, or control of any child shall have the child ~~tested for tuberculosis and~~ immunized against diphtheria, tetanus, poliomyelitis, pertussis, measles, rubella, mumps, hepatitis B, and haemophilis influenzae disease in accordance with testing and immunization schedules established by regulations of the Cabinet for Human Resources. Additional immunizations may be required by the Cabinet for Human Resources through the promulgation of an administrative regulation pursuant to KRS Chapter 13A if recommended by the United States Public Health Service or the American Academy of Pediatrics. All parents, guardians, and other persons having care, custody, or control of any child shall also have any child found to be infected with tuberculosis ~~tested,~~ ~~examined,~~ and treated according to administrative regulations of the Cabinet for Human Resources promulgated under KRS Chapter 13A. The persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for Human Resources.
- (2) ***A local health department may, with the approval of the Department of Health Services, require all first-time enrollees in a public or private school within the health department's jurisdiction to be tested for tuberculosis prior to entering school.*** ~~Each child entering the public schools shall have proof of having been tested for tuberculosis prior to enrollment.~~ Following the first year of school, upon an epidemiological determination made by the state or ~~local~~ ~~regional~~ health officer in accordance with administrative regulations promulgated by the Cabinet for Human Resources, all parents, guardians, and other persons having care, custody, or control of any child shall have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis ~~tested,~~ ~~examined~~ and treated according to administrative regulations of the Cabinet for Human Resources. ***Nothing in this section shall be construed to require the testing for tuberculosis of any child whose parent or guardian is opposed to such testing, and who objects by a written sworn statement to the testing for tuberculosis of the child on religious grounds. However, in a suspected case of tuberculosis, a local health department may require testing of this child.***
- (3) All public or private primary or secondary schools, and preschool programs shall require a current immunization certificate for any child enrolled as a regular attendee, as provided by administrative regulation of the Cabinet for Human Resources, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.
- (4) For each child cared for in a day care center, certified family child care home, or any other licensed facility which cares for children, a current immunization certificate, as provided by administrative regulation of the Cabinet for Human Resources, promulgated under KRS Chapter 13A, shall be on file in the center, home, or facility within thirty (30) days of entrance into the program or admission to the facility.
- (5) Any forms relating to exemption from immunization requirements shall be available at public or private primary or secondary schools, preschool programs, day care centers, certified family child care homes, or other licensed facilities which care for children.

Section 2. KRS 158.037 is amended to read as follows:

Each public or private elementary or secondary school shall report ~~tuberculin skin test and~~ immunization results to its local health department in accordance with regulations promulgated by the Cabinet for Human Resources.

Approved April 3, 1998

CHAPTER 303

(SB 83)

AN ACT relating to child protection.

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

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
- (2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (3) "Cabinet" means the Cabinet for Human Resources;
- (4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;
- (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;
- (10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

- (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (15) "Department" means the Department for Social Services;
- (16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;
- (18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (20) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;
- (21) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment;
- (22) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (23) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (24) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (25) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (26) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- (27) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (28) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (29) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (30) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

- (31) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (32) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;
- (33) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- (34) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (35) *"Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;*
- (36) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- ~~(37)(36)~~ "Parent" means the biological or adoptive mother or father of a child;
- ~~(38)(37)~~ "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- ~~(39)(38)~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- ~~(40)(39)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- ~~(41)(40)~~ "Public offense action" means an action brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- ~~(42)(41)~~ "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic

psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

- (43)~~(42)~~ "Residential treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (44)~~(43)~~ "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (45)~~(44)~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (46)~~(45)~~ "Secretary" means the secretary of the Cabinet for Human Resources;
- (47)~~(46)~~ "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- (48)~~(47)~~ "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (49)~~(48)~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ;
- (50)~~(49)~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (51)~~(50)~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (52)~~(51)~~ "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (53)~~(52)~~ "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (54)~~(53)~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (55)~~(54)~~ "Youth alternative center" means a nonsecure facility, approved by the Department of Corrections, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- (56)~~(55)~~ "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 620.050 is amended to read as follows:

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or

imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action.

- (2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- (3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.
- (4) ***The report of suspected child abuse, neglect, or dependency and*** all information obtained by the cabinet or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:
 - (a) Persons suspected of causing dependency, neglect, or abuse~~[, provided that in such cases names of informants shall be withheld unless ordered by the court];~~
 - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
 - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;
 - (d) Other medical, psychological, educational, or social service agencies, ***child care administrators***, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
 - (e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
 - (f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600; or
 - (g) Those persons so authorized by court order.
- (5) ***The identity of informants shall not be divulged to anyone without a court order after the court has reviewed in camera the record of the state related to the report or complaint and has found it has reason to believe that the informant knowingly made a false report, excepting law enforcement agencies having a legitimate interest in the case.***
- (6) ***Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.***
- (7) ***When an adult who is the subject of information made confidential by subsection (4) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (4) of this section is presumed voluntarily waived and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.***
- (8) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of such reports. Such photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking such photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

Approved April 3, 1998

CHAPTER 304**(SB 161)**

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Commission on Human Services Collaboration is hereby created and is attached to the Cabinet for Human Resources for administrative purposes. The commission shall develop, adopt, and amend, as appropriate, a service coordination plan to promote health, education, and social services partnerships of public and private agencies. The commission shall coordinate, evaluate, and provide technical assistance in implementing the service coordination plan.*
- (2) *The commission shall coordinate and facilitate development of community partnership strategic plans, which are designed to implement the service coordination plan.*
- (3) *The commission shall coordinate and facilitate development of outcomes to be achieved by community partnerships as outlined in the service coordination plan and report on progress toward achieving results.*
- (4) *The commission shall also work to increase the efficiency and effectiveness of services to individuals, families and children through the identification and elimination of duplicative boards and commissions, which exercise overlapping responsibilities, and the identification of gaps in and barriers to the provision and receipt of human services. The commission shall provide technical assistance to communities.*
- (5) *The commission shall report to the Legislative Research Commission and the General Assembly by October 1 of each year on the following:*
 - (a) *The coordination plan;*
 - (b) *The community partnership strategic plans;*
 - (c) *The increase in the efficiency and effectiveness of services;*
 - (d) *The boards and commissions eliminated;*
 - (e) *The boards and commissions identified as duplicative; and*
 - (f) *The identified gaps and barriers to provision and receipt of human services.*
- (6) *The commission shall consist of the following members:*
 - (a) *The Governor's designee;*
 - (b) *The secretary of the Cabinet for Human Resources;*
 - (c) *The secretary of the Cabinet of Economic Development;*
 - (d) *The secretary of the Justice Cabinet;*
 - (e) *The secretary of Arts, Education and Humanities;*
 - (f) *The secretary of the Tourism Cabinet;*
 - (g) *The secretary of the Workforce Development Cabinet;*
 - (h) *The commissioner of education;*
 - (i) *The commissioner of juvenile justice;*
 - (j) *The director of the Administrative Office of the Courts;*
 - (k) *Seven (7) gubernatorial appointees, representing business, community leaders, and consumers; and*
 - (l) *The chair for the Council on State and Local Collaboratives.*
- (7) *Members who hold state government positions shall serve by virtue of their offices. The remaining initial members of the commission shall be designated by the Governor to serve for a term ranging from one (1) to*

four (4) years. Subsequent appointments to the commission shall be for four (4) year terms and limited to two (2) consecutive four (4) year terms.

- (8) *The Governor shall designate a member of the public appointed to the commission to serve as chair of the commission for a term of two (2) years. Thereafter, a chair shall be selected by the members of the commission from the members of the public appointed by the commission. The chair shall serve for a period of two (2) years.*
- (9) *The chair of the commission, following consultation with the cabinet secretaries and upon agreement of the commission, may designate work groups to make recommendations to the commission regarding parental and community involvement and its mission.*
- (10) *Staff assistance shall be provided to the commission through the cooperative efforts of the members of the commission serving in the executive cabinet. Primary staff assistance shall be the responsibility of the Cabinet for Human Resources.*
- (11) *Members of the commission shall be eligible to receive travel expenses while attending meetings of the commission in accordance with state travel regulations. Members of committees appointed by the commission shall be eligible for reimbursement of travel expenses incurred while attending committee or commission meetings in accordance with state travel regulations.*
- (12) *The commission shall cease to exist two (2) years after the effective date of this Act unless otherwise reauthorized by the General Assembly.*

Section 2. (1) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsections (1) and (10) of Section 1 of this Act shall be codified as the Cabinet for Families and Children.

(2) If the reorganization of the Cabinet for Human resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (6) of Section 1 of this Act shall be codified as the Cabinet for Families and Children and the Cabinet for Health Services. There shall be representation on the commission of the secretaries of both the newly established cabinets.

Section 3. The General Assembly confirms both Executive Order 96-954, dated July 18, 1996, which creates a Kentucky Commission on Human Services Collaboration, and Executive Order 97-96, dated January 23, 1997, which adds another member to the commission, to the extent they are not otherwise confirmed or superseded by this Act.

Approved April 3, 1998

CHAPTER 305

(HJR 61)

A JOINT RESOLUTION directing the Transportation Cabinet to name the Morganfield Bypass as the "Sam M. McElroy Expressway" and to erect appropriate highway signs.

WHEREAS, Sam M. McElroy ably served the citizens of Union, Daviess, and Henderson Counties in the General Assembly as representative of the 7th House District from 1984 through 1994; and

WHEREAS, Sam M. McElroy's work in the General Assembly benefited from his background in agriculture, conservation, and land management with his service on the Agriculture, Natural Resources and Environment, and Counties and Special Districts Committees; and

WHEREAS, Sam M. McElroy worked diligently while in the General Assembly to improve roads in his district and was particularly instrumental in gaining approval for a bypass around Morganfield on US 60; and

WHEREAS, Sam M. McElroy is a graduate of the University of Kentucky, a veteran of the United States Army, and was named the University of Kentucky College of Agriculture's Outstanding Alumnus in 1977; and

WHEREAS, Sam M. McElroy is a past President of the State Association of Conservation Districts; and

WHEREAS, all who know Sam M. McElroy as a legislator, neighbor, and friend have been witness to his integrity, dedication, good humor, and kindness;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name Morganfield Bypass, currently under development, as the "Sam M. McElroy Expressway".

Section 2. The Transportation Cabinet shall prepare the appropriate highway signs for the naming of the "Sam M. McElroy Expressway" to facilitate their erection upon the completion of the road.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Madisonville, Kentucky.

Approved April 3, 1998

CHAPTER 306

(HB 431)

AN ACT relating to traffic regulations.

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

Section 1. KRS 189.270 is amended to read as follows:

- (1) ~~[(a)]~~ The department may *issue* ~~promulgate administrative regulations, pursuant to KRS Chapter 13A, to govern the issuance of~~ permits for the operation of motor vehicles, manufactured homes, recreational vehicles, **boats, or any other vehicle transporting a nondivisible load** ~~[vehicles transporting microwave satellite television antennae, and vehicles transporting boats or farm equipment]~~, whose gross weight including load, height, width, or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes, and unusual conditions, and upon terms in the interest of public safety and the preservation of the highways as the department may require.
- (2) *Except as provided in subsection (7) of this section, the department may, at the request of an applicant, issue a single-trip permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter if the load being transported is a nondivisible load. A single-trip permit shall cost sixty dollars (\$60) for each overweight or overdimensional permit requested.*
- (3) *Except as provided in subsection (7) of this section, the department may, at the request of an applicant, issue an annual permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter if the load being transported is a nondivisible load. The vehicle shall not exceed sixteen (16) feet in width exclusive of usual and ordinary overhang, one hundred twenty (120) feet in length including a towing vehicle and trailer combination, thirteen (13) feet six (6) inches in height, or one hundred twenty thousand (120,000) pounds. Except as provided in subsections (4) and (7) of this section, an annual permit for loads less than fourteen (14) feet in width shall cost two hundred fifty dollars (\$250). An annual permit for loads exceeding fourteen (14) feet in width shall cost five hundred dollars (\$500).*
- (4) *An annual permit to transport farm equipment less than fourteen (14) feet in width shall cost eighty dollars (\$80). An annual permit to transport farm equipment that exceeds fourteen (14) feet in width from a dealership to a farm or from a farm to a dealership shall cost one hundred fifty dollars (\$150).*
- (5) *Permits issued under this section shall be for nondivisible loads and shall be valid statewide; however, the department may, as a condition of issuing an annual or single-trip permit, limit the overweight or overdimensional vehicle to specified routes, exclude certain highways, or even cancel an applicant's permit if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the overweight or overdimensional vehicle. A person who applies for, and accepts, a permit issued under this section is acknowledging that the Kentucky Transportation Cabinet is not guaranteeing safe passage of vehicles by issuing the permit. A person who applies for, and accepts, a permit issued under*

this section agrees to measure all clearances of highway structures, both laterally and vertically, prior to passage of the person's vehicles along the routes specified in the permit. A person who applies for, and accepts, a permit issued under this section is classified as a bare licensee whose duty is to assume sole risk involved in using Kentucky's highways without warranty of accuracy.

- (6) *The department shall promulgate administrative regulations under KRS Chapter 13A to establish requirements for escort vehicles, safety markings, and other safety restrictions governing the operation of an overweight or overdimensional vehicle. The department shall provide each applicant for an annual or single-trip permit issued under this section a copy of all restrictions associated with the overweight or overdimensional permit at no charge to the applicant. The department shall be prohibited from raising the permit fee established in subsections (2) and (3) of this section by levying additional fees for an overweight or overdimensional permit through the administrative regulation process.*
- (7) *The cabinet shall not issue an annual permit under this section if the person applying for the permit is eligible for an annual permit issued under KRS 189.2715 or 189.2717.*

~~{(b) The department shall require an applicant to pay a single trip fee of sixty dollars (\$60) for each overweight or overdimensional permit issued except as set forth below:~~

- ~~1. Twenty dollars (\$20) for each single trip manufactured home permit if the manufactured home is fourteen (14) feet wide or less; and~~
- ~~2. Forty dollars (\$40) for each single trip manufactured home permit if the manufactured home exceeds fourteen (14) feet in width.~~

~~{(c) The department shall require an applicant to pay a fee as follows for any annual overdimensional permit issued:~~

- ~~1. Eighty dollars (\$80) for each annual permit to transport:

 - ~~a. Farm equipment;~~
 - ~~b. Utility equipment transporter including towing vehicle and trailer combination which does not exceed ninety five (95) feet in length or twelve (12) feet in width;~~
 - ~~c. Boat transporter; or~~
 - ~~d. Microwave antennae transporter permit;~~~~
- ~~2. Five hundred dollars (\$500) for each annual manufactured home permit if the manufactured home is sixteen (16) feet or less in width;~~
- ~~3. Eighty dollars (\$80) for each annual manufactured home permit if all manufactured homes transported during the year are less than fourteen (14) feet in width; and~~
- ~~4. Five hundred dollars (\$500) for each annual boat permit for units in excess of sixty five (65) feet in length and sixteen (16) feet in width.~~

~~{(8){(d)} The department may require the applicant to give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of ~~motor~~ vehicles, ~~manufactured homes, and recreational vehicles~~ in accordance with the terms of the permit *issued under this section* shall not constitute a violation of this chapter if the operator has the permit, or an authenticated copy of it, in his possession.~~

~~{(2) Annual boat permits shall be issued for any unit, including towing vehicle and trailer combination which does not exceed ninety five (95) feet in length or sixteen (16) feet in width exclusive of usual and ordinary overhang. The department may, by administrative regulation, limit annual boat permits for units including towing vehicle and trailer combinations which exceed sixty five (65) feet in length and sixteen (16) feet in width to manufacturers and dealers, to specified routes or to exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the units. Movement of boats in excess of sixty five (65) feet in length and twelve (12) feet in width shall be preceded by notification to the Department of Vehicle Regulation, Division of Motor Carriers of any trip to be made under the permit. The department may, no later than eighteen (18) hours after the receipt of notice, prohibit the trip if, because of temporary or special conditions, an unreasonable risk of accident or unreasonable impedance of the flow of traffic would be created.~~

- ~~(3) Any motor carrier transporting equipment used to mold steel which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit pursuant to subsection (1) of this section. The permit shall be limited to a vehicle operating on a round trip basis of not more than twenty five (25) miles. The material movement shall be limited to the manufacturing facilities of the same corporation. Reporting of these movements shall be on an annual basis, but shall include an estimate of trips which will be made weekly. The cost of the annual permit shall be five hundred dollars (\$500).~~
- ~~(4) The department shall, for a fee not to exceed one hundred fifty dollars (\$150), issue an annual permit for the operation of a motor vehicle or vehicle described in subsection (1) of this section when the motor vehicle or vehicle exceeds the dimension limits for length or width prescribed by KRS 189.221 or 189.222, if:~~
- ~~(a) The motor vehicle is engaged in the transporting of farm equipment from the dealership to the farm or from the farm to the dealership; and~~
- ~~(b) The width of the motor vehicle or vehicle does not exceed sixteen (16) feet, including any part of the body or load.~~
- ~~(5) Upon the issuance of an annual permit for the operation of a motor vehicle or vehicle described in subsection (4) of this section, the department shall provide each applicant free of charge a publication which contains a description of the administrative regulations that are applicable to the operation of the motor vehicle or vehicle including escort vehicles, safety markings, and other applicable restrictions. The department shall update the publication within thirty (30) days of any change in an administrative regulation that pertains to the operation of a motor vehicle or vehicle described in subsection (4) of this section.~~
- ~~(6) (a) Annual overlength permits may be issued to any utility pole or pipe transporter under the following conditions:~~
- ~~1. An annual overlength permit may be issued for a towing vehicle and trailer combination which does not exceed one hundred twenty five (125) feet in overall length. Restrictions may be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance of traffic flow could be created. An annual permit to transport poles or pipe which are fifty five (55) feet or less in length shall cost one hundred dollars (\$100). An annual permit to transport poles or pipe which are more than fifty five (55) feet in length shall cost three hundred fifty dollars (\$350). The Department of Highways may prescribe the use of escort vehicles for transportation of poles or pipes which exceed fifty five (55) feet in length, and the permit holder shall notify the Department of Highways of each trip or series of trips to be made that requires an escort. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.~~
 - ~~2. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on a specially designed pole rack mounted on the body of the truck if the pole or pipe length exceeds forty five (45) feet. Restrictions may also be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance to traffic flow could be created. The cost of this overlength permit shall be one hundred dollars (\$100).~~
 - ~~3. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on specially designed pole racks mounted on the body of the truck if the pole or pipe length exceeds fifty five (55) feet, but does not exceed ninety five (95) feet. The permit shall cost three hundred fifty dollars (\$350). The Department of Highways may prescribe the use of escort vehicles, and the permit holder shall notify the Department of Highways of each trip or series of trips made. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.~~
 - ~~4. More than one (1) type of permit authorized in subparagraphs 1. and 2. of this paragraph may be issued for the same vehicle. The maximum cost of the multiple use annual permit shall be three hundred fifty dollars (\$350).~~
- ~~(b) The secretary of transportation shall, by administrative regulation, prescribe additional safety requirements for movements of these vehicles. Administrative regulations promulgated for this subsection and for utility equipment transporters under subsection (1) of this section shall not restrict the ability of a permit holder to respond to an emergency due to an electrical or gas outage.~~

~~(7) Each motor carrier used in transporting prefabricated wood trusses, used in residential and commercial construction, which exceeds the dimensional limits for movement over a highway in this state may apply for an annual oversized permit. The Department of Vehicle Regulation shall charge the applicant a fee of five hundred dollars (\$500) for each annual permit. A copy of the permit shall be carried at all times in the vehicle and shall be shown to a peace officer upon demand. The department may restrict the use of the permits to specified routes or exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or impedance of the flow of traffic could result. The department shall promulgate administrative regulations setting forth the safety requirements which shall be met prior to the movement of any vehicle under the provisions of this permit including setting the dimensions at which the transporter shall contact the department for specific, individual authority for the movement under the annual permit.~~

~~(9)~~~~(8)~~ Any person transporting a parade float which exceeds the dimensional limits on a highway over which it is transported shall be required to obtain a permit as required in subsection ~~(2)~~~~(1)~~ of this section. If the float is being used in conjunction with a parade to be held within the boundaries of the Commonwealth, a fee shall not be assessed by the department to issue the permit.

~~(10)~~~~(9)~~ A person shall not operate any ~~motor~~ vehicle~~, manufactured home, or recreational vehicle~~ in violation of the terms of the permit *issued under this section*.

Section 2. KRS 189.2717 is amended to read as follows:

- (1) Subject to the provisions of KRS 189.222, the department may promulgate administrative regulations pursuant to KRS Chapter 13A governing the issuance of annual permits for the operation of motor vehicles transporting nondivisible loads in this Commonwealth whose gross weight exceeds the limits prescribed by this chapter. ~~In no instance shall~~ The gross weight of a motor vehicle operating pursuant to this section **shall not** exceed one hundred twenty thousand (120,000) pounds. The movement of the overweight motor vehicle shall be limited to a specific route set forth on the annual permit.
- (2) The following axle weights shall not be exceeded in the loading of a nondivisible load:
 - (a) Single axle with axles less than forty-two (42) inches apart **and being the steering axle with one (1) wheel on each side of the axle** to be considered a single axle shall not be more than fifteen thousand (15,000) pounds;
 - (b) Two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart shall not be more than forty thousand (40,000) pounds;
 - (c) Three (3) axles in tridem arrangement which are spaced forty-two (42) or more inches apart and less than one hundred twenty (120) inches apart shall not be more than sixty-five thousand (65,000) pounds; **and**
 - (d) **Dual wheel axle with one (1) axle with two (2) wheels on each side of the axle to be considered a dual wheel axle shall not be more than twenty thousand (20,000) pounds each.**
- (3) Each motor vehicle operating pursuant to this section shall comply with the safety provisions set forth in the administrative regulations promulgated by the department pursuant to this section.
- (4) The fee for the annual permit for each motor vehicle pursuant to this section shall be five hundred dollars (\$500).
- (5) The department may refuse to issue a permit for a requested route because of the inadequacies of the roadway or a structure on that route.

Section 3. The following KRS sections are repealed:

189.273 Permit for transportation of soil conservation and other specialized equipment -- Escort vehicles.

189.274 Special permits for moving specialized equipment.

Approved April 3, 1998

CHAPTER 307

(HB 635)

AN ACT relating to license plates.

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

Section 1. KRS 186.1732 is amended to read as follows:

- (1) Upon application to the county clerk of the county of residence, ***an active component***~~[a]~~ member of the United States ***Armed Forces, a member of the reserves of the United States Armed Forces,***~~[Army Reserve]~~ or any retired member of the ***United States Armed Forces***~~[Army Reserve]~~ with ~~twenty~~~~[twenty-five]~~ ***(20)***~~[(25)]~~ years of service, ***or a veteran of the United States Armed Forces who served on active duty for at least twenty-four (24) months and received an honorable discharge*** shall be issued a license plate in the same form and character as license plates authorized by law to be used on passenger cars. This license plate may be issued for a passenger car as set forth in KRS 186.050(1) or for a commercial vehicle as set forth in KRS 186.050(3)(a), but shall not authorize the operation of the vehicle at a gross laden weight in excess of six thousand (6,000) pounds. The plate shall bear ***a seal, indicating Army, Air Force, Marine Corps, or Navy, a designator that indicates whether the applicant's status is active, reserve, retired, or veteran,***~~[the name "United States Army Reserve"]~~ and a registration number. The member,~~or~~ retired member, ***or veteran,*** may purchase ***two (2) registrations***~~[only one (1) such registration]~~ annually and ***they***~~[it]~~ shall be for ***vehicles that are owned or leased by the applicant***~~[a vehicle in which he has total or partial ownership]~~. Each application shall be accompanied by proof of current ***active or reserve***~~[previous]~~ service, ***retired status or veteran eligibility***~~[in the United States Armed Forces]~~, and the payment of a one (1) time fee of twenty-five dollars (\$25). License plates issued under this section shall expire on December 31. Annually, thereafter, upon application to the county clerk of the county of his residence, together with proof of current service, or ***twenty (20)***~~twenty-five (25)]~~ years of previous service in the United States Armed Forces, ***or veteran status,*** and with payment of a renewal registration fee of eleven dollars and fifty cents (\$11.50) and three dollars (\$3) clerk's fee, the clerk shall issue a new plate or renewal decal as directed by the Transportation Cabinet. Application for registration under this section shall be made to the county clerk of the county of residence and shall be accompanied by the appropriate fees prescribed by this section.
- (2) (a) Upon the sale or transfer of a vehicle licensed as authorized by subsection (1) of this section, the owner shall remove the ***military***~~[Army Reserve]~~ license plate and return it and the certificate of title and registration to the county clerk. The clerk shall issue a regular license plate, and certificate of title and registration, upon payment of an eleven dollar and fifty cent (\$11.50) state fee and three dollar (\$3) clerk's fee.
 - (b) Upon application of another vehicle which is authorized to bear the registration under subsection (1) of this section, owned by the same applicant to whom the ***military***~~[Army Reserve]~~ license plate was originally issued, the county clerk shall issue another such license plate. There shall be no state fee for the plate and a two dollar (\$2) clerk's fee.
- (3) Upon termination of membership in the ***active component or reserves of the*** United States ***Armed Forces***~~[Army Reserve, except for those retired persons who remain eligible through the provisions of subsection (1) of this section]~~, an applicant to whom ***a military***~~[an Army Reserve]~~ license plate was issued under this section shall, within thirty (30) days, return the ***military***~~[Army Reserve]~~ plate to the county clerk of his county of residence.
- (4) For the services performed in issuing ***military***~~[Army Reserve]~~ license plates, and in annually issuing a renewal decal to be affixed to the ***military***~~[Army Reserve]~~ license plate, the county clerk shall receive from each applicant a fee of three dollars (\$3). A like fee shall be charged for issuance of a replacement license plate after the sale or transfer of the vehicle for which it was originally issued.
- (5) The secretary of the Transportation Cabinet shall, in accordance with the provisions of KRS Chapter 13A, promulgate administrative regulations and prescribe forms necessary to carry out the purpose of this section.

Approved April 3, 1998

CHAPTER 308**(HB 189)**

AN ACT relating to the establishment of a task force to study the nature and extent of the provision of health care services to children in school by school personnel who are not licensed, certified, or permitted to perform those health care services.

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

Section 1. The Legislative Research Commission is directed to establish a seven (7) member task force to study the nature and extent of the provision of health care services to children in public elementary and secondary schools by school personnel who are not licensed, certified, or permitted to perform those health care services. The Legislative Research Commission shall appoint one (1) member of the House of Representatives and one (1) member of the Senate to serve as members and co-chairs of the task force.

Section 2. The task force shall submit an interim report to the Legislative Research Commission no later than August 1, 1999, and a final report of any findings and recommendations to the year 2000 Regular Session of the General Assembly, at which time the task force shall cease to exist.

Section 3. Staff services to be utilized in completing the work of the task force are estimated to cost \$12,500. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 3, 1998

CHAPTER 309**(HB 92)**

AN ACT relating to student attendance.

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

Section 1. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

- (1) "Average daily attendance" means the aggregate days attended by pupils in a public school, divided by the actual number of days the school is in session.
 - (a) *Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and*
 - (b) *Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;*
- (2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;
- (3) "Board" means the board of education of any county or independent school district;
- (4) "District" means any school district as defined by law;
- (5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;
- (6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;
- (7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school

divided by the actual number of days school is in session. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;

- (8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;
- (9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;
- (10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;†
- (11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;
- (12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;
- (13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;
- (14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;
- (15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year; **and**†
- (16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board.

Section 2. KRS 157.350 is amended to read as follows:

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

- (1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;

- (2) Operates all schools for a term as provided in KRS 158.070 and administrative regulations of the Kentucky Board of Education. If the school term is less than one hundred eighty-five (185) days for any reason not approved by the Kentucky Board of Education on recommendation of the chief state school officer, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;
- (3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440;
- (4) Includes no nonresident pupils in its average daily attendance, except *as follows*:~~by~~
 - (a) *Pupils listed under a* written agreement with the district of the pupils' legal residence. If an agreement cannot be reached, either board may appeal to the chief state school officer for settlement of the agreement. The chief state school officer shall have thirty (30) days to establish the terms of agreement. Either board may appeal the chief state school officer's decision to the Kentucky Board of Education. The Kentucky Board of Education shall have sixty (60) days to approve or amend the agreement of the chief state school officer. In consideration of these appeals, the chief state school officer and the Kentucky Board of Education shall give preference to the best interest of the individual student. This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital; *and*
 - (b) *Pupils who have been expelled for behavioral reasons who shall be counted in average daily attendance under Section 1 of this Act;*
- (5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls;
- (6) Any school district which fails to comply with subsection (5) shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. The hearing shall be conducted in accordance with KRS Chapter 13B. A district under this subsection shall, at the hearing, have an opportunity to show inability to comply.

Approved April 3, 1998

CHAPTER 310

(HB 333)

AN ACT relating to the Substance Abuse, Pregnancy and Women of Childbearing Age Work Group.

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

Section 1. KRS 222.021 is amended to read as follows:

- (1) There is hereby created within the Cabinet for Human Resources a Substance Abuse, *Pregnancy and Women of Childbearing Age* ~~and Pregnancy~~ Work Group. The work group shall carry out the planning and coordinating activities of the Commonwealth with regard to substance dependency and abuse *among pregnant women and other women of childbearing age* ~~during pregnancy~~.
- (2) The work group shall be appointed by the Secretary for Human Resources and be composed of, but not restricted to, a representative of the Cabinet for Human Resources, Department for Health Services, Division of Maternal and Child Health Services; Department for Social Services; *Department for Social Insurance*; Department for Mental Health and Mental Retardation Services, Division of Substance Abuse and Division of Mental Health; Department for Medicaid Services; Justice Cabinet, Department of State Police, Drug Enforcement, Special Investigations Unit; Department of Education, Division of Program Resources; Office of the Attorney General; Office for a Drug Free Kentucky; *Kentucky Commission on Women*; Regional Community Mental Health and Mental Retardation System; *University of Kentucky Institute on Women and Substance Abuse*; University of Louisville, School of Medicine, Department of Pediatrics; University of Kentucky Medical Center, Department of Obstetrics and Gynecology; local or district health department; Kentucky Psychological Association; Kentucky Pharmacists Association; Kentucky Hospital Association; Kentucky Nurses Association; and the Kentucky Medical Association; *Kentucky Chapter of the National Association of Social Workers; Kentucky Association of Addiction Professionals; Kentucky Prevention Network; Coalition for Women's Substance Abuse Services; Kentucky Women's Advocates; Kentucky*

Youth Advocates; Kentucky Chapter of the March of Dimes; Foster Parent Association; and the Homeless Coalition. ~~[The Director of the Division of Substance Abuse shall serve as chairperson.]~~

- (3) The *Substance Abuse, Pregnancy and Women of Childbearing Age* Work Group shall *be chaired jointly by the Director of the Division of Substance Abuse and another member of the work group who has been elected by the membership of the work group.* The work group shall meet at least quarterly and shall periodically assess the extent of alcohol and other substance dependency and abuse among Kentucky women who are pregnant *and other women of childbearing age*; identify, develop, and coordinate resources available and needed within the Commonwealth for any *woman*~~[person]~~ who is pregnant *or of childbearing age* and at risk of alcohol and substance dependency or abuse; and identify, develop, and coordinate resources available and needed for infants and children exposed to alcohol or drugs *in utero or through alcohol or drug abuse in the home*~~[during pregnancy]~~.
- (4) The work group shall make *a biennial*~~[an annual]~~ report, no later than January 1 of each *odd numbered* year, of its activities and any recommendations to the Secretary of the Cabinet for Human Resources and the Legislative Research Commission.
- (5) The provisions of subsections (1) to (4) of this section, creating a Substance Abuse, *Pregnancy and Women of Childbearing Age*~~[and Pregnancy]~~ Work Group shall expire on July 15, 2002~~[1998]~~. As of that date, the Substance Abuse, *Pregnancy and Women of Childbearing Age*~~[and Pregnancy]~~ Work Group shall cease to exist.

Approved April 3, 1998

CHAPTER 311

(HB 598)

AN ACT relating to public water systems.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that the federal Safe Drinking Water Act, as amended by Public Law 104-182, creates an opportunity for Kentucky to improve public drinking water supplies. Therefore, the cabinet shall administer a system capacity program for public water systems consistent with the federal law. For purposes of Sections 1 to 4 of this Act, "system capacity" means the technical, financial, and managerial capacity to operate a public water system in compliance with the federal Safe Drinking Water Act, as amended by Public Law 104-182. The cabinet may promulgate administrative regulations as necessary to administer Sections 1 to 4 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *Not later than August 6, 2000, the cabinet shall develop and begin implementing, a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial system capacity.*
- (2) *In preparing the system capacity development strategy, the cabinet shall solicit and consider public comment on, and incorporate into the strategy as appropriate:*
 - (a) *The methods or criteria that the cabinet will use to identify and prioritize public water systems most in need of improving technical, financial, and managerial capacity;*
 - (b) *A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair system capacity development;*
 - (c) *A description of how the cabinet will use the authorities and resources of the Safe Drinking Water Act as amended by PL 104-182, or other means, to assist public water systems in complying with national primary drinking water regulations, to encourage the development of partnerships between public water systems to enhance the system capacity of public water systems, and to assist public water systems in the training and certification of operators;*
 - (d) *A description of how the cabinet will establish a baseline against which to measure improvements in system capacity with respect to national primary drinking water regulations, this chapter, KRS 224.10-110, and administrative regulations promulgated thereunder; and*

- (e) *An identification of the persons that have an interest in and are involved in the development and implementation of the system capacity development strategy, including all appropriate agencies of federal, state, and local governments, private and nonprofit public water systems, and public water system customers.*
- (3) *If the cabinet determines that an existing public water system does not have system capacity, it may assist the public water system in submitting a system capacity development plan as part of the long range water supply plan required by KRS 151.114. The plan shall contain timetables, goals, and funding sources necessary for the public water system to achieve system capacity.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

After October 1, 1999, new community or nontransient noncommunity public water systems, as defined by federal law, shall not be created unless they have system capacity. For new community or nontransient noncommunity public water systems that intend to begin operating after October 1, 1999, the cabinet shall not approve plans pursuant to KRS 224.10-110 and the administrative regulations promulgated pursuant thereto, unless the systems demonstrate to the cabinet that they have system capacity.

SECTION 4. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The cabinet shall conduct a source water assessment and delineation program as described in the 1996 amendments to the federal Safe Drinking Water Act, Public Law 104-182.

Approved April 3, 1998

CHAPTER 312

(HB 429)

AN ACT relating to insurance.

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

Section 1. KRS 287.030 is amended to read as follows:

- (1) As used in this section, "person" includes a natural person, partnership, corporation, association, business trust, voting trust, or similar organization.
- (2) No persons, except corporations, shall engage in the business of private banking in this state.
- (3) No bank incorporated under the laws of another state or national bank having its principal place of business outside this state shall transact any banking business in this state except to lend money, unless specifically authorized by law or administrative regulation, or except as permitted following a merger transaction within the meaning of Section 44 of the Federal Deposit Insurance Act pursuant to 12 U.S.C. sec. 1811 et seq., approved after June 1, 1997.
- (4) *Kentucky chartered banks, or their subsidiaries, are specifically authorized to engage in the sale of*~~No person who after July 13, 1984, owns or acquires more than one half (1/2) of the capital stock of a bank shall act as insurance agent or broker with respect to any insurance except credit life insurance, credit health insurance, insurance of the interest of a real property mortgagee in mortgaged property, other than title} insurance.~~
- (5) No bank incorporated under the laws of the Commonwealth of Kentucky shall make any loan or discount on the security of the shares of its own capital stock, or the shares of stock of a bank holding company which controls the bank to the extent that such loan or discount secured by such shares exceeds the amounts permitted by Section 23(A) of the Federal Reserve Act (12 U.S.C. sec. 371c) as that section reads on July 15, 1986, nor be the purchaser or holder of any such shares, except that a bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business; and stock so purchased or acquired, shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at public or private sale. This subsection shall not affect or modify in any way KRS 386.025, but said section shall remain in full force and effect.

SECTION 2. A NEW SECTION OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*

- (a) *"Financial institution" means a bank or bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. sec. 1841, a savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act in 12 U.S.C. sec. 1813(c)(1), and any other individual, corporation, partnership, or association authorized to take deposits and make loans in the Commonwealth, and any affiliate or subsidiary of any of the above;*
 - (b) *"Insurance agency activities" means any activity relating to insurance other than credit life insurance, credit health insurance, forced placed or voluntary credit property, credit involuntary unemployment insurance, or insurance of the interest of a real property mortgagee in mortgaged property, other than title insurance, for which a license as agent, solicitor, broker, or consultant is required under this chapter; and*
 - (c) *"Insurance information" means any information provided by a consumer in order to obtain insurance.*
- (2) *A financial institution authorized by law to engage in insurance agency activities in this state shall, in addition to any other applicable requirements, comply with the following requirements:*
- (a) *The financial institution or officer, agent, representative, or employee thereof shall qualify for licensure under all applicable provisions of this chapter and abide by all applicable provisions of this chapter and applicable administrative regulations;*
 - (b) *A financial institution shall provide a written statement, signed or initialed by the consumer, to evidence compliance with KRS 304.12-150;*
 - (c) *If the consumer voluntarily discloses or authorizes, in a written statement that is signed or initialed by the consumer, the disclosure of insurance information about the consumer to any person, the statement shall be an acknowledgment that the disclosure is not to the detriment of the consumer; and*
 - (d) *A financial institution licensed by the department to engage in insurance agency activities shall:*
 - 1. *Not violate the anti-tying provisions of the Bank Holding Company Act, 12 U.S.C. sec. 1971 et seq. in effect as of December 31, 1997; and*
 - 2. *Notify the department in writing within ten (10) days of any final judgment or any final administrative action, by a federal agency authorized to enforce the anti-tying provision, that finds that the financial institution or any of its employees committed a violation of the Bank Holding Company Act. Any such final and unappealable judgment or final and unappealable administrative action shall be deemed a violation of this chapter;*
 - (e) *Prior to the sale of any policy of insurance to a consumer, a financial institution shall provide to the consumer a written statement, signed or initialed by the consumer, that:*
 - 1. *The insurance offered by the financial institution is not a deposit;*
 - 2. *The insurance offered by the financial institution is not insured by the Federal Deposit Insurance Corporation or other government agency that insures deposits;*
 - 3. *The insurance offered by the financial institution is not guaranteed by the financial institution;*
 - 4. *The insurance is optional or, if required, may be purchased from any insurance agent or insurer selected by the consumer if that agent or insurer provides the same or equivalent coverage; and*
 - 5. *By not purchasing the insurance if it is optional, or by purchasing the insurance from another insurance agent or insurer if the insurance is required, will not in any way affect current or future credit decisions; and*
 - (f) *The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that specify the disclosure forms required by subsections (b), (c), and (e) of this section.*

- (3) *An officer or employee of a financial institution shall not directly or indirectly delay or impede the completion of a loan transaction or any other transaction with a financial institution for the purpose of influencing a consumer's selection or purchase of any insurance.*
- (4) *An employee of a financial institution may receive compensation for the referral of a consumer, who seeks information about or wishes to purchase any insurance product, to a licensed person or for the provision of the telephone number of a licensed person who sells or provides information on the product only if:*
 - (a) *The employee receives the referral fee regardless of whether insurance coverage is sold;*
 - (b) *The referral compensation is a fixed amount;*
 - (c) *The referral compensation is a portion of a financial institution's program offering referral fees for other noninsurance products or services marketed by the financial institution; and*
 - (d) *The referral compensation is paid by the financial institution.*
- (5) *All financial institutions not insured by the Federal Deposit Insurance Corporation or other government agency that insures deposits are not required to comply with subsection (2)(e) of this section.*

SECTION 3. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An employee of a general agency may receive compensation for the referral of a consumer, who seeks information about or wishes to purchase any insurance product, to a licensed person or for the provision of the telephone number of a licensed person who sells or provides information on the product only if:

- (1) *The employee receives the referral fee regardless of whether insurance coverage is sold;*
- (2) *The referral compensation is a fixed amount; and*
- (3) *The referral compensation is paid by the general agency.*

Approved April 3, 1998

CHAPTER 313

(HB 564)

AN ACT relating to real estate.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

A principal broker shall return an associate's license to the commission upon request. A principal broker that fails to return a license to the commission upon request shall be in violation of KRS 324.160(1)(r).

Section 2. KRS 324.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) *"Real estate brokerage" means a single, multiple, or continuing act of selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering to lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others for a fee, commission, compensation, or other valuable consideration*["Broker" means any person who for a fee, commission, compensation, or other valuable consideration sells or offers for sale, buys or offers to buy, deals in time shares or options, negotiates the purchase, sale, or exchange of real estate, engages in property management, leases or offers to lease, rents or offers for rent, or refers or offers to refer for the purpose of securing prospects, any real estate or the improvements thereon for others, but shall not apply to a person whose only compensation for negotiating the purchase, sale, or lease of an interest or interests in mineral rights consists of an interest in the rights that are the subject of the purchase, sale, or lease];
 - (b) "Commission" means the Kentucky Real Estate Commission;

- (c) "Net listing" means a listing agreement that provides for a stipulated net price to the owner and the excess over the stipulated net price to be received by the licensee as the commission;
 - (d) "Principal broker" means a *person licensed as a broker under KRS 324.046*~~[as defined in paragraph (a) of this subsection]~~ who, in addition to performing acts *of real estate brokerage* or transactions comprehended by that definition, is the single broker responsible for the operation of the *company with which he or she is associated*~~[office or offices]~~;
 - (e) "Real estate" means real estate in its ordinary meaning and includes *timeshares, options*, leaseholds, and other interests less than leaseholds;
 - (f) "Sales associate" means any person associated with a Kentucky-licensed principal broker *who is licensed under KRS 324.046(2) and performs acts of real estate brokerage under the direction and control of the principal broker*~~[for performing acts or transactions comprehended by the definition of "broker" as defined in paragraph (a) of this subsection and licensed under this chapter]~~;
 - (g) "Approved real estate school" means:
 1. A school that has been given a certificate of approval by the State Board for Proprietary Education *and*~~[in addition to a certificate of approval by]~~ the Kentucky Real Estate Commission. The school shall also be currently in good standing with both the State Board for Proprietary Education and the commission; or
 2. A National Association of Realtors recognized program which has been reviewed by the Kentucky Real Estate Commission and deemed an approved real estate school;
 - (h) "Accredited real estate school" means a college or university accredited by appropriately recognized educational associations or chartered and licensed in Kentucky that grants credits toward an associate degree or a baccalaureate degree to those students successfully completing a course in real estate;~~and~~
 - (i) "Property management" means the ~~marketing, leasing, or~~ overall management of real property for others for a fee, commission, compensation, or other valuable consideration, *and may include the marketing of property, the leasing of property, collecting rental payments on the property, payment of notes, mortgages, and other debts on the property, coordinating maintenance for the property, remitting funds and accounting statements to the owner, and other activities that the commission may determine by administrative regulation; and*
 - (j) *"Broker" means any person who is licensed under KRS 324.046(1) and performs acts of real estate brokerage.*
- (2) One act for a fee, commission, compensation, or other valuable consideration of buying or selling real estate of or for another; offering for another to buy, sell, or exchange real estate; leasing, renting, or offering to rent real estate; referring or offering to refer real estate for the purpose of securing prospects; or dealing in options or time sharing shall constitute the person performing, offering, or attempting to perform the act as a broker or sales associate.

Section 3. KRS 324.020 is amended to read as follows:

- (1) It shall be unlawful for any person to act as a broker or real estate sales associate or to advertise or assume to act as a broker or sales associate within the Commonwealth of Kentucky, without a license issued by the Kentucky Real Estate Commission.
- (2) A licensee who is an owner or a builder-developer shall comply with the provisions of this chapter and the administrative regulations applying to real estate brokers and sales associates.
- (3) No broker shall split fees with or compensate any person who is not licensed to perform any of the acts regulated by this chapter, except that a broker may pay a commission to or split fees with a broker licensed outside of Kentucky who represents an out-of-state client.
- (4) No sales associate licensed in Kentucky shall supervise another licensed sales associate or manage an office, except by permission of the commission and when acting on the death of the principal broker.

- (5) The Kentucky Real Estate Commission may seek and obtain injunctive relief against any unlicensed individual acting in violation of this chapter by filing a civil action in the Circuit Court where ***the commission is located or where*** the unlawful activity took place.

Section 4. KRS 324.045 is amended to read as follows:

- (1) Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a broker or sales associate in a manner to safeguard the interest of the public, and only after satisfactory proof of qualifications has been presented to the commission.
- (2) In addition to proof of honesty, truthfulness, and good reputation of any applicant for a license, each applicant shall pass a written examination conducted by the commission, or its authorized representative. The examination shall be of the scope and wording sufficient in the judgment of the commission to establish the competency ~~and trustworthiness~~ of the applicant to act as a broker or sales associate in a manner to protect the interests of the public. However, ~~an~~**no** examination shall **not** be required for the renewal of any present or future license, unless the license has been revoked, suspended, or is allowed to expire without renewal for a period of more than one (1) year.
- (3) The commission shall hold examinations at ***the*** times and places it determines, and an examination fee shall be collected from each applicant to defray the expenses of holding the examinations.

Section 5. KRS 324.046 is amended to read as follows:

- (1) Every applicant for initial licensure as a broker shall have successfully completed not less than twenty-one (21) academic credit hours or the equivalent with at least twelve (12) hours in real estate courses from an accredited or approved real estate school and shall have been engaged in the real estate business as a sales associate averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior to application.
- (2) Every applicant for initial licensure as a sales associate shall have successfully completed six (6) academic credit hours or ***their*** equivalent in real estate courses from an accredited or approved real estate school.
- (3) Proof of the academic credit hours shall be an official transcript from the attended university and a sworn notarized affidavit signed by both the applicant and his ***or her*** principal broker or other documentation satisfactory to the commission. The applicant may file a complaint with the commission if the principal broker unjustly refuses to sign the affidavit.
- (4) The commission may reduce the two (2) year experience requirement for applicants for a broker's license to one (1) year, if the applicant has an associate degree in real estate or a baccalaureate degree with a major in real estate.
- (5) ***Persons***~~Any person~~ licensed under the real estate laws of this state prior to June 19, 1976:~~;~~
- (a) ***Who have continuously maintained an active license since that date*** shall not be subject to any educational changes in this chapter or subject to any continuing education requirements; ***and***
- (b) ***Who have not continuously maintained an active license since that date may be exempted from continuing education requirements if the commission determines their qualifications merit such an exemption.***

Section 6. KRS 324.090 is amended to read as follows:

- (1) Licenses shall expire on the thirty-first day of March of each year. The commission shall ***renew***~~issue~~ a ~~new~~ license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of the license, upon receipt of the written request of the applicant and payment of the annual fees required. ***A new license***~~No applicant for renewal~~ shall ***be mailed only if the licensee's name, address, status, or***~~change broker~~ affiliation ***changes***~~between March 1 through March 31~~.
- (2) A fine not to exceed two hundred dollars (\$200) shall be assessed for failure to renew on time before a new license is issued. Failure to receive a renewal form shall not constitute an adequate excuse for failure to renew on time nor shall failure of the mail.
- (3) Any license not renewed at the end of the renewal year as prescribed by the commission shall automatically revert to expired status. The license may be reactivated before a lapse of one (1) year, if delinquent fees are paid by the licensee.

Section 7. KRS 324.115 is amended to read as follows:

Every broker licensed under KRS 324.045 shall ~~have and~~ maintain a definite place of business in this state, *except a* ~~Provided, however, that if the~~ broker *who* is a nonresident *shall* ~~it is~~ not *be required* ~~mandatory~~ to maintain an active place of business in this state if *he or she maintains* a business place ~~is maintained~~ in the state of original licensure, *unless this provision conflicts with the commission's agreement of reciprocity with the state of original licensure.*

Section 8. KRS 324.117 is amended to read as follows:

- (1) Real estate advertising shall not be false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company *listed on the licensee's real estate license* or the name of the principal broker and a designation indicating that *the licensee* ~~he~~ is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising.
- (2) The name of a deceased broker may remain a part of the firm name.
- (3) No ~~sales~~ associate ~~or nonlicensed individual~~ may have his *or her* name in the firm name.
- (4) Any sales associate or broker affiliated *with* ~~under~~ a principal broker shall advertise in the ~~firm~~ name *of the real estate company listed on the associate's or broker's real estate license* or the name of the principal broker, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property.

Section 9. KRS 324.150 is amended to read as follows:

- (1) The commission or its staff may on its own initiative, and shall on the verified written complaint of any person, investigate the actions of any broker or sales associate or any person who assumes to act in such capacity, if the complaint, or complaint together with other evidence presented in connection with it, makes out a prima facie case. It may suspend or revoke any license for grounds stated in KRS 324.160.
- (2) *To investigate allegations of practices violating the provisions of this chapter, the commission may:*
 - (a) *Issue subpoenas to compel attendance of witnesses and the production of documents;*
 - (b) *Administer oaths;*
 - (c) *Examine witnesses; and*
 - (d) *Pay appropriate witness fees.*

Section 10. KRS 324.160 is amended to read as follows:

- (1) The commission may suspend or revoke any license or levy fines not to exceed five hundred dollars (\$500), or both, and place any licensee on probation for a period of up to twelve (12) months or require successful completion of academic credit hours in real estate courses from an accredited or approved real estate school or issue a formal reprimand or order a licensee to pay restitution in an amount to be determined by the commission after a hearing, as a condition of continued licensure, for any of the following causes:
 - (a) Obtaining a license through false or fraudulent representation;
 - (b) Making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property;
 - (c) Making any false promises of a character likely to influence, persuade, or induce;
 - (d) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
 - (e) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;
 1. A real estate licensee shall not directly or indirectly buy property listed with him *or her* nor acquire an interest therein without making his *or her* true position clearly known in writing on the sales contract or offer to purchase;
 2. Before a real estate licensee buys, sells, or receives compensation for property in which the licensee owns an interest, the licensee shall disclose any interest in the property to all parties to the transaction;

- (f) Accepting valuable consideration for the performance of any of the acts specified in this chapter, from any person, except from his *or her* principal broker at the time the *brokerage agreement*~~{listing}~~ was obtained. When acting as an agent in the management of property, a real estate licensee shall not accept any commission, rebate, or profit on expenditures made for a client without the full knowledge and consent of the client;
 - (g) Representing or attempting to represent a broker other than a principal broker, without the express knowledge and consent of that principal broker;
 - (h) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into *the licensee's*~~{his}~~ possession. When acting as a property manager, the licensee shall render an accounting and remit all moneys to his *or her* client strictly in accordance with the contract of employment;
 - (i) Paying valuable consideration to any person for services performed in violation of this chapter;
 - (j) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending the imposition of sentence, *or failing to report a felony conviction, or plea of guilty to a felony, or an "Alford" plea to a felony to the commission*; or soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate, or acting in the dual capacity of broker and undisclosed principal in the transaction;
 - (k) Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;
 - (l) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, *or attempting to obtain a brokerage agreement* with an owner or lessor knowing that the owner or lessor had a written outstanding contract granting exclusive agency in connection with the property to another real estate broker;
 - (m) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;
 - (n) Failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;
 - (o) Failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which may indicate a violation of this chapter;
 - (p) Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in KRS 324.020(3);
 - (q) Violating any of the provisions in this chapter or any lawful order, rule, or administrative regulation made or issued under the provisions of this chapter;
 - (r) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or
 - (s) Gross negligence.
- (2) Any conduct constituting an act of discrimination regarding a person's race, color, creed, sex, or national origin, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (1)(r) of this section.
- (3) No unlawful act or violation of any provision of this chapter by any *affiliated licensee*~~{associate}~~ of the principal broker *shall*~~{may}~~ be cause for holding the principal broker primarily liable, unless the broker has knowledge of the unlawful violation *and did not prevent it. The principal broker and his or her designated manager, if any, shall exercise adequate supervision over the activities of licensed affiliates and all company employees to ensure that violations of this chapter do not occur. A principal broker's failure to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter.*~~{The commission through means of a formal hearing may fine, suspend, or revoke the license of the principal broker for failing to exercise adequate supervision over the activities of licensed affiliates.}~~
- (4) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

Section 11. KRS 324.410 is amended to read as follows:

The purposes of the real estate education, research, and recovery fund shall be as follows:

- (1) If a licensee, acting in the capacity of a licensee, has been duly found guilty of fraud in the violation of one (1) or more of the provisions of KRS 324.160, and upon the conclusion of a final order entered by the commission, or by the courts, if appealed, the commission may pay to the aggrieved person or persons an aggregate amount not to exceed twenty thousand dollars (\$20,000) *per claimant with combined payments to all claimants* against any one (1) licensee *not to exceed fifty thousand dollars (\$50,000)*, if the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order and if the amount or amounts of money in question are certain and liquidated.
- (2) The commission shall maintain a minimum level of four hundred thousand dollars (\$400,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system and the interest from the investments shall be deposited to the credit of the real estate education, research, and recovery fund. Sufficient liquidity shall be maintained so that there shall be money available to satisfy any and all claims which may be processed through the commission through the means of formal administrative hearing as outlined in this chapter.
- (3) The commission, in its discretion, may use any and all funds in excess of the four hundred thousand dollars (\$400,000) level, regardless of whether it is from the real estate education, research, and recovery fund fees or accrued interest thereon, for the following purposes:
 - (a) To carry out the advancement of education and research in the field of real estate for the benefit of those licensed under the provisions of this chapter and the improvement and making more efficient the real estate industry;
 - (b) To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of real estate licensees;
 - (c) To establish a real estate chair or courses at Kentucky state institutions of higher learning for the purpose of making the courses available to licensees and the general public who may seek them on a college or university level;
 - (d) To contract for a particular research project in the field of real estate for the Commonwealth of Kentucky;
 - (e) To sponsor, contract for, and to underwrite other educational and research projects of a similar nature having to do with the advancement of the real estate field in Kentucky; and
 - (f) To receive recommendations and to cooperate and work with the Kentucky Association of Realtors and other real estate groups for the enlightenment and advancement of the real estate licensees of Kentucky.
- (4) Within sixty (60) days after the end of each fiscal year, the commission shall mail to each licensee a statement of income and expenses of the real estate education, research, and recovery fund, the details of which have been approved by the secretary of the Finance and Administration Cabinet.

Approved April 3, 1998

CHAPTER 314

(HB 328)

AN ACT relating to tax administration.

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

Section 1. KRS 131.155 is amended to read as follows:

- (1) As used in this section the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.
- (2) Notwithstanding any statutory provisions to the contrary, the cabinet may require all taxpayers *and any other person who is required to collect or remit taxes and fees administered by the cabinet*, ~~whose average~~

~~monthly liability for the tax imposed under KRS Chapter 139 or whose average monthly liability for the tax required to be withheld under KRS 141.310 exceeds twenty five thousand dollars (\$25,000),~~ to remit *those taxes and fees to the cabinet*~~{that tax}~~ by electronic fund transfer. The transfer shall be made on or before the date the tax is due and the cabinet may permit the filing of the tax return following the date of the tax payment. *Taxpayers or any other person who is required to collect or remit taxes and fees administered by the cabinet whose average payment per reporting period is less than twenty-five thousand dollars (\$25,000) as of August 1, 1998, seventeen thousand five hundred dollars (\$17,500) as of July 1, 1999, and ten thousand dollars (\$10,000) as of July 1, 2000 and thereafter for each tax or fee required to be collected or remitted shall not be required to remit the payments by electronic fund transfer.*

- (3) *The cabinet shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the cabinet.*
- (4) *The cabinet may waive the requirement that a qualifying taxpayer remit the payment by electronic fund transfer if the taxpayer is unable to remit funds electronically.*
- (5) *Taxpayers and any other persons who are required to collect or remit taxes administered by the cabinet by electronic fund transfer shall be entitled to receive refunds for any overpayment of taxes or fees, on or after July 1, 2001, by electronic fund transfer.*

Section 2. KRS 131.990 is amended to read as follows:

- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- (2) Any person who violates any of the provisions of KRS 131.190, except subsection (4) thereof, shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both, and shall be disqualified and removed from office or employment. Any person who violates the provisions of KRS 131.190(4) shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years or both.
- (3) Any person who willfully fails to comply with the rules and regulations promulgated by the Revenue Cabinet for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (5) *Any person who fails to comply with the provisions of Section 1 of this Act shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of Section 1 of this Act for each failure to comply.*

Section 3. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Revenue Cabinet:

- (1) The cabinet may make administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state.
- (2) The cabinet, by representatives appointed by it in writing, may take testimony or depositions, and may examine the records, documents, files, and equipment of any taxpayer or of any person whose records, documents, or equipment will furnish knowledge concerning the tax liability of any taxpayer, when it deems this reasonably necessary for purposes incident to the performance of its functions. The cabinet may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the cabinet.
- (3) The cabinet shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.

- (4) The cabinet shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.
- (5) Attorneys employed by the cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Revenue Cabinet attorney undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including, but not limited to, the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (6) In the event of the incapacity of attorneys employed by the cabinet or at the request of the secretary of the Revenue Cabinet, the Attorney General or his designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including, but not limited to, the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (7) The cabinet may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the cabinet for administration.
- (8) The cabinet may conduct research in the fields of taxation, finance, and local government administration, and publish its findings, as the secretary may deem wise.
- (9) The cabinet may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require such taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.
- (10) *The cabinet may, when it is in the best interest of the Commonwealth or helpful to the efficient and effective enforcement, administration, or collection of motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of the motor fuels tax, or the petroleum environmental assurance fee.*

Section 4. The amendment contained in Section 1 of this Act shall apply for payments remitted on or after August 1, 1998.

Approved April 3, 1998

CHAPTER 315

(HB 448)

AN ACT relating to assessment companies.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 299 IS CREATED TO READ AS FOLLOWS:

- (1) *When any company licensed under this chapter transfers or suspends its business or fails to actively and in good faith to operate its corporate franchises, powers, and privileges in the due course of business and in the fulfillment of the design and purpose of its creation for the period of one (1) year, it shall be deemed to have abandoned the purpose of its creation, and it shall not thereafter, directly or indirectly, resume its business or operate in any manner any of its corporate franchises, powers, or privileges, and they shall for all purposes thereby become and remain forever inoperative and void.*
- (2) *On the effective date of this Act, no company not previously licensed shall be licensed to engage in the business of assessment or cooperative insurance as set forth in KRS 299.310 to 299.470, and 299.990.*

Section 2. KRS 299.460 is amended to read as follows:

The commissioner shall examine into the management of any company whenever he deems it prudent for the protection of policyholders in this state, but not less frequently than once in every four (4) years. He shall also examine into the management of a company upon the application of ten (10) of its members, or twenty-five percent (25%) of its board of directors, or its president or secretary. The company shall pay all expenses of the examination which shall promptly be deposited in the State Treasury "Examination Expense Revolving Fund" established in KRS 304.2-300. If the commissioner finds that *the company or any director, agent, adjuster, employee, administrator, or officer* has been or is violating the provisions of KRS 299.310 to 299.450, or the bylaws of the company, he shall proceed in like manner as with other *insurers* ~~[insurance companies]~~ guilty of like violations. *The commissioner may issue orders, conduct investigations, hold hearings, issue subpoenas, assess penalties, and take other reasonable and necessary actions as with other insurers.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 299 IS CREATED TO READ AS FOLLOWS:

- (1) *Every company licensed under this chapter shall provide to the commissioner a list of its officers and directors, their names, addresses, principal business activities, and occupations or employment.*
- (2) *Every company licensed under this chapter shall file with the commissioner a copy of any management contract, third party administrator contract, agency contract, or any other agreement, contract, or document whereby rights or duties of the company are assigned or delegated to another entity. No agreement shall be effective until approved by the commissioner. An agreement may be disapproved if, after a hearing under KRS Chapter 13B, the commissioner finds that the agreement does not comply with the following conditions:*
 - (a) *The agreement shall be the result of an arms length transaction between the company and any other party;*
 - (b) *The terms of the agreement shall be fair and reasonable to the parties, and the charges or fees for all services provided shall be reasonable;*
 - (c) *The books, accounts, and records of each party to the agreement shall be maintained to clearly and accurately disclose the precise nature and details of the transaction; and*
 - (d) *The agreement shall be made for the benefit of the policyholders of the company.*

Approved April 3, 1998

CHAPTER 316

(HB 407)

AN ACT relating to ownership and conveyance of property.

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

Section 1. KRS 381.135 is amended to read as follows:

- (1) (a) *As used in this subsection:*
 1. *"Ownership interest in a closely held farm corporation or partnership" means any interest in a farm with one (1) or more of the shareholders or partners owning twenty percent (20%) or more of the corporation or partnership.*
 2. *"Farm" means a tract of at least five (5) contiguous acres used for the production of agricultural or horticultural crops including, but not limited to, livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public.*
- (b) *A person desiring a division of land held jointly with others, ~~or~~ a person desiring an allotment of dower or curtesy, or a person with an ownership interest of twenty percent (20%) or more in a closely held farm corporation or partnership may file in the Circuit Court of the county in which the land or the greater part thereof lies a petition containing a description of the land, a statement of the names of those having an interest in it, and the amount of such interest, with a prayer for the division or allotment; and, thereupon, all persons interested in the property who have not united in the petition shall be*

summoned to answer not more than twenty (20) days after service of the summons. The written evidences of the title to the land, or copies thereof, if there be any, must be filed with the petition.

- (2) The statutory guardian of an infant or guardian or conservator of a person adjudged mentally disabled may file or unite in the petition, in the names of, and in conjunction with such infant or mentally disabled person; and, if the petition be against an infant or mentally disabled person the guardian or conservator may appear and defend for them; if they fail to do so, the court shall appoint a discreet person for that purpose.
- (3) Upon such a petition by all interested in the property, or upon the expiration of twenty (20) days after the service of a summons on all who have an interest in the property and have not united in the petition, the court may order the division, or allotment of dower or curtesy, according to the rights of the parties.
- (4) The court shall appoint three (3) competent persons as commissioners to determine the division or allotment of land, having a due regard for the rights of all parties interested. Before proceeding to act, the commissioners shall take an oath to discharge their duty impartially.
- (5) The order of appointment shall fix a time and place for the meeting of the commissioners who shall meet accordingly; but, if prevented from meeting at the time and place so fixed, they may meet as soon thereafter as convenient, and may adjourn to such other time and place as they may agree upon, until their duty shall be performed.
- (6) The commissioners shall equitably determine the allotment to the parties of their respective interests in the land. A registered land surveyor shall perform the actual survey of the land in accordance with the determination made by the commissioners, and prepare the descriptions of the land, including all related maps, plats and documents, and he shall affix thereto his personal seal and signature, unless such actual survey and the resultant description, maps, plats, and documents pertaining to this land are already in existence. The commissioners shall make report thereof to the court, which may either confirm, set aside or remand the report to the commissioners for correction.
- (7) If the report be confirmed, a commissioner to be appointed for the purpose shall, by deed, convey to each party the land allotted to him.
- (8) If the report be confirmed by the Circuit Court, it, together with said surveyor's descriptions, survey and all related documents, and the applicable deeds shall be certified by the clerk of that court to the county clerk, for record.
- (9) Two (2) of the commissioners may act, if one (1) refuses or fails to do so.
- (10) A party summoned may, by answer, controvert the allegations of the petition or contest the rights claimed therein; and, thereupon, the case shall be tried and decided as an ordinary action, but without the intervention of a jury.
- (11) The costs of the action shall be apportioned among the parties in the ratio of their interests, except that the costs arising from a contest of fact or law shall be adjudged against the unsuccessful party.
- (12) No verification of the pleadings shall be required.
- (13) The commissioners and the land surveyor shall be paid a reasonable compensation, to be taxed as costs.
- (14) This section shall not affect the jurisdiction of courts of equity to make partition or allot dower or curtesy.

Approved April 3, 1998

CHAPTER 317

(HB 307)

AN ACT relating to the Kentucky Tuition Grant program.

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

Section 1. KRS 164.785 is amended to read as follows:

- (1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:

- (a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education;
 - (b) Has been accepted by or is enrolled as a full time student in a Kentucky independent~~[-nonprofit]~~ college or university which is accredited by the Southern Association of Colleges and Schools and whose institutional programs are not comprised solely of a sectarian instruction. ***An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability may also qualify under this paragraph;***
 - (c) Is not enrolled in a program of study leading to a degree in theology, divinity, or religious education; and
 - (d) Has not previously attended college or university for more than seven (7) semesters or the equivalent.
- (2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.
 - (3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.
 - (4) The need of each applicant shall be determined by acceptable need analysis such as the parents' confidential statement of the college scholarship service, and such other analyses as the authority may determine, subject to the approval by the U.S. Secretary of Education.
 - (5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.

Approved April 3, 1998

CHAPTER 318

(HB 371)

AN ACT relating to solid waste management.

WHEREAS, House Bill 371, introduced for consideration by the 1998 General Assembly and known as the "container deposit bill," presented an approach to the management of litter and the encouragement of recycling not considered by a legislative study group since the Task Force on Container Deposits created by Senate Bill 2 of the 1991 Extraordinary Session; and

WHEREAS, since the 1991 special session on solid waste, the state has made significant progress in the management of solid waste disposal and the encouragement of recycling; and

WHEREAS, House Bill 371 presents an approach to solid waste management that may, if carefully structured to fit into the state's present system of solid waste management, achieve even more progress in eliminating road and creekside litter while leading to greater reuse of discarded materials;

NOW, THEREFORE,

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

Section 1. The House Bill 371 Task Force is created and shall be composed of the following: the primary sponsor of House Bill 371; four (4) members of the General Assembly selected by the Legislative Research Commission, two (2) of whom shall be members of the Interim Joint Committee on Agriculture and Natural Resources; a student representative of the Estill County High School; a representative of the Natural Resources and Environmental Protection Cabinet; a representative of the Department of Local Government; a representative of the Kentucky League of Cities; a representative of the Kentucky Association of Counties; a representative of the Kentucky Chapter of the Solid Waste Association of North America; a representative of the Kentuckians for the Commonwealth; a representative of the Kentucky Resources Council; a representative of the Beverage Industry Recycling Program; a representative of the Kentucky Retail Federation; a representative of the Food Service and Packaging Industry; a representative of the Kentucky Beer Wholesalers Association; two (2) members selected by the Legislative Research Commission to represent nonalcoholic beverage bottlers; a representative of the Kentucky Farm Bureau; a representative of the League of Kentucky Sportsmen; a representative of the Kentucky Grocers Association;

and a representative of the Kentucky Scrap Processors and Recyclers Association. The Legislative Research Commission shall appoint a legislative member to serve as chairperson of the task force.

Section 2. The House Bill 371 Task Force shall review House Bill 371, introduced for consideration by the 1998 General Assembly, and any amendments or committee substitutes to the bill. The goal of the review shall be to determine in what ways the approach to solid waste management presented by the bill may improve the present structure of solid waste management in Kentucky and achieve that improvement with the least disruption of the present structure. The task force shall conclude its review by issuing a report to the Legislative Research Commission no later than September 30, 1999. The report may contain recommendations for legislative proposals to strengthen the state's waste management programs based upon its review of House Bill 371.

Section 3. The members of the task force shall be reimbursed for expenses incurred to attend task force meetings.

Section 4. Staff services to be utilized in completing this study are estimated to cost \$25,000. These staff services shall be provided from the regular commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 3, 1998

CHAPTER 319

(HB 391)

AN ACT relating to architectural and engineering services and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding the provisions of KRS 45A.800 to 45A.835, the Finance and Administration Cabinet and the Transportation Cabinet may enter into price contracts for architectural, engineering, and engineering-related services. If the agencies choose to enter into a price contract, subsection (2) of this section shall apply.*
- (2) *Price contracts shall be awarded to firms qualified by the Finance and Administration Cabinet, Department of Facilities Management or by the Transportation Cabinet, Department of Highways. The Finance and Administration Cabinet selection committee established by Section 4 of this Act shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department for Facilities Management for qualification of interested firms. The Transportation Cabinet selection committee established by Section 4 of this Act shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department of Highways for qualification of interested firms.*
 - (a) *The respective committees shall evaluate those firms submitting statements of interest in obtaining a price contract. The submitting firms shall be reviewed according to the following criteria:*
 1. *Qualifications;*
 2. *Ability of professional personnel; and*
 3. *Past record and experience.*
 - (b) *Firms qualified by the commissioner of the Department for Facilities Management or by the commissioner of the Department of Highways shall be awarded price contracts by the respective departments for the type of work for which they have been qualified.*
 - (c) *The commissioner of the Department for Facilities Management or the commissioner of the Department of Highways may select firms to perform work under price contract for small projects for which the architectural, engineering, or engineering-related fees do not exceed fifty thousand dollars (\$50,000). However, no firm that has received more than one hundred thousand dollars (\$100,000) in price contract fees in any one (1) fiscal year in the contract discipline being awarded shall be selected to work under a price contract unless the secretary of finance and administration or the secretary of transportation makes a written determination that the selection is in the best interest*

of the Commonwealth and the determination is confirmed by the appropriate cabinet's selection committee established by Section 4 of this Act.

- (3) *Notwithstanding any provision of the Kentucky Revised Statutes, no price contract shall be awarded under the provisions of this section before completion of the review procedure provided for in KRS 45A.695 and 45A.705.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *If choosing to operate under this section, the Transportation Cabinet shall, by administrative regulations promulgated under KRS Chapter 13A, designate each type of project for which a pool of firms is to be established and from which the firm to provide the needed architectural, engineering, or engineering-related contract services is to be selected. The project types designated by these administrative regulations shall be limited to those projects for which the professional services to be rendered for each individual contract are substantially similar and to those project types for which architectural, engineering, or engineering-related fees are expected to be at least fifty thousand dollars (\$50,000).*
- (2) *The Transportation Cabinet selection committee established under Section 4 of this Act shall annually select the engineering or engineering-related services firms for each pool in accordance with the standards for application and selection established by administrative regulation under subsection (4) of this section.*
- (3) *Once selected for a particular pool, a firm providing architectural, engineering, or engineering-related services shall remain in the pool for two (2) years unless disqualified under subsection (6) of this section. Upon the expiration of the two (2) year period, a firm may reapply for selection.*
- (4) *The procedures and criteria for qualifying and selecting the firms to be placed in each annual pool shall be set forth in administrative regulations promulgated by the Transportation Cabinet. The administrative regulations shall provide for adequate notice to firms of the establishment of the individual pools, an application procedure for a firm interested in the pool for a particular type of project, the deadline for submission of the application, and the criteria to be used for the establishment of each pool.*
- (5) *The procedures for determining which firm is to be selected from the pool to provide services for a particular project shall be set forth in administrative regulations promulgated by the Transportation Cabinet.*
- (6) *The secretary of transportation may remove a firm from a pool for good cause. Any firm that has been removed from a pool may, within thirty (30) days after the removal, petition the secretary for reinstatement. Within sixty (60) days following the secretary's receipt of a petition, the selection committee shall meet to consider the request for reinstatement. If the selection committee recommends that the firm be reinstated to the pool and the secretary accepts the recommendation, the affected firm shall be reinstated.*
- (7) *After one (1) year of disqualification, a firm that has been removed from a pool under subsection (6) of this section may reapply to be qualified.*
- (8) *Nothing in this section shall be construed to require use of any pool for a particular project if the responsible cabinet has determined that the project does not meet the criteria established for pool projects.*

Section 3. KRS 45A.800 is amended to read as follows:

As used in KRS 45A.800 to 45A.835, 45A.195, 45A.440, and 45A.695, unless the context requires otherwise:

- (1) "Architect" means an architect licensed~~[to practice]~~ under KRS Chapter 323 or a landscape architect licensed~~[to practice]~~ under KRS Chapter 323A;
- (2) "Engineer" means an engineer licensed~~[to practice]~~ under KRS Chapter 322;
- (3) "Procuring agency" means either the Finance and Administration Cabinet or the Transportation Cabinet;
- (4) "Project" means any undertaking requiring~~[the]~~ professional **architectural, engineering, or engineering-related** services~~[of an architect or engineer]~~, except as provided in KRS 45A.100;
- (5) "User agency" means the state agency or any public supported institution of higher education, when it declines to exercise the authority granted under KRS 164A.590, that will occupy or otherwise be the primary beneficiary of a completed Finance and Administration Cabinet project;~~[and]~~
- (6) "User division" means the division of the Transportation Cabinet that requires the procuring of engineering *or engineering-related* services for a project;

- (7) *"Engineering-related services" means specialized professional services performed by individuals, consultants, or other organizations of recognized technical competence, education, or experience that are involved in the planning, design, construction, maintenance, or operation of Kentucky's transportation systems or construction projects in accordance with applicable licensing statutes; and*
- (8) *"Firm" means an individual or other entity that offers professional architectural, engineering, or engineering-related services.*

Section 4. KRS 45A.810 is amended to read as follows:

- (1) (a) One (1) or more architectural services selection committees and one (1) or more engineering *or engineering-related* services selection committees shall be created in the Finance and Administration Cabinet.
- (b) One (1) or more engineering and *engineering-related*~~engineering~~ services selection committees shall be created in the Transportation Cabinet.
- (2) Except when an emergency exists as defined by KRS 45A.095(3), *when architectural, engineering, or engineering-related services are procured under Sections 1 and 2 of this Act, or when the project is constructed under KRS 45A.045(11)(a) or (b):*
- (a) An architectural services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring architectural services;
- (b) An engineering *and engineering-related* services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring engineering *or engineering-related* services; and
- (c) An engineering and *engineering-related*~~related~~ services selection committee created in the Transportation Cabinet shall participate in every instance of that cabinet's procuring engineering or *engineering-related*~~related~~ services.
- (3) An architectural services selection committee created in the Finance and Administration Cabinet shall consist of six (6) or more members selected in the manner specified within each paragraph:
- (a) Two (2) architects. The secretary of the Finance and Administration Cabinet shall appoint a pool of *at least* six (6) architects who are employees of the cabinet. At least three (3) of the architects shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select architects from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;
- (b) *One (1) or more additional employees of the Department for Facilities Management, appointed by the commissioner of the Department for Facilities Management, to serve as a nonvoting technical adviser for a given project selection. Advisory members shall serve on a project-by-project basis and shall have the requisite knowledge, training, or experience pertaining to the professional requirements of the project.*
- (c) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;
- ~~(d)(e)~~ An individual. The Kentucky Society of Architects shall nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee;~~and~~
- ~~(e)(d)~~ One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who *may, at the discretion of the Auditor,*~~shall~~ serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee *may*~~shall~~ attend *any*~~all~~ committee proceedings. If

more than one (1) employee is appointed, then ~~either~~~~[at least one (1)]~~ of the employees ~~may~~~~[shall]~~ attend ~~any~~~~[each]~~ committee proceeding; **and**

(f) *Upon completion of the selection process set forth in this subsection, the commissioner of the Department of Facilities Management shall submit a statement to the Auditor of Public Accounts attesting to full compliance with the selection process for each architectural firm appointed to provide architectural services. In addition, a complete record of the selection process for each project shall be maintained by the department and shall be subject to audit by the Auditor of Public Accounts.*

(4) The engineering **and engineering-related** services selection committee created in the Finance and Administration Cabinet shall consist of six (6) or more members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Finance and Administration Cabinet shall appoint a pool of **at least** six (6) engineers who are employees of the cabinet. At least three (3) of the engineers shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select engineers from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An individual. The Kentucky Society of Professional Engineers and the **Kentucky** Consulting Engineers Council~~[of Kentucky]~~ shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee;~~and~~

(d) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who **may, at the discretion of the Auditor,**~~[shall]~~ serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee ~~may~~~~[shall]~~ attend ~~any~~~~[all]~~ committee proceedings. If more than one (1) employee is appointed, then ~~either~~~~[at least one (1)]~~ of the employees ~~may~~~~[shall]~~ attend ~~any~~~~[each]~~ committee proceeding;

(e) *One (1) or more additional employees of the Department for Facilities Management to serve as nonvoting technical adviser for a specific project selection. Advisory members shall serve on a project-by-project basis and shall have the requisite knowledge, training, or experience pertaining to the professional requirements of the project; and*

(f) *Upon completion of the selection process set forth in this subsection, the commissioner of the Department of Facilities Management shall submit a statement to the Auditor of Public Accounts attesting to full compliance with the selection process for each firm appointed to provide engineering or engineering-related services. In addition, a complete record of the selection process for each project shall be maintained by the department and shall be subject to audit by the Auditor of Public Accounts.*

~~(5) [Notwithstanding the provisions of subsections (3) and (4) of this section, when the Finance and Administration Cabinet procures for one (1) project architectural services for an estimated fee of fifty thousand dollars (\$50,000) or more and engineering services for an estimated fee of one hundred thousand dollars (\$100,000) or more, then:~~

~~(a) The secretary of the Finance and Administration Cabinet shall appoint one (1) of the cabinet engineers serving on the engineering services selection committee to serve as a nonvoting member of the architectural services selection committee; and~~

~~(b) He shall appoint one (1) of the cabinet architects serving on the architectural services selection committee to serve as a nonvoting member of the engineering services selection committee.~~

- (6) The engineering and ~~engineering-related~~ services selection committee created in the Transportation Cabinet shall consist of six (6) or more members selected in the manner specified in each paragraph:
- (a) Two (2) engineers. The secretary of the Transportation Cabinet shall appoint a pool of six (6) engineers who are employees of the cabinet. At least three (3) of the engineers shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select engineers from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;
 - (b) Two (2) engineers who are merit employees of the user division appointed by the head of that division to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency. However, if two (2) user divisions have approximately equal responsibilities or separate responsibilities for the project, each user division head shall appoint one (1) member to the selection committee;
 - (c) An individual. The Kentucky Society of Professional Engineers and the *Kentucky* Consulting Engineers Council ~~of Kentucky~~ shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; ~~and~~
 - (d) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who *may, at the discretion of the Auditor,* ~~shall~~ serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee *may* ~~shall~~ attend *any* ~~all~~ committee proceedings. If more than one (1) employee is appointed, then *either* ~~at least one (1)~~ of the employees *may* ~~shall~~ attend *any* ~~each~~ committee proceeding; *and*
 - (e) *Upon completion of the selection process set forth in this subsection, the commissioner of the Department of Highways shall submit a statement to the Auditor of Public Accounts attesting to full compliance with the selection process for each firm appointed to provide engineering or engineering-related services. In addition, a complete record of the selection process for each project shall be maintained by the department and shall be subject to audit by the Auditor of Public Accounts.*
- (6)(7) (a) All selection committee members shall have experience which qualifies them to serve on the committee.
- (b) The same appointment procedures set out in this section apply to any user agency or user division listed in subsection (3), (4), or (6) of this section that does not operate under a merit system.
 - (c) Any individual appointed to serve in a pool from which selection committee members are drawn shall serve in the pool for an initial one (1) year term and may be reappointed to succeed himself ~~for another one (1) year term~~. He shall serve until his successor is appointed and qualified. ~~At the conclusion of his service in a pool, he shall be prohibited from serving in a pool until a year has elapsed.~~ A successor or a replacement, in the case of a vacancy in the pool, shall be appointed in the same manner as the initial appointee. If a selection committee member, drawn from a pool, leaves a selection committee, his replacement shall be drawn from the pool in the same manner as he. The replacement shall have the merit or nonmerit status of his predecessor.
 - (d) Any individual appointed by the Auditor of Public Accounts to serve on selection committees shall serve an initial one (1) year term and may be reappointed to succeed himself ~~for another one (1) year term~~. He shall serve until his successor is appointed and qualified. ~~At the conclusion of his service, he shall be prohibited from serving on a selection committee until a year has elapsed.~~ A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.
 - (e) The selection committee members appointed by the head of a user agency or user division ~~or pursuant to subsection (5) of this section~~ shall serve on a project-by-project basis. These members shall participate only in committee action related to the project for which they were appointed. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 5. KRS 45A.825 is amended to read as follows:

- (1) (a) A firm shall not be considered for providing architectural, *engineering*, or *engineering-related*~~(engineering)~~ services to the Finance and Administration Cabinet or engineering or *engineering-related*~~(related)~~ services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to advertised notice of a request for proposals to which that firm intends to respond.
- (b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.
- (2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.
- (b) The request for proposals:
 1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;
 2. Shall indicate the relative weight of evaluation factors; and
 3. Shall establish a timetable for:
 - a. The selection committee's first meeting held pursuant to subsection (6) of this section; and
 - b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.
- (c) Through advertisement, and any other available means, the procuring agency shall provide notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The advertisement shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that ~~engineering and architectural~~ firms in all regions of the Commonwealth are given an equal opportunity to be selected.
- (3) A firm shall respond to a request for proposals by submitting, before the deadline, a one (1) page letter of interest as well as a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.
- (5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.
- (6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
 - (a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;
 - (b) Be provided with:
 1. The certified list created pursuant to subsection (5) of this section;
 2. The firms' responses to the request for proposals;
 3. The request for proposals;
 4. The advertised notice of request for proposals; and
 5. The project evaluation sheets; and
 - (c) Discuss the future conduct of its affairs.

- (7) (a) When the ~~Department of~~ Transportation **Cabinet** procures any engineering or **engineering-related**~~related~~ services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars (\$50,000) or engineering **or engineering-related** services for an estimated fee of less than one hundred thousand dollars (\$100,000), this subsection and subsection (9) of this section shall govern the procurement process.
- (b) The selection committee shall meet in executive session to:
1. Evaluate the materials with which it has been provided;
 2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
 3. Notify the procuring agency of the ranking.
- (c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:
1. The three (3) finalists;
 2. Their ranking; and
 3. The rest of the procedure that will be followed in the awarding of the contract.
- (d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars (\$50,000) or more or engineering **or engineering-related** services for an estimated fee of one hundred thousand dollars (\$100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.
- (b) The selection committee shall meet in executive session to:
1. Evaluate the materials with which it has been provided;
 2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
 3. Notify the procuring agency of the three (3) finalists.
- (c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:
1. The three (3) finalists; and
 2. The rest of the procedure that will be followed in the awarding of the contract.
- (d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.
- (e) The selection committee shall meet in executive session to:
1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
 2. Forward the ranking to the procuring agency.
- (f) The procuring agency shall send a letter to each finalist, informing the finalist of:
1. His ranking; and
 2. The rest of the procedure that will be followed in the awarding of the contract.
- (g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

- (9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.
- (10) Once a procuring officer has negotiated a contract, the procuring agency shall send a letter to the other finalists, informing them of:
- (a) Which firm has successfully negotiated a contract; and
 - (b) The rest of the procedure that will be followed in the awarding of the contract.
- (11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.
- (12) ***The provisions of this section shall not apply to the procurement of architectural, engineering, or engineering-related services under Sections 1 and 2 of this Act.***

Section 6. KRS 45A.820 is amended to read as follows:

- (1) Selection committee members who are not employees of state agencies or state universities shall receive a salary of ~~two~~^{one} hundred dollars ~~(\$200)~~^(\$100) per day for those days authorized by the selection committee for selection committee activities.
- (2) Selection committee members who are employees of state agencies or state universities shall not receive a salary for their time spent on selection committee activities, and the state government salaries of these committee members shall not be reduced due to time spent away from other state government activities.
- (3) All selection committee members shall be reimbursed for costs necessarily incurred in carrying out their duties. All reimbursements shall be authorized by the selection committee.
- (4) The procuring agency shall pay all costs generated under this section by a selection committee.

Section 7. KRS 45A.830 is amended to read as follows:

- (1) ***For architectural, engineering, and engineering-related services procured under Section 5 of this Act,*** ~~After~~ the procuring officer ***shall make available a copy of the proposed contract to each member of the selection committee involved in the procurement process after the procuring officer*** has negotiated an architectural, ***engineering,*** or ***engineering-related***~~engineering~~ services contract for the Finance and Administration Cabinet or an engineering or ***engineering-related***~~related~~ services contract for the Transportation Cabinet, but before the contract is submitted to the Personal Service Contract Review Subcommittee, ~~the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process.~~
- (2) ***For architectural, engineering, and engineering-related services procured under Section 5 of this Act,*** the secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. Any employee of the Auditor of Public Accounts, who ***served***~~was appointed to serve~~ as a nonvoting member of the selection committee and who attended any committee proceeding, ***may***~~shall~~ participate in the preparation of a report for filing with the Personal Service Contract Review Subcommittee certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.

- (3) ***For architectural, engineering, and engineering-related services procured under Section 5 of this Act***, the procuring agency shall file with the Personal Service Contract Review Subcommittee:
- (a) The certificates;
 - (b) The selection committee's ranking of firms; and
 - (c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Section 8. KRS 45A.805 is amended to read as follows:

- (1) The General Assembly finds and declares it to be the policy of the Commonwealth of Kentucky to:
- (a) Insure the fair and equitable treatment of all firms interested in providing architectural, ***engineering***, or ***engineering-related***~~[engineering]~~ services to the Commonwealth;
 - (b) Announce publicly all requirements for architectural, ***engineering***, and ***engineering-related***~~[engineering]~~ services; and
 - (c) Award a contract for architectural, ***engineering***, or ***engineering-related***~~[engineering]~~ services to the best firm, qualified to perform the work on a project, on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

Section 9. Whereas it is imperative to make changes in the architect and engineer procurement procedure in order to insure timely construction of projects funded by the 1998 General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 3, 1998

CHAPTER 320

(SCR 131)

A CONCURRENT RESOLUTION reauthorizing the 1996 Task Force on Funding for Wildlife Conservation to conduct two meetings and to report its findings.

WHEREAS, the Task Force on Funding for Wildlife Conservation, authorized by the 1996 regular session of the General Assembly, presented recommendations to the 1998 General Assembly; and

WHEREAS, these recommendations cover a broad range of policy, regulatory and legislative changes;

NOW, THEREFORE,

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

Section 1. The 1996 Task Force on Funding for Wildlife Conservation is reauthorized with its original membership. The task force shall convene once in 1998 and once in 1999 to assess the progress being made toward implementing the recommendations from its October, 1997 report.

Section 2. The task force shall report its findings to the Interim Joint Committee on Agriculture and Natural Resources and the Interim Joint Committee on Appropriations and Revenue before October 31, 1999.

Section 3. Staff services to be utilized in conducting this assessment and reporting its findings are estimated to cost five thousand dollars (\$5,000). These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 7, 1998

CHAPTER 321**(SJR 87)**

A JOINT RESOLUTION naming part of KY 1524 in Clay County in honor of Governor A. B. "Happy" Chandler.

WHEREAS, A. B. "Happy" Chandler achieved substantial improvements in schools, highways, and health and welfare programs during his two terms as Governor of the Commonwealth of Kentucky; and

WHEREAS, during his second term as Governor A. B. "Happy" Chandler was instrumental in the completion of Kentucky Highway 1524 in Clay County, Kentucky; and

WHEREAS, the citizens of Clay County, Kentucky, and specifically T. C. Sizemore, desire to honor A. B. "Happy" Chandler by requesting that part of KY 1524 be named the "Happy Chandler Highway"; and

WHEREAS, on the 14th day of August, 1997, the desire was approved by the Fiscal Court of Clay County, Kentucky after having held a public comment hearing;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name a segment of KY 1524 the "Happy Chandler Highway." The segment begins at the junction of KY 1524 at KY 66 (mpt 16.462) and follows KY 1524 for a distance of 3.4 miles to the Mill Creek Road intersection in Clay County, Kentucky.

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs to facilitate their erection at the beginning and end points of the segment upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Fiscal Court of Clay County, 316 Main Street, Suite 143, Manchester, Kentucky 40962.

Approved April 7, 1998

CHAPTER 322**(SJR 76)**

A JOINT RESOLUTION directing the Transportation Cabinet to name segments of several highways in honor of Bill Monroe and Jamie Lee Burke.

WHEREAS, William Smith Monroe, the father of bluegrass music, was just shy of his 85th birthday when he was taken from us to pick with others of his time in the heavens above; and

WHEREAS, Bill Monroe, loved and admired by all, passed away on September 9, 1996, and was buried near his boyhood home in Rosine, Kentucky; and

WHEREAS, Bill Monroe had a rare creative spirit and unique ability to bring people together to share in his music and experience his gift of love; and

WHEREAS, Bill Monroe's music was born of his homeland and became a special American musical form enjoyed by millions throughout the world; and

WHEREAS, in 1996, the Commonwealth experienced a total of 134,558 motor vehicle accidents and of that total, 738 were fatal traffic accidents and 36,434 were nonfatal injury accidents; and

WHEREAS, in 1996, 846 people were killed and 55,909 persons were injured; and

WHEREAS, the Kentucky State Police estimate that approximately one (1) in every five thousand (5,000) Kentucky residents died as a result of a fatal traffic accident in 1996; and

WHEREAS, cold hard statistics too often impersonalize the horror of what is happening on Kentucky's highways; and

WHEREAS, one (1) of the Commonwealth's native daughters - one (1) of the Commonwealth's brightest hopes - one (1) of the Commonwealth's most exemplary young adults was Jamie Lee Burke; and

WHEREAS, Jamie Lee Burke's young life was abruptly ended during a tragic traffic accident on the Preston Highway in Jefferson and Bullitt Counties; and

WHEREAS, Jamie Lee Burke's legacy should be that life is a fragile gift and that traffic safety should be a priority for all who travel our nation's highways; and

WHEREAS, Jamie Lee Burke is a young woman we should never forget;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name the segment of U.S. 62 from Beaver Dam to Leitchfield, the "Blue Moon of Kentucky Highway" and the segment of U.S. 231 from Beaver Dam to Hartford, the "Bill Monroe Memorial Boulevard".

Section 2. The Transportation Cabinet is directed to name the segment of the Preston Highway from milepoint 0.00 at the Jefferson County line extending north to milepoint 0.33, the "Jamie Lee Burke Memorial Highway".

Section 3. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs to facilitate their erection upon the effective date of this Resolution.

Section 4. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the fiscal courts of Jefferson, Bullitt, Ohio, and Grayson counties.

Approved April 7, 1998

CHAPTER 323

(SB 438)

AN ACT relating to block grants.

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

Section 1. KRS 45.353 is amended to read as follows:

- (1) The Commission shall refer each block grant application received to the designated review body for review and consideration.
- (2) The designated review body shall review and consider each block grant application according to the following standards and criteria, and shall make an affirmative finding of fact that:
 - (a) Except as provided in paragraph (b) of this subsection, block grant and other funds specified in the application have been included in an appropriation provision or any branch budget bill enacted by the General Assembly in anticipation of such application;
 - (b) Any excess in the total amount of block grant funds sought over the total amount of such funds anticipated and included in an appropriation provision or any branch budget bill, has been included in a surplus expenditure plan approved by the General Assembly;
 - (c) A budget reduction plan specifying programs and services to be eliminated or to be reduced in scope if federal funding diminishes or is cut, has been included;
 - (d) The budget reduction plan does not propose to increase the ratio of state funds to federal funds if federal funding diminishes, or is cut;
 - (e) Block grant and other funds to be provided under the application are fairly and equitably distributed among those programs, services, or recipients eligible for block grant funding;
 - (f) Block grant and other funds to be provided under the application are not to be used to fund programs or services that would duplicate or supplant existing programs or services funded by the private sector;
 - (g) The intended uses of block grant and other funds specified in the application are in compliance with the applicable federal and state laws pertaining to such block grant funds; and

- (h) The amount of block grant and other funds to be retained by the state administering agency for administrative purposes does not exceed an amount allowable under federal law.
- (3) *For the purpose of the review and consideration of a block grant application, the findings of fact and any other reports or recommendations of the designated review body need only be approved by a majority of the members present at the public hearing held according to KRS 45.352.*

Approved April 7, 1998

CHAPTER 324

(SB 390)

AN ACT relating to state contracts.

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

Section 1. KRS 45A.190 is amended to read as follows:

- (1) *As used in this section, "agency contract administrator" means the state agency employee responsible for the administration of a contract.*
- (2) When a construction contract is awarded in an amount in excess of twenty-five thousand dollars (\$25,000), the following bonds shall be furnished to the Commonwealth, and shall be binding on the parties upon the award of the contract:
- (a) A performance bond satisfactory to the Commonwealth executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the Commonwealth, in an amount equal to one hundred percent (100%) of the contract price as it may be increased; and
- (b) A payment bond satisfactory to the Commonwealth executed by a surety company authorized to do business in the Commonwealth, or otherwise supplied, satisfactory to the Commonwealth, for the protection of all persons supplying labor and material to the contractor or his subcontractors, for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.
- ~~(3)~~ *When any contract in an amount in excess of twenty-five thousand dollars (\$25,000) for commodities, supplies, equipment, or services of any kind, or when a contract for construction services costing twenty-five thousand dollars (\$25,000) or less is proposed for presentation to vendors or contractors, the agency contract administrator shall evaluate whether a performance bond should be required in the procurement document, and make his recommendation to the purchasing agency. The agency contract administrator shall note the reason that a performance bond is or is not recommended and his notation shall be a part of the permanent record relating to the contract. If a performance bond is required, the requirement shall be included in the invitation to bid, request for proposal, or other procurement document. The agency contract administrator shall make audits of the performance of contracts upon completion of one-third (1/3) of the contract and upon completion of two-thirds (2/3) of the contract. For contracts taking longer than one (1) year to complete, audits of performance shall be conducted at least annually. Before a vendor is released from a performance bond, the agency contract administrator shall review the audits of performance, make a final performance review, and promptly determine whether, in his or her opinion, the vendor has fully complied with the terms of the contract. The opinion of the agency contract administrator shall be made in writing or electronically, set forth the reasons for his or her opinion regarding compliance or noncompliance, and be signed by the agency contract administrator. This opinion may have an electronic signature. The using agency head shall, after consideration of the performance audits, the final performance review, and the opinion of the agency contract administrator regarding compliance or noncompliance, determine whether to recommend to the purchasing agency that the performance bond be released or whether a claim should be made against the performance bond. This determination of the using agency head shall be in writing, signed by the using agency head, and forwarded to the purchasing agency. This determination may have an electronic signature and be transmitted electronically. If the recommendation of the using agency is not followed by the purchasing agency, the purchasing agency shall place a statement in the file explaining why it is not followed.*

- (4) Nothing in this section shall be construed to limit the authority of the Commonwealth to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (2) *or* (3)~~(4)~~ of this section.

Approved April 7, 1998

CHAPTER 325

(SB 355)

AN ACT relating to occupational therapists.

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

Section 1. KRS 319A.100 is amended to read as follows:

A temporary permit to practice as an occupational therapist or occupational therapy assistant may be granted to a person who has completed the education and experience requirements of this chapter and has applied for licensure under the provisions of this chapter. The temporary permit shall allow the applicant for licensure to practice occupational therapy under the supervision of a licensed occupational therapist. The temporary permit shall be valid until the applicant for licensure is issued or denied a license under the provisions of this chapter, but in no instance shall the temporary permit extend for more than sixty (60) days following the second examination offered after the applicant has applied *to take the examination required for licensure or certification*~~for licensure~~. Not more than one (1) temporary permit shall be granted per applicant.

Section 2. KRS 319A.020 is amended to read as follows:

There is hereby created the Kentucky Occupational Therapy Board which shall consist of *seven (7)*~~five (5)~~ members to be appointed by the Governor. *Five (5)*~~Three (3)~~ members shall be licensed occupational therapists *with*~~of~~ at least five (5) years' experience; one (1) member shall be a certified occupational therapy assistant *with*~~certified by the American Occupational Therapy Association, of~~ at least five (5) years' experience in the practice of occupational therapy; and one (1) member shall be a consumer.~~[The Governor shall appoint the board within ninety (90) days after July 15, 1986, and annually thereafter.]~~

Approved April 7, 1998

CHAPTER 326

(SB 337)

AN ACT relating to franchise plan health insurance.

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

Section 1. KRS 304.17-390 is amended to read as follows:

- (1) Health insurance on a franchise plan is that issued to:
 - (a) Five (5) or more employees of a common employer; or
 - (b) Ten (10) or more members of any bona fide association or labor union, which association or union was formed and exists for purposes other than that of obtaining insurance, and under which such employees or members, with or without their dependents, are issued individual policies which may vary as to amounts and kinds of coverage as applied for, under an arrangement whereby the premiums on the policies are to be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated employee or officer of the association acting on behalf of the employer or association members.
- (2) *Disability insurance on a franchise plan is that issued for:*
 - (a) *Three (3) or more employees of a common employer; or*
 - (b) *Ten (10) or more members of any bona fide association or labor union, which association or union was formed and exists for purposes other than that of obtaining insurance, and under which the*

employees or members, with or without their dependents, are issued individual policies which may vary as to amounts and kinds of coverage as applied for, under an arrangement whereby the premiums on the policies are to be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated employee or officer of the association acting on behalf of the employer or association members.

- (3) The term "employees" includes also the employer's officers, and the employer or partners if the employer is an individual or a partnership.
- (4)~~(3)~~ An insurer may charge different rates, provide different benefits, or employ different underwriting procedure for individuals insured under a franchise plan, if such rates, benefits, or procedures as used do not unfairly discriminate as between individuals insured under franchise plans and individuals otherwise insured under similar policies, taking into consideration the insuring, risk and exposure factors, and expense elements.

Approved April 7, 1998

CHAPTER 327

(SB 336)

AN ACT relating to the Kentucky Birth Surveillance Registry.

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

Section 1. KRS 211.660 is amended to read as follows:

- (1) The Department for Health Services shall establish and maintain a Kentucky birth surveillance registry that will provide a system for the collection of information concerning birth defects, stillbirths, and high risk conditions. The system may cover all or part of the Commonwealth.
- (2) In establishing the system, the department may review vital statistics records, and shall also consider expanding the current list of congenital anomalies and high risk conditions as reported on birth certificates.
- (3) The department may require general acute-care hospitals licensed under the provisions of KRS Chapter 216B to maintain a list of the following information: All inpatients up to the age of five (5) years with a primary diagnosis of a congenital anomaly or high risk condition as defined by the department upon the recommendation of the appointed advisory committee.
- (4) *Each licensed free-standing birthing center and general acute-care hospital licensed under KRS Chapter 216B shall grant to any Kentucky Birth Surveillance Registry personnel or his or her designee, upon presentation of proper identification, ~~With the written consent of one (1) parent or guardian, the department may have~~ access to the medical records of any patient meeting the criteria in subsection (3) of this section. **If the department's agent determines that copying of the medical records is necessary, associated costs shall be borne by the Department for Public Health at the rate pursuant to KRS 422.317**~~that are maintained by general acute care hospitals and freestanding birthing centers licensed under the provisions of KRS Chapter 216B.~~*
- (5) *No liability of any kind, character, damages, or other relief shall arise or be enforced against any licensed free-standing birthing center or general acute-care hospital by reason of having provided the information or material to the Kentucky Birth Surveillance Registry.*
- (6) The Department for Health Services may implement the provisions of KRS 211.651 to 211.670 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

Approved April 7, 1998

CHAPTER 328

(SB 288)

AN ACT relating to length of service awards programs.

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

Section 1. KRS 65.156 is amended to read as follows:

- (1) The governing board of any local government retirement system created pursuant to KRS 67A.320, 67A.340, 67A.360 to 67A.690, 79.080, 90.400, 90.410, 95.290, 95.520 to 95.620, 95.621 to 95.629, 95.767 to 95.784, 95.851 to 95.884, or KRS Chapter 96 shall submit the retirement system to an actuarial evaluation at least once every three (3) years, if the system provides a defined benefit. The evaluation shall be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees' Retirement Income Security Act of 1975. The board shall send a copy of the most recent evaluation to the librarian of the Legislative Research Commission by September 1, 1982, and thereafter the board shall send a copy of each new evaluation within ten (10) days of receipt.
- (2) Actuaries performing evaluations pursuant to this section shall use the entry age normal cost funding method. Their reports shall include a definition of each actuarial term and an explanation of each actuarial assumption used. Assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience.
- (3) Any city or municipal agency with a retirement system created pursuant to KRS 79.080, 90.400, 90.410, 95.520 to 95.620, 95.621 to 95.629, 95.767 to 95.784, 95.851 to 95.884, or KRS Chapter 96 which is closed to new members pursuant to KRS 78.530, 95.520, 95.621, or 95.852 shall, if its local pension system provides a defined benefit, contribute annually to the pension system, for the benefit of the retirees of the system and the active participants who choose to remain in the system, and in cities of the second class for the benefit of members who have completed at least twenty (20) years' service and withdrawn from service pursuant to KRS 95.857, an amount equal to that which would be required pursuant to the funding standards of KRS 95.868, plus so much of the principal amount of any unfunded prior service liability as the actuary states is necessary to maintain cash flow adequate to pay retiree and beneficiary payments until financial obligations to all retirees and beneficiaries are fully satisfied.
- (4) All lawful expenses for general administration, performance bonds, medical, actuarial, accounting, auditing, legal, and investment services of a retirement system listed in subsection (1) of this section shall be paid from the pension fund. Actuaries performing evaluations pursuant to this section shall include estimates of the expenses in their recommendations for pension system funding, and local governments shall add payments for the expenses to their annual contributions to their respective retirement systems.
- (5) A city or city agency or urban-county government may, pursuant to KRS 67A.340, 79.080, 90.410, or KRS Chapter 96 as applicable, provide for the retirement security of its employees through the creation of a money purchase or defined contribution plan qualified under Section 401(a) of the Internal Revenue Code of 1954 as amended. City employee deferred compensation plans created pursuant to KRS 18A.270, or money purchase or defined contribution plans, qualified under Section 401(a) of the Internal Revenue Code of 1954 as amended, which by their nature cannot have an unfunded liability, shall not be subject to the actuarial evaluation requirements of this section, and shall not be subject to termination for purposes of employee entry into the County Employees Retirement System, as required by KRS 78.530, 79.080, 90.410, and 96.180.
- (6) No city or county, except an urban-county, or special district, nor any agency or instrumentality of a city or county or special district shall create or maintain for its officers or employees a defined benefit retirement system, which by its nature can have an unfunded liability. The provisions of this subsection shall not preclude employer contributions for city managers or other appointed local government executives who participate, pursuant to KRS 78.540, in a retirement system which operates in more than one (1) state, nor the continuation of a local government defined benefit retirement system which has been closed to new members but which must fulfill its obligations to current active members, retirees, and beneficiaries. ***Notwithstanding any provision to the contrary, the provisions of this subsection shall not apply to length of service awards programs established for the benefit of volunteer firefighters and volunteer life squad and volunteer rescue personnel.***
- (7) ***Notwithstanding any provision to the contrary, any city or county may establish awards programs that recognize the length of service to the community by volunteer firefighters, volunteer life squads, and volunteer rescue personnel.***

Approved April 7, 1998

CHAPTER 329**(SB 259)**

AN ACT relating to motor carriers.

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

Section 1. KRS 281.632 is amended to read as follows:

- (1) To enable the provision of service for which there is an immediate and urgent need to or from a point or points or within a territory having no carrier service capable of meeting such need, the department may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or contract carrier by motor vehicle or by an applicant for a nonprofit bus certificate, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the department shall specify but for not more than an aggregate of one hundred eighty (180) days, and shall create no presumption that corresponding permanent authority will be granted thereafter. ***For good cause shown, the temporary authority period may be extended for one (1) additional one hundred eighty (180) day period.***
- (2) Pending the determination of an application filed with the department for approval of a consolidation or merger of the properties of two (2) or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carriers, the department may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred eighty (180) days, of the operation of the motor carrier properties sought to be acquired by the persons proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. ***For good cause shown, the temporary authority period may be extended for one (1) additional one hundred eighty (180) day period.***

Approved April 7, 1998

CHAPTER 330**(SB 230)**

AN ACT relating to school technology.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Kentucky Board of Education shall promulgate administrative regulations to prevent sexually explicit material from being transmitted via any video or computer system, software or hardware product, or Internet service managed or provided to local schools or school districts.***
- (2) ***Each local school district and school shall utilize the latest available filtering technology to ensure that sexually explicit material is not made available to students.***
- (3) ***The Kentucky Department of Education shall make available to school districts and schools upon request and without cost, state-of-the-art software products that enable local districts and schools to prevent access to sexually explicit material. The department shall also notify all school districts and schools of the availability of the software. Any product provided or obtained by a district or school shall meet the requirements of subsection (2).***
- (4) ***Each local school district shall establish a policy regarding student Internet access that shall include, but not be limited to, parental consent for student Internet use, teacher supervision of student computer use, and auditing procedures to determine whether education technology is being used for the purpose of accessing sexually explicit or other objectionable material.***

Approved April 7, 1998

CHAPTER 331

(SB 167)

AN ACT relating to motor carriers.

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

Section 1. KRS 281.624 is amended to read as follows:

~~{(1)—}~~The term "household goods certificate" means a certificate granting authority to operate as an irregular route common carrier transporting *personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is:*

- (1) *Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or*
- (2) *Arranged and paid for by another party*~~uncrated office and store furniture and used household goods, uncrated new furniture, uncrated computers and electronic equipment which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, and crated computers and electronic equipment of unusual nature or value which are to be delivered for installation to the premises of the ultimate user; provided, however, that nothing in this section shall be construed to obviate or remove any specific restriction or limitation as to areas which may be served that presently exist in any certificate, and any limitation or restriction shall remain in effect.~~

- ~~(2)—~~Any person, or his respective predecessor in interest, engaged as of December 31, 1969, in the transportation of uncrated office and store furniture and used household goods, and uncrated new furniture, pursuant to a valid certificate issued by the department authorizing the activity as an irregular route common carrier, shall, upon application, be entitled to the issuance of a household goods certificate to thereafter authorize a continuation of the same operations, including a designation of the location of the situs of the office and terminal facilities of the person utilized as of December 31, 1969. Upon petition by any interested party, or, upon its own motion if it so desires, the department shall require a hearing upon any application to establish an applicant's rights thereunder. The hearing shall be conducted in accordance with KRS Chapter 13B. Any subsequent change in situs, or additional situs to a household goods certificate shall be granted only upon application to the department in the same manner as other applications made under KRS 281.625].

Section 2. KRS 281.631 is amended to read as follows:

- (1) Every holder of a *regular route* certificate of public convenience and necessity issued by the Department of Vehicle Regulation authorizing the transportation of persons ~~or property~~ for hire, which certificate authorizes service at a point that is also a point at which service is authorized under the terms of any other certificate of the same type held by the same person, is authorized to transport persons ~~or property, as the case may be,~~ for hire, from any point on either of said certificated routes via such common point of service to any point on any other such connecting certificated route or routes, unless such service be restricted by the terms of any of said certificates.
- (2) It is the purpose of this section to further clarify the provisions of this chapter relating to the application of the administrative and judicial interpretations of the Federal Motor Carrier Act to the administration of this chapter.

Section 3. KRS 281.680 is amended to read as follows:

- (1) Under *administrative* ~~rules and~~ regulations *promulgated* ~~prescribed~~ by the department *under KRS Chapter 13A*, every common carrier or irregular route common carrier *of passengers or household goods*, except carriers operating pursuant to a ~~local cartage certificate,~~ taxicab certificate, *a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate*, or an industrial bus certificate, shall maintain on file with the department a schedule of rates, fares, charges and classifications, and a time schedule, if any, of all motor vehicles operated under a certificate, and shall keep open for public inspection at designated offices so much of such schedules as the department deems necessary for public information. The carriers may become a participating party to a tariff published or issued by a tariff-issuing agency, and the issuing agent of the tariff shall file the tariff with the department, but such tariff-issuing agent may not represent any carrier in any matters before the department. Notwithstanding the exclusion of carriers operating pursuant to a ~~local cartage~~

~~certificate,~~ taxicab certificate, **a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate,** or an industrial bus certificate, the department may by **administrative** regulation require ~~such~~ carriers to file a schedule of their rates, fares, charges, and classifications.

- (2) Under ~~administrative~~ ~~rules and~~ regulations ~~promulgated~~ ~~prescribed~~ by the department **under KRS Chapter 13A,** every contract carrier shall maintain on file with the department all contracts made for transportation, and shall keep open for public inspection at designated offices such contracts as the department deems necessary for public information.
- ~~(3) No schedule of rates need be filed for the transportation of any commodity that has been exempted by the department, except that the department may require the filing of a schedule of rates.~~
- ~~(4)~~ The department shall have full power concerning the control of rates and contracts under its ~~administrative~~ ~~rules and~~ regulations.
- ~~(4)~~ ~~(5)~~ To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the department prescribes rates, charges, and classifications, the department shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges and classifications. ~~The~~ ~~Such~~ procedures shall assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service, for which rates are prescribed, are ascertained.

Section 4. KRS 281.685 is amended to read as follows:

- (1) ~~A~~ ~~No~~ common carrier or irregular route common carrier **of passengers or household goods** shall **not** charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith, than the rates, fares and charges specified in its tariffs and classifications filed with the department and in effect at the time; **and** ~~a~~ ~~nor shall any~~ common carrier or irregular route common carrier **shall not** refund or remit any part of the rates, fares or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.
- (2) ~~A~~ ~~No~~ contract carrier shall **not** charge, demand, collect or receive a greater, less or different compensation for the transportation of persons ~~or property~~ or for any service in connection therewith than that contained in the contract required to be filed with the department and in effect at the time; **and** ~~a~~ ~~nor shall any~~ contract carrier **shall not** refund or remit any part of the charges specified in the contract, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

Section 5. KRS 281.690 is amended to read as follows:

- (1) ~~A~~ ~~No~~ common carrier or irregular route common carrier **of passengers or household goods** shall **not** make any change in any rate that has been duly established under this chapter except after thirty (30) days' notice to the department, which notice shall state plainly the changes proposed to be made and the proposed effective date of the change. The carrier shall also give notice of the proposed change to other interested persons in the manner as the department directs in its administrative regulations. All proposed changes shall be shown by filing new tariffs in the form and manner prescribed by the department. The department may, in accordance with **administrative** regulations ~~and~~ ~~prescribe therefor,~~ upon the showing of good cause, provide for the allowance of a change in rates by holders of certificates authorizing only transportation of property upon notice less than that specified in this subsection.
- (2) Whenever any tariff setting forth a change in rates is filed, the department may, upon its own initiative, and shall, upon protest filed in accordance with the administrative regulations of the department, enter upon a hearing, to be conducted in accordance with KRS Chapter 13B, concerning the lawfulness of the proposed rate. The department shall mail written notice of the hearing to the applicant, the protestant, and to any other person who, in the opinion of the department, may be interested in or affected by the proposed change in rate. The department may suspend the operation of the new rates for a period of not more than six (6) months from the proposed effective date by order, giving reasons therefor. If after the hearing the department finds the proposed rate, or any part thereof, to be unjust, unreasonable, or unjustly discriminatory, or in violation of law, the department shall determine the just and reasonable rate to be charged and shall fix the same by final order.
- (3) ~~A~~ ~~No~~ contract carrier shall **not** make any change in its contract filed with the department except upon the approval of the department.

Section 6. KRS 281.990 is amended to read as follows:

- (1) *A person shall be fined not less than twenty-five dollars (\$25) and no more than two hundred dollars (\$200), or imprisoned for not more than thirty (30) days, or both, if the person:*
- (a) ~~Any person who~~ Violates, ~~or~~ causes, aids, or abets any violation of ~~any of~~ the provisions of this chapter, or any order, rule or *administrative* regulation lawfully issued pursuant to authority granted by this chapter;
 - (b) ~~or who~~ Knowingly makes any false or erroneous statement, report or representation to the Department of Vehicle Regulation with respect to any matter placed under the jurisdiction of the department by this chapter;
 - (c) ~~or who~~ Knowingly makes any false entry in the accounts or records required to be kept pursuant to the authority granted by this chapter; ~~or~~
 - (d) ~~who~~ Knowingly fails to keep, or knowingly destroys or mutilates, any ~~such~~ accounts or records ~~shall be fined not less than twenty five dollars (\$25) nor more than two hundred dollars (\$200), or imprisoned for not more than thirty (30) days, or both.~~

Every device to evade or to prevent the application of any provision of this chapter, or any lawful order, rule or *administrative* regulation of the department issued pursuant thereto, shall constitute a violation thereof.

- (2) (a) Any person who violates KRS 281.615(1) shall be fined not less than *two thousand* ~~sixty~~ dollars ~~(\$2,000)~~ ~~(\$60)~~ nor more than *three thousand five* ~~two~~ hundred dollars ~~(\$3,500)~~ ~~(\$200)~~, or imprisoned for not more than thirty (30) days or both.
- (b) *Any person who operates as a motor carrier in violation of the terms of his or her certificate or permit shall be fined not less than two thousand dollars (\$2,000) nor more than three thousand five hundred dollars (\$3,500), or imprisoned for not more than thirty (30) days or both.*
- (3) In addition to the penalties prescribed in subsection (1) of this section, in case of violation by any person in whose name an industrial bus is licensed, ~~the~~ ~~such~~ person shall forfeit all certificates and permits held by him, and shall not be eligible to hold any certificate or permit for a period of five (5) years thereafter.
- (4) *A person who violates KRS 281.615(2) shall not be subject to a penalty under this section.*

Approved April 7, 1998

CHAPTER 332

(SB 114)

AN ACT relating to community foundations.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Foundation" means a charitable community foundation established to accept gifts, bequests, devises, or other transfers for the purpose of meeting charitable objectives for the citizens of the community;*
 - (b) *"Local government" means every city, regardless of classification, every county, and every charter county and urban-county government; and*
 - (c) *"Component fund" means an individual fund treated as part of a foundation and that meets the requirements established under regulations promulgated implementing Title 26 U.S.C. sec. 170 as amended from time to time.*
- (2) *A local government may donate to a foundation the proceeds from the sale of any utility or facility or any grant, bequest, or devise received by it.*
- (3) *If the foundation receives a gift from a local government that is subject to conditions, limitations, or requirements by the donor, the gift shall be segregated in a component fund within the foundation, which*

shall be subject to conditions, limitations, or requirements that are substantially identical to those established by the donor.

- (4) *If the foundation receives a gift from a local government that is not subject to any specified conditions, limitations, or requirements by the donor, the gift amount shall be maintained in a component fund. The income from the fund shall be distributed to the local government for charitable purposes as directed by an ordinance of the governing body of the local government.*
- (5) *The foundation shall return any donations to the general fund of a local government if:*
- (a) *The foundation loses its status as a public charitable organization;*
 - (b) *The foundation is liquidated; or*
 - (c) *The foundation violates any condition, limitation, or requirement as established by the local government governing body.*

Approved April 7, 1998

CHAPTER 333

(SB 151)

AN ACT relating to reorganization.

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

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

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

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

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

9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.

- (g) Office of Communications and Community Affairs.
- 4. Transportation Cabinet:
 - (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) ~~Office of Aeronautics.~~
 - ~~(g)~~ Office of General Counsel.
 - ~~(g)~~~~(h)~~ Office of Public *Affairs*~~[Relations]~~.
 - ~~(h)~~~~(i)~~ Office of Personnel Management.
 - ~~(i)~~~~(j)~~ Office of Minority Affairs.
 - ~~(j)~~~~(k)~~ Office of Environmental Affairs.
 - (k) Office of Policy and Budget.**
- 5. Cabinet for Economic Development:
 - (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
- 7. Cabinet for Human Resources:
 - (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.

- (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.

- (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.

- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 2. KRS 174.020 is amended to read as follows:

- (1) The Transportation Cabinet in addition to the departments set forth in KRS 174.015 shall consist of the following organizational units:
- (a) Office of the Secretary of Transportation comprised of the secretary of transportation, **a deputy secretary for administration**~~chief deputy secretary (who shall also serve as commissioner of the Department of Highways)~~, a deputy secretary for legal affairs, and the Office of Environmental Affairs created by paragraph **(h)(i)**~~(i)~~ of this subsection;
 - (b) Railroad Commission, attached to the Office of the Secretary for administrative purposes;
 - (c) Office of Public **Affairs**~~Relations~~, headed by an executive director who shall serve as **media spokesperson**~~press secretary~~ and shall be responsible for **all matters relating to** public relations and information;
 - (d) Office of General Counsel, headed by an executive director **responsible for general office administration, and the general counsel who provides**~~which shall provide~~ legal services for the cabinet;
 - (e) Office of Personnel Management, headed by an executive director who shall be responsible for the implementation of programs and practices for the recruitment,~~training,~~ utilization, and management of cabinet personnel;
 - (f) Office of Minority Affairs, headed by an executive director who shall be responsible for the development and implementation of programs and procedures for assisting minorities in employment and contractual relations with the cabinet;
 - ~~(g) Office of Aeronautics, headed by an executive director who shall be responsible for the administration of the Commonwealth's airport planning and development programs;~~
 - ~~(h) Kentucky Airport Zoning Commission established by KRS 183.861, which shall be attached to the Division~~~~Office~~ of Aeronautics;~~and~~
 - (h)(i)** Office of Environmental Affairs, headed by an executive director who shall oversee~~and implement~~ all Transportation Cabinet environmental issues, activities, **and programs; developing and implementing** policies;~~and~~ **procedures. The position of executive director is a policy-making position under the provisions of KRS 18A.175**~~programs~~. The Office of Environmental Affairs may

direct the Transportation Cabinet's environmental activities, associated personnel, and facilities when necessary to assure compliance with environmental laws and regulations; **and**

- (i) ***Office of Policy and Budget, headed by an executive director who shall be responsible for administering the budget functions of the Transportation Cabinet.***
- (2) The executive directors of the Offices of Public ~~Affairs~~ ~~Relations~~, General Counsel, Personnel Management, Minority Affairs, ~~Aeronautics, and~~ Environmental Affairs, **and Policy and Budget** shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050. ***The positions of director in the Division of Fleet Management, Division of Professional Services, and Division of Environmental Analysis are policy-making positions pursuant to KRS 18A.175.***

Section 3. Executive Order 96-916, dated July 15, 1996, reorganizing the Transportation Cabinet is hereby confirmed and modified to the extent that it is not otherwise confirmed by this Act. The confirmation shall include, without being limited to, the creation of the following offices within the Department of Highways:

(1) Office of Intermodal Planning, headed by an executive director who shall be a registered engineer pursuant to KRS Chapter 322 and who shall be responsible for advising the secretary on transportation policies and directions for long-range Transportation Cabinet planning regarding all forms of transportation including highways, water, air, rail, and pipeline modes. The Office shall also be responsible for all transportation planning functions including the development and processing of the federal aid highway program, as well as regional and local transportation planning activities;

(2) Office of Project Development, headed by an executive director who shall be a registered professional engineer pursuant to KRS Chapter 322 known as the Deputy State Highway Engineer for Project Development. The executive director shall be responsible for formulating and implementing all pre-construction phases of highway projects in the Division of Professional Services, Division of Bridge Design, Division of Highway Design, Division of Environmental Analysis, and the Division of Right of Way and Utilities; and

(3) Office of Construction/Operations, headed by an executive director who shall be a registered professional engineer pursuant to KRS Chapter 322 known as the Deputy State Highway Engineer for Construction/Operations. The executive director shall be responsible for formulating and implementing all maintenance, traffic control, and equipment utilization for the state highway system in the Division of Construction, Division of Materials, Division of Contract Procurement, Division of Traffic, Division of Equipment, and the Division of Operations.

Approved April 7, 1998

CHAPTER 334

(SB 123)

AN ACT relating to the creation of the Transportation and Tourism Interagency Committee.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

The Transportation and Tourism Interagency Committee is established to foster close collaboration between the Tourism Development Cabinet and the Transportation Cabinet on policies that affect the tourism industry and to place strong emphasis on the coordination of mutual interests such as highway signage, scenic byways, highway safety, and concern for the Commonwealth's beauty and heritage.

SECTION 2. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Transportation and Tourism Interagency Committee shall be composed of thirteen (13) members or their official appointed designees, as follows:***
 - (a) ***Six (6) members appointed by the secretary of the Tourism Cabinet;***
 - (b) ***Six (6) members appointed by the secretary of the Transportation Cabinet; and***
 - (c) ***One (1) member appointed by the executive director of the Kentucky Heritage Council.***

- (2) *Committee members shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with the performance of their duties and functions as committee members.*
- (3) *The committee shall elect its chair and vice chair from representatives of the Tourism Development and Transportation Cabinets for a term of one (1) year. The vice chair shall succeed the chair. The chair shall alternately be a representative of the Tourism Development and Transportation Cabinets.*
- (4) *The committee shall meet upon the call of the chair and upon the request of the secretary of the Tourism Development Cabinet or the secretary of the Transportation Cabinet.*
- (5) *A committee member may appoint a proxy for an individual meeting, delegating to the proxy the privilege of voting on any issue. The proxy appointment shall be in writing.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

The Transportation and Tourism Interagency Committee shall have, but not be limited to, the following duties and responsibilities:

- (1) *Review Kentucky's signage laws, administrative regulations, and policies implementing the federal "Manual on Uniform Traffic Control Devices" and submit any proposed revisions to the secretary of the Transportation Cabinet;*
- (2) *Seek public comment on Kentucky's signage laws, administrative regulations, and policies;*
- (3) *Advise the Transportation Cabinet on the scenic byways and highways program;*
- (4) *Review and make recommendations on requests for highway signage from tourism-related entities;*
- (5) *Coordinate development of the tourism information potential of welcome centers and rest areas through such means as interactive videos, information kiosks, and highway advisory radio transmitters, as well as other innovative methods which may be identified by the committee;*
- (6) *Monitor developments across the United States relating to billboards and official signs;*
- (7) *Report to the secretary of the Transportation Cabinet and to the secretary of the Tourism Development Cabinet on issues of mutual interest to the cabinets;*
- (8) *Serve as an advisory committee on issues identified by the secretary of the Transportation Cabinet and secretary of the Tourism Development Cabinet; and*
- (9) *Report committee recommendations to the secretary of the Transportation Cabinet, the secretary of the Tourism Development Cabinet, the secretary of the Education, Arts, and Humanities Cabinet, and the secretary of the Executive Cabinet.*

Approved April 7, 1998

CHAPTER 335

(SB 103)

AN ACT relating to fiscal court organization.

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

Section 1. KRS 67.050 is amended to read as follows:

- (1) Any county may have a fiscal court consisting of the county judge/executive and three (3) commissioners elected from the county at large. To ascertain whether the county desires to have county commissioners, the county judge/executive, upon an application by written petition signed by *registered voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county in the preceding presidential election or one thousand two hundred (1,200) registered voters of the county, whichever is less* ~~one hundred (100) legal voters of the county~~, shall enter an order on his order book calling an election to submit to the legal voters of the county the following question: "Are you for or against having a fiscal court composed of three (3) commissioners and the county judge/executive?" The order shall be entered at the next regular term after the petition is filed, and shall direct the election to be held at the next regular election to be

held in the county if the order is filed with the county clerk not later than the second Tuesday in August preceding the day of the regular election. The county clerk shall give to the sheriff or other officer appointed to hold the election a certified copy of the order within five (5) days after the order is made, and the sheriff or other officer shall have the order published pursuant to KRS Chapter 424 and in addition advertise it by printed handbills posted at one (1) or more conspicuous places in each precinct in the county for the length of time that publication is required, stating when the election will be held and the purpose thereof.

- (2) All such elections shall be held under the general election laws. No such election shall be held in any county more often than once in four (4) years.
- (3) Any county that has voted in favor of having county commissioners may return to its prior form of government by following the same procedures as provided in subsections (1) and (2) of this section, by which it chose to have county commissioners. A petition for an election on a return to a fiscal court composed of justices of the peace and the county judge/executive shall state a proposed number of justices of the peace. The question to be submitted to the voters shall be in the following form: "Are you in favor of a return to a fiscal court composed of the county judge/executive and (insert the proposed number of justices) justices of the peace who shall represent specific districts within the county?"
- (4) If a majority of the votes cast at an election held under subsection (3) of this section are in favor of a return to a fiscal court composed of justices of the peace and the county judge/executive, the fiscal court shall, if necessary, initiate proceedings to reapportion the justices districts, and such reapportionment shall conform to the requirements of KRS 67.045. The change in the composition of the fiscal court shall become effective upon the assumption of office of justices of the peace elected at the next regular election for that office.

Approved April 7, 1998

CHAPTER 336

(SB 76)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
 - (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and

- (1) If the defendant's record indicates a controlled substance or alcohol problem, submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, said fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. For good cause shown, the testing fee may be waived by the court.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Human Resources, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:
 - (a) Restitution by payment may be ordered in a lump sum or in specified payments;
 - (b) Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;
 - (c) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (d) Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;
 - (e) The circuit clerk shall assess an additional fee of two percent (2%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall enure to the general fund of the State Treasury;
 - (f) When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court. The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation; and
 - (g) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.
- (5) ***In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of probation or conditional discharge of a sentence of detention or imprisonment for a drug or alcohol related offense, to make one (1) payment either to Drug Abuse Resistance Education (D.A.R.E.) or to any treatment or prevention program for drug or alcohol abuse that***

a local government administers, refers individuals to, or contracts to administer, in an amount not to exceed the amount of any fine which also could have been imposed for the offense.

- (6) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- (7)~~(6)~~ When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2), or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

Approved April 7, 1998

CHAPTER 337

(SB 74)

AN ACT relating to crime stoppers organizations and providing a mechanism for their funding.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

- (1) *Any crime stoppers organization that enters into a written agreement of affiliation, as provided in subsection 2 of this section, with a county in which the organization operates shall be funded in part by a one dollar (\$1) fee added to court costs in that county. The fee shall be imposed on every person who is:*
- (a) *Convicted of any misdemeanor or violation, other than a violation of KRS Chapters 186, 187, 188, 189, or 189A; and*
- (b) *Sentenced to pay a fine for the misdemeanor or violation, regardless of whether the person is also incarcerated, or whether the fine is suspended, waived, or otherwise not imposed.*
- (2) *Any crime stoppers organization may enter into a written agreement of affiliation, approved by a fiscal court or urban county council, with any county, or with any number of counties, in which the organization operates. Agreements of affiliation shall be valid for two (2) years and may be renewed. The agreements shall specify:*
- (a) *The relationship between the crime stoppers organization, the county, and law enforcement agencies in the county; and*
- (b) *That the crime stoppers organization shall account annually to the fiscal court or urban county council for all funds raised by the organization from all sources and all funds expended by the organization for any purpose. The agreement shall allow the crime stoppers organization to identify the sources of funds raised generically rather than by name. The agreement shall not require the crime stoppers organization to divulge the amounts of individual rewards paid nor the identity of any person to whom a reward was paid.*
- (3) *In every county where an agreement of affiliation is approved, the county clerk shall notify the circuit clerk to collect the fee required by this section. The circuit clerk shall collect the fee for two (2) years from the date the agreement was signed. When the circuit clerk pays fines and costs over to the state, the circuit clerk shall pay all money collected under this section to the crime stoppers organization named in the agreement.*
- (4) *The crime stoppers fee shall not be waived or suspended. Failure to pay the fee shall be treated as a failure to pay a fine under KRS Chapter 534.*

- (5) *Crime stoppers organizations may use the funds they receive under this section for any purpose authorized by KRS 431.575.*

Approved April 7, 1998

CHAPTER 338

(SB 61)

AN ACT relating to judicial supervision of custody decree or agreement.

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

Section 1. KRS 403.330 is amended to read as follows:

- (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.
- (2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the local probation, *another appropriate local entity*, or *if currently involved in the case, the child welfare department* to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Approved April 7, 1998

CHAPTER 339

(SB 58)

AN ACT relating to protection of and counseling for child victims.

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

Section 1. KRS 431.600 is amended to read as follows:

- (1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Human Resources. *Cabinet for Human Resources social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020, is the alleged or suspected perpetrator of the abuse.* Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.
- (2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.
- (3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.
- (4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.

- (5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.
- (6) Commonwealth's attorneys and county attorneys and the Cabinet for Human Resources *and other team members* shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.
- (7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.

Approved April 7, 1998

CHAPTER 340

(SB 45)

AN ACT relating to local government budgets and escrow accounts.

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

Section 1. KRS 68.260 is amended to read as follows:

- (1) The proposed county budget, tentatively approved by the fiscal court and approved by the state local finance officer as to form and classification shall be submitted to the fiscal court for adoption not later than July 1 of each year or within ten (10) days after receipt of the certified assessment from the Revenue Cabinet, as provided in KRS 133.180, whichever shall be later. The budget as presented and amended shall be adopted as of July 1. The county judge/executive shall cause a copy of the proposed budget to be posted in a conspicuous place in the courthouse near the front door, and be published pursuant to KRS Chapter 424, at least *seven* (7)~~ten (10)~~ days before final adoption by the fiscal court.
- (2) Any taxpayer or group of taxpayers may petition the fiscal court in respect to the budget or any part thereof before final adoption.
- (3) If the fiscal court rejects any part of the proposed budget, it shall make the changes in the nature and amount of funds a majority of the court considers desirable; but it has no power to make any change in the form or classification of the budget units or subdivisions of units.

Section 2. KRS 371.160 is amended to read as follows:

- (1) If, in any contract in the amount of five hundred thousand dollars (\$500,000) or more involving the improvement of real estate, a certain amount or percentage of the contract is held back by the owner, that retained amount shall be deposited in a separate escrow account with a bank or trust company authorized to do business in the Commonwealth of Kentucky.
- (2) As of the time of the deposit of the retained funds, they shall become the sole and separate property of the contractor to whom they are owed.
- (3) The escrow agent shall promptly invest all escrowed principal in obligations selected by the escrow agent in its discretion.
- (4) Upon satisfactory completion of the contract, to be evidenced by a written release by the owner, all funds accumulated in the escrow account, together with any interest thereon, shall be paid immediately to the contractor to whom it is owed.
- (5) The escrow agent shall be compensated for its services in an amount agreed to by the owner, contractor, and escrow agent. The compensation shall be a commercially reasonable fee commensurate with fees being charged for handling of escrow accounts of similar size and duration. The compensation shall be paid from the escrow account.
- (6) In the event the owner fails or refuses to execute the release provided for in subsection (4) of this section, then the contractor shall have a cause of action against the owner in a court of proper jurisdiction.

- (7) This section shall not apply to contracts with the Commonwealth, *any county, charter county, urban-county government, or municipality, or any other political subdivision, agency, or instrumentality of the Commonwealth*, or school boards.

Approved April 7, 1998

CHAPTER 341

(HB 666)

AN ACT relating to commerce.

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

Section 1. KRS 141.208 is amended to read as follows:

- (1) For the purposes of this section, "limited liability company" shall mean any company subject to the provisions of KRS Chapter 275.
- (2) Any limited liability company *shall be* ~~which is~~ treated ~~as a partnership for federal income tax purposes shall be treated as a partnership in accordance with the provisions of KRS 141.206~~ for Kentucky income tax purposes *in the same manner as its tax treatment for federal*
- ~~{(3) Any limited liability company which is treated as a corporation for federal income tax purposes shall be treated as a corporation in accordance with the provisions of KRS 141.040 for Kentucky} income tax purposes.~~

Section 2. KRS 142.050 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
- (a) "Deed" means any document, instrument, or writing other than a will and other than a lease or easement, regardless of where made, executed, or delivered, by which any real property in Kentucky, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.
- (b) "Value" means:
1. In the case of any deed not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon; and
 2. In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.
- (2) A tax upon the grantor named in the deed shall be imposed at the rate of fifty cents (\$0.50) for each \$500 of value or fraction thereof, which value is declared in the deed upon the privilege of transferring title to real property.
- (3) (a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for recordation, the county clerk shall ascertain and compute the amount of the tax due thereon and shall collect the amount as prerequisite to acceptance of the deed for recordation.
- (b) The amount of tax shall be computed on the basis of the value of the transferred property as set forth in the deed.
- (c) The tax required to be levied by this section shall be collected only once on each transaction and in the county in which the deed is required to be recorded by KRS 382.110(1).
- (4) The county clerk shall collect the amount due and certify the date of payment and the amount of collection on the deed. The county clerk shall retain five percent (5%) as his fee for collection and remit the balance every three (3) months to the county treasurer, who shall deposit the money in the county general fund.
- (5) The Revenue Cabinet may prescribe regulations necessary to carry out the purposes of this section.
- (6) Any county clerk who willfully shall record any deed upon which a tax is imposed by this section without collecting the proper amount of tax and certifying the date and amount of collection on the deed as required by

this section based on the declared value indicated in the affidavit appended to the deed shall, upon conviction, be fined \$50 for each offense.

- (7) The tax imposed by this section shall not apply to a transfer of title:
- (a) Recorded prior to March 27, 1968;
 - (b) To, in the event of a deed of gift or deed with nominal consideration, or from the United States of America, this state, any city or county within this state, or any instrumentality, agency, or subdivision hereof;
 - (c) Solely in order to provide or release security for a debt or obligation;
 - (d) Which confirms or corrects a deed previously recorded;
 - (e) Between husband and wife, or between former spouses as part of a divorce proceeding;
 - (f) On sale for delinquent taxes or assessments;
 - (g) On partition;
 - (h) Pursuant to:
 - 1. ***Merger or consolidation between and among corporations, partnerships, including registered limited liability partnerships, limited partnerships, or limited liability companies; or***
 - 2. ***The conversion of a general partnership, including a registered limited liability partnership, or a limited partnership into a limited liability company***~~mergers of corporations~~;
 - (i) ~~Between~~***By*** a subsidiary corporation ~~and to~~ its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of ***either corporation's***~~the subsidiary's~~ stock;
 - (j) Under a foreclosure proceeding;
 - (k) ***Between a person and***~~By an individual to~~ a corporation, general partnership, limited partnership, registered limited liability partnership, or limited liability company in an amount equal to the portion of the value of the real property transferred that represents the proportionate interest of the transferor of the property in the entity to which the property was transferred, if the transfer was for nominal consideration;
 - (l) Between parent and child or grandparent and grandchild, with only nominal consideration therefor;~~and~~
 - (m) By a corporation, general partnership, limited partnership, registered limited liability partnership, or limited liability company to ***a person as***~~an individual~~ owner or shareholder of the entity, upon dissolution of the entity, in an amount equal to the portion of the value of the real property transferred that represents the proportionate interest of the ***person***~~individual owner~~ to whom the property was transferred, if the transfer was for nominal consideration;
 - (n) ***Between a trustee and a successor trustee; and***
 - (o) ***Between a limited liability company and any of its members.***
- (8) The tax imposed by subsection (2) of this section shall not apply to transfers to a trustee, to be held in trust, or from a trustee to a beneficiary of the trust if:
- (a) The grantor is the sole beneficiary of the trust;
 - (b) The grantor is a beneficiary of the trust and a direct transfer from the grantor of the trust to all other individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to one (1) of the provisions of subsection (7) of this section; or
 - (c) A direct transfer from the grantor of the trust to all other individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to one (1) of the provisions of subsection (7) of this section.
- (9) As used in this section, "trust" shall have the same definition as contained in KRS 386.800.

Section 3. KRS 271B.1-220 is amended to read as follows:

- (1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:
- (a) Articles of incorporation \$ 40
 - (b) Application for use of indistinguishable name \$ 20
 - (c) Application for reserved name \$ 15
 - (d) Notice of transfer of reserved name \$ 15
 - (e) Application for registered name \$ 36
 - (f) Application for renewal of registered name \$ 36
 - (g) Corporation's statement of change of registered agent
or registered office, or both \$ 10
 - (h) Agent's statement of change of registered office for
each affected corporation \$ 10
not to exceed a total of \$1,000
 - (i) Amendment of articles of incorporation \$ 40
 - (j) Restatement of articles of incorporation \$ 40
 - (k) Amended and restated articles \$ 80
 - (l) Articles of merger or share exchange \$ 50
 - (m) Articles of dissolution \$ 40
 - (n) Articles of revocation of dissolution \$ 15
 - (o) Reinstatement penalty following administrative dissolution \$ 100
 - (p) Application for certificate of authority \$ 90
 - (q) Application for amended certificate of authority \$ 40
 - (r) Application for certificate of withdrawal \$ 40
 - (s) Annual report \$ 15
 - (t) Articles of correction \$ 20
 - (u) ~~Application for~~ Certificate of existence or authorization \$ 10
 - (v) Any other document required or permitted to
be filed by this chapter \$ 15
 - (w) Agent's statement of resignation No fee
 - (x) Certificate of administrative dissolution No fee
 - (y) Certificate of reinstatement No fee
 - (z) Certificate of judicial dissolution No fee
 - (aa) Certificate of revocation of authority to transact business No fee
- (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.
- (3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:
- (a) Fifty cents (\$0.50) a page for copying; and

(b) Five dollars (\$5) for the certificate.

- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to corporations.

Section 4. KRS 271B.1-400 is amended to read as follows:

In this chapter:

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlining, shall be considered conspicuous.
- (4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.
- (5) "Deliver" includes mail.
- (6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or inurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (7) "Effective date of notice" is defined in KRS 271B.1-410.
- (8) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.
- (9) "Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government.
- (10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.
- (11) "Governmental subdivision" includes authority, county, district, and municipality.
- (12) "Includes" denotes a partial definition.
- (13) "Individual" includes the estate of an incompetent or deceased individual.
- (14) "Means" denotes an exhaustive definition.
- (15) "Notice" is defined in KRS 271B.1-410.
- (16) "Person" includes individual and entity.
- (17) "Principal office" means the office (in or out of this state) so designated in *writing to the Secretary of State* ~~the annual report~~ where the principal executive offices of a domestic or foreign corporation are located.
- (18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
- (19) "Record date" means the date established under Subtitles 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date, unless another time for doing so is specified when the record date is fixed.
- (20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of KRS 271B.8-400 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
- (21) "Share" means the unit into which the proprietary interests in a corporation are divided.
- (22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

- (23) "State" when referring to a part of the United States, includes a state and Commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.
- (24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
- (26) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Section 5. KRS 271B.2-020 is amended to read as follows:

- (1) The articles of incorporation shall set forth:
 - (a) A corporate name for the corporation that satisfies the requirements of KRS 271B.4-010;
 - (b) The number of shares the corporation is authorized to issue;
 - (c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;
 - (d) The mailing address of the corporation's principal office; and
 - (e) The name and mailing address of each incorporator.
- (2) The articles of incorporation may set forth:
 - (a) The names and mailing addresses of the individuals who are to serve as the initial directors;
 - (b) Provisions not inconsistent with law regarding:
 - 1. The purpose or purposes for which the corporation is organized;
 - 2. Managing the business and regulating the affairs of the corporation;
 - 3. Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
 - 4. A par value for authorized shares or classes of shares; and
 - 5. The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
 - (c) Any provision that under this chapter is required or permitted to be set forth in the bylaws; and
 - (d) A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of his duties as a director, provided that such provision shall not eliminate or limit the liability of a director:
 - 1. For any transaction in which the director's personal financial interest is in conflict with the financial interests of the corporation or its shareholders;
 - 2. For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law;
 - 3. For any vote for or assent to an unlawful distribution to shareholders as prohibited under KRS 271B.8-330; or
 - 4. For any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of any director for any act or omission occurring prior to the date when such provision becomes effective. In no case shall this subsection or any such provision be construed to expand the liability of any director as determined pursuant to KRS 271B.8-300.

- (3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.
- (4) ***Unless the registered agent signs the articles, the corporation shall deliver with the articles of incorporation the registered agent's written consent to the appointment.***

Section 6. KRS 271B.5-010 is amended to read as follows:

- (1) Each corporation shall continuously maintain in this state:
- (a)~~(1)~~ A registered office that may be the same as any of its places of business; and
- (b)~~(2)~~ A registered agent, who may be:
- 1.~~(a)~~ An individual who resides in this state and whose business office is identical with the registered office;
 - 2.~~(b)~~ A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office;~~or~~
 - 3.~~(c)~~ A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office;
 4. ***A domestic limited liability company or a foreign limited liability company authorized to transact business in the state whose business office is identical with the registered office; or***
 5. ***A domestic limited partnership or foreign limited partnership authorized to transact business in the state whose business office is identical with the registered office.***
- (2) ***Unless the registered agent signs the document making the appointment, the appointment of the registered agent or a successor registered agent on whom process may be given is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.***

Section 7. KRS 271B.10-020 is amended to read as follows:

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;
- (3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (4) ***To delete the mailing address of the corporation's initial principal office if the statement containing the mailing address of new principal office is on file with the Secretary of State;***
- (5) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;
- (6)~~(5)~~ To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or
- (7)~~(6)~~ To make any other change expressly permitted by this chapter to be made without shareholder action.

Section 8. KRS 271B.11-080 is amended to read as follows:

- (1) One (1) or more domestic or foreign limited liability companies or limited partnerships may merge with one (1) or more domestic corporations if:
- (a) The merger is permitted by the laws of the state or country under whose law each foreign limited liability company or limited partnership is incorporated, organized, or formed, and each foreign limited liability company or limited partnership complies with those laws in effecting the merger;
 - (b) Each domestic limited liability company party to the merger complies with the applicable provisions of the Kentucky Revised Statutes;

- (c) Each domestic limited partnership party to the merger complies with the applicable provisions of KRS Chapter 362;
 - (d) Each domestic corporation complies with the applicable provisions of KRS 271B.11-010 to 271B.11-040.
- (2) The plan of merger shall set forth:
- (a) The name of each constituent business entity that is a party to the merger and the name of the surviving business entity into which each constituent business entity proposes to merge;
 - (b) The terms and conditions of the proposed merger, including but not limited to, a statement which sets forth whether limited liability is retained by the surviving business entity;
 - (c) The manner and basis of converting the shares in each corporation and the interests in each business entity that is a party to the merger into interests, shares, or other securities or obligations, as the case may be, of the surviving entity, or of any other business entity, or, in whole or in part, into cash or other property;
 - (d) The amendments to the articles of organization of a limited liability company, or articles of incorporation of a corporation or certificate of limited partnership, as the case may be, of the surviving business entity as are desired to be effected by the merger, or that no changes are desired;
 - (e) Other provisions relating to the proposed merger that are deemed necessary or desirable.
- (3) The business entity surviving from the merger shall deliver to the Secretary of State for filing articles of merger duly executed by each constituent business entity setting forth:
- (a) The name and jurisdiction of formation or organization of each constituent business entity which is to merge;
 - (b) The plan of merger;
 - (c) The name of the surviving business entity;
 - (d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with the laws applicable to such business entity; and
 - (e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:
 - 1. Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and
 - 2. Appoints the Secretary of State as its agent for service of process in any such proceeding. The surviving entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.
- (4) The articles of merger filed by the surviving entity in accordance with this section shall also be deemed to have been filed for any domestic limited liability company party to the merger in accordance with the applicable sections of the Kentucky Revised Statutes and for any domestic limited partnership party to the merger in accordance with KRS Chapter 362.
- (5) Upon merger taking effect, if the surviving entity in the merger is a foreign limited partnership, limited liability company, or corporation, the surviving entity shall be deemed:
- (a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger;
 - (b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger the amount, if any, to which they are entitled under Subtitle 13 of KRS Chapter 271B; and

- (c) To agree, to the extent required by Section 200 of the Constitution, that the courts of this Commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this Commonwealth in all matters which may arise, as if the transaction has not taken place.
- (6) If a domestic or foreign limited liability company or limited partnership is the surviving entity of a merger, the surviving domestic or foreign limited liability company or limited partnership shall be considered a surviving corporation for purposes of KRS 271B.11-060(1).
- (7) *A partner or, in the case of a limited partnership, a general partner who becomes a shareholder of a corporation as a result of a merger shall remain liable as a partner or general partner, as the case may be, for an obligation incurred by the partnership or limited partnership before the merger takes effect. The partner's or general partner's liability for all obligations of the corporation incurred before the merger takes effect shall be that of a shareholder as provided in this chapter. A limited partner who becomes a shareholder as a result of a merger shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the merger takes effect.*

Section 9. KRS 271B.13-010 is amended to read as follows:

As used in this subtitle:

- (1) "Corporation" means the issuer of the shares held by a dissenter, *except that in the case of a merger where the issuing corporation is not the surviving corporation, then, after consummation of the merger, "corporation" shall mean the surviving corporation* ~~before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer~~.
- (2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under KRS 271B.13-020 and who exercises that right when and in the manner required by KRS 271B.13-200 to 271B.13-280.
- (3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable. In any transaction subject to the requirements of KRS 271B.12-210 or exempted by KRS 271B.12-220(2), "fair value" shall be at least an amount required to be paid under KRS 271B.12-220(2) in order to be exempt from the requirements of KRS 271B.12-210.
- (4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.
- (5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.
- (7) "Shareholder" means the record shareholder or the beneficial shareholder.

Section 10. KRS 271B.15-030 is amended to read as follows:

- (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:
- (a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of KRS 271B.15-060;
 - (b) The name of the state or country under whose law it is incorporated;
 - (c) Its date of incorporation and period of duration;
 - (d) The street address of its principal office;
 - (e) The address of its registered office in this state and the name of its registered agent at that office; and
 - (f) The names and usual business addresses of its current directors and officers.

- (2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.
- (3) ***Unless the registered agent signs the application, the foreign corporation shall deliver with the application for certificate of authority the registered agent's written consent to the appointment.***

Section 11. KRS 271B.15-070 is amended to read as follows:

- (1) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:
- (a)~~{(1)}~~ A registered office that may be the same as any of its places of business; and
- (b)~~{(2)}~~ A registered agent, who may be:
- 1.~~{(a)}~~ An individual who resides in this state and whose business office is identical with the registered office;
 - 2.~~{(b)}~~ A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - 3.~~{(c)}~~ A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office;
 4. ***A domestic limited liability company or a foreign limited liability company authorized to transact business in the state whose business office is identical with the registered office.***
- (2) ***Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.***

Section 12. KRS 273.182 is amended to read as follows:

- (1) Each corporation shall continuously maintain in this state:
- (a)~~{(1)}~~ A registered office that may be the same as any of its places of business; and
- (b)~~{(2)}~~ A registered agent, who may be:
- 1.~~{(a)}~~ An individual who resides in this state and whose business office is identical with the registered office;
 - 2.~~{(b)}~~ A domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office;~~{or}~~
 - 3.~~{(c)}~~ A foreign corporation or nonprofit foreign corporation authorized to transact business in this state whose business office is identical with the registered office; ***or***
 4. ***A domestic limited liability company or a foreign limited liability company authorized to transact business in the state whose business office is identical with the registered office.***
- (2) ***Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment..***

Section 13. KRS 273.247 is amended to read as follows:

- (1) The articles of incorporation shall set forth:
- (a) The name of the corporation;
 - (b) The purpose or purposes for which the corporation is organized;
 - (c) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets or dissolution or final liquidation;
 - (d) The street address of the corporation's initial registered office and the name of its initial registered agent at that address;

- (e) The mailing address of the corporation's principal office;
 - (f) The number of directors constituting the initial board of directors, and the names and mailing addresses of the persons who are to serve as the initial directors; and
 - (g) The name and mailing address of each incorporator.
- (2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in KRS 273.163 to 273.387.
 - (3) Unless its articles of incorporation provide otherwise, every corporation shall be presumed to have perpetual duration and succession in its corporate name.
 - (4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, when a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.
 - (5) ***Unless the registered agent signs the articles, the corporation shall deliver with the articles of incorporation the registered agent's written consent to the appointment.***

Section 14. KRS 273.2521 is amended to read as follows:

- (1) The Secretary of State ~~may~~~~shall~~ prescribe and furnish on request forms for:
 - (a) ~~{An application for }~~A certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;
 - (e) The annual report.

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State ~~may~~~~shall~~ prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter. Use of these forms shall ***not*** be mandatory.

Section 15. KRS 273.361 is amended to read as follows:

- (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of KRS 273.364;
 - (b) The name of the state or country under whose law it is incorporated;
 - (c) Its date of incorporation and period of duration;
 - (d) The street address of its principal office;
 - (e) The address of its registered office in this state and the name of its registered agent at that office; and
 - (f) The names and usual business addresses of its current directors and officers.
- (2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or county under whose law it is incorporated.
- (3) ***Unless the registered agent signs the application, the foreign corporation shall deliver, with the application for certificate of authority, the registered agent's written consent to the appointment.***

Section 16. KRS 273.3641 is amended to read as follows:

- (1) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:
 - (a)~~{(1)}~~ A registered office that may be the same as any of its places of business; and
 - (b)~~{(2)}~~ A registered agent, who may be:

1. ~~(a)~~ An individual who resides in this state and whose business office is identical with the registered office;
2. ~~(b)~~ A domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office; or
3. ~~(c)~~ A foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

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

Section 17. KRS 273.357 is amended to read as follows:

The dissolution of a corporation either (1) by the filing of articles of dissolution with the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in KRS 273.161 to 273.390, ~~or (3) by expiration of its period of duration,~~ shall not take away or impair any remedy available to or against ~~the~~ ~~such~~ corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to ~~the~~ ~~such~~ dissolution if action or other proceeding thereon is commenced within two (2) years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers ~~may~~ ~~shall have power to~~ take ~~such~~ corporate or other action ~~as shall be~~ appropriate to protect ~~the~~ ~~such~~ remedy, right, or claim. ~~If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two (2) years so as to extend its period of duration.~~

Section 18. KRS 273.368 is amended to read as follows:

- (1) In respect of the following documents, the fees to be collected by the Secretary of State for filing ~~and issuing~~, when required by this chapter, shall be:
 - (a) Articles of incorporation ~~and a certificate of incorporation~~, eight dollars (\$8);
 - (b) Articles of amendment ~~and a certificate of amendment~~, eight dollars (\$8);
 - (c) Restated articles of incorporation ~~and restated certificate of incorporation~~, eight dollars (\$8);
 - (d) Articles of merger or consolidation ~~and a certificate of merger or consolidation~~, eight dollars (\$8);
 - (e) Articles of dissolution ~~and certificate of dissolution~~, five dollars (\$5);
 - (f) A statement of change of address of registered office or change of registered agent, or both ~~, by the Secretary of State~~, five dollars (\$5);
 - ~~(g) A statement by a foreign corporation designating a resident process agent, by the Secretary of State, five dollars (\$5);~~
 - ~~(h)~~ An annual report by a domestic corporation ~~, by the Secretary of State~~, four dollars (\$4);
 - ~~(h)~~ ~~(i)~~ An annual report by a foreign corporation ~~, by the Secretary of State~~, eight dollars (\$8);
 - ~~(i)~~ ~~(j)~~ ***Application for certificate of authority, forty dollars (\$40)*** ~~[Certified copy of the articles of incorporation and existing amendments, by the Secretary of State, twenty five dollars (\$25) as an original filing fee, and a recording fee of ten dollars (\$10); ten dollars (\$10) for recording subsequent amendments]; and~~
 - ~~(j)~~ ~~(k)~~ Any other statement or report of a foreign or domestic corporation, eight dollars (\$8).
- (2) For recording any documents, as required by this chapter, the county clerk shall be entitled to the fees specified in KRS 64.012.

Section 19. KRS 274.005 is amended to read as follows:

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

- (1) "Professional service corporation" means a corporation organized under this chapter.

- (2) "Foreign professional service corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the law of this state.
- (3) "Professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which, prior to the passage of this chapter and by reason of law or a professional code of ethics, could not be performed by a corporation. The personal services which come within the provisions of this chapter are the personal services rendered by, but not limited to, certified public accountants, public accountants, chiropractors, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropractists, architects, veterinarians, optometrists and attorneys-at-law.
- (4) "Qualified person" means a natural person, general partnership, **limited liability company, registered limited liability partnership**, or professional service corporation which is eligible under this chapter to own shares issued by a professional service corporation.
- (5) "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional service corporation is organized to render.

Section 20. KRS 274.017 is amended to read as follows:

- (1) A professional service corporation may issue and a shareholder thereof may transfer or pledge shares, fractional shares, and rights or options to purchase shares only to:
 - (a) Natural persons who are authorized by law in this state or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;
 - (b) General partnerships, **including registered limited liability partnerships**, in which all the partners are qualified persons with respect to such professional corporation and in which at least one (1) partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation;~~and~~
 - (c) **A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of organization of the limited liability company; and**
 - (d) Professional service corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.
- (2) Any issuance or transfer of shares in violation of this section shall be void; however, nothing herein contained shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

Section 21. KRS 275.015 is amended to read as follows:

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

- (1) "Articles of organization" means the articles filed in conformity with the provisions of KRS 275.020 and 275.025, and those articles as amended or restated.
- (2) "Business entity" means domestic and foreign limited liability companies, general and limited partnerships, **including registered limited liability partnerships**, corporations, business trusts, and sole proprietorships.
- (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country.
- (4) "Court" means every court having jurisdiction in the case.
- (5) "Event of disassociation" means an event that causes a person to cease to be a member as provided in KRS 275.280.
- (6) "Foreign limited liability company" means an organization that is:
 - (a) An unincorporated association;
 - (b) Organized under laws of a state other than the laws of this Commonwealth, or under the laws of any foreign country; and
 - (c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity.
- (7) "Knowledge" means actual knowledge of a fact.

- (8) "Limited liability company" or "domestic limited liability company" means **a limited liability company**~~an unincorporated association~~ formed under this chapter **having one (1) or more members**.
- (9) "Limited liability company interest" or "interest in the limited liability company" means the interest that may be issued in accordance with KRS 275.195.
- (10) "Limited partnership" means a limited partnership formed under the laws of the Commonwealth or any other state or a foreign country.
- (11) **"Majority-in-interest of the members" means those members entitled to cast a majority of the votes to be cast by the members on any matter under the terms of the operating agreement described in subsection (3) of Section 29 of this Act.**
- (12) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with KRS 275.165.
- ~~(13)~~~~(12)~~ "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in KRS 275.275 and who have not ceased to be members as provided in KRS 275.280.
- ~~(14)~~~~(13)~~ "Operating agreement" means any agreement, written or oral, among all of the members, as to the conduct of the business and affairs of a limited liability company. If a written operating agreement contains a provision to the effect that any amendment to the operating agreement of the limited liability company shall be in writing and adopted in accordance with the provisions of the operating agreement, the provision shall be enforceable in accordance with its terms, and any agreement as to the conduct of the business and affairs of the limited liability company which is not in writing and adopted in accordance with the provisions of the operating agreement shall not be considered part of the operating agreement and shall be void and unenforceable. **If a limited liability company has only one (1) member, an operating agreement shall be deemed to include:**
- (a) **A writing executed by the member that relates to the affairs of the limited liability company and the conduct of its business regardless of whether the writing constitutes an agreement; or**
- (b) **If the limited liability company is managed by a manager, any other agreement between the member and the limited liability company as it relates to the limited liability company and the conduct of its business, regardless of whether the agreement is in writing.**
- ~~(15)~~~~(14)~~ "Person" means an individual, a general partnership, a limited liability partnership, **including a registered limited liability partnership**, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity.
- ~~(16)~~~~(15)~~ "Principal office" means the office, in or out of the Commonwealth, so designated in writing with the Secretary of State where the principal executive offices of a domestic or foreign limited liability company are located.
- ~~(17)~~~~(16)~~ "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- ~~(18)~~~~(17)~~ "Proceeding" means civil suit and criminal, administrative, and investigative action.
- ~~(19)~~~~(18)~~ "Professional limited liability company" means a limited liability company organized under this chapter or the laws of another state or foreign country for purposes that include, but are not limited to, the providing of one (1) or more professional services. Except as otherwise expressly provided in this chapter, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies.
- ~~(20)~~~~(19)~~ "Professional services" mean the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys.

~~(21)~~~~(20)~~ "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide.

Section 22. KRS 275.020 is amended to read as follows:

One (1) or more persons may *serve as the organizer and* form a limited liability company by delivering articles of organization to the Secretary of State for filing. It shall not be necessary that the person or persons be members of the limited liability company.

Section 23. KRS 275.025 is amended to read as follows:

- (1) The articles of organization shall set forth:
 - (a) A name for the limited liability company that satisfies the requirements of KRS 275.100;
 - (b) The street address of the limited liability company's initial registered office, and the name of its initial registered agent at that office;
 - (c) The mailing address of the initial principal office of the limited liability company; *and*
 - ~~(d) A statement that the limited liability company has at least two (2) or more members;~~
 - ~~(e)~~ A statement that the limited liability company is to be managed by a manager or managers or that the limited liability company is to be managed by its members; ~~and~~
 - ~~(f) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve.~~
- (2) *The term of a limited liability company shall be perpetual unless a period of duration other than perpetual is set forth in the articles of organization.*
- (3) The articles of organization of a professional limited liability company shall designate the professional services to be practiced through the professional limited liability company.
- ~~(4)~~~~(3)~~ The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement not inconsistent with law.
- ~~(5)~~~~(4)~~ A written statement of the initial registered agent consenting to serve in that capacity shall accompany the articles of organization.
- ~~(6)~~~~(5)~~ A member of a limited liability company shall not have a vested property right resulting from any provision of the articles of organization.

Section 24. KRS 275.050 is amended to read as follows:

- (1) The Secretary of State shall prescribe and furnish on request forms for:
 - (a) A certificate of existence or authorization;
 - (b) An application for a certificate of authority;
 - (c) An application for a certificate of withdrawal;
 - (d) A statement of change of registered office or registered agent;
 - (e) A statement of change of principal office address;
 - (f) The annual report; and
 - (g) Amended application for certificate of authority.
- (2) The Secretary of State shall have the discretion to make mandatory the use of the forms referred to in subsection (1) of this section.
- (3) The Secretary of State ~~may~~~~shall~~ prescribe and furnish on request forms for other documents required or permitted to be filed pursuant to this chapter, but their use shall not be mandatory.

Section 25. KRS 275.135 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, every member shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge or has received notification of the fact that the member has no such authority.
- (2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:
 - (a) No member, solely by reason of being a member, shall be an agent of the limited liability company; and
 - (b) Every manager shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is the manager shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge or has received notification of the fact that the manager has no such authority.
- (3) An act of a manager or a member which is apparently not for the carrying on in the usual way of the business or affairs of the limited liability company shall not bind the limited liability company unless, at the time of the transaction or at any other time, the act is authorized in accordance with the operating agreement.
- (4) An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.
- (5) ***Unless otherwise set forth in a written operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's powers to manage or control the business and affairs of the limited liability company, including without limitation the power to delegate to agents and employees of a member, manager, or limited liability company or to delegate by an agreement to other persons. This delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.***

Section 26. KRS 275.150 is amended to read as follows:

- (1) Except as ***provided in subsection (2) of this section or as*** otherwise specifically set forth in ***other sections in*** this chapter, no member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall be personally liable by reason of being a member, manager, employee, or agent of the limited liability company, under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise. The status of a person as a member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall not subject the person to personal liability for the acts or omissions, including any negligence, wrongful act, or actionable misconduct, of any other member, manager, agent, or employee of the limited liability company.
- (2) ***Notwithstanding the provisions of subsection (1) of this section, under a written operating agreement or under another written agreement, a member or manager may agree to be obligated personally for any of the debts, obligations, and liabilities of the limited liability company.***

Section 27. KRS 275.165 is amended to read as follows:

- (1) Unless the articles of organization vest management of the limited liability company in a manager or managers, management of the business and affairs of the limited liability company shall vest in the members. Subject to any provisions in the articles of organization, the operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

- (2) If the articles of organization vest management of the limited liability company in one (1) or more managers, except to the extent otherwise provided in the articles of organization, the operating agreement, or this chapter, the manager or managers shall have exclusive power to manage the business and affairs of the limited liability company. Unless otherwise provided in the articles of organization or the operating agreement, managers:
- (a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of ***the majority-in-interest***~~[more than one-half (1/2) by number]~~ of the members;
 - (b) Shall not be required to be members of the limited liability company or natural persons; and
 - (c) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified.

Section 28. KRS 275.170 is amended to read as follows:

Unless otherwise provided in an operating agreement:

- (1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.
- (2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers, ***one-half (1/2) by number of other persons participating in the management of the business or affairs of the limited liability company***, or ***the majority-in-interest of the*** members~~[or other persons participating in the management of the business or affairs of the limited liability company from]~~:
 - (a) Any transaction connected with the conduct or winding up of the limited liability company; or
 - (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his status as manager or member.
- (3) One who is a member of the limited liability company in which management is vested in managers under KRS 275.165(2) and who is not a manager shall have no duties to the limited liability company or the other members solely by reason of acting in his capacity as a member.

Section 29. KRS 275.175 is amended to read as follows:

- (1) Unless otherwise provided in the articles of organization, ***a written***~~[an]~~ operating agreement, or this chapter,~~[and subject to subsection (2) of this section,]~~ the affirmative vote, approval, or consent of ***a majority-in-interest of the***~~[more than one-half (1/2) by number of the]~~ members, if management of the limited liability company is vested in the members, or of the managers, if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business affairs of the limited liability company.
- (2) Unless otherwise provided in writing in the operating agreement, the affirmative vote, approval, or consent of ***the majority-in-interest of the***~~[all]~~ members shall be required to:
 - (a) Amend a written operating agreement;
 - (b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof; or
 - (c) Amend the articles of organization to change the management of the limited liability company from members to managers or from managers to members.
- (3) ***Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, for all purposes of this chapter, the members of a limited liability company shall vote, approve, or consent in proportion to their contributions, based upon the agreed value as stated in the records of the limited liability company as required by KRS 275.185, made by each member to the extent they have been received by the limited liability company and have not been returned.***

Section 30. KRS 275.180 is amended to read as follows:

A written~~[The]~~ operating agreement may:

- (1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in KRS 275.170; and
- (2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager.

Section 31. KRS 275.205 is amended to read as follows:

Profits and losses of a limited liability company shall be allocated among the members and among classes of members in ~~the~~ manner provided in the operating agreement. If *a written* ~~the~~ operating agreement does not otherwise provide, profits and losses shall be allocated on *the basis of the agreed value, as stated in the records of the limited liability company as required by KRS 275.185, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned* ~~[a per capita basis]~~.

Section 32. KRS 275.210 is amended to read as follows:

Except as otherwise provided in KRS ~~275.215 and~~ 275.310, distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in writing in an operating agreement. If ~~the~~ ~~an~~ operating agreement does not so provide in writing, each member shall share ~~equally~~ in any distribution *on the basis of the agreed value, as stated in the records of the limited liability company as required by KRS 275.185, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned*. A member shall be entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happenings of the events specified in an operating agreement or at the times determined by the members or managers pursuant to KRS 275.175.

Section 33. KRS 275.220 is amended to read as follows:

Unless otherwise provided in *a written* ~~an~~ operating agreement:

- (1) A member, regardless of the nature of the member's contribution, shall not have a right to demand and receive any distribution from the limited liability company in any form other than cash; and
- (2) A member shall not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage that the member would have shared in a cash distribution equal to the value of the property at the time of distribution.

Section 34. KRS 275.245 is amended to read as follows:

- (1) Except as provided in subsection (2) ~~(5)~~ of this section, property of the limited liability company held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member *so authorized* in the name of the limited liability company.
- ~~(2) Property of the limited liability company that is held in the name of one (1) or more members or managers with an indication in the instrument transferring the property to them of their capacity as members or managers of the limited liability company or of the existence of a limited liability company, if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.~~
- ~~(3) Property transferred under subsection (1) or (2) of this section may be recovered by a limited liability company if the limited liability company proves that the execution of the instrument of transfer did not bind the limited liability company under KRS 275.135, unless the property has been transferred by the initial transferee or person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.~~
- ~~(4) Property of the limited liability company held in the name of one (1) or more persons other than the limited liability company, without an indication in the instrument transferring title to the property to them of their capacity as members or managers of the limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.~~

~~(5)~~ If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

- (a) Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager *so authorized* in the name of the limited liability company; and
- (b) A member, solely by reason of being a member, shall not have authority to transfer property of the limited liability company.

Section 35. KRS 275.260 is amended to read as follows:

On application to a court of competent jurisdiction by any judgment creditor of a member, the court ~~shall~~~~may~~ charge the member's limited liability company interest with payment of the unsatisfied amount of judgment with interest thereon. To the extent so charged, the judgment creditor shall have only the rights of an assignee of the member's limited liability company interest. This chapter shall not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

Section 36. KRS 275.265 is amended to read as follows:

- (1) Unless otherwise provided in a written operating agreement, an assignee of a limited liability company interest shall become a member only if *a majority-in-interest of the members*~~(the other members unanimously)~~ consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of specification, consent shall be evidenced by one (1) or more written instruments, dated and signed by *the requisite*~~all~~ members.
- (2) An assignee who becomes a member shall have, to the extent assigned, the rights and powers and shall be subject to the restrictions and liabilities of a member under the articles of organization, any *written* operating agreement, and this chapter. An assignee who becomes a member also shall be liable for any obligations of his assignor to make contributions under KRS 275.200. However, the assignee shall not be obligated for liabilities of which the assignee had no knowledge at the time he became a member and which could not be ascertained from the articles of organization or any written operating agreement.
- (3) Unless otherwise provided in a written operating agreement, the assignor shall not be released from his liability to the limited liability company under KRS 275.200, whether or not an assignee of a limited liability company interest becomes a member.
- (4) Unless otherwise provided in a written operating agreement, a member who assigns his entire limited liability company interest shall cease to be a member or to have the power to exercise any rights of the member when the assignee becomes a member with respect to the entire assigned interest.
- (5) *Unless otherwise set forth in the operating agreement, a successor in interest to a member who is disassociated from the limited liability company shall have the rights and obligations of an assignee with respect to the member's interest.*

Section 37. KRS 275.280 is amended to read as follows:

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

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

~~obtaining replacement of the services the withdrawing member was obligated to perform and may offset the damages against the amount otherwise distributable to the withdrawing member, in addition to pursuing any remedies provided in an operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term shall constitute a breach of the operating agreement.~~

Section 38. KRS 275.285 is amended to read as follows:

A limited liability company shall be dissolved and its affairs wound up upon the happening of the first to occur of the following:

- (1) ***The expiration of the term of the limited liability company set forth in the articles of organization, if any,*** ~~At the time~~ or upon the occurrence of events specified in the articles of organization or a written operating agreement;
- (2) ***Unless otherwise set forth in the operating agreement,*** the written consent of ***a majority-in-interest of the members of a limited liability company*** ~~all members~~;
- (3) ~~Any event of disassociation of a member, unless:~~
 - (a) ~~The business of the limited liability company is continued by the consent of all the remaining members on or before the ninetieth day following the occurrence of the event; or~~
 - (b) ~~Otherwise provided in a written operating agreement;~~
- (4) ~~Entry of a decree of judicial dissolution under KRS 275.290; or~~
- (4) ~~(5)~~ Filing of a certificate of dissolution by the Secretary of State under KRS 275.295.

Section 39. KRS 275.295 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:
 - (a) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;
 - (b) The limited liability company is without a registered agent or registered office in Kentucky for at least sixty (60) days; or
 - (c) The limited liability company does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued.
- (2)
 - (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination.
 - (b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days ***from the date on which*** ~~after service of the~~ notice ***was mailed*** ~~is perfected~~, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the limited liability company ***by mailing the notice by first class mail to the limited liability company at its registered office.***
- (3)
 - (a) A limited liability company administratively dissolved under subsection (2) of this section may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 1. State the name of the limited liability company and the effective date of its administrative dissolution;
 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;
 3. State that the limited liability company's name satisfies the requirements under KRS 275.100;

4. Contain a certificate from the Kentucky Revenue Cabinet stating that all taxes owed by the limited liability company have been paid; and
 5. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report as provided for in KRS 275.055(1).
- (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 2. Serve a copy on the limited liability company.
- (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited liability company shall resume carrying on business as if the administrative dissolution had never occurred.
- (4) (a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the limited liability company at its registered office or, if none, to the last principal office identified on the most recent annual report.
- (b) The limited liability company may appeal the denial of reinstatement to the Circuit Court of the county where the limited liability company's principal office, or, if there is none in Kentucky, its registered office, is located within thirty (30) days after service of the notice of denial by doing the following:
1. Filing a petition with the court to set aside the dissolution; and
 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as are other civil proceedings.

Section 40. KRS 275.350 is amended to read as follows:

- (1) Unless otherwise provided in a written operating agreement, a limited liability company that is a party to a proposed merger shall approve the plan of merger in KRS 275.355 by **a majority-in-interest of the members**~~[the unanimous consent of the members]~~.
- (2) Each business entity that is a party to a proposed merger shall approve the plan of merger in the manner and by the vote required by the laws applicable to the business entity.
- (3) Each business entity that is a party to the merger shall have the rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the business entity.

Section 41. KRS 275.365 is amended to read as follows:

A merger shall have the following effects:

- (1) The constituent business entities that are parties to the merger shall be a single entity, which shall be the entity designated in the plan of merger as the surviving business entity.
- (2) Each party to the merger, except the surviving business entity, shall cease to exist.
- (3) The surviving business entity shall possess all the rights, privileges, immunities, and powers of each constituent business entity and shall be subject to all the restrictions, disabilities, and duties of each of the constituent entities to the extent the rights, privileges, immunities, powers, restrictions, disabilities, and duties are applicable to the type of business entity that is the surviving business entity.
- (4) All property, real, personal, and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest

of, belonging to, or due to each of the constituent business entities shall be vested in the surviving business entity without further act or deed.

- (5) The title to all real estate and any interest therein, vested in any constituent business entity shall not revert or be in any way impaired by reason of the merger.
- (6) The surviving entity shall thenceforth be liable for all liabilities and obligations of each of the constituent business entities merged, and any claim existing or action or proceeding pending by or against any constituent business entity may be prosecuted as if the merger had not taken place, or the surviving business entity may be substituted in the action.
- (7) Neither the rights of creditors nor any liens on the property of any constituent business entity shall be impaired by the merger.
- (8) The interests in a limited liability company or other business entities that are to be converted or exchanged into interests, other securities, cash, obligations, or other property under the terms of the plan of merger are so converted and the former holders thereof are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law.
- (9) ***A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a merger, as the case may be, shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the merger takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the merger takes effect shall be that of a member as provided in this chapter. A limited partner who becomes a member as a result of a merger shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the merger takes effect.***

Section 42. KRS 292.310 is amended to read as follows:

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

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, but "agent" does not include an individual who represents an issuer in:
 - (a) Effecting a transaction in a security exempted by subsections (1), (2), (3), (10), or (11) of KRS 292.400, or subsections (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities,
 - (b) Effecting transactions exempted by KRS 292.410 unless otherwise required, or
 - (c) Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an agent only if he otherwise comes within this definition;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
 - (a) An agent, issuer, bank, savings institution, or trust company,
 - (b) A person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or
 - (c) A person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in paragraph (b);
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "Commissioner" means the commissioner of the Department of Financial Institutions;
- (5) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;

- (6) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (7) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
- (a) A bank, savings institution, or trust company;
 - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
 - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
 - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
 - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
 - (f) A person who has no place of business in this state if:
 - 1. His only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or
 - 2. During any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) clients other than those specified in subparagraph 1., or
 - (g) Such other persons not within the intent of this subsection as the director may by rule or order designate;
- (8) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;
- (9) "Nonissuer" means not directly or indirectly for the benefit of the issuer;
- (10) "Person" means an individual, *a limited liability company*, a corporation, a partnership, *a registered limited liability partnership*, *a limited partnership*, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (11) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (12) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;

- (13) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company;
- (14) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;
- (15) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 43. KRS 304.9-020 is amended to read as follows:

An "agent" is an individual, firm, *partnership, limited partnership,* ~~or~~ corporation, *or limited liability company appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf, and if authorized to do so by the insurer, to effectuate and countersign insurance contracts* ~~[appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf, and if authorized to do so by the insurer, to effectuate and countersign insurance contracts].~~

Section 44. KRS 342.0011 is amended to read as follows:

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

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.
- (2) "Occupational disease" means a disease arising out of and in the course of the employment.
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.
- (5) "Death" means death resulting from an injury or occupational disease.
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.
- (8) "Department" means the Department of Workers' Claims in the Labor Cabinet.
- (9) "Commissioner" means the commissioner of the Department of Workers' Claims.
- (10) "Board" means the Workers' Compensation Board.

- (11) (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
- (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
- (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
1. Total and permanent loss of sight in both eyes;
 2. Loss of both feet at or above the ankle;
 3. Loss of both hands at or above the wrist;
 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
 5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
 6. Incurable insanity or imbecility; or
 7. Total loss of hearing.
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.
- (16) "Person" means any individual, partnership, ***including a registered limited liability partnership, limited partnership, limited liability company***, firm, association, trust, joint venture, corporation, limited liability company, or legal representative thereof.
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns.
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.

- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tippie or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, *including registered limited liability partnerships, limited partnerships, limited liability companies*, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.
- (24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge

or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.
- (26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.
- (27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:
 - (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.
 - (b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.
 - (c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made

available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.

- (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.
 - (e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).
 - (f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.
 - (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection.
 - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter.
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.
- (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.
- (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.
- (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.
- (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.
- (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.
- (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition.
- (36) "Permanent disability rating" means the permanent impairment rating selected by an arbitrator or administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

Section 45. KRS 342.012 is amended to read as follows:

- (1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, or **qualified** members of a limited liability company, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if the owner, owners, qualified partners, or **qualified** members of a limited liability company elect to come under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of the owners, partners, or members of a limited liability company to provide coverage for their employees, nonqualified partners, or **nonqualified** members, if any, required under this chapter.
- (2) When an owner, owners, qualified partners, or **qualified** members of a limited liability company have elected to be included as employees, this inclusion shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.
- (3) For the purpose of this section, "qualified partner" or "**qualified member or members**" means, *respectively*, a partner who has entered into a meaningful partnership agreement or a member who has entered into **meaningful articles of organization or a meaningful operating agreement of a limited liability company**, which **document** shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or **limited liability company** and that the partner or member has made some contribution to the partnership or **limited liability company** which entitles him to participate in the profits of the business as well as to participate in the decision-making process of the partnership or **limited liability company**.
- (4) For the purposes of this section, "nonqualified partner" or "**nonqualified member**" means, *respectively*, a person who has entered into a partnership agreement, or **articles of organization or operating agreement of a limited liability company**, which **document** shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or **limited liability company**; that the person will not participate in the decision-making of the partnership or **limited liability company** and will not participate in the profits and losses of the business engaged in by the partnership or **limited liability company**.
- (5) Every partnership filing a partnership agreement and every **limited liability company filing articles of organization or an operating agreement** for the purpose of exemption pursuant to the provisions of KRS 342.340 shall, on or before April 15 of each year, file with the commissioner the ~~employer-partnership~~ identification number assigned to the partnership or **limited liability company** by the Internal Revenue Service. On or before April 15 of each year, each partnership and each **limited liability company** having a **partnership agreement, operating**~~an~~ agreement, or **articles of organization** on file with the commissioner shall file a copy of the tax return of the partnership or **limited liability company** with the commissioner. Failure to comply with the provisions of this subsection shall be prima facie evidence that the partnership agreement or **limited liability company articles of organization** filed with the commissioner is composed, *respectively*, of "nonqualified partners" or "**nonqualified members**", *respectively*, as defined in this section, and the commissioner shall promptly notify interested government agencies of the failure of the filed partnership agreement or **limited liability company articles of organization or operating agreement** to indicate compliance with KRS 342.340. With particular reference to employers engaged in coal mining, the commissioner shall promptly report the failure to comply with the provisions of this subsection to the Department of Mines and Minerals so that appropriate action may be undertaken pursuant to KRS 351.175.
- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

Section 46. KRS 342.195 is amended to read as follows:

The notice and claim shall be given to the employer, or if the employer is a partnership, then to any one (1) of the **general** partners. If the employer is a corporation or a **limited liability company**, the notice or claim may be given to any agent of the corporation or **limited liability company** upon whom process may be served, or to any officer of the corporation or **any member or manager, as the case may be, of the limited liability company authorized to manage the limited liability company under its articles of incorporation** or to any agent of the corporation or **limited liability company** in charge of the business at the place where the injury occurred. Notice or claim may be given by delivery to any such person or as provided in KRS 342.135.

Section 47. KRS 355.9-401 is amended to read as follows:

- (1) The proper place to file in order to perfect a security interest is as follows:
 - (a) Except for equine or interests therein defined in KRS 355.9-109(3), when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the county clerk in the county where the land is located;
 - (b) When the collateral is timber to be cut or is minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or when the financing statement is filed as a fixture filing (KRS 355.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded, and where they shall be indexed separately from mortgage instruments; and
 - (c) In all other cases, if the debtor is a resident of this state in the office of the county clerk in the county of the debtor's residence or, if the debtor is a nonresident of this state, then in the office of the Secretary of State of the Commonwealth of Kentucky. The Secretary of State may collect a fee of eight dollars (\$8) for each filing in his office under this section.
- (2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.
- (3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.
- (4) The rules stated in KRS 355.9-103 determine whether filing is necessary in this state.
- (5) For the purposes of this section:
 - (a) An individual debtor for whom filing is controlled by subsection (1)(c) of this section shall be deemed a resident of the county in which the debtor's principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;
 - (b) A partnership shall be deemed a resident of the county in which its principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;
 - (c) A limited partnership organized under KRS Chapter 362 shall be deemed a resident of the county in which its office is located, as set forth in its certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362. If such office is not located in this state, the debtor shall be deemed a nonresident for purposes of filing in this state;
 - (d) A limited partnership not organized under the laws of this state and authorized to do business in this state under KRS Chapter 362 shall be deemed a resident of the county in which the office of its process agent is located, as set forth in the designation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
 - (e) A corporation organized under KRS Chapter 271B, 273, or 274 **or a limited liability company organized under KRS Chapter 275** shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;
 - (f) A corporation not organized under the laws of this state, ~~but and~~ authorized to transact or do business in this state under KRS Chapter 271B, 273, or 274, **or a limited liability company not organized under the laws of this state, but authorized to transact business in this state under KRS Chapter 275**, shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent ~~corporate~~ filing with the Secretary of State which officially designates its current registered office;

- (g) A cooperative corporation or association organized under KRS Chapter 272 shall be deemed a resident of the county in which its principal business is transacted, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
- (h) A cooperative corporation organized under KRS Chapter 279 shall be deemed a resident of the county in which its principal office is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
- (i) A business trust organized under KRS Chapter 386 shall be deemed a resident of the county in which its principal place of business is located, as evidenced by the recordation of its declaration of trust in that county pursuant to KRS Chapter 386;
- (j) A credit union organized under KRS Chapter 290 shall be deemed a resident of the county in which its principal place of business is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky; and
- (k) Any other organization (defined in KRS 355.1-201) shall be deemed a resident of the county in which its principal place of business in this state is located, except that any limited partnership or corporation not organized under the laws of this state and not authorized to transact or do business in this state shall be deemed a nonresident for purposes of filing in this state. If the organization does not have a place of business in this state, then it shall be deemed a nonresident for purposes of filing in this state.

Section 48. KRS 360.027 is amended to read as follows:

- (1) No limited partnership, **limited liability company**, or business trust shall hereafter plead or set up the taking of more than the legal rate of interest, as a defense to any action brought against it to recover damages on, or enforce payment of, or other remedy on, any mortgage, bond, note or other obligation, executed or assumed by such limited partnership, **limited liability, or business trust**; provided, that this section shall not apply to any action instituted subsequent to June 16, 1972, upon any mortgage, bond, note or other obligation executed or assumed by such limited partnership or business trust prior to June 16, 1972.
- (2) The provisions of subsection (1) of this section shall not apply to a limited partnership, **limited liability company**, or business trust, the principal asset of which shall be the ownership of a one (1) or two (2) family dwelling.

Section 49. KRS 362.407 is amended to read as follows:

- (1) Each limited partnership shall continuously maintain in this state:
 - (a)~~(1)~~ An office which may, but need not be, a place of its business in this state, at which shall be kept the records required by KRS 362.409 to be maintained; and
 - (b)~~(2)~~ An agent for service of process on the limited partnership, which agent shall be an individual resident of this state, a domestic corporation, ~~or~~ a foreign corporation authorized to do business in this state, **a domestic limited liability company, or a foreign limited liability company authorized to do business in this state.**
- (2) **Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.**

Section 50. KRS 362.465 is amended to read as follows:

Unless otherwise provided in a partnership agreement, a limited partner has no right to withdraw from a limited partnership ~~at the time or upon the happening of an event specified in writing in the partnership agreement~~. If the partnership agreement does not specify a time a limited partner may withdraw, a limited partner may not withdraw prior to the time for the dissolution and winding up of the limited partnership without the unanimous consent of the partners ~~in writing the time or the events upon the happening of which a limited partner may withdraw, or set forth a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six (6) months' prior written notice to each general partner at his address as set forth in the certificate of limited partnership~~.

Section 51. KRS 362.467 is amended to read as follows:

Except as provided in KRS 362.473, upon withdrawal, a withdrawing partner shall receive any distribution to which he is entitled in writing under the partnership agreement. ~~[- If not otherwise provided in writing in the partnership agreement, he shall receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.]~~

Section 52. KRS 362.415 is amended to read as follows:

- (1) In order to form a limited partnership, a certificate of limited partnership shall be executed and filed with the Secretary of State. The certificate shall be in the form prescribed by the Secretary of State and shall set forth:
 - (a) The name of the limited partnership;
 - (b) The address of the office and the name and address of the agent for service of process required to be maintained by KRS 362.407;
 - (c) The name and the business address of each general partner;
 - (d) A mailing address for the limited partnership;
 - (e) The latest date upon which the limited partnership is to dissolve; and
 - (f) Any other matters the general partners determine to include therein.
- (2) A limited partnership shall be formed at the time of the filing of the certificate of limited partnership with the Secretary of State or at any later time specified in the certificate of limited partnership, which shall be a date certain and shall not be later than the ninetieth day after the date it is filed, if, in either case, there has been substantial compliance with the requirements of this section.
- (3) ***Unless the registered agent signs the certificate, the limited partnership shall deliver with the certificate of limited partnership the consent of appointment of the agent for service of process to be maintained by KRS 362.407.***

Section 53. KRS 362.481 is amended to read as follows:

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court ~~shall~~^{may} charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor shall have only the rights of an assignee of the partnership interest. KRS 362.403 to 362.525 shall not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

Section 54. KRS 362.497 is amended to read as follows:

- (1) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State one (1) original and one (1) exact or conformed copy of an application for registration as a foreign limited partnership, in the form prescribed by the Secretary of State, signed by a general partner and setting forth:
 - (a) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;
 - (b) The state and date of its formation;
 - (c) The name and address of any agent for service of process on the foreign limited partnership. The agent shall be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state;
 - (d) A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if the appointed agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;
 - (e) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
 - (f) The name and the business address of each general partner; and
 - (g) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

- (2) The execution by a general partner of an application for registration as a foreign limited partnership, the execution of a certificate amending the application pursuant to KRS 362.503 and the execution of a certificate of cancellation pursuant to KRS 362.505 shall constitute an affirmation under the penalties of perjury that the facts stated there are true.
- (3) ***Unless the registered agent signs the application, the foreign limited partnership shall deliver with the application the consent of appointment of the agent for service of process.***

Section 55. KRS 362.555 is amended to read as follows:

- (1) To become and to continue as a registered limited liability partnership, a partnership shall file with the Secretary of State a statement or a renewal statement, as the case may be, stating the name of the partnership; the address of its principal office, ~~if the partnership's principal office is not located in this state~~; the number of partners; ***the names of the partners***; a brief statement of the business in which the partnership engages; and that the partnership registers its status or renews its status, as the case may be, as a registered limited liability partnership.
- (2) The statement or renewal statement shall be executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a statement or renewal statement.
- (3) The statement or renewal statement shall be accompanied by a fee of two hundred dollars (\$200).
- (4) The Secretary of State shall register as a registered limited liability partnership, and shall renew the registration of any registered limited liability partnership, any partnership that submits a completed statement or renewal statement with the required fee.
- (5) Registration shall be effective for one (1) year after the date a statement is filed, unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a withdrawal notice. Registration, whether pursuant to an original statement or a renewal statement, as a registered limited liability partnership shall be renewed if, during the sixty (60) day period preceding the date the statement or renewal statement otherwise would have expired, the partnership files with the Secretary of State a renewal statement. Registration pursuant to a renewal statement shall expire one (1) year after the date the registration would have expired if the last renewal of the registration had not occurred.
- (6) The status of a partnership as a registered limited liability partnership shall not be affected by changes made in the information stated in the statement or renewal statement after the filing of the statement or renewal statement.
- (7) The Secretary of State may provide forms for use under this section.

Section 56. KRS 365.015 is amended to read as follows:

- (1) The real name of ***an individual*** ~~or a person~~ shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman; the real name of a domestic general partnership is that name which includes the real name of ***each*** ~~at least one (1)~~ of the partners; ***the real name of a registered limited liability partnership is the name stated in its statement of registered limited liability partnership filed under KRS Chapter 362***; the real name of a domestic limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS Chapter 362; the real name of a domestic business trust is the name set forth in the declaration of trust; ~~and~~ the real name of a domestic corporation is the name set forth in its articles of incorporation; ***and the real name of a domestic limited liability company is the name set forth in its articles of organization***. The real name of a foreign general partnership, ***including a foreign registered limited liability partnership***, or limited partnership and of a foreign business trust is the name recognized by the laws of the foreign state under which it is formed as being the real name or the fictitious name adopted for use in this state; ***the real name of a foreign registered limited liability partnership is the name stated in its statement of foreign registered limited liability partnership filed under KRS Chapter 362***; ~~and~~ the real name of a foreign corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this state under KRS 271B.15-060; ***and the real name of a foreign limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this state under KRS 275.410***.

- (2) (a) No **individual**~~[person]~~, general **partnership, including a registered limited liability partnership**,~~[or]~~ limited partnership, business trust,~~[or]~~ corporation, **or limited liability company** shall conduct or transact business in this state under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such **individual, partnership, limited partnership**~~[person, partnership]~~, business trust,~~[or]~~ corporation, **or limited liability company** has filed a certificate of assumed name;
- (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of **the individual**~~[person]~~, partnership, **limited partnership**, business trust,~~[or]~~ corporation, **or limited liability company** and his or its address, including street and number, if any;
- (c) A separate certificate shall be filed for each assumed name;
- (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other~~[assumed name or any corporate name or any foreign limited partnership]~~ name previously filed **and on record** with the Secretary of State;
- (e) The certificate shall be executed~~[and acknowledged]~~ for **an individual**~~[a person]~~, by the **individual**~~[person]~~; for a general partnership, **including a registered limited liability partnership**, by **at least one (1) partner authorized to do so by**~~[all]~~ the partners; for a limited partnership, by a general partner; for a business trust, by the trustees; for a corporation, by any person authorized to act for the corporation; **and for a limited liability company, by a member or manager authorized to act for the limited liability company.**
- (3) **The certificate of assumed name for an individual shall be filed with the county clerk where the person is deemed a resident for the purposes of and under the provisions of KRS Chapter 355. The certificate of assumed name for a general partnership, including a registered limited liability partnership, limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity is deemed a resident for the purposes of and under the provisions of KRS Chapter 355. If the entity is not deemed a resident of a county in the Commonwealth, the entity shall file only with the Secretary of State.**~~[The certificate of assumed name for a person shall be filed with the county clerk of each county wherein business will be conducted or transacted under an assumed name. The certificate of assumed name for a general or limited partnership, business trust or corporation shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy for each county wherein business will be conducted or transacted under such assumed name. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of each county wherein business will be conducted or transacted under the assumed name].~~
- (4) **An assumed name shall be effective for a term of five (5) years from the date of registration and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.**
- (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party transacting business and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership, **including a registered limited liability partnership**, by **at least one (1) partner authorized to do so by**~~[all]~~ the partners, for a limited partnership by a general partner, for a business trust by the trustees,~~[and]~~ for a corporation by any person authorized to act for the corporation, **and for a limited liability company by a member or manager authorized to act for the limited liability company.**
- ~~(6)~~~~(5)~~ A general partnership shall amend an assumed name to reflect a change in the identity of partners. The amendment shall set forth:
- (a) The assumed name and date of original filing;
- (b) A statement setting out the changes in identity of the partners; and

(c) Shall be signed by *at least one (1) partner authorized to do so by* ~~all~~ the ~~general~~ partners.

~~(7)(6)~~ The county clerk shall receive a fee pursuant to KRS 64.012 for filing each certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for filing each certificate, ~~and~~ amendment, *and renewal certificate*.

Section 57. KRS 275.310 is amended to read as follows:

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (1) Payment, or adequate provisions for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;
- (2) Unless otherwise provided in a written operating agreement, to members or former members in satisfaction of liabilities for distributions under KRS 275.210 ~~and 275.215~~; and
- (3) Unless otherwise provided in a written operating agreement, to members and former members first for the return of their contributions and second in proportion to the members' respective rights to share in distributions from the limited liability company prior to dissolution.

Section 58. KRS 273.3182 is amended to read as follows:

- (1) A corporation administratively dissolved under KRS 273.318 or revoked under the provisions of KRS 273.367, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:
 - (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;
 - (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;
 - (c) State that the corporation's name satisfies the requirements of KRS 273.177;
 - (d) Contain a certificate from the Revenue Cabinet reciting that all taxes owed by the corporation have been paid; and
 - (e) Be accompanied by the fee for filing a statement or report provided for in KRS 273.368(1)(j) ~~(k)~~ and the current fee for filing each delinquent annual report provided for in KRS 273.368.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its registered office.
- (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.

Section 59. The following KRS sections are repealed:

275.215 Effect of event of disassociation which does not cause dissolution.

275.270 Member's legal representative to have rights of assignee if member dies or is declared incompetent.

Approved April 7, 1998

CHAPTER 342

(SB 34)

AN ACT relating to tampering with or rigging a pari-mutuel horse race.

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

Section 1. KRS 230.990 is amended to read as follows:

- (1) Any person who violates KRS 230.070 or subsection (3) of KRS 230.080 shall be guilty of a Class D felony.
- (2) Any person who violates KRS 230.090 shall be guilty of a Class A misdemeanor.
- (3) Any person who violates KRS 230.680 shall be guilty of a Class A misdemeanor.
- (4) Any person who refuses to make any report or to turn over sums as required by KRS 230.361 to 230.373 shall be guilty of a Class A misdemeanor.
- (5) Any person failing to appear before the commission at the time and place specified in the summons issued pursuant to KRS 230.260(7), or refusing to testify, shall be guilty of a Class B misdemeanor. False swearing on the part of any witness shall be deemed perjury and punished as such.
- (6)
 - (a) *A person is guilty of tampering with or interfering with a horse race when, with the intent to influence the outcome of a horse race, he uses any device, material, or substance not approved by the Kentucky Racing Commission on or in any participant involved in or eligible to compete in a horse race to be viewed by the public.*
 - (b) *Any person who, while outside the Commonwealth and with intent to influence the outcome of a horse race contested within the Commonwealth, tampers with or interferes with any equine participant involved in or eligible to compete in a horse race in the Commonwealth is guilty of tampering with or interfering with a horse race.*
 - (c) *Tampering with or interfering with a horse race is a Class C felony.*

Section 2. KRS 518.060 is amended to read as follows:

- (1) A person is guilty of tampering with or rigging a sports contest when, with intent to influence the outcome of a sports contest, he *or she*:
 - (a) Tampers with any sports participant or sports official or with any animal *other than a horse*, equipment, or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules governing the sports contest in question; or
 - (b) Substitutes a sports participant, animal, other than a horse, equipment or other thing involved in the conduct or operation of a sports contest for the genuine person, animal, or thing.
- (2) Tampering with or rigging a sports contest is a Class A misdemeanor.

Approved April 7, 1998

CHAPTER 343

(SB 31)

AN ACT relating to motor vehicles.

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

Section 1. KRS 186.043 is amended to read as follows:

- (1) In enacting this section, it is the intention of the General Assembly to recognize the special value of historic vehicles to the Commonwealth, and also to recognize that historic vehicles, because of their limited use and easily identifiable characteristics, do not require the same degree of regulation as other vehicles.
- (2) As used in this section, unless the context otherwise requires, "historic vehicle" shall mean all motor vehicles twenty-five (25) years old or older, which are used primarily for exhibition in shows, parades, tours, and other special uses, but not for general transportation.
- (3) Historic vehicles shall be registered and licensed by the Transportation Cabinet. The registration shall be in lieu of registration and license required by KRS 186.020 to 186.270.
- (4) Upon payment of a fee of fifty dollars (\$50) and an application in accordance with regulations issued by the Transportation Cabinet, the secretary of the Transportation Cabinet shall issue a certificate of registration and two (2) special license plates of a different color and design than the regular license plate, which, in the judgment of the secretary of the Transportation Cabinet, will best advertise, popularize, and promote the Commonwealth of Kentucky. These plates, besides the word "Kentucky" shall have the words, "Historic Motor

Vehicle" inscribed in a conspicuous manner and carry no year date. These plates shall have a serial number beginning with the number "100" and continue in a consecutive numerical sequence.

- (5) *Historic vehicles may display an authentic Kentucky license plate, twenty-five (25) years or older, or a reproduction of such a plate, if the Historic Motor Vehicle plate and the registration receipt are kept in the vehicle at all times.*
- (6) The registration license and license plates of historic motor vehicles shall be valid without renewal as long as the vehicle is in existence. If the historic motor vehicle is sold, the registration and license shall be assigned and transferred to the new owner on the records of the Transportation Cabinet upon receipt of an application in accordance with regulations issued by the cabinet and payment of a fee of three dollars (\$3).
- ~~(7)~~ (6) The secretary of the cabinet may promulgate administrative regulations he deems necessary to further the purpose of this section.

Approved April 7, 1998

CHAPTER 344

(HCR 126)

A CONCURRENT RESOLUTION recognizing the Kentucky Public Health Improvement Plan, a strategic plan for the public health in Kentucky, produced by the Department for Public Health.

WHEREAS, the Commonwealth is responsible for protecting the public health of the citizens; and

WHEREAS, the Commonwealth must address the public health vision and strategic plan based on a consensus of opinion among public health stakeholders within our state; and

WHEREAS, public health services are provided by the Department for Public Health; and

WHEREAS, the mission of the Kentucky Department for Public Health is to protect, promote, and monitor the improvement of the health of the public; and

WHEREAS, the vision for the Kentucky Department for Public Health is to provide a key leadership role in making Kentucky recognized nationally for our success in disease prevention, health education, and advocacy of wellness whereby this achievement will occur through development of effective, ongoing partnerships with public and private sector organizations and the collaborative effort of Kentucky's citizens; Kentuckians will enjoy the services of a system second to none in access, quality, and accountability; Kentucky's citizens will actively participate in programs and activities such as injury prevention, maintenance of a healthy and safe environment, wellness, immunization and disease screening activities; and the public health system will have a stable infrastructure with sufficient resources and flexibility to respond to change and to the needs of its citizens; and

WHEREAS, the plan is founded upon the following values and principles:

- (1) **Honesty/Integrity:** public trust in the words and actions of public health professionals and public health leaders;
- (2) **Ethics:** adherence to accepted standards of professional conduct;
- (3) **Excellence/Quality:** achievement of high standards in public health assessment, policy development, and assurance;
- (4) **Efficiency:** productive use of public resources;
- (5) **Effectiveness:** achievement of the best possible outcomes in the health of Kentuckians;
- (6) **Compassion/Respect:** sympathetic concern for and deference to the needs of the public;
- (7) **Responsibility/Accountability:** adherence to goals and priorities set for public health; appropriate use of resources;
- (8) **Accessibility:** readily-available, consumer-oriented activities and services; and
- (9) **Prevention/Education:** priority on promoting health and preventing disease, disability, and premature death;

WHEREAS, the three core/primary functions of public health are assessment, policy development, and assurance; and

WHEREAS, the goals as stated in the Kentucky Public Health Improvement Plan are related to the three core/primary functions of public health; and

WHEREAS, the priority health issues of Kentucky, as expressed in the Plan, are:

- (1) Reducing teenage pregnancy and low-birth-weight babies;
- (2) Reducing infant and child deaths;
- (3) Maintaining the health of a rapidly growing elderly population;
- (4) Achieving appropriate immunizations for children;
- (5) Reducing disability and premature death of children and youth;
- (6) Improving lifestyle activities, including physical fitness and exercise, nutrition, and positive parenting; reducing use of tobacco, alcohol, and illegal substances; and increasing seat-belt use;
- (7) Providing adequate prenatal care for pregnant women;
- (8) Assuring access by all Kentuckians to primary health care, especially in rural and inner-city areas;
- (9) Assuring access by both private and public health providers to health and health-related information;
- (10) Meeting environmental health standards;
- (11) Maintaining food safety; and
- (12) Reducing communicable diseases; and

WHEREAS, a major concern exists centering on the financial resources of Kentucky's public health system to support its primary public health functions;

NOW, THEREFORE,

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

Section 1. That public health stakeholders can be expected to use the Kentucky Public Health Improvement Plan in the following ways:

- (a) As a guide for public health and local public health departments to plan their activities and budget their resources.
- (b) As a guide for public health to educate the public about the activities and goals of the Department, its resource needs, and the progress it has made in achieving public health goals.
- (c) As a guide for health-planning purposed by public and private health providers, such as hospitals, nursing homes, by provider associations, such as hospital associations, professional associations; and by health and social service organizations, including funding sources, and nonprofit human services agencies.
- (d) As a guide for local groups and coalitions of health and health-related providers, and by local human services and other agencies, as for example, public schools, in the development of innovative efforts to provide community assessment, policy development, and assurance.
- (e) As a resource for health policy analysts and academicians to devise and evaluate innovative health programs and services.

Section 2. The Kentucky Public Health Improvement Plan will be considered in health budget decisions.

Section 3. The Kentucky Public Health Improvement Plan will be used as a measure of the adequacy of funding available for public health purposes.

Approved April 7, 1998

CHAPTER 345**(HCR 125)**

A CONCURRENT RESOLUTION creating a task force to determine the feasibility and cost of establishing Fishtrap Lake as a Kentucky State Park.

WHEREAS, Fishtrap Lake, located at the Levisa Fork of the Big Sandy River, was designated in 1968 as a flood control area; and

WHEREAS, Fishtrap Lake is an outstanding and untapped natural resource in the state of Kentucky; and

WHEREAS, the natural resources and beauty found in the Big Sandy area are unique treasures in the Commonwealth and should be shared and celebrated by all citizens of the state; and

WHEREAS, the General Assembly needs information on the feasibility and cost of establishing Fishtrap Lake as a Kentucky State Park in order to objectively and responsibly determine whether to proceed with this designation;

NOW, THEREFORE,

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

Section 1. There is created a Task Force on Fishtrap Lake of the Legislative Research Commission to study the feasibility and cost of establishing Fishtrap Lake as a Kentucky State Park. The Task Force shall consist of:

- (a) The secretary of the Tourism Cabinet or her designee;
- (b) The commissioner of the Department of Parks or his designee;
- (c) The Pike County Judge/Executive or her designee;
- (d) Two (2) members of the House of Representatives appointed by the Speaker of the House, one (1) of whom the Speaker shall designate as co-chair of the Task Force; and
- (e) Two (2) members of the Senate appointed by the President of the Senate, one (1) of whom the President shall designate as co-chair of the Task Force.

Section 2. The Task Force on Fishtrap Lake shall report its findings and recommendations to the Interim Joint Committee on Economic Development and Tourism not later than the interim committee's regularly scheduled meeting in September, 1999.

Section 3. Staff services shall be provided by the Legislative Research Commission and are estimated to cost \$15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Section 4. The Clerk of the House of Representatives is hereby directed to transmit copies of this Resolution to Governor Paul E. Patton, 700 Capitol Avenue, Frankfort, Kentucky 40601; Representative Chris Ratliff, P.O. Box 1306, Pikeville, Kentucky 41502; Commissioner Kenny Rapier, Kentucky Department of Parks, Capital Plaza Tower, 10th Floor, 500 Mero Street, Frankfort, Kentucky 40601; Steven D. Combs, Mayor of Pikeville, P.O. Box 1228, Pikeville, Kentucky 41502; and Donna Damron, Pike County Judge Executive, 324 Main Street, Pikeville, Kentucky 41501.

Approved April 7, 1998

CHAPTER 346**(HJR 121)**

A JOINT RESOLUTION proclaiming the fourth week of March each year as "Commonwealth Cleanup" week, and directing the Natural Resources and Environmental Protection Cabinet to support those communities that engage in spring cleaning in celebration of Kentucky's natural beauty.

WHEREAS the state of Kentucky has made significant improvements in the past twenty years in cleaning up the environment; and

WHEREAS many communities and government agencies have initiated their own cleanup programs in recent years; and

WHEREAS the Kentucky Transportation Cabinet spent more than \$4 million in litter removal last year for a total of 221,000 man hours; and

WHEREAS such efforts as the Transportation Cabinet's Adopt-A-Highway Program now has 2,700 volunteer groups cleaning 14,000 miles of roadway at least four times annually; and

WHEREAS the Natural Resources and Environmental Cabinet has investigated more than 1,400 illegal dumps, issued more than 1,000 notices, and cleaned up more than 300 dumps since April 1997; and

WHEREAS the Natural Resources and Environmental Cabinet is involved in a cleanup program known as PRIDE that will clean up 40 Eastern and Southern Kentucky counties this spring;

WHEREAS such programs as the River Sweep of the Ohio River and its tributaries in 1997 had 22,000 volunteers, including 600 people cleaning up the Kentucky River and picking up 40 tons of trash; and

WHEREAS the annual Lake Cumberland Cleanup attracted more than 1,000 volunteers last year who gathered more than 4,200 bags of trash; and

WHEREAS these and other individual efforts can be enhanced through a statewide, coordinated cleanup week to beautify the entire Commonwealth;

NOW, THEREFORE,

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

Section 1. The fourth week of March each year shall be "Commonwealth Cleanup" week, culminating with a statewide cleanup day on the Saturday of that week. This week shall provide an opportunity for Kentucky communities, in partnership with local, regional, and state entities, to clean and display the natural beauty of the Commonwealth.

Section 2. Local governments and private businesses shall be encouraged to participate in "Commonwealth Cleanup" week through developing, organizing, and implementing activities that highlight the natural beauty of their communities. They are encouraged to work in partnership with civic and volunteer organizations as well as corporate sponsors. Their goal shall be to consider the ways in which Kentucky's beauty enriches their daily living and underpins their economic vitality. Examples of "Commonwealth Cleanup" week activities include: encouraging local communities to offer prizes for those groups who collect the most litter; asking boat owners to volunteer their services to help remove litter from shorelines not easily reached by land; and setting up locations for recyclables.

Section 3. The Kentucky National Guard is encouraged to support this effort by providing logistical support across the Commonwealth to help clean up the sites too large for volunteer groups.

Section 4. The Natural Resources and Environmental Protection Cabinet shall promote "Commonwealth Cleanup" week by continuing to support those agencies and organizations wanting to clean up the environment. The support shall include providing technical assistance in assessing and understanding Kentucky's natural resources, coordinating contacts with other state and federal agencies that can assist with a project as appropriate, guiding local organizers to possible sources of funding to help implement a project as appropriate, overseeing a statewide campaign to publicize "Commonwealth Cleanup" week, and promoting those communities that have outstanding participation. This includes working in tandem with the Kentucky Department of Education to sponsor a statewide poster contest for children through the eighth grade.

Section 5. The month of March shall be designated as Environmental Education Month. During this time, state agencies involved in environmental education are encouraged to work with schools and communities to promote the environment and its preservation. Schools shall also be encouraged to sponsor cleanup or beautifying activities on their grounds during this month.

Section 6. The "Commonwealth Cleanup" week activities shall culminate with the Governor proclaiming the success of those communities, civic organizations, and corporate sponsors that excel in cleaning up where they live.

Section 7. The Natural Resources and Environmental Protection Cabinet shall report to the Legislative Research Commission by September 1, 1999, on the outcome of the first "Commonwealth Cleanup" week. The report may include suggestions for changes in the program.

Approved April 7, 1998

CHAPTER 347

(HJR 95)

A JOINT RESOLUTION directing a study of electric restructuring during the 1998-2000 legislative interim, and making an appropriation therefor.

WHEREAS, electricity is a pervasive force and vital need in the current economy of Kentucky; and

WHEREAS, Kentucky enjoys among the lowest electric utility rates in the nation, benefiting not only citizen ratepayers but also allowing the state to use this as a tool in recruiting business; and

WHEREAS, restructuring the electric industry would have profound impacts upon the overall economy of Kentucky; and

WHEREAS, restructuring and deregulation have yielded tangible benefits in the airline, trucking, and telecommunications industries; and

WHEREAS, several states have begun to restructure their electric delivery systems in the hopes of lowering electric utility rates, and the United States Congress also has begun to debate the issue; and

WHEREAS, any restructuring in Kentucky must guarantee universal quality service, with adequate consumer education, and should take into account any possible impacts upon Kentucky coal as a viable generation source; and

WHEREAS, the issue of electricity restructuring is a complex one deserving of intensive study and careful, prudent recommendations;

NOW, THEREFORE,

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

Section 1. There is established the Electricity Restructuring Task Force, whose membership shall carefully study the issue of electric restructuring in Kentucky during the 1998-2000 interim and analyze its impacts upon the Commonwealth. The task force shall meet at least monthly, beginning not later than October 1, 1998, and shall report back to the Legislative Research Commission and the Governor with findings and recommendations no later than November 15, 1999.

Section 2. (1) The task force shall be comprised of the following members:

- (a) Ten members from the executive branch, to be appointed by the Governor, with one member being the Attorney General or his designee; and
 - (b) Ten members from the General Assembly, of which three members shall be appointed by the President of the Senate, three members shall be appointed by the Speaker of the House, two members shall be appointed by the Senate Minority Floor Leader, and two members shall be appointed by the House Minority Floor Leader. All legislative branch appointments shall be approved by the Legislative Research Commission.
- (2) The task force shall have three co-chairs, one appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House. All appointments shall be made before July 31, 1998, and all legislative appointments shall be approved by the Legislative Research Commission.

Section 3. The task force may form advisory committees of no more than seven persons. These advisory committees may contain representatives of the private sector, but in all cases the membership of an advisory committee shall consist of more task force members than private sector representatives. Advisory committees may study particular areas of interest to the task force, such as universal service, consumer education, reliability, and future regulation. The sole role of an advisory committee shall be to report back to the full task force.

Section 4. Except as provided in KRS 18A.200, members of the task force, shall receive actual travel expenses while attending meetings.

Section 5. The task force may employ consultants, request and hear testimony, or take any necessary steps to ensure a fair, thorough, and reasonable study of the issue. The task force shall receive staffing assistance from the Public Service Commission and the Legislative Research Commission, and the executive directors of both agencies are directed to assist the task force in meeting its staffing needs.

Section 6. There is hereby appropriated from the general fund the sum of \$150,000 to accomplish the study. Any amount remaining following the completion of the study shall revert to the general fund.

Approved April 7, 1998

CHAPTER 348

(HJR 89)

A JOINT RESOLUTION creating a Task Force on Utility Tax Policy to direct a comprehensive study of the taxation of public service companies that supply utility service to citizens of the Commonwealth.

WHEREAS, in recent years, federal law has directed public service companies to provide telecommunications services at retail in a competitive environment and has deregulated the sale of electricity and natural gas at wholesale; and

WHEREAS, other states have enacted legislation to restructure and deregulate electric and natural gas utilities to encourage competition among public service companies providing these utility services, and it is anticipated that similar legislation will be introduced in the Kentucky General Assembly; and

WHEREAS, Kentucky's current tax laws for public service companies were enacted under the assumption that utility services would be provided primarily by utilities operating as monopolies with prices set by cost of service rate regulation, and new technologies and the emerging competitive environments are creating new utility services and new types of public utility service providers, including marketers and those who resell services, that the current tax structure did not contemplate; and

WHEREAS, many local governments, local taxing districts, and school districts rely on state-administered tax programs for as much as half of their annual revenues; and

WHEREAS, absent changes in the tax laws, competition among utilities is likely to have a significant impact on state and local tax revenues through tax avoidance by some new utility providers, decreased costs for utility services, and declining value of utility property; and

WHEREAS, different utility providers are being taxed differently causing the current tax structure to create competitive advantages and disadvantages and creating an unlevel playing field; and

WHEREAS, there is much criticism and debate over the current state and local tax structure, rate classification, and prevailing methods of taxation subjecting them to much controversy, protest, and frequent litigation; and

WHEREAS, all public service companies providing utility services to the citizens of the Commonwealth should contribute their fair share of taxes in support of governmental services required by the citizens of the Commonwealth;

NOW, THEREFORE,

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

Section 1. (1) There is hereby established a Task Force on Utility Tax Policy to direct a study during the 1998-2000 interim regarding the method by which public service companies that provide utility services are currently taxed by state and local governments. The task force shall recommend the methods of taxation for the future to ensure

fair and equitable taxation of these companies, improve the efficiency of revenue collections, and simplify compliance with tax laws in a fair and equitable manner.

- (2) (a) The task force shall consist of the following members:
 1. Six (6) members of the Senate, to be selected by the President of the Senate;
 2. Six (6) members of the House, to be selected by the Speaker of the House; and
 3. Six (6) members appointed by the Governor.
- (b) The co-chairs shall be named, one each, by the Legislative Research Commission and the Governor.

Section 2. The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, shall supply staff support to the task force with assistance from the Revenue Cabinet and the Public Service Commission as needed. The task force shall be authorized to contract for consultant services.

Section 3. The task force may form one (1) or more advisory groups to assist the task force in carrying out its responsibilities. The advisory groups may include:

- (1) An advisory group on telecommunications that may include one (1) or more representatives from the following:
 - (a) Local exchange service;
 - (b) Interstate long distance service;
 - (c) Cellular services, both analog and digital;
 - (d) Paging;
 - (e) Cable, including wireline, multichannel multipoint distribution service and direct broadcast satellite;
 - (f) Internet access service;
 - (g) Resellers of telecommunications service;
 - (h) Municipally owned providers of telecommunications services;
 - (i) The Public Service Commission; and
 - (j) Any additional representation the co-chairs of the task force deem appropriate.
- (2) An advisory group on energy services that may include one (1) or more representatives from the following, including municipally owned, investor owned, and co-operatives:
 - (a) Local electric distribution service;
 - (b) Local gas distribution service;
 - (c) Electric transmission service;
 - (d) Gas transmission service;
 - (e) Electric generation service;
 - (f) Electric marketers;
 - (g) Gas marketers;
 - (h) The Public Service Commission; and
 - (i) Any additional representation the co-chairs of the task force deem appropriate.
- (3) An advisory group on local government utility revenue that may include one (1) or more representatives from the following:
 - (a) Kentucky Association of Counties;
 - (b) Kentucky League of Cities;
 - (c) Kentucky County Judge/Executive Association;

- (d) Kentucky County Magistrates Association;
 - (e) Special taxing districts;
 - (f) Kentucky School Boards Associations;
 - (g) Kentucky Department of Education;
 - (h) Department for Local Government;
 - (i) Revenue Cabinet; and
 - (j) Any additional representation the co-chairs of the task force deem appropriate.
- (4) Members of the advisory group shall serve without compensation. The members of the advisory groups shall be selected by the co-chairs of the task force from lists provided by the respective industries or associations.

Section 4. The task force shall report its findings and recommendations, with enabling legislation, to the Governor and the Legislative Research Commission by December 1, 1999.

Approved April 7, 1998

CHAPTER 349

(HB 911)

AN ACT relating to economic development.

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

Section 1. KRS 154.22-040 is amended to read as follows:

- (1) Each year the authority shall under its rural economic development assistance program, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, ***or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent twelve (12) consecutive months for which unemployment figures are available***, and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate ***that meets the criteria of this subsection*** ~~[above the state average]~~, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county.
- (2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of five hundred thousand dollars (\$500,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension. No economic development project which will result in the replacement of manufacturing facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:
 - (a) Rehabilitates a manufacturing facility:
 - 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces a manufacturing facility existing in the Commonwealth:
 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - (c) Replaces an existing manufacturing facility located in the same qualified county, and the existing manufacturing facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval and completion by the eligible company of its bond, loan, or other financing and review thereof by the authority, the authority may by final approval designate an eligible company to be an approved company.

Approved April 7, 1998

CHAPTER 350

(HB 853)

AN ACT relating to administrative regulations.

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

Section 1. KRS 13A.315 is amended to read as follows:

- (1) An administrative regulation shall be withdrawn and shall not be reviewed by a legislative subcommittee if:
 - (a) It has not been reviewed or approved by the official or administrative body with authority to review or approve;
 - (b) An item is not filed on or before a deadline specified by this chapter; or
 - (c) The administrative body has failed to comply with the provisions of this chapter governing the filing of administrative regulations, public hearings, and the statement of consideration.
- (2) An administrative regulation which has not complied with all the provisions of this chapter and any regulations promulgated under this chapter shall be considered procedurally defective and void.
- (3)
 - (a) ***An administrative regulation that has been found deficient by a subcommittee shall be withdrawn immediately by the promulgating administrative body if, pursuant to Section 2 of this Act, the Governor has determined that it shall be withdrawn.***
 - (b) ***The promulgating administrative body shall notify the regulations compiler in writing and by telephone that it is withdrawing an administrative regulation governed by the provisions of this subsection.***

- (c) *The written withdrawal of an administrative regulation governed by the provisions of this subsection shall be made in a letter to the regulations compiler in the following format: "Pursuant to KRS 13A.330(2)(b), the Governor has determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The (name of promulgating administrative body) withdraws (administrative regulation number and title)."*
- (d) *An administrative regulation governed by the provisions of this subsection shall be considered withdrawn upon receipt by the regulations compiler of the written withdrawal.*

Section 2. KRS 13A.330 is amended to read as follows:

- (1) An administrative regulation that has not been found deficient by a legislative subcommittee shall be considered as adopted and shall become effective:
 - (a) Upon adjournment on the day a subcommittee meets to consider the administrative regulation pursuant to KRS 13A.290(7) if:
 - 1. The administrative regulation is on the agenda of the subcommittee meeting;
 - 2. A quorum of the subcommittee is present; and
 - 3. The subcommittee:
 - a. Considers the administrative regulation; or
 - b. Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; or
 - (b) If a subcommittee fails to meet within thirty (30) days of assignment of an administrative regulation as provided in KRS 13A.290(7), or does not place the administrative regulation on the agenda of a meeting held within thirty (30) days of the referral of the administrative regulation to it by the Commission, at the expiration of the thirty (30) day period.
- (2) If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit to the Governor:
 - (a) A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and
 - (b) A request that the Governor determine whether the administrative regulation shall:
 - 1. Be withdrawn;
 - 2. Be withdrawn and amended to conform to the finding of deficiency; or
 - 3. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.
- (3) The Governor shall transmit his determination to the Commission and the regulations compiler.
- (4) An administrative regulation that has been found deficient by a legislative subcommittee shall be considered as adopted and become effective after:
 - (a) The subcommittee of appropriate jurisdiction to which an administrative regulation was assigned pursuant to KRS 13A.290(6) has:
 - 1. Reviewed the administrative regulation; or
 - 2. Failed to meet within thirty (30) days of such assignment; and
 - (b) The regulations compiler has received the Governor's determination *that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency*~~pursuant to this section~~.

Section 3. KRS 13A.335 is amended to read as follows:

- (1) An administrative regulation found deficient by a subcommittee shall not expire if:

- (a) A subsequent amendment of that administrative regulation is filed with the Commission by the administrative body;
 - (b) The subcommittee that found the administrative regulation deficient approves a motion that the subsequent amendment corrects such deficiency; and
 - (c) Any subcommittee that reviews the administrative regulation under the provisions of KRS Chapter 13A finds that the administrative regulation is not deficient.
- (2) An administrative regulation found deficient by the Administrative Regulation Review Subcommittee shall not expire if:
- (a) The administrative regulation is amended to correct the deficiency at a meeting of the subcommittee to which it was assigned by the Commission;
 - (b) That subcommittee does not determine that the administrative regulation is deficient for any other reason; and
 - (c) The Administrative Regulation Review Subcommittee approves a motion that the deficiency has been corrected and that the administrative regulation should not expire.
- (3) An administrative regulation found deficient by a subcommittee shall not expire if the subcommittee:
- (a) Reconsiders the administrative regulation and its finding of deficiency; and
 - (b) Approves a motion that the administrative regulation is not deficient.
- (4) (a) *If an existing administrative regulation has been amended and found deficient by a subcommittee, it shall not expire if the:*
1. *Administrative regulation was found deficient due to the amendment;*
 2. *Promulgating administrative body has withdrawn the proposed amendment of the existing administrative regulation; and*
 3. *Regulations compiler has not received the Governor's determination pursuant to Section 2 of this Act.*
- (b) If an administrative regulation has been found deficient by a subcommittee, the regulations compiler shall add the following notice to the administrative regulation: "This administrative regulation shall expire on adjournment of the next regular session of the General Assembly." This notice shall be the last section of the administrative regulation.
- (c)~~(b)~~ If an administrative regulation has been found deficient by a subcommittee, subsequent amendments of that administrative regulation filed with the Commission shall contain the notice provided in paragraph (a) of this subsection.
- (d)~~(c)~~ If an administrative regulation that has been found deficient by a subcommittee has been amended and determined not to be deficient under the provisions of this section, the regulations compiler shall delete the notice required by paragraph (a) of this subsection.

Approved April 7, 1998

CHAPTER 351

(HB 813)

AN ACT relating to retirement.

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

Section 1. KRS 61.701 is amended to read as follows:

- (1) There is hereby created and established a state fund to be known as "Kentucky Retirement Systems Insurance Fund."

- (2) The fund is created for the purpose of providing a fund separate from the retirement funds and is to be used to provide fringe benefits to retired recipients and employees of employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and to certain of their dependents or beneficiaries named in KRS 61.702~~{(4)}~~.
- (3) The fund shall be administered by the board of trustees of the Kentucky Retirement Systems and the board shall manage the assets of the fund in the same manner in which it administers the retirement funds.

Section 2. KRS 61.702 is amended to read as follows:

- (1) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section. The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems, who are under age sixty-five (65), to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status.
- (2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.
- (3)
 - (a) The premium required to provide hospital and medical benefits under this section shall be paid in full from the insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, a State Police Retirement System member or a hazardous position employee, as defined in KRS 61.592, who becomes disabled in the line of duty, as defined in KRS 16.505(19), shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, a State Police Retirement System member or a hazardous position employee as defined in KRS 61.592, who is killed in the line of duty, as defined in KRS 16.505(19), shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."
 - (b) For a member of the County Employees Retirement System, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service for which benefits are eligible under KRS 21.345 to 21.510.

1. Upon request by a member, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in the Judicial Retirement System, and calculate the portion of the member's premium to be paid by the County Employees Retirement System, according to the criteria established in paragraph (a) of this subsection. The Judicial Retirement Fund annually shall pay to the County Employees Retirement System the percentage of the system's cost of the retiree's hospital and medical premium which shall be equal to the percentage of the member's number of months of service in the Judicial Retirement System divided by his total combined service. The amounts paid by the Judicial Retirement Fund and the County Employees Retirement System shall not be more than one hundred percent (100%) of the single premium amount adopted by the respective boards of trustees or more than the maximum percentage payable under the program established under this section or KRS 21.427.
 2. A member who elects hospital and medical benefits under this subsection shall lose any claim to insurance benefits under the Judicial Retirement Plan as described in KRS 21.427, and the election shall be irrevocable.
- (4) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits. The other provisions of this section notwithstanding, the insurance fund shall pay the same percentage of the premium for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary, as the fund pays or paid for the member. The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or dependent or beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.
- (5) *After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.*
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

Approved April 7, 1998

CHAPTER 352

(HB 801)

AN ACT relating to establishing Native American Indian Month in Kentucky.

WHEREAS, several states across the country have established a special observance to celebrate a strong, proud people with a deep faith in nature and its awesome power and an indomitable spirit that has allowed them to always persevere; and

WHEREAS, Native American Indians are so important to our state's history that they were even responsible for naming this Land of Plenty, Kentucke; and

WHEREAS, even today, Kentucky is home to more than 6,000 Native American Indians; and

WHEREAS, Native American Indians have played a vital role in the life of our Commonwealth, and their many contributions have enhanced the freedom, prosperity, and greatness of Kentucky; and

WHEREAS, the Commonwealth of Kentucky is committed to remembering these contributions and to honoring the unique heritage of our state's first inhabitants; and

WHEREAS, as we enter the next century, the Commonwealth of Kentucky has an exciting opportunity to open a new era of understanding, cooperation, and respect among all Kentuckians; and

WHEREAS, a special observance would reflect our Commonwealth's commitment to the Native American Indians as an integral part of the social, political, and economic fabric of the state of Kentucky; and

WHEREAS, a special observance would embody the fundamental belief of Kentuckians that people of widely varied and diverse cultural backgrounds must stand united together to make this great Commonwealth strong;

NOW, THEREFORE,

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

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

- (1) *The month of November of each year shall be observed in Kentucky as "Native American Indian Month" and during this month schools, clubs, and civic and religious organizations are encouraged to recognize the contributions of Native American Indians with suitable ceremony and fellowship designed to promote greater understanding and brotherhood between Native American Indians and the non-Native American Indian people of the Commonwealth of Kentucky.*
- (2) *The Governor shall, prior to the first day of November of each year, issue a proclamation inviting and urging the people of the Commonwealth to observe Native American Indian Month with suitable ceremony and fellowship.*
- (3) *The Kentucky Department of Education, Kentucky Heritage Council, and the Native American Heritage Commission established by Executive Order 96-272 shall, within the limits of funds available for this purpose, make information available to all people of this Commonwealth regarding Native American Indian Month and the observance thereof.*

Approved April 7, 1998

CHAPTER 353

(HB 789)

AN ACT relating to the establishment of the chief information officer for the executive branch of the Commonwealth.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that:

- (1) *The establishment of the Office of the Chief Information Officer as the Commonwealth's single point of contact and spokesperson for all matters related to information technology and resources, including policies, standard setting, deployment, strategic and tactical planning, acquisition, management, and operations is necessary and in keeping with the industry trends of the private and public sectors;*
- (2) *The appropriate use of information technology by the Commonwealth can improve operational productivity, reduce the cost of government, enhance service to customers, and make government more accessible to the public;*
- (3) *Government-wide planning, investment, protection, and direction for information resources must be enacted to:*

- (a) *Ensure the effective application of information technology on state business operations;*
- (b) *Ensure the quality, security, and integrity of state business operations; and*
- (c) *Provide privacy to the citizens of the Commonwealth;*
- (4) *The Commonwealth must provide information technology infrastructure, technical directions, and a proficient organizational management structure to facilitate the productive application of information technology and resources to accomplish programmatic missions and business goals;*
- (5) *Oversight of large scale and government statewide systems or projects is necessary to protect the Commonwealth's investment and to ensure appropriate integration with existing or planned systems;*
- (6) *A career development plan and professional development program for information technology staff of the executive branch is needed to provide key competencies and adequate on-going support for the information resources of the Commonwealth and to ensure that the information technology staff will be managed as a Commonwealth resource;*
- (7) *The Commonwealth is in need of information technology advisory capacities to the Governor and the agencies of the executive cabinet;*
- (8) *Appropriate public-private partnerships to supplement existing resources must be developed as a strategy for the Commonwealth to comprehensively meet its spectrum of information technology and resource needs; and*
- (9) *The exercise by the chief information officer of powers and authority conferred by Sections 1 to 4 of this Act shall be deemed and held to be the performance of essential governmental functions.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

There is hereby established a position of chief information officer for the Commonwealth. This position shall be exempt from the classified service under KRS 18A.115 and from the salary limitations of KRS 64.640, and shall be bonded commensurate with cabinet secretaries under KRS 62.160. The chief information officer shall be appointed by the Governor and serve in the Governor's Executive Cabinet. The chief information officer shall report to the secretary of the Governor's cabinet concerning his or her responsibilities to provide direction, stewardship, leadership, and general oversight of information technology and information resources. For purposes of this section, unless the context requires otherwise, "information technology" and "information resources" shall have the same meaning as in KRS 61.942.

- (1) *The chief information officer shall be the principal adviser to the Governor and the executive cabinet on information technology policy, including policy on the acquisition and management of information technology and resources.*
- (2) *The chief information officer shall carry out functions necessary for the efficient, effective, and economical administration of information technology and resources within the executive branch. Roles and duties of the chief information officer shall include but not be limited to:*
 - (a) *Developing strategies and policies to support and promote the effective applications of information technology within state government as a means of saving money, increasing employee productivity, and improving state services to the public, including electronic public access to information of the Commonwealth;*
 - (b) *Assessing, recommending, and implementing information technology governance and organization design to include effective information technology personnel management practices;*
 - (c) *Promoting effective and efficient design and operation of all major information resources management processes for executive branch agencies, including improvements to work processes;*
 - (d) *Overseeing and managing strategic information technology directions, standards, and architecture;*
 - (e) *Integrating information technology and resources plans with agency business plans;*
 - (f) *Developing, implementing, and maintaining the technology infrastructure of the Commonwealth;*
 - (g) *Overseeing shared Commonwealth information technology resources and services;*

- (h) *Performing as the focal point and representative for the Commonwealth in information technology and related areas with both the public and private sector;*
- (i) *Facilitating and fostering applied research in emerging technologies that offer the Commonwealth innovative business solutions;*
- (j) *Establishing appropriate partnerships and alliances to support the effective implementation of information technology projects in the Commonwealth;*
- (k) *Identifying information technology applications that should be statewide in scope, and ensuring that these applications are not developed independently or duplicated by individual state agencies of the executive branch;*
- (l) *Establishing performance measurement and benchmarking policies and procedures;*
- (m) *Reviewing and overseeing large or complex information technology projects and systems for compliance with statewide strategies, policies, and standards, including alignment with Commonwealth's business goals, investment, and other risk management policies. The chief information officer is authorized to grant or withhold approval to initiate these projects;*
- (n) *Preparing annual reports and plans concerning the status and result of the state's specific information technology plans and submitting these annual reports and plans to the governor and the General Assembly;*
- (o) *Integrating information technology resources to provide effective and supportable information technology applications in the Commonwealth; and*
- (p) *Managing the Office of the Chief Information Officer and its budget.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

The chief information officer shall have the power to make and enter into memoranda of agreement and contracts necessary or incidental to the performance of duties and execution of powers, including, but not limited to, agreements or contracts with the United States, other state agencies, and any governmental subdivision of the Commonwealth.

SECTION 4. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

- (1) *To assist the chief information officer and to provide necessary support as required to carry out the powers and duties of the chief information officer, the Office of the Chief Information Officer is hereby established and attached for administrative purposes to the Office of the Governor.*
- (2) *The Office of the Chief Information Officer shall have the authority to solicit, receive, and consider proposals from any state agency, federal agency, local government, university, nonprofit organization, private person, or corporation.*
- (3) *The Office of the Chief Information Officer may solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance to be held, used, and applied in accordance with Sections 1 to 4 of this Act.*
- (4) *The Office of the Chief Information Officer is hereby designated a state agency for the receipt of federal funds related to information technology.*
- (5) *The Office of the Chief Information Officer may promulgate necessary administrative regulations in accordance with KRS 13A and suggest necessary legislative actions for the furtherance of duties of the office.*

Section 5. KRS 12.020 is amended to read as follows:

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

and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.

- (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
 - (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
 - (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.

- (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.

- (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.
- 9. ***Office of the Chief Information Officer.***

Section 6. KRS 12.023 is amended to read as follows:

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

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department of Local Government;

- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;~~[-and]~~
- (7) Coal Marketing and Export Council; *and*
- (8) *Office of the Chief Information Officer.*

Section 7. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
 - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;
 - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television;
 - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
 - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
 - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
 - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
 - (j) Physicians employed as such;
 - (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
 - (l) The judicial department, referees, receivers, jurors, and notaries public;
 - (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
 - (n) Patients or inmates employed in state institutions;
 - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
 - (p) Seasonal, temporary, and emergency employees;
 - (q) Federally funded time-limited employees;
 - (r) Officers and members of the state militia;

- (s) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;
 - (t) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
 - (u) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
 - (v) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
 - (w) County and Commonwealth's attorneys and their respective appointees;
 - (x) Chief district engineers and the state highway engineer;
 - (y) Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;
 - (z) Employees of the Kentucky Peace Corps;~~and~~
 - (aa) Employees of the Council on Postsecondary Education; **and**
 - (bb) Chief Information Officer of the Commonwealth.**
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
 - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
 - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
 - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
 - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

Section 8. KRS 42.029 is amended to read as follows:

- (1) There is established a department of state government to be known as the Department of Information Systems. The department shall be a part of the Finance and Administration Cabinet. The Department of Information Systems shall be headed by a commissioner, appointed by the secretary of the Finance and Administration Cabinet, with the approval of the Governor. The commissioner shall be responsible to the secretary.
- (2) The secretary of the Finance and Administration Cabinet shall appoint, with the approval of the Governor, a deputy commissioner of the Department of Information Systems, pursuant to KRS 12.050. The commissioner of information systems, with the approval of the secretary of the Finance and Administration Cabinet, may appoint such principal assistants, pursuant to KRS 12.050, as may be necessary for the development and

implementation of policy. The commissioner may employ, pursuant to the provisions of KRS Chapter 18A, such personnel as may be necessary to execute the functions and duties of the department.

- (3) The Department of Information Systems shall provide ~~Leadership, policy direction, and~~ technical support *and services* to all executive agencies of state government in the application of information technology. The department shall:
 - (a) Assure compatibility ~~portability,~~ and connectivity of Kentucky's information systems; and
 - (b) Implement necessary management processes to assure full compliance with the Kentucky information resources architecture as adopted by the Kentucky Information Resources Management Commission.
- (4) The Department of Information Systems shall include the following divisions, each of which shall be headed by a director appointed by the secretary with the approval of the Governor, pursuant to KRS 12.050:
 - (a) The Division of Network Services, which shall be responsible for network planning, network design, network management, systems administration, research and evaluation of desktop and departmental computer technologies, support for end user computing, and information dissemination;
 - (b) The Division of Computer Services, which shall be responsible for all computer operations, systems programming, technical support services, data storage, and database management services;
 - (c) The Division of Systems Development, which shall be responsible for providing comprehensive systems analysis, design, and development services, and applications consulting services to designated state agencies with primary responsibility for supporting economic development, education, human services, and public protection systems;
 - (d) The Division of Systems Engineering, which shall be responsible for providing comprehensive systems analysis, design, and development services and applications consulting services to designated state agencies with primary responsibility for supporting environmental, financial, labor, personnel, revenue, safety, justice, tourism, and transportation systems; and
 - (e) The Division of Support Services, which shall be responsible for planning and procurement assistance, fiscal administration, service coordination, application development standards, data security, disaster recovery planning, technical training, technical publications, and facilities support.
 - (f) The secretary of the Finance and Administration Cabinet, in consultation with the commissioner of the Department of Information Systems, shall designate the state agencies to be provided services by the Division of Systems Development and the Division of Systems Engineering based on the complexity of the services to be provided and each division's work load.
- (5) The Department of Information Systems may delegate authority to individual state agencies for the performance of departmental and desktop level functions if the commissioner finds the delegation to be in the best interest of the Commonwealth. All delegations of authority shall:
 - (a) Be in written form;
 - (b) Specify the level and scope of functions to be performed; and
 - (c) Provide notice to the agency receiving delegation of authority, that the delegated authority will be revoked if the commissioner finds that the functions being performed fail to adhere to prescribed criteria or if the commissioner finds that it is no longer in the best interest of the Commonwealth to continue the agency's delegation of authority. Nothing in this subsection shall apply to the data processing operations or personnel of the Kentucky Retirement Systems or the Kentucky Teachers' Retirement System.
- (6) The Department of Information Systems may provide general consulting services, technical training, and support for generic software applications, upon request from a local government, if the commissioner finds that the requested services can be rendered within the established terms of the federally approved cost allocation plan.
- (7) Nothing in this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.
- (8) The department may promulgate necessary administrative regulations for the furtherance of this section.

Section 9. KRS 61.945 is amended to read as follows:

- (1) There is hereby created an independent agency of state government to be known as the Kentucky Information Resources Management Commission, hereafter called the "commission." It shall be the responsibility of the commission to coordinate and guide the application of information technologies and resources in the executive branch of state government.
- (2) The commission shall consist of:
 - (a) Three (3) cabinet secretaries from the executive branch, at least one (1) of whom shall be from either the Transportation or Human Resources Cabinet, appointed by the Governor, or their respective designees;
 - (b) The state budget director or his designee;
 - (c) The commissioner of the Department of Information Systems;
 - (d) The State Librarian or his designee;
 - (e) One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 - (f) Two (2) citizen members from the private sector with information resources management knowledge and experience to be appointed by the Governor;
 - (g) One (1) representative of local government appointed by the Governor from a list of six (6) persons, three (3) to be submitted by the president of the Kentucky League of Cities, and three (3) to be submitted by the president of the Kentucky Association of Counties;
 - (h) One (1) member of the press to be appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Press Association;
 - (i) The executive director of the Kentucky Authority for Educational Television;
 - (j) The chairman of the Communications Advisory Council as an ex officio~~[-nonvoting]~~ member;~~[-and]~~
 - (k) The chairman of the Geographic Information Advisory Council as an ex officio~~[-nonvoting]~~ member;
and
 - (l) ***The Chief Information Officer of the Commonwealth.***
- (3) The commission shall select from its membership a chairperson and any other officers it considers essential. A member of the commission shall not:
 - (a) Be an officer, employee, registered legislative agent, Executive Branch lobbyist, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the information resources technology industry;
 - (b) Own, control, or have directly or indirectly, more than a ten percent (10%) interest in a business entity that has a substantial interest in the information resources technology industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any state governmental body with information resources systems, the computers on which they are automated, or a service related to information resources systems; or
 - (d) Receive anything of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise.
- (4) (a) It shall be a ground for removal of a member of the commission if the member:
 1. Does not maintain during service on the commission the qualifications or status required for initial appointment to the commission;
 2. Violates a prohibition established by subsection (3) of this section; or
 3. Is absent from three (3) consecutive meetings or more than half of the regularly-scheduled commission meetings that the member is eligible to attend during a state fiscal year unless the absence is excused by majority vote of the commission.(b) The validity of an action of the commission shall not be affected by the fact that it was taken when a ground for removal of a member existed. If the chairperson of the commission has knowledge that a

potential ground for removal of a commission member exists, the chairperson shall notify the Governor of the potential ground for removal.

- (5) (a) The term of office of the members specified in subsection (2)(b), (c), (d), (i), (j), and (k) of this section shall be the same as the term of office by virtue of which they serve upon the commission.
- (b) The terms of the cabinet secretaries appointed pursuant to subsection (2)(a) of this section shall be established in the commission's operating policies or bylaws not to be less than two (2) years.
- (6) Members of the commission appointed pursuant to subsection (2)(e), (f), (g), and (h) of this section shall serve for a term of four (4) years. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments. If a nominating organization changes its name, the subsequent organization having the same responsibilities and purposes shall be the nominating organization.
- (7) Members of the commission shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their duties.
- (8) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at commission meetings.

Approved April 7, 1998

CHAPTER 354

(HB 783)

AN ACT changing the classification of the City of Simpsonville, in Shelby County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Simpsonville, in Shelby County, is such as to justify its being classified as a city of the fifth class.

NOW, THEREFORE,

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

Section 1. The City of Simpsonville, in Shelby County, is transferred from the sixth to the fifth class of cities.

Approved April 7, 1998

CHAPTER 355

(HB 780)

AN ACT relating to small business.

WHEREAS, small business is the backbone of our state's economy; and

WHEREAS, administrative rules promulgated by state agencies can have an unduly burdensome impact on the growth and vitality of small business; and

WHEREAS, state agencies need to consult with the small business community when promulgating administrative regulations to better assess their impact and to consider alternatives that will ease the impact of administrative regulations on small business; and

WHEREAS, small businesses need to better utilize the administrative regulation review process to provide more input and to be aware of the impact of administrative regulations; and

WHEREAS, an administrative body's interpretation or application of its administrative regulations may also have a disproportionately burdensome impact on a small business especially when the small business lacks the resources to contest an administrative body's interpretation or application of an administrative regulation that imposes a fine, citation, or penalty;

NOW, THEREFORE:

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

Section 1. There is hereby established a Subcommittee on Small Business Regulation of the Interim Joint Committee on Economic Development and Tourism. The subcommittee shall conduct a study to:

- (a) Review and identify administrative regulations of concern to small business owners because of the economic burdens they places on businesses;
- (b) Assess the degree of regulatory burden facing small businesses that creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that outweighs the benefits to the public;
- (c) Identify sources of information and programs that assist in regulatory and reporting requirements for small businesses;
- (d) Identify methods of regulation that are more collaborative, more solution-oriented, and less punitive to small businesses; and
- (e) Make recommendations regarding changes needed in regulations and legislation.

The subcommittee shall seek information and advice from small business owners and operators, government agencies involved in regulation, and others as appropriate.

Section 2. No later than August 31, 1999, the Subcommittee on Small Business Regulation shall report its findings and recommendations, including proposals for legislation, to the Interim Joint Committee on Economic Development and Tourism for its referral to the Legislative Research Commission.

Section 3. Staff services shall be provided by the staff to the Legislative Research Commission and are estimated to cost \$15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 7, 1998

CHAPTER 356

(HB 776)

AN ACT relating to ferrets.

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

Section 1. KRS 150.355 is amended to read as follows:

- (1) No person shall use ferrets in hunting. No person shall keep a ferret *which was born in the wild* as a pet or for any purpose, unless he has procured a ferret permit from the commissioner. A permit must be obtained within ten (10) days after the person acquires possession of a ferret and one (1) permit shall entitle the holder to keep any number of ferrets. If the owner of any ferret uses it contrary to the provisions of this chapter, the commissioner may revoke his permit and confiscate all of his ferrets. Each use of a ferret in hunting shall constitute a separate offense.
- (2) *The provisions of subsection (1) of this section shall not apply to a ferret which has been born and raised in captivity nor to a ferret born and raised in captivity which was obtained from a pet store or private vendor. Except for the prohibition on using a ferret for hunting, no permit shall be necessary to keep a ferret which was born and raised in captivity and a ferret born and raised in captivity shall be exempt from regulation under KRS Chapter 150 or administrative regulations promulgated thereunder.*

Approved April 7, 1998

CHAPTER 357

(HB 771)

AN ACT relating to small and farm wineries.

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

Section 1. KRS 243.155 is amended to read as follows:

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- (1) A small winery license shall authorize the licensee to perform the following functions, without having to obtain separate licenses, except that each off-premises retail site shall be separately licensed:
- (a) Manufacture wines and bottle wines produced by that small winery in an amount not to exceed fifty thousand (50,000) gallons in one (1) year;
 - (b) Serve on the premises or at off-premise retail sites complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day, if the small winery or off-premise retail site is located in wet territory;
 - (c) Sell *by the drink or* by the package on premises, ~~or~~ at off-premise retail sites, *and at fairs, festivals, and other similar types of events*, wine produced on the premises of the small winery or produced by a licensed farm winery, at retail to consumers if all sales sites are located in wet territory;
 - (d) Sell and transport wine produced on the premises of the small winery to wholesale license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders; *and*
 - (e) Consume on the premises wine produced by the small winery or a licensed farm winery and purchased by the *drink or by the* package at the licensed premises, if the small winery is located in wet territory; ~~and~~
 - ~~(f) Obtain a special temporary wine license for the purpose of selling wine produced by the small winery or a farm winery at a fair, festival, or other similar type of event, if the event is held in a wet territory.~~
- (2) In accordance with administrative regulations promulgated by the board the holder of a small winery license or farm winery license, upon affidavit filed with the board that grapes, grape juice, other fruits, other fruit juices, or honey produced in Kentucky are not obtainable, may apply for a permit to import these products. The burden of proof shall be upon the applicant to show that the grapes, grape juice, other fruits, other fruit juices, or honey are not available from any other source within the Commonwealth of Kentucky.
- (3) If a licensed small winery is located in a dry territory, KRS 242.230 to 242.430 shall apply.
- (4) *Other provisions of KRS Chapters 243 and 244 notwithstanding, a small winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism.*
- (5) This section shall not exempt the holder of a small winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small winery, except as expressly stated in this section.

Section 2. KRS 243.156 is amended to read as follows:

- (1) A farm winery license shall authorize the licensee to perform the following functions, without having to obtain separate licenses:
- (a) Manufacture wines and bottle wines at a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, in an amount not to exceed twenty-five thousand (25,000) gallons in one (1) year;
 - (b) Serve on the premises complimentary samples of wine produced by it in amounts not to exceed four (4) ounces per patron per day, if the farm winery is located in wet territory;
 - (c) Sell wine produced on the premises of the farm winery or produced by a licensed small winery *by the drink or* by the package at retail to consumers, if the farm winery or off-premise retail site is located in wet territory and the wine produced by the small winery is made with Kentucky products;
 - (d) Sell and transport wine produced on the premises of the farm winery to wholesale liquor license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;

- (e) Serve complimentary samples or sell wine produced on the premises of the farm winery at another farm winery or small winery sales site, if the other farm winery or small winery sales site is located in wet territory;
 - (f) Consume on the premises wine produced by the farm winery or a small winery and purchased by the *drink or by the package* at the licensed premises, if the farm winery is located in wet territory; and
 - (g) ~~*Sell by the drink or by the package*~~ ~~[Obtain a special temporary wine license for the purpose of selling]~~ wine produced by the farm winery or a licensed small winery at a fair, festival, or other similar type of event, if the event is held in a wet territory.
- (2) A licensed farm winery may establish one (1) off-premise retail sales outlet, if it is located in wet territory.
 - (3) All of the fresh fruits, fruit juices, or honey used to manufacture wine at a farm winery shall be grown or produced in the Commonwealth of Kentucky.
 - (4) If a licensed farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply.
 - (5) *Other provisions of KRS Chapters 243 and 244 notwithstanding, a farm winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism.*
 - (6) This section shall not exempt the holder of a farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from administrative regulations of the board, except as expressly stated in this section.

Approved April 7, 1998

CHAPTER 358

(HB 769)

AN ACT relating to agricultural marketing.

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

Section 1. KRS 260.020 is amended to read as follows:

- (1) The Office *for Agricultural Marketing and Product Promotion* ~~[of Agri Markets]~~ in the Department of Agriculture shall be under the supervision of the Commissioner, and shall consist of personnel determined and appointed by the Commissioner.
- (2) The Office *for Agricultural Marketing and Product Promotion* ~~[of Agri Markets]~~ shall be headed by an *executive director* ~~[office head]~~ appointed by the Commissioner.

Section 2. KRS 260.030 is amended to read as follows:

- (1) The Office *for Agricultural Marketing and Product Promotion* ~~[of Agri Markets]~~ shall:
 - (a) *Promote and develop markets for Kentucky agricultural products, assist in setting up farm cooperatives, and assist in coordinating feasibility studies, loans, grants, and funding activities for producers and cooperatives* ~~[Stress promotional market efforts and make available to farmers practical assistance in setting up farm cooperatives];~~
 - (b) Gather and disseminate information concerning supply, demand, prevailing prices, and commercial movement, including common and cold storage of food products, and maintain market news service for the purpose of disseminating *this* ~~[such]~~ information;
 - (c) Foster and encourage the inspection, grading, standardizing, labeling, and branding of farm products; provide standards of excellence and brands for the use of producers and consumers in the marketing of Kentucky-grown products; and promote the standardization of packages and containers for *those* ~~[such]~~ purposes;

- (d) **Promulgate administrative**~~Make~~ regulations for the grading, packing, hauling, storing, and sale of farm products ~~if when~~ the **administrative** regulations are authorized by statutes, and enforce those **administrative** regulations;
 - (e) Act as mediator or arbitrator, when invited, in any issue that may arise between producers and distributors of agricultural products;
 - (f) Encourage the establishment of public markets and direct dealing between producer and consumer;
 - (g) **Promote the sale of Kentucky-grown products locally, and in domestic and international markets**~~Encourage the consumption of Kentucky-grown products within and without the state~~;
 - (h) Encourage the development of a market for the commercial production of earthworms;~~and~~
 - (i) Negotiate and enter into cooperative agreements with the United States Department of Agriculture or any other appropriate federal agency for carrying **out the provisions of** this section; ~~and into effect~~
 - (j) **Develop opportunities for the diversification of Kentucky agriculture, including additional crops and enterprises for tobacco growers.**
- (2) The functions of the office shall be supplementary to, and not in duplication of, the educational activities of the College of Agriculture of the University of Kentucky.
 - (3) In accomplishing its purposes, the office shall not compete with business operated by private capital.

Approved April 7, 1998

CHAPTER 359

(HB 765)

AN ACT relating to oil and gas recovery enhancement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 137 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "recovered inactive well" means a well that has been inactive for a consecutive two (2) year period or a well that has been plugged and abandoned, as determined by the Department of Mines and Minerals, and that resumes producing crude petroleum oil.*
- (2) *Every taxpayer engaged in the production of crude petroleum oil within this Commonwealth shall be allowed a credit against the tax imposed under KRS 137.120 equal to four and one-half percent (4.5%) of the market value of crude petroleum oil that is produced from a recovered inactive well.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 143A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "recovered inactive well" means a well that has been inactive for a consecutive two (2) year period or a well that has been plugged and abandoned, as determined by the Department of Mines and Minerals, and that resumes producing natural gas.*
- (2) *Every taxpayer engaged in severing or processing natural gas within this Commonwealth shall be allowed a credit against the tax imposed under KRS 143A.020 equal to four and one-half percent (4.5%) of the gross value of natural gas that is produced from a recovered inactive well.*

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

- (1) *Any person may investigate an abandoned well upon receipt of approval from the department. The person shall submit to the department:*
 - (a) *An application requesting approval to investigate and stating the planned methods for the investigation. In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, the application shall include a plan to prevent erosion and sedimentation;*
 - (b) *A twenty-five dollar (\$25) fee; and*

- (c) *A certification by the applicant that he has the authority to enter the property upon which the well is located and to conduct the investigation.*
- (2) *The department shall review all applications for investigation. If the department approves the request for investigation, the applicant shall be allowed to produce the well without a permit as required by Section 4 of this Act, and the applicant shall submit a report of investigation to the department on forms provided by the department. In order to produce the well for more than sixty (60) days, the applicant must obtain a bond as required by KRS 353.590(5). Notwithstanding the provisions of KRS 353.590(2), no fee shall be required for any such well.*

Section 4. KRS 353.570 is amended to read as follows:

- (1) No person shall drill or deepen a well, or reopen a plugged well for the production of oil or gas or for the injection of water, gas or other fluid into any oil or gas producing formation (except seismograph test holes) after June 16, 1960, or drill or deepen a water supply well, and geological or structure test holes after June 16, 1966, until such person shall obtain a permit from the department, *except as provided in Section 3 of this Act.*
- (2) When any applicant for a permit as required by this section has complied with the provisions of this chapter and all rules and regulations promulgated hereunder, the department shall issue the permit.
- (3) The department may authorize the commencement of the drilling, deepening or reopening of any well prior to the issuance of a permit therefor; except if the location of the well is known to be underlain by a coal-bearing stratum and consent of the owner, operator, and lessee of the coal-bearing stratum has not been granted. Consent shall be implied, when the coal-bearing stratum is owned by the oil and gas lessor or lessee, and the coal is not under lease to any third party.

Approved April 7, 1998

CHAPTER 360

(HB 753)

AN ACT relating to retirement.

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

Section 1. KRS 21.405 is amended to read as follows:

- (1) As of July 1, 1982, the board of trustees of the Kentucky Judicial Form Retirement System shall recompute the monthly benefits of persons then receiving benefits under the Judicial Retirement Plan, by using the same service credit rate and the same number of years of service that were used in computing the benefits then being received, but substituting, in lieu of the "final compensation" that was used in the computation of the benefit then being received, an amount equal to fifty-five percent (55%) of the final compensation of the office in which the credit was earned, for a person retiring as of June 30, 1982.
- (2) As of July 1, 1983, and as of July 1 of each year thereafter, the board of trustees of the Kentucky Judicial Form Retirement System shall recompute the monthly benefits of persons then receiving benefits under the Judicial Retirement Plan, by using the following formula: two and three-fourths percent (2.75%) times fifty-five percent (55%) of the final compensation of the office in which the retirement credit was earned for a person retiring as of the recomputation date, times the number of years of service credit (not to exceed thirty-six (36) years).
- (3) In making the recomputations provided for in subsections (1) and (2) of this section, the same reduction factor, in case of an actuarially reduced benefit or a surviving spouse's benefit, shall be used as was used in determining the benefit then being received. If the benefit as recomputed in accordance with subsection (1) or (2) of this section is higher than the benefit then being received, the recomputed benefit shall thereafter be paid monthly, commencing as of the date specified for the recomputation, subject to future adjustment at ensuing annual recomputations in accordance with subsection (2) of this section. For the purposes of this section, the following office equivalents shall be used: Judge of former Court of Appeals - Justice of Supreme Court; any position other than judge or justice that was covered by the Judicial Retirement System - Judge of the present Court of Appeals.
- (4) *Effective August 1, 1998, and on July 1 of each year thereafter, a recipient of a monthly pension benefit from the Kentucky Judicial Retirement Plan shall have his/her benefit increased by the percentage increase*

in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%). In determining the State's appropriation to the Judicial Retirement Fund, only the costs of increases granted as of the most recent valuation date shall be recognized. The benefits of this subsection as provided on August 1, 1998, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 21.480. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.

Section 2. KRS 6.521 is amended to read as follows:

- (1) As of July 1 of each year, the board of trustees of the Kentucky Judicial Form Retirement System shall recompute the monthly benefits of persons then receiving benefits under the Legislators' Retirement Plan, by using the following formula: three and one-half percent (3.5%) times fifty-five percent (55%) of the final compensation of the office in which the credit was earned for a person retiring as of the recomputation date, times the number of years of service credit (not to exceed twenty-eight (28) years). In making the recomputation, the same reduction factor, in case of an actuarially reduced benefit or a surviving spouse's benefit, shall be used as was used in determining the benefit then being received. If the benefit as recomputed in accordance with this section is higher than the benefit then being received, the recomputed benefit shall thereafter be paid monthly, commencing as of the date specified for the recomputation, subject to future adjustment at ensuing recomputations in accordance with this section.
- (2) *Effective August 1, 1998, and on July 1 of each year thereafter, a recipient of a monthly pension benefit from the Legislators' Retirement Plan shall have his/her benefit increased by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%). In determining the State's appropriation to the Legislators' Retirement Fund, only the costs of increases granted as of the most recent valuation date shall be recognized. The benefits of this subsection as provided on August 1, 1998, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 6.505. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.*

Approved April 7, 1998

CHAPTER 361

(HB 742)

AN ACT relating to workers' compensation.

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

Section 1. KRS 342.803 is amended to read as follows:

- (1) The Kentucky Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act, and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. ***The General Assembly hereby recognizes that the operation of a competitive state fund is a unique activity for state government and that a corporate structure will best enable the authority to be managed in an entrepreneurial and business-like manner.*** The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of KRS Chapter 304 applicable to domestic mutual insurance companies, unless otherwise provided or exempted in KRS 342.801 to 342.843.
- (2) Except for initial funding for start-up, the authority shall be entirely self-supporting.
- (3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.
- (4) The authority shall provide coverage and issue policies as an insurer in the voluntary market and as an insurer of last resort.

Section 2. KRS 342.807 is amended to read as follows:

- (1) The authority shall be governed by a board of directors. The board shall exercise complete jurisdiction over the authority.
- (2) The board shall consist of *the*:
 - (a) *Secretary of the Finance and Administration Cabinet;*
 - (b) *Commissioner of the Department of Personnel;*
 - (c) *Secretary of the Public Protection and Regulation Cabinet; and*
 - (d) Seven (7) *at-large* ~~[voting]~~ members ~~[and four (4) ex officio nonvoting members who shall serve in an advisory capacity.]~~
- ~~(3) On or before sixty (60) days after April 4, 1994, the board shall be~~ appointed by the Governor, subject to confirmation by the Senate. ~~[The members of the board shall have the following qualifications:~~
 - ~~(a) One (1) member shall have proven or demonstrated knowledge and experience in insurance underwriting principles, preferably in the area of workers' compensation;~~
 - ~~(b) One (1) member shall have proven or demonstrated knowledge and experience in workplace safety in the majority of all categories or classifications of employment and industry in the Commonwealth;~~
 - ~~(c) One (1) member shall be a nonmanagement employee of a prospective employer policyholder;~~
 - ~~(d) Two (2) members shall represent employers with fewer than fifty (50) employees; and~~
 - ~~(e) Two (2) members shall represent employers with more than fifty (50) employees.]~~
- ~~(3)~~~~(4)~~ Any vacancy which occurs prior to the expiration of a term shall be filled by the Governor in the same manner as the initial appointment was made, and the new appointee shall serve only the remainder of the unexpired term.
- ~~(4)~~~~(5)~~ No person shall serve on the board who:
 - (a) Fails to meet or comply with the conflict of interest policies established by the board and KRS 304.24-270;
 - (b) Is not bondable;
 - (c) Is an employee, attorney, or contractor of a competing insurer providing workers' compensation insurance in the Commonwealth; or
 - (d) Is not a resident of this Commonwealth.
- ~~(5)~~~~(6)~~ In making the appointments to the board, subject to Senate confirmation, the Governor shall ensure adequate representation from the major sectors of the economy and workforce in the Commonwealth.

Section 3. KRS 342.809 is amended to read as follows:

- (1) The board shall elect a chair and other officers it deems necessary from its members. The Governor shall make the initial appointments to the board as follows: three (3) members shall be appointed to terms that expire December 31, 1995, and four (4) members shall be appointed to terms that expire December 31, 1997. Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.
- (2) Senate confirmation of the Governor's appointees is required in accordance with the provisions of KRS 11.160. If a member is not confirmed by the Senate, the Governor, within thirty (30) days of the rejection, shall make another appointment. That member shall serve the remainder of the term in question and shall also be subject to confirmation should the term extend until the next regular session, or a special session which includes this subject on the call, whichever occurs earlier.
- (3) **Six (6)**~~[Four (4) voting]~~ members shall constitute a quorum. The board shall meet at least **monthly**~~[quarterly]~~.
- (4) Each ~~[voting]~~ member, *except the secretaries of the cabinets and the commissioner of personnel*, shall be compensated five thousand dollars (\$5,000) annually, except the chair, who shall be paid seven thousand five

hundred dollars (\$7,500). In addition, the ~~the~~ ~~voting~~ members of the board, ***except the secretaries of the cabinets and the commissioner of personnel***, shall be reimbursed for necessary travel and lodging expenses in accordance with administrative regulations promulgated by the Cabinet for Finance and Administration for state employees.

- (5) ~~The ex officio nonvoting members of the board shall be: the secretary of the Finance and Administration Cabinet, the commissioner of the Department of Personnel, and the commissioner of the Department of Insurance.~~
- (6) ~~A~~ ~~voting~~ board member, ***except the secretaries of the cabinets and the commissioner of personnel***, may be removed for cause by the board. Cause shall include, but not be limited to, incompetence or misconduct defined in policies or bylaws ***adopted*** ~~formulated~~ by the board ~~and adopted by the policyholders~~.

Section 4. KRS 342.811 is amended to read as follows:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

- (1) Sue ~~or be sued~~;
- (2) Hire a manager to administer the authority ***in accordance with the policies and procedures of the board***;
- (3) ***Hire an internal auditor who shall serve at the pleasure of and report directly to the board on the internal operations of the authority***;
- (4) ~~(3)~~ Adopt a corporate seal;
- (5) ~~(4)~~ Develop ***and file with the Legislative Research Commission*** bylaws for the operation of the authority;
- (6) ~~(5)~~ Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;
- (7) ~~(6)~~ Examine and adopt an annual operating budget for the authority;
- (8) ~~(7)~~ Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;
- (9) ~~(8)~~ Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;
- (10) ~~(9)~~ Develop ~~broad~~ policy for the ~~long term~~ operation of the authority consistent with its mission and fiduciary responsibility;
- (11) ~~(10)~~ Adopt a procurement policy consistent with the provisions of KRS Chapter 45A, ***including competitive bidding procedures***;
- (12) ~~(11)~~ Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness;
- (13) ~~(12)~~ Pursuant to KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;
- (14) ~~(13)~~ Pursuant to KRS 342.823, assess policyholders; ~~and~~
- (15) ~~(14)~~ ***Employ a qualified firm to conduct an internal review and management or performance audit of the internal operations of the authority as needed or determined by the board, Attorney General, or Auditor of Public Accounts***;
- (16) ***Approve a personnel policy subject to the provisions of Section 5 of this Act***;
- (17) ***Approve all contracts entered into by the authority, in accordance with the bylaws and procurement policy of the board***;
- (18) ***Conduct annually an independent audit of the financial condition of the authority; and***

- (19) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843.

Section 5. KRS 342.813 is amended to read as follows:

- (1) Following a nationwide search, the board shall hire a manager, subject to Senate confirmation in accordance with KRS 11.160 who shall serve at the pleasure of the board. The manager shall be compensated at a level determined by the board~~[-, and may be removed by the board in the same manner prescribed in KRS 342.809 for the removal of a member of the board].~~
- (2) The manager shall have proven successful experience for a period of at least five (5) years as an executive at the general management level in insurance operations or in the management of a state fund for workers' compensation.
- (3) The manager shall conduct the day-to-day operations of the authority for the purpose of carrying out the policies and procedures of the board. The~~[-specific]~~ duties of the manager~~[-shall]~~ include, but *are* not~~[-be]~~ limited to:
 - (a) Administering all operations of the authority in accordance with the direction of the board;
 - (b) Recommending to the board an annual administrative budget covering the operations of the authority and, upon approval, submitting the administrative budget, financial status, and actuarial condition of the authority to the Governor and the General Assembly for their examination;
 - (c) Directing and controlling all expenditures of the approved budget;
 - (d) From time to time, upon the recommendation of an actuary, recommending to the board actuarially-sound rating plans, and the amount of dividends, if any, to be returned to policyholders;
 - (e) Investing the assets of the authority under the guidance of the board and in accordance with the provisions of Subtitle 7 of KRS Chapter 304;
 - (f) ***Recommending to the board and administering***~~[-Formulating and administering]~~ a system of personnel administration~~[-and employee compensation that uses merit principles of personnel management, includes employee benefits and grievance procedures, and includes in-service training programs];~~
 - (g) Preparing and administering fiscal, payroll, accounting, data processing, and procurement procedures for the operation of the authority;
 - (h) Recommending to the board bylaws and uniform procedures for the management of the authority;
 - (i) Within the limitations of the budget, employing necessary staff personnel ***in accordance with the personnel policies of the board***;
 - (j) Maintaining appropriate levels of property, casualty, and liability insurance as approved by the board to protect directors, officers, employees, and assets of the authority; and
 - (k) Contracting~~[-by competitive bidding]~~ ***in accordance with Section 4 of this Act***~~[-pursuant to KRS Chapter 45A]~~ for claims administration, safety services, legal defense, actuaries, medical providers, financial services, and other services which the manager elects to obtain outside employed staff.
- (4) The manager may:
 - (a) Reinsure any risk or part of any risk;
 - (b) Cause to be inspected and audited the payrolls of policyholders or employers applying to the authority for insurance;
 - (c) Establish procedures for adjusting claims in accordance with this chapter; *and*
 - (d)~~[-Contract with physicians, surgeons, hospitals, and other health care providers for medical and surgical treatment provided by this chapter;~~
 - (e)~~[-Contract with qualified third party entities to assist in the development and formulation of rates and rating plans; and~~

~~(4)~~ Require policyholders to maintain an adequate deposit to provide security for periods of coverage for which premiums have not been paid.

- (5) The manager shall give an official bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the authority.
- (6) The provisions of KRS Chapters 18A and 64~~[relating to salaries, salary limits, or benefits]~~ shall not apply to the board, the manager, or the staff of the authority; **however, the board shall adopt a system of personnel administration that includes benefits, grievance procedures, training and compensation.**

Section 6. KRS 342.823 is amended to read as follows:

- (1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities, except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners.
- (2) The ~~authority~~~~board~~ shall **file reports required by KRS 304.3-240**~~[submit an annual independently audited financial statement in accordance with procedures governing annual statements adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year].~~
- (3) **The authority shall file a report not later than March 31 of each year indicating**~~[The statement shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the co-chairs of the Legislative Research Commission. It shall indicate]~~ the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. **The report shall be a public record and shall be delivered to the Governor, commissioner of insurance, Auditor of Public Accounts, Attorney General, and the co-chairs of the Legislative Research Commission.** Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

- (a) A summary of the prior quarterly reports required in KRS 342.821;
- (b) **A management**~~[An actuarial]~~ projection of **the future** solvency status for **the authority**~~[at least ten (10) years in the future];~~ and
- (c) Any recommendations pertaining to the same.

- ~~(4)~~~~(3)~~ **The authority shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:**

- (a) **That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts, Attorney General, and Legislative Research Commission; and**
- (b) **That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.**

- (5) If at any time the assets of the authority are less than its liabilities, the board may levy an assessment on its policyholders~~[The board may enforce payment of the assessment]~~ in the manner provided in Subtitle 24 of KRS Chapter 304.

Section 7. KRS 342.841 is amended to read as follows:

- (1) The board shall comply with KRS Chapter 61 in regard to open meetings and **open records in** the conduct of ordinary business. **In addition to the exemptions listed in KRS Chapter 61, proceedings to discuss rates, proposed rates, or anything that relates to rates if that discussion would jeopardize the competitiveness of the authority may be closed, as well as,**~~[except that]~~ proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth~~[may be closed to the public. The authority shall act as any other domestic mutual insurance company with regard to all of its records. Any request for records shall be in writing. Any records requested shall be in pursuit of the investigation, and the confidentiality of the information in the records shall be maintained].~~
- (2) **All records of the authority shall be deemed open records and subject to public inspection, unless:**
 - (a) **The record is excluded from inspection under KRS Chapter 61;**

- (b) *The record includes information that would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth;*
- (c) *In addition to the exemption provided by KRS 61.878(1)(c)1., the record is generated by the authority, generally recognized as confidential or proprietary, and which if openly disclosed would permit an unfair commercial advantage to competitors of the authority or other entity to which the record relates; and*
- (d) *The record relates to a fraud investigation conducted by the authority and that does not become evidence in a criminal or civil action.*

Section 8. KRS 342.843 is amended to read as follows:

- (1) The Attorney General and the Auditor of Public Accounts shall ~~continuously~~ monitor the operations of the authority.
- (2) Either the Attorney General or the Auditor of Public Accounts, or both, may make *at any time* any *examinations or* investigations, jointly or severally, of the operations, practices, management, or other matters relating to the authority as they deem necessary. *Either of them shall have the power to subpoena witnesses and records for these purposes, and otherwise to compel the giving of evidence for any matter under study. The Attorney General, the Auditor of Public Accounts, or any employee authorized by either of them may require the giving of this evidence under oath and may administer the oath. Any person voluntarily providing information or evidence may be required to do so under oath administered by the Attorney General, the Auditor of Public Accounts, or any employee authorized by either of them. If any person fails or refuses to testify or furnish documentary evidence concerning any matter requested, the Franklin Circuit Court, on application of either the Attorney General or the Auditor of Public Accounts or both, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or of a refusal to testify in the Circuit Court.*
- (3) The Attorney General and the Auditor of Public Accounts shall have *without restriction*:
 - (a) Full access to all records of the authority, *except that confidential medical records of employees of insureds are available only by subpoena;*
 - (b) Full access to all financial transactions and investigations of the authority; *and*
 - (c) *The right to attend all meetings of the board and its committees* ~~[The right of subpoena; and~~
 - ~~(d) Full access to claims, records, and supporting data].~~
- (4) If fraud, mismanagement, illegal activity, imprudent practices, or other deficiencies are found in the operations or other practices of the authority, the Attorney General or Auditor of Public Accounts, or both shall:
 - (a) Recommend internal corrective action;
 - (b) Institute a civil action or action for injunctive relief to compel corrective action;
 - (c) Institute criminal proceedings against any officer or employee of the authority or any other person, as defined in KRS 446.010, as may be necessary; or
 - (d) Any combination of the above listed actions or any other form of action reasonably calculated to assure efficient and honest operations of the authority and those involved with it.
- (5) *The Attorney General and the Auditor of Public Accounts shall report jointly to the General Assembly in January of each year in which the General Assembly convenes in regular session the results of the monitoring activities required by this section.*

Section 9. If the reorganization of the Department of Personnel into the Personnel Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Commissioner of the Department of Personnel appearing in subsection (2)(b) of Section 1 of this Act shall be codified as the Secretary of the Personnel Cabinet.

Section 10. If the reorganization of the Department of Personnel into the Personnel Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to "and the commissioner of personnel" appearing in subsections (4) and (6) of Section 3 of this Act shall be deleted.

Approved April 7, 1998

CHAPTER 362

(HB 714)

AN ACT relating to the Education Professional Standards Board.

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

Section 1. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
 - (a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
 - (b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2)
 - (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.
 - (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
 - (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
 - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
 - (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is an employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is certified for the position he holds, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.

- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
- (g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in ~~any~~^[a] position ~~in the district~~~~[which involves supervisory or disciplinary power over a minor,]~~ any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.~~[Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.]~~
- (4) (a) *Beginning January 1, 1999, a superintendent shall require a national and state criminal background check on all new certified hires in the school district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.*
- (b) *The superintendent shall require that each new certified hire, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Kentucky State Police and the Federal Bureau of Investigation.*
- (c) *All fingerprints requested under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.*
- (d) *The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.*
- (5) *A superintendent shall require a state criminal background check on all classified initial hires.*
- (a) *The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Kentucky State Police.*
- (b) *Any request for records under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The results of the state criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.*
- (6) (a) If a school term has begun and a *certified or classified* position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the *criminal history background check*~~[required records]~~. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
- (b) Employment shall be contingent on the receipt of *the criminal history background check*~~[records]~~ documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

- (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the *school* district of a ***criminal history background check***~~[record]~~ documenting a ***record of a sex crime or as a violent offender***~~[criminal act]~~ as defined in ***KRS 17.165***~~[above]~~ and no further procedures shall be required.
- (d) ***The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.***
- ~~(7)(5)~~ (a) Each application or renewal form, provided by the employer to ~~an~~~~the~~ applicant ***for a classified position***, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A ***STATE CRIMINAL HISTORY BACKGROUND***~~[RECORD]~~ CHECK AS A CONDITION OF EMPLOYMENT."
- (b) ***Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."***
- ~~((6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.~~
- ~~(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.~~

Section 2. KRS 161.027 is amended to read as follows:

- (1) The Education Professional Standards Board, pursuant to KRS 161.028, shall by administrative regulation establish requirements for a preparation program in institutions of higher education for all new applicants for principal certification and establish criteria for admission to the program.
- (2) The Education Professional Standards Board and the Council on Postsecondary Education shall evaluate the preparation programs for principals and maintain only those institutional programs that can demonstrate both the quality and the capability to enroll adequate numbers of students to justify the resources necessary for maintenance of a quality program.
- (3) The Education Professional Standards Board shall develop or select appropriate assessments for applicants seeking certification as principals, including:
- (a) ~~An~~~~A generic~~ assessment ***of the ability to apply knowledge***~~[to assure an acceptable level of communication skills, general knowledge, and professional education concepts related to, but not limited to]~~, instructional leadership, management, and ***supervision***~~[supervisory]~~ skills; and
- (b) A specialized assessment on the current instructional and administrative practices in Kentucky public education.
- (4) The Education Professional Standards Board shall establish the minimum score for successful completion of assessments and shall establish a reasonable fee to be charged applicants for the actual cost of administration of the assessments. The Education Professional Standards Board shall provide for confidentiality of assessment scores.
- (5) The Education Professional Standards Board shall develop an internship program which shall provide for the supervision, assistance, and assessment of beginning principals and assistant principals. The internship shall not be required of applicants who have completed, within a ten (10) year period prior to making application, at least two (2) years of successful experience as a principal in a school situation. The Education Professional Standards Board, by administrative regulation, shall establish the internship program.
- (6) The certification of principals shall require the successful completion of the examinations required by subsection (3) of this section. A one (1) year certificate may be given to a person who has:
- (a) A comparable certificate from another state; or

- (b) All other qualifications except the assessments and is selected as a principal in a district where the superintendent certifies to the Education Professional Standards Board that there is a limited number of applicants to meet the requirements of the school council selecting a principal.

Upon successful completion of the assessments, a certificate shall be issued for an additional four (4) years.

- (7) Upon successful completion of the approved preparation program and the assessments, the **Education Professional Standards Board**~~[chief state school officer]~~ shall issue to the applicant a statement of eligibility for internship valid for five (5) years. If the applicant does not participate in an internship program within the five (5) year period, the applicant shall reestablish eligibility by repeating and passing the assessments in effect at that time **or by completing a minimum of six (6) graduate hours, directly related to instructional leadership, management, or supervision, at a regionally or nationally accredited institution. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility.** Upon obtaining employment for an internship position as principal or assistant principal within the period of eligibility, the applicant shall be issued the appropriate one (1) year certificate for the position.
- (8) All applicants for principal certification, after successfully completing the assessments, shall successfully complete the internship program described in subsection (5) of this section for certification as a principal. If the principal's internship performance is judged to be less than satisfactory pursuant to administrative regulations developed by the Education Professional Standards Board, the principal applicant shall be provided with an opportunity to repeat the internship one (1) time if the applicant is employed by a school district as a principal or assistant principal.
- (9) Following successful completion of the internship program, the principal's certificate shall be extended for four (4) years. Renewal of the certificate shall require the completion of a continuing education requirement as prescribed by the Education Professional Standards Board.

Section 3. KRS 161.028 is amended to read as follows:

- (1) ~~The~~~~[Beginning July 15, 1990, there shall be an]~~ Education Professional Standards Board ~~has~~~~[, with]~~ the authority and responsibility to:
- (a) Establish standards and requirements for obtaining and maintaining a teaching certificate;
 - (b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel;
 - (c) Issue, renew, **revoke**, suspend, **or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate**~~[and revoke teaching certificates];~~
 - (d) Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;
 - (e) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;
 - (f) Maintain data and submit reports to the Governor and the Legislative Research Commission concerning employment trends, **including the number of minority certified employees,**~~[and performance of certificated personnel]~~ and the quality of professional preparation programs~~[- The board shall study the problem of the declining pool of minority teachers in the Commonwealth and submit recommendations for increasing the number of minority teachers to the 1992 Regular Session of the General Assembly];~~
 - (g) Reduce and streamline the credential system to allow greater flexibility in staffing local schools while maintaining standards for teacher competence;
 - (h) Develop a professional code of ethics;
 - (i) Select and evaluate the executive secretary to the board;

- (j) Approve the biennial budget request~~{-}~~ and *advise the commissioner of education on budgetary matters;*
 - (k) Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with revoking certificates; *and*
 - (l) *Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver.*
- (2) (a) The board shall be composed of seventeen (17) members. The chief state school officer and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:
- 1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
 - 2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
 - 3. One (1) member representative of local boards of education; and
 - 4. Three (3) members representative of *postsecondary* institutions~~{- of higher education}~~, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent not-for-profit college or university.
- (b)~~{-}~~ ~~For the initial appointments, the Governor shall designate four (4) members to serve a term of four (4) years; three (3) members to serve a term of three (3) years; three (3) members to serve a term of two (2) years; three (3) members to serve a term of one (1) year.~~
- (e)~~{-}~~ A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.
- (c)~~{(d)}~~ Members of the board shall serve without compensation, but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.
- (d)~~{(e)}~~ A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from his employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.
- (e)~~{(f)}~~ A chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive secretary~~{- appointed by the chief state school officer from the Department of Education staff}~~ shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman. The Department of Education shall provide staff and support for the board.
- (f)~~{(g)}~~ To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.
- (3)~~{-}~~ ~~No later than June, 1997, the board shall develop and submit to the Governor and the Legislative Research Commission plans for the operation of the board after July 15, 1998, including separation of administrative attachment to the Department of Education.~~
- (4)~~{-}~~ The Education Professional Standards Board shall be the successor to the State Board for Elementary and Secondary Education for purposes of performing the duties authorized in KRS 161.027, 161.028, 161.030, 161.042, 161.044, 161.046, 161.048, 161.049, 161.100, 161.115, 161.120, 161.124, and 161.126. Rules,

administrative regulations, and procedures relating to these duties shall not lapse and shall continue in effect until repealed or amended by the Education Professional Standards Board.

Section 4. KRS 161.030 is amended to read as follows:

- (1) Notwithstanding the age of the pupil, the certification of all teachers and other school personnel, in public schools only, is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the common schools, except as provided for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board. After July 15, 1994, all certificate applications and other data collection instruments of the board shall include a request for voluntary information about the applicant's ethnic background. This information shall be available to help local school districts locate minority candidates. A person who holds a certificate prior to this requirement may request that ethnic information be added to his file. Nothing in this section shall preclude the right of an individual in a nonpublic school from seeking voluntary certification by the Education Professional Standards Board.
- (2) Certificates shall be issued *upon written application and in accordance with statutes and regulations in effect at the time of application* to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.
- (3) ~~Initial~~ Certification of all new teachers and *teachers seeking additional certification* ~~reissuance of expired certificates for persons not completing two (2) years of successful teaching experience within the last ten (10) years~~ shall require the successful completion of appropriate assessments prior to certification. The assessments shall be selected by the Education Professional Standards Board and shall measure ~~communication skills, general knowledge, professional education concepts, and~~ knowledge in the specific teaching field of the applicant, *including content of the field and teaching of that content*. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment. The assessments shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the assessments and the approved teacher preparation program, a certificate valid for one (1) year shall be issued. If an out-of-state teacher with less than two (2) years experience comes to Kentucky after the deadline for taking the assessments, a temporary certificate may be issued for a period up to six (6) months provided the local board cannot fill the vacant position with a certified teacher. The teacher shall take the assessments if they are administered during the period of the temporary certificate. The certificate shall be extended for the remainder of the year if the teacher successfully completes the assessments. If the teacher fails the assessments, the temporary certificate shall be valid only for the current semester.
- (4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the assessments shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any assessment to repeat that assessment, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Department of Education shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.
- (5) All new teachers~~[-]~~ and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. The teacher shall be a full-time employee or shall have an annual contract and serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship. The internship may be served in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association. Successful completion shall be determined by a majority vote of the beginning teacher committee. The internship period shall be counted as experience for the purpose of continuing contract status, retirement eligibility, and benefits for single salary experience increments. Upon successful completion of the beginning teacher program, the one (1)

year initial teaching certificate shall be extended for the remainder of the usual duration period established for that particular certificate by Education Professional Standards Board administrative regulations.

- (6) The beginning teacher committee shall be composed of three (3) persons who have successfully completed special training in the supervision and assessment of the performance of beginning teachers as provided in subsection (8) of this section. The committee shall consist of a resource teacher, the school principal of the school where the internship is served, and a teacher educator *appointed by* ~~from~~ a state-approved teacher training institution ~~to be appointed by the president of that institution~~.
- (a) If more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a principal.
 - (b) In unusual situations, the Education Professional Standards Board may permit the assistant principal to serve in lieu of the principal on a beginning teacher committee.
 - (c) If the teacher training institution is unable to provide a member, the district superintendent shall appoint an instructional supervisor from the school district.
 - (d) If the intern is teaching in a regionally or nationally accredited nonpublic school without a principal, the person filling the principal member position may have other appropriate qualifications as required by administrative regulations promulgated by the Education Professional Standards Board.
 - (e) If the teacher training institution is unable to provide a member to serve on the beginning teacher committee in a nonpublic school, the chief officer of the school shall appoint an instructional supervisor or a teacher with like qualifications and responsibilities to serve on the beginning teacher committee in lieu of the teacher educator.
 - (f) The resource teacher shall be appointed by the Department of Education from a pool of qualified resource teachers, and, any statutes to the contrary notwithstanding and to the extent of available appropriations, shall be entitled to be paid a reasonable stipend by the Department of Education for work done outside normal working hours. In the case of a resource teacher in a nonpublic school, payment shall be made directly to the resource teacher by the Department of Education. Priority shall be given to resource teachers ~~with the same certification as the teacher intern~~ in the following order:
 1. ***Teachers with the same certification in the same school;***
 2. ***Teachers with the same certification in the same district;***
 3. Teachers in the same school;
 4. ~~2.~~ Teachers in the same district; and
 5. ~~3.~~ Teachers in an adjacent school district.
 - (g) The committee shall meet with the beginning teacher a minimum of three (3) times per year for evaluation and recommendation with all committee members present. In addition, each member of the committee shall observe the beginning teacher in the classroom a minimum of three (3) times per year. If the teacher's first year performance is judged by the committee to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time if the teacher is employed by a school district.
- (7) The resource teacher shall spend a minimum of seventy (70) hours working with the beginning teacher; twenty (20) of these hours shall be ~~observing the beginning teacher~~ in the classroom setting; fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings. The resource teacher shall have completed at least four (4) years of successful teaching experience as attested to by his or her immediate supervisor or by having achieved tenure and be able to show evidence of continuing professional development by having achieved a master's degree or its equivalent or the accumulation of two thousand (2,000) hours of continuing professional activities.
- (8) By contract with teacher education institutions in the Commonwealth, the chief state school officer shall provide special training for persons who will be serving on the beginning teacher committees. Completion of special training shall be evidenced by successfully passing the assessments as prescribed by the Education Professional Standards Board. A principal hired after July 15, 1996, shall be required to complete the beginning teacher committee training program within one (1) year after his appointment.

- (9) If an applicant establishes eligibility for a one (1) year certificate under the provisions of subsection (3) of this section, but does not become employed on the basis needed to satisfy the one (1) year internship requirement, the applicant shall be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board. The applicant shall remain eligible for the one (1) year certificate, as provided in subsection (3) of this section, and for the opportunity to serve the internship for a period of five (5) years after establishing eligibility. If the internship is not completed within the five (5) year period, the applicant must reestablish eligibility by repeating and passing the assessment program in effect for new teachers at that time or by completing a minimum of six (6) graduate hours toward completion of a graduate program required by administrative regulations promulgated by the Education Professional Standards Board. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility.
- (10) The Education Professional Standards Board shall approve the curricula of any standard college or university, or of any department thereof, for the training of teachers, and shall also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

Section 5. KRS 161.120 is amended to read as follows:

- (1) *The Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding* ~~any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons: [may be revoked by the Education Professional Standards Board for immorality, misconduct in office, incompetency, violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, willful neglect of duty, conviction of a misdemeanor offense under KRS Chapter 510 involving a student, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or being found by the Education Professional Standards Board to have had sexual contact as defined in KRS 510.010(7) with a student, or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification.]~~
- (a) *Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:*
1. *A felony;*
 2. *A misdemeanor under KRS Chapter 508, 509, 510, 522, 525, 529, 530, or 531; or*
 3. *A misdemeanor involving a student or minor.*
- A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;*
- (b) *Having sexual contact as defined in KRS 510.010(7) with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;*
- (c) *Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action;*
- (d) *Demonstrating willful or careless disregard for the health, welfare, or safety of others;*
- (e) *Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;*
- (f) *Possessing, using, or being under the influence of alcohol, which impairs the performance of duties;*
- (g) *Unlawfully possessing or unlawfully using a drug during the performance of duties;*

- (h) *Incompetency or neglect of duty;*
- (i) *Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;*
- (j) *Failing to report as required by subsection (3) of this section;*
- (k) *Failing to comply with an order of the Education Professional Standards Board;*
- (l) *Violating any state statute relating to schools or the teaching profession;*
- (m) *Violating any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or*
- (n) *Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection*

~~[(b) The board may revoke an individual's certificate if the certificate was revoked or voluntarily surrendered in another state on the same or similar grounds provided in this subsection.]~~

- (2) *If an alleged violation is not of a serious nature and the evidence presented to the Education Professional Standards Board, after an appropriate opportunity for the certificate holder to respond, provides clear indication that the alleged conduct did in fact occur, the board may issue a written admonishment to the certificate holder. The certificate holder shall have the right to file a written response within thirty (30) days of the date of the admonishment and to have the response attached to the admonishment. Alternatively, the certificate holder may file a request for a hearing within thirty (30) days of the date of the written admonishment. Upon receipt of a timely request, the board shall set aside the written admonishment and set the matter for a hearing.*
- (3)
 - (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, *address, phone number*, Social Security number, *and* position name ~~and position code~~ of any certified school employee in *the employee's* ~~his~~ district whose contract is terminated or not renewed, for cause *except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure*; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who ~~is~~ otherwise *may* ~~known to~~ have engaged in any actions or conduct *while employed in the school district that* ~~as~~ might reasonably be expected to warrant consideration for *action against the certificate under subsection (1) of this section* ~~revocation~~. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.
 - (b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, *that may warrant action against the certificate under subsection (1) of this section* ~~which are based on immorality, misconduct in office, incompetency, violation of school law or administrative regulation promulgated by the Kentucky Board of Education, willful neglect of duty, or falsification of certification credentials~~, and shall forward copies of all relevant documents and records in his possession.
 - (c) The Education Professional Standards Board may consider reports and information received from other sources.
 - (d) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources and shall have the right to file a written rebuttal which shall be attached to the district superintendent's report.
- (4) *A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.*
- (5) ~~(3)(a)~~ *Before revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate* ~~Upon taking action to initiate proceedings to revoke a certificate~~, the Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B.

- (6)~~(b)~~ *After denying an application for a certificate or issuing a written admonishment, the Education Professional Standards Board shall set the matter for a hearing upon written request filed within thirty (30) days of the letter advising of the denial, refusal, or admonishment.*
- (7) *Upon request, a~~The~~ hearing may be public or private at the discretion of the certified employee or applicant.*
- (8)~~(e)~~ *The hearing shall be conducted ~~before~~ by the full board, a panel of three (3) members of the board, or a person appointed as hearing officer by the board pursuant to KRS 13B.030(1).*
- (9)~~(4)~~ *The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.*
- (10) *If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student which are needed as a result of the sexual contact.*
- (11)~~(5)~~ *Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation.*
- (12)~~(6)~~ *An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court in accordance with KRS Chapter 13B.*

Section 6. The following KRS section is repealed:

161.040 General qualifications for certificates.

Approved April 7, 1998

CHAPTER 363

(HB 708)

AN ACT relating to the use of information technology.

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

SECTION 1. KRS CHAPTER 369 IS HEREBY ESTABLISHED AND A NEW SECTION CREATED TO READ AS FOLLOWS:

Sections 1 to 3 of this Act shall be construed consistent with what is commercially reasonable under the circumstances and to effectuate the following purposes:

- (1) *To facilitate and promote on-line state government services;*
- (2) *To facilitate the flow of authorized electronic records within state government, between the public and private sectors, and between private sector entities; and*
- (3) *To promote public confidence in the integrity and reliability of electronic records.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 1 to 3 of this Act, unless the context expressly requires otherwise:

- (1) *"Electronic" means relating to or by means of electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies;*
- (2) *"Electronic record" means any digital representation of data or information generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another;*
- (3) *"Electronic signature" means an electronic identifier whose use is intended by the person using it to have the same force and effect as the use of a manual signature and containing the following characteristics:*

- (a) *It is unique to the person using it;*
 - (b) *It is capable of verification; and*
 - (c) *It is under the sole control of the person using it; and*
- (4) *"Record" means information that is inscribed, stored, or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 3 of this Act do not apply to:*
- (a) *Any situation in which their application would be inconsistent with the express intent of the parties to a written document;*
 - (b) *Any legal requirement governing the creation or execution of any document that serves to convey rights and obligations under a will or trust;*
 - (c) *Any legal requirement governing the conveyance of any interest in real property;*
 - (d) *Any legal requirement governing the creation or transfer of any negotiable instrument or any instrument establishing title or an interest in title.*
- (2) *Nothing in Sections 1 to 3 of this Act shall be construed to:*
- (a) *Require a recipient or any other person asked to rely on an electronic record or an electronic signature to accept the electronic record or electronic signature or to respond to or act upon an electronic record or electronic signature, unless the parties have freely and voluntarily agreed to the use of an electronic record or electronic signature prior to transmission;*
 - (b) *Preclude the recipient of an electronic record or an electronic signature from establishing the conditions under which the recipient will accept the electronic record or electronic signature, unless the parties have freely and voluntarily agreed to the conditions under which the recipient would accept the electronic record or electronic signature prior to transmission; or*
 - (c) *Require a state or local governmental entity or agency to accept an electronic record or electronic signature, unless the entity or agency has agreed to accept the electronic record or electronic signature in advance of transmission and the manner and medium of transmission is acceptable to the entity or agency.*
- (3) *If all parties to a private sector transaction agree to the use of an electronic record or an electronic signature, or, in dealings with a state or local governmental entity or agency, if that entity or agency agrees to accept an electronic record or an electronic signature:*
- (a) *Information, records, and electronic signatures shall not be denied legal effect, validity, or enforceability solely on the grounds that they are in electronic, duplicate, or imaged form.*
 - (b) *Where a statute or administrative regulation requires a manual signature, or provides for certain consequences if a document is not manually signed, an electronic signature shall have the same force and effect as the use of a manual signature.*
 - (c) *Where a statute or administrative regulation requires information to be "written," or "in writing," or provides for certain consequences if it is not, that statute or administrative regulation shall be satisfied by an electronic record.*
 - (d) *Where a statute or administrative regulation requires information to be presented or retained in its original form, or provides consequences for the information not being presented or retained in its original form, that statute or administrative regulation shall be satisfied by an electronic record if there exists reliable assurance as to the integrity of the data or the information from the time when it was first generated to its final form, as an electronic record or otherwise.*

Section 4. KRS 61.950 is amended to read as follows:

- (1) The commission shall meet at least four (4) times each year and report its findings no less than semiannually to the Legislative Research Commission and the Governor. All reports of the commission shall be made available to the general public. In addition, the commission, upon the call of its officers, may hold meetings at any time it deems necessary.

- (2) The commission's roles and duties shall include the following:
- (a) Providing overall leadership, policy direction, strategic planning, and coordination of information resources management for the executive branch of state government and public universities;
 - (b) Formulation of a five (5) year statewide information resources management plan, to be updated every two (2) years, from long-range information resources management plans submitted by agencies of the executive branch, including the public universities, as the commission may require;
 - (c) Defining, maintaining, and publishing a timely information resources management architecture relating to the management of information resources by executive branch state agencies, and implementing processes and procedures to ensure compliance with the information resources management architecture;
 - (d) Coordinating, through policy and interagency agreements and monitoring, an appropriate program of training and education for executive branch state and local agencies regarding strategic information systems planning, and the selection and use of information technologies to facilitate effective information resources management, appropriate employee skill building, and career development;
 - (e) Promoting executive level awareness, support, and involvement with information resources management throughout the executive branch of government;
 - (f) Reviewing and approving or disapproving, in whole or part, executive branch agency five (5) year strategic information resources plans, and forwarding those plans with findings and recommendations to the agency head, the Governor's Office for Policy and Management, and the Legislative Research Commission for use during the preparation and enactment of the biennial budget. Commission review shall be based upon the extent to which the plan is compliant with statewide information resources standards, policies and guidelines; is suited to supporting the mission of the agency; and furthers implementation of statewide initiatives identified in the statewide plan. As part of the review process, the commission shall monitor and evaluate the progress of the current plan and the executive branch agency's use of information technologies and shall include its assessment of these activities in the findings and recommendations;
 - (g) Identifying and assessing opportunities for multiagency development and use of information resources, or the development of executive branch agency projects which would improve the quality and availability of information. When identifying these opportunities the commission may require executive branch agencies to evaluate the opportunities as alternatives to their own plans, and may forward these findings as provided in paragraph (f) of this subsection;
 - (h) Maintaining supportive relationship and coordinating activities with the adjunct Communications Advisory Council provided for in KRS 61.955 and 61.957, and the Geographic Information Advisory Council established by Executive Order 92-1049, October 1, 1992, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, information technology;
 - (i) Establishing and maintaining relationships with other planning organizations as necessary to ensure coordination and implementation of comprehensive statewide strategies involved with, or affected by, information technology;
 - (j) Reviewing and recommending to the Department of Personnel and other associated agencies appropriate job classifications related to information resources management, to include both technical and managerial positions;
 - (k) Establishing and maintaining an information dissemination service or clearinghouse for:
 - 1. Current practices of state agencies regarding information resources management;
 - 2. Emerging and advancing information resources technologies;
 - 3. Information resources vendor performance in the public sector;
 - 4. Technical resources in the Commonwealth; and
 - 5. Elements of the information resources management architecture;

- (l) Establishing and maintaining research and development capacity for beneficial applications of information resources technology for the state's public sector, which includes:
 - 1. Conducting research on current and emerging information resources technologies and their potential to enhance governmental services; and
 - 2. Sponsoring and evaluating pilot projects to assist with the successful adoption by other state agencies;
 - (m) Fostering and encouraging the interest and cooperation of the state information resources technology community for improvement and enhancement of public services delivery;
 - (n) Serving as catalyst for information technology advancements in the public sector;
 - (o) Recommending procedures and legislation to improve the accessibility of machine readable public records by state agencies, citizens, and businesses; and
 - (p) Recommending procedures and legislation to ensure the privacy of individuals, with particular emphasis on the potential for invasion of individual privacy.
- (3) Nothing in KRS 61.940, 61.945, or this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.
 - (4) The commission may promulgate necessary administrative regulations for the furtherance of this section, *including administrative regulations establishing electronic signature standards for the executive branch of state government.*
 - (5) The commission may establish committees or work groups composed of commission and noncommission members as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Persons connected with the automated information and communications resources industries, as specified in KRS 61.945, may participate on committees or work groups, but shall not have a vote.
 - (6) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.

Approved April 7, 1998

CHAPTER 364

(HB 697)

AN ACT relating to local government code enforcement boards.

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

Section 1. KRS 65.8808 is amended to read as follows:

- (1) The legislative body of a local government may, by ordinance, create a code enforcement board which shall have the power to issue remedial orders and impose civil fines as a method of enforcing a local government ordinance when a violation of the ordinance has been classified as a civil offense in accordance with this section.
- (2) Subject to the limitations set forth in subsection (3) of this section, the legislative body of a local government may elect to enforce any ordinance of the local government, *including any zoning ordinance or regulation*, by classifying a violation of the ordinance as a civil offense and establishing civil fines which may be imposed on any person who commits a violation of the ordinance. If a local government elects to enforce an ordinance as a civil offense, the ordinance, by its express terms, shall provide:
 - (a) That a violation of the ordinance is a civil offense;
 - (b) A maximum civil fine that may be imposed for each violation of the ordinance; and
 - (c) A specific civil fine of less than the maximum civil fine that will be imposed for each offense if the person who has committed the offense does not contest the citation.
- (3) No legislative body of a local government shall classify the violation of an ordinance as a civil offense if the *same conduct that is regulated by the ordinance* ~~violation~~ would also constitute *a criminal offense or a*

~~*moving motor vehicle offense* [an offense] under any provision of the Kentucky Revised Statutes, including specifically, and without limitation, any provision of the Kentucky Penal Code and any moving motor vehicle offense.~~

Section 2. KRS 65.8811 is amended to read as follows:

- (1) A code enforcement board shall consist of either **three (3)**, five (5), or seven (7) members who shall be appointed by the executive authority of the local government, subject to the approval of the legislative body.
- (2) (a) ***The initial appointments to a three (3) member code enforcement board shall be as follows:***
 1. ***One (1) member appointed for a term of one (1) year;***
 2. ***One (1) member appointed for a term of two (2) years; and***
 3. ***One (1) member appointed for a term of three (3) years.***
- (b) The initial appointments to a five (5) member code enforcement board shall be as follows:
 1. One (1) member appointed for a term of one (1) year;
 2. Two (2) members appointed for a term of two (2) years each; and
 3. Two (2) members appointed for a term of three (3) years each.
- (c) ~~(b)~~ The initial appointments to a seven (7) member code enforcement board shall be as follows:
 1. Two (2) members appointed for a term of one (1) year each;
 2. Three (3) members appointed for a term of two (2) years each; and
 3. Two (2) members appointed for a term of three (3) years each.

All subsequent appointments shall be made for a term of three (3) years.

- (3) Each member of a code enforcement board shall have resided within the boundaries of the local government unit for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.
- (4) A member may be reappointed, subject to approval of the legislative body.
- (5) Any vacancy on a code enforcement board shall be filled within sixty (60) days by the executive authority, subject to the approval of the legislative body. If a vacancy is not filled by the executive authority within sixty (60) days, the remaining members of the code enforcement board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.
- (6) Any member of a code enforcement board may be removed by the appointing authority for misconduct, inefficiency, or willful neglect of duty. Any appointing authority who exercises the power to remove a member of a code enforcement board shall submit a written statement to the member and to the legislative body of the local government setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.
- (7) All members of a code enforcement board shall, before entering upon their duties, take the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky.
- (8) The members of a code enforcement board may be reimbursed for expenses or compensated, or both, as specified in the ordinance creating the board.
- (9) No member of a local government code enforcement board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the unit of local government ***that has created the code enforcement board*** ~~[of which he is a member]~~.
- (10) Each legislative body ***that elects to establish a*** ~~[of a local government]~~ code enforcement board is encouraged to provide opportunities for education regarding pertinent topics for the members of the code enforcement ***board*** ~~[boards]~~.

Section 3. KRS 65.8815 is amended to read as follows:

- (1) The board shall, upon the initial appointment of its members, and annually thereafter, elect a chair from among its members, who shall be the presiding officer and a full voting member of the board. In the absence of the chair, the remaining members of the board shall select one (1) of their number to preside in place of the chair and exercise the powers of the chair.
- (2) Meetings of the code enforcement board shall be held as specified in the ordinance creating the board.
- (3) The presence of *two (2) or more members shall constitute a quorum on a three (3) member board, the presence of* three (3) or more members shall constitute a quorum on a five (5) member board, and the presence of four (4) or more members shall constitute a quorum on a seven (7) member board. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of a code enforcement board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for purposes of establishing a quorum.
- (4) Minutes shall be kept for all proceedings of the code enforcement board and the vote of each member on any issue decided by the board shall be recorded in the minutes.
- (5) All meetings and hearings of the code enforcement board shall be open to the public.
- (6) The local government legislative body shall provide clerical and administrative personnel as reasonably required by its code enforcement board for the proper conduct of its duties.

Section 4. KRS 65.8828 is amended to read as follows:

- (1) When a hearing before the code enforcement board has been requested, the code enforcement board, through its clerical and administrative staff, shall schedule a hearing. ~~The hearing shall be conducted within fourteen (14) days of the date of the request, unless the person who requested the hearing requests or agrees to a continuance not to exceed fourteen (14) days.~~ Not less than seven (7) days before the date set for the hearing, the code enforcement board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing before the code enforcement board who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.
- (2) Each case before a code enforcement board ~~may~~**shall** be presented by an attorney selected by the local government or by a member of the administrative staff of the local government. ~~An~~**The** attorney ~~may~~**shall** either be counsel to the code enforcement board or ~~may~~**shall** represent the local government by presenting cases before the code enforcement board, but in no case shall ~~an~~**the** attorney serve in both capacities.
- (3) All testimony shall be under oath and shall be recorded. The code enforcement board shall take testimony from the code enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (4) At the hearing, the code enforcement board shall determine, based on the evidence presented, whether a violation was committed. When the board determines that no violation was committed, an order dismissing the citation shall be entered. When the board determines that a violation has been committed, the board shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by ordinance.
- (5) Every final order of a code enforcement board shall be reduced to writing, which shall include the date the order was issued, and a copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order of the board is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

Section 5. KRS 65.8831 is amended to read as follows:

- (1) An appeal from any final order issued by a code enforcement board may be made to the District Court of the county in which the local government is located within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the board's order in the same manner as any civil action under the Rules of Civil Procedure. ~~The *appeal shall be limited to a review of the record created before the code enforcement board* [action shall be tried de novo and the burden shall be upon the local government to establish that a violation has occurred. If the court finds that a violation occurred, judgment shall be entered ordering the offender to pay to the local government all fines assessed for the violation and all charges and fees incurred by the local government as of the date of the judgment in connection with the enforcement of the ordinance. If the court finds a violation did not occur, the complaint shall be dismissed and the plaintiff shall be authorized to recover his costs].~~
- (2) A judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.
- (3) If no appeal from a final order of a code enforcement board is filed within the time period set forth in this section, the code enforcement board's order shall be deemed final for all purposes.

Approved April 7, 1998

CHAPTER 365

(HB 696)

AN ACT relating to income taxation.

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

Section 1. KRS 141.010 is amended to read as follows:

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

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

- (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam; and
 - (i)
 - 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 - 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 - 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code; ~~and~~
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this

chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

- (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction;~~and~~
- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
and
- (e) ***"Taxable net income" in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code;***
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Approved April 7, 1998

CHAPTER 366

(HB 680)

AN ACT relating to sales and use tax exemptions for agriculture.

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

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) **Baling twine and baling wire for the baling of hay and straw;**
- (11) Machinery for new and expanded industry;
- ~~(12)(11)~~ Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- ~~(13)(12)~~ Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the

facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;

- ~~(14)~~~~(13)~~ Tombstones and other memorial grave markers;
- ~~(15)~~~~(14)~~ On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- ~~(16)~~~~(15)~~ On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.
- ~~(17)~~~~(16)~~ Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:
 - (a) "Gasoline" is defined as in KRS 138.210(4);
 - (b) "Special fuels" is defined as in KRS 138.560(3);
 - (c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and
 - (d) "Agricultural purposes" is defined as in KRS 138.343(4);
- ~~(18)~~~~(17)~~ Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- ~~(19)~~~~(18)~~ Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- ~~(20)~~~~(19)~~ Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- ~~(21)~~~~(20)~~ Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- ~~(22)~~~~(21)~~ Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- ~~(23)~~~~(22)~~ Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- ~~(24)~~~~(23)~~ Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- ~~(25)~~~~(24)~~ Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems,

ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

- (26)~~(25)~~ Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000; and
- (27)~~(26)~~ Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000.

Approved April 7, 1998

CHAPTER 367

(HB 668)

AN ACT relating to government.

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

Section 1. KRS 30A.060 is amended to read as follows:

- (1) Each clerk shall prepare in a proper manner every bond to be taken by or given before him or his court.
- (2) The clerk shall refuse any surety offered in a bond to be taken by him who is, in his opinion, insufficient.
- (3) The clerk shall prepare bail bonds as required by subsection (1) of this section; however, **additional public officials and their employees shall be authorized by rule or order of the Chief Circuit Judge to** ~~any other bonded public officers may~~ prepare and accept bail bonds to be taken by the clerk or for his court. Such bail bonds shall have the same validity as if prepared or taken by the clerk.

Section 2. KRS 186.490 is amended to read as follows:

The circuit clerk of each county shall:

- (1) Comply with all rules and regulations issued by the cabinet under KRS 186.400 relating to his duties;
- (2) Act for the cabinet for the purpose of issuing temporary operator's licenses and instruction permits;
- (3) Administer the oath required by KRS 186.412 to the applicant without fee;
- (4) Report and remit ~~monthly each Monday~~ to the state all moneys collected during the preceding ~~month~~ ~~week~~ and remit a copy of all applications taken by him during the same period to the Transportation Cabinet. Upon failure of any clerk to report and remit therefor more than seven (7) days after the due date, he shall pay, in addition to the amount due, a penalty of ten percent (10%) of the amount due. Penalties collected under this section shall be paid into the State Treasury as a part of the revenue collected under KRS 186.531;
- (5) Keep adequate records of all moneys collected and remitted to the state; and

- (6) Keep in his office at all times available to the cabinet a record of all temporary licenses issued in his county, all denials, cancellations, suspensions, revocations or withdrawals of operator's licenses or motorcycle operator's licenses within his county and, to the extent that he is advised, of all other withdrawals of the privilege to operate a motor vehicle on the highways.

Section 3. KRS 186.531 is amended to read as follows:

- (1) The cost of operators' licenses and permits shall be as follows:
- (a) The fee for a four (4) year original or renewal motor vehicle license shall be eight dollars (\$8);
 - (b) The fee for a four (4) year original or renewal motorcycle operator's license shall be twelve dollars (\$12) and a combination motor vehicle-motorcycle operator's license shall be eighteen dollars (\$18);
 - (c) The fee for an instruction permit for a motor vehicle shall be two dollars (\$2) plus four dollars (\$4) for preparing and acknowledging the application;
 - (d) The fee for an instruction permit for a motorcycle shall be five dollars (\$5) plus one dollar (\$1) for preparing and acknowledging the application;
 - (e) The fee for a duplicate license shall be six dollars (\$6);
 - (f) The fee for an identification card shall be four dollars (\$4). The fee for a duplicate identification card shall be two dollars (\$2); and
 - (g) Any applicant under the age of twenty-one (21) who meets the requirements for the issuance of a valid driver's license shall be issued a license valid until the date the applicant attains the age of twenty-one (21). The fee for the license shall be two dollars (\$2) per year for the requisite number of years as set forth herein. The applicant shall have thirty (30) days after his twenty-first birthday in which to renew his driver's license.
- (2) Except as provided in subsection (3) of this section, the circuit clerk shall deposit in the State Treasury to the credit of the general fund except as provided in *paragraph (a)*, paragraph (f), and paragraph (g) of this subsection fees pertaining to applications and license fees in the following manner:
- (a) ***Twenty-two per cent (22%) of the cost for the issuance of any original and renewal license shall be deposited in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees and providing salary adjustments for employees.*** ~~One dollar and seventy five cents (\$1.75) of any original and renewal license, except that the fee for a combination motor vehicle-motorcycle operator's license shall be three dollars (\$3);~~
 - (b) One dollar (\$1) for issuance of any instruction permit;
 - (c) One dollar (\$1) for preparing and acknowledging an application for an instruction permit;
 - (d) One dollar and twenty-five cents (\$1.25) for preparing and acknowledging an application for a duplicate;
 - (e) One dollar and twenty-five cents (\$1.25) for each identification card;
 - (f) For each original or renewal license one dollar (\$1) shall be credited to a special account within the state road fund and shall be used by the Transportation Cabinet exclusively for the purpose of issuing a photo license. For each original or renewal motorcycle operator's license and each motorcycle instruction permit, four dollars (\$4) shall be credited to a special account within the state road fund and shall be used exclusively for the purpose of the motorcycle safety education program fund pursuant to KRS 186.890; ~~and~~
 - (g) An applicant for an original or renewal motor vehicle operator's license, commercial driver's license, or motorcycle operator's license shall have the opportunity to make a donation of one dollar (\$1) to promote an organ donor program. The one dollar (\$1) donation shall be added to the regular fee for an original or renewal motor vehicle operator's license, commercial driver's license, or motorcycle operator's license. One (1) donation may be made per issuance or renewal of a license or any combination thereof. The fee shall be paid to the circuit clerk and shall be retained by the clerk to be used exclusively for the purpose of promoting an organ donor program. Organ donation shall be voluntary and may be refused by the applicant at the time of issuance or renewal of a license; ***and***
 - (h) ***Three dollars (\$3) for a combination motor vehicle-motorcycle operator's license.***

- (3) The following fees shall be deposited in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees, providing salary adjustments for employees, providing training for employees, and purchasing additional equipment used in administering the issuance of driver's licenses:
- (a) One dollar (\$1) for issuing of an instruction permit;
 - (b) Three dollars (\$3) for preparing and acknowledging an application for an instruction permit;
 - (c) Four dollars (\$4) for preparing and acknowledging an application for a duplicate license;
 - (d) Ten dollars (\$10) for preparing and acknowledging an application for a reinstatement fee; and
 - (e) These fees shall be in addition to other funds provided to the circuit clerk through the regular appropriation made by the General Assembly to the Administrative Office of the Courts.
- (4) The remainder of all fees, and other moneys collected by the circuit clerk shall be forwarded to the state.

Approved April 7, 1998

CHAPTER 368

(HB 659)

AN ACT relating to victims of crime.

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

Section 1. KRS 346.020 is amended to read as follows:

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

- (1) "Board" means the Crime Victims Compensation Board;
- (2) "Child" means any person less than eighteen (18) years of age;
- (3) "Claimant" means any of the following claiming compensation under this chapter: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them who is legally responsible for the expenses incurred by the victim as a result of the crime committed against the victim;
- (4) "Criminally injurious conduct" means conduct that occurs or is attempted in this jurisdiction, poses a substantial threat of personal physical, psychological injury, or death, and is punishable by fine, imprisonment, or death. ***Criminally injurious conduct shall include an act of terrorism, as defined in 18 U.S.C. sec. 2331, committed outside of the United States against a resident of Kentucky.*** Acts which, but for the insanity or mental irresponsibility or lack of capacity of the perpetrator, would constitute criminal conduct shall be deemed to be criminally injurious conduct. The operation of a motor vehicle, motorcycle, train, boat, aircraft, or other vehicle in violation of law does not constitute a criminally injurious conduct unless the injury or death was intentionally inflicted or involved a violation of KRS 189A.010, driving under the influence;
- (5) "Family," when used with reference to a person, shall mean:
 - (a) Any person related to such person within the third degree of consanguinity;
 - (b) Any person maintaining a sexual relationship with such person; or
 - (c) Any person residing in the same household with such person; and
- (6) (a) "Victim" means a needy person who suffers personal physical or psychological injury or death from a criminal act in Kentucky as a result of:
 - 1. Criminally injurious conduct;
 - 2. A good faith effort to prevent criminally injurious conduct; or
 - 3. A good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

- (b) "Victim" shall also mean a resident who is a victim of a crime occurring outside this state if:
1. The crime would be compensable had it occurred inside this state; and
 2. The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in KRS 346.050.
- (c) *"Victim" shall also mean a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. sec. 2331, committed outside the United States.*

Approved April 7, 1998

CHAPTER 369

(HB 658)

AN ACT relating to farm safety.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

In order to educate the citizens of the Commonwealth on the significance and importance of farm safety, the department shall assist counties in implementing farm safety programs by making grants when funds are available to eligible county organizations to assist the organizations in promoting their farm safety programs.

SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *For a county organization to be eligible for funding, the following requirements shall be met:*
- (a) *The organization shall be incorporated as nonprofit under KRS Chapter 273; and*
 - (b) *The organization shall submit a business plan to the department detailing how the corporation will operate and how it intends to incorporate a farm safety plan in its overall farm safety program.*
- (2) *If the county organization's business plan is approved by the department, and if funding is available, the department shall distribute a grant of one thousand dollars (\$1,000) to the organization.*
- (3) *The county organization shall make an annual written report to the department regarding the activities of the organization's farm safety program and the disposition of the grant money.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

The commissioner may promulgate administrative regulations to carry out the provisions of Sections 1 to 3 of this Act.

Approved April 7, 1998

CHAPTER 370

(HB 652)

AN ACT relating to elder abuse.

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

Section 1. KRS 209.020 is amended to read as follows:

As used in this chapter unless the context otherwise requires:

- (1) "Secretary" means the secretary of the Cabinet for Human Resources;
- (2) "Cabinet" means the Cabinet for Human Resources;
- (3) "Department" means the Department for Social Services of the Cabinet for Human Resources;
- (4) "Adult" means:
 - (a) A person eighteen (18) years of age or older ~~or a married person without regard to age~~, who because of mental or physical dysfunctioning, ~~or who is the victim of abuse or neglect inflicted by a spouse,~~ is

unable to manage his own resources ~~or~~ carry out the **activity**~~[activities]~~ of daily living~~[]~~ or protect himself from neglect, **or a** hazardous or abusive **situation**~~[situations]~~ without assistance from others, and **who** may be in need of protective services; **or**

(b) A person without regard to age who is the victim of abuse and neglect inflicted by a spouse;

- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he obtains suitable care in or out of his home;
- (6) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement;
- (7) "Abuse~~[or neglect]~~" means the infliction of physical pain, **mental injury, or injury of an adult**~~[, or mental injury, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which an adult, living alone, is unable to provide or obtain for himself the services which are necessary to maintain his health or welfare or a situation in which a person inflicts physical pain or injury upon a spouse or deprives a spouse of reasonable services necessary to maintain the health and welfare of his spouse];~~
- (8) "Exploitation" means the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person;
- (9) "Investigation" shall include, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse, or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
- (10) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
- (11) "Emergency protective services" are protective services furnished an adult in an emergency;
- (12) "Protective placement" means the transfer of an adult from his present living arrangement to another;~~[and]~~
- (13) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;
- (14) **"Access to records" means that any representative of the Cabinet for Human Resources actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall be allowed access to the medical, mental, health, and financial records of the adult that are in the possession of any individual, hospital, firm, corporation or other facility, if necessary to complete the investigation mandated in this chapter; and**
- (15) **"Neglect" means a situation in which an adult is unable to perform or obtain for himself the services which are necessary to maintain his health or welfare, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which a person deprives his spouse of reasonable services to maintain health and welfare.**

Section 2. KRS 209.030 is amended to read as follows:

- (1) The secretary may, within his discretion, adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary to effect the purpose of this chapter insofar as such action is reasonably calculated to serve the public interest. The secretary may take necessary action and may offer or cause to be offered protective services toward safeguarding the welfare of an adult who has experienced abuse or neglect, inflicted or caused by a spouse.
- (2) Any person, including, but not limited to, physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in

accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

- (3) An oral or written report shall be made immediately to the cabinet upon knowledge of the occurrence of suspected abuse, neglect, or exploitation of an adult. Any person making such a report shall provide the following information, if known: The name and address of the adult, or of any other person responsible for his care; the age of the adult; the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; the identity of the perpetrator, if known; the identity of the complainant, if possible; and any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation.
- (4) Upon receipt of the report, the cabinet shall take the following action as soon as practical:
 - (a) Notify the appropriate law enforcement agency;
 - (b) Initiate an investigation of the complaint; and
 - (c) Make a written report of the initial findings together with a recommendation for further action, if indicated.
- (5) Any representative of the cabinet may enter any health facility or health service licensed by the cabinet at any reasonable time to carry out the cabinet's responsibilities under this chapter. Any representative of the cabinet actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall also be allowed access to the mental and physical health records of the adult which are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this chapter.
- (6) Any representative of the cabinet may with consent of the adult or caretaker enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter. If the adult or caretaker does not consent to the investigation, a search warrant may issue upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the cabinet to proceed with the investigation.
- (7) If a determination has been made that protective services are necessary when indicated by the investigation, the cabinet shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.
- (8) In the event the adult elects to accept the protective services to be provided by the cabinet, the caretaker shall not interfere with the cabinet when rendering such services.

Section 3. KRS 209.100 is amended to read as follows:

- (1) If an adult lacks the capacity to consent to receive protective services in an emergency, these services may be ordered by a court on an emergency basis through an order pursuant to KRS 209.110, provided that:
 - (a) The adult is in a state of abuse or neglect and an emergency exists;
 - (b) The adult is in need of protective services;
 - (c) The adult lacks the capacity to consent ~~and/or refuses~~ ~~[refuse]~~ to consent to such services; and
 - (d) No person authorized by law or court order to give consent for the adult is available to consent to emergency protective services or such person refuses to give consent.
- (2) In ordering emergency protective services, the court shall authorize only that intervention which it finds to be the least restrictive of the individual's liberty and rights while consistent with his welfare and safety.

Section 4. KRS 209.120 is amended to read as follows:

- (1) Upon petition by the cabinet a court may issue an order authorizing the provision of emergency protective services to an adult after a hearing and upon a finding based on a preponderance of the evidence that:
 - (a) The adult is in a state of abuse, ~~or~~ neglect, **or exploitation** and is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
 - (b) The adult is in need of protective services;
 - (c) The adult lacks the capacity to consent to such services; and

- (d) No person authorized by law or court order to give consent for the adult is available to consent to protective services or such person refuses to give consent.
- (2) In issuing an emergency order the court shall adhere to the following limitations:
- (a) Only such protective services, including medical and surgical care and protective placement, as are necessary to remove the conditions creating the emergency shall be covered, and the court shall specifically designate the approved services in its order. Such designation of approved services shall be deemed to be the consent of the court authorizing the provision of such services.
 - (b) Protective services authorized by the court shall not include hospitalization or protective placement unless the court specifically finds such action is necessary and gives specific approval for such action in its order.
 - (c) The issuance of an emergency order shall not deprive the adult of any rights except to the extent validly provided for in the order.
 - (d) To implement an order, the court may authorize forcible entry of the premises of the adult for the purpose of rendering protective services or transporting the adult to another location for the provision of such services. Authorized forcible entry shall be accomplished by a peace officer accompanied by a representative of the cabinet.
- (3) If the court finds, pursuant to a hearing, that the adult is in need of protective services, and should that adult have a guardian who has been derelict in providing for the welfare of the adult, the court shall have the discretion to remove the guardian and appoint another guardian, if an individual is available, willing, and able to function as guardian; such removal and appointment shall be in compliance with the provisions of KRS Chapter 387. It is not necessary for the court to find a guardian has been derelict as a requirement for the issuance of an order for protective services.
- (4) If the court finds that protective services are no longer needed by the adult, the court shall order the emergency protective services to terminate.

Section 5. KRS 209.990 is amended to read as follows:

- (1) Anyone knowingly and willfully violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.
- (2) Any caretaker who knowingly and willfully abuses, neglects, or exploits an adult within the meaning of this chapter, and in so doing causes serious physical or mental injury or permanent disability to such an adult, is guilty of a Class C felony, or if such abuse, neglect, or exploitation causes minor physical or mental injury or temporary disability to the adult, the caretaker is guilty of a Class A misdemeanor.
- (3) ***Any person who knowingly and willfully financially exploits an adult within the meaning of this chapter is guilty of a Class C felony.***

SECTION 6. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Cabinet for Human Resources shall create an Elder Abuse Committee to develop a model protocol on elder abuse and neglect in the Commonwealth, that shall be comprised of various state agency representatives from the following list:***
 - (a) ***The Department for Social Services;***
 - (b) ***The Department for Social Insurance;***
 - (c) ***The Department for Public Health;***
 - (d) ***The Department for Mental Health and Mental Retardation;***
 - (e) ***The Division of Aging;***
 - (f) ***The Division of Licensing and Regulation;***
 - (g) ***The Office of the Ombudsman; and***
 - (h) ***Area Agencies on Aging.***

- (2) *The committee shall address issues of prevention, intervention, and agency coordination of services on a state and local level through interaction with local groups or entities that either directly or indirectly provide services to the elder population, including, but not limited to:*
- (a) *Senior citizen centers;*
 - (b) *Local governmental human service groups;*
 - (c) *The Sanders-Brown Center on Aging at the University of Kentucky;*
 - (d) *Long Term Care Ombudsmen; and*
 - (e) *Other organizations or associations dedicated to serving elder citizens and their families in the Commonwealth.*
- (3) *The committee shall:*
- (a) *Explore the need for a comprehensive statewide resource directory of services for the elderly;*
 - (b) *Enhance existing public awareness campaigns for elder abuse and neglect; and*
 - (c) *Provide forums for the exchange of information to educate the elder population and their families on the rights of elders.*
- (4) *The committee shall produce an annual report of their activities, products, and recommendations for public policy to the Governor and the Legislative Research Commission.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

The cabinet shall promulgate administrative regulations for the provision of general adult services to include uniform criteria for adult intake and appropriate and necessary service provision.

Section 8. KRS 311.625 is amended to read as follows:

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

"Living Will Directive

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

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

Any prior designation is revoked.

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

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

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

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

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

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

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

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

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

Signed this day of, 19...

Signature and address of the grantor.

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

Signature and address of witness.

Signature and address of witness.

OR

STATE OF KENTUCKY)

.....County)

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

Done this day of, 19...

Signature of Notary Public or other officer.

Date commission expires:.....

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

- (2) An ~~advance~~^{advanced} directive shall be in writing, dated, and signed by the grantor, or at the grantor's direction, and either witnessed by two (2) or more adults in the presence of the grantor and in the presence of each other, or acknowledged before a notary public or other person authorized to administer oaths. None of the following shall be a witness to ***or serve as a notary public or other person authorized to administer oaths in regard to*** any advance directive made under this section:
- (a) A blood relative of the grantor;
 - (b) A beneficiary of the grantor under descent and distribution statutes of the Commonwealth;
 - (c) An employee of a health care facility in which the grantor is a patient, unless the employee serves as a notary public;
 - (d) An attending physician of the grantor; or
 - (e) Any person directly financially responsible for the grantor's health care.
- (3) A person designated as a surrogate pursuant to an advance directive may resign at any time by giving written notice to the grantor; to the immediate successor surrogate, if any; to the attending physician; and to any health care facility which is then waiting for the surrogate to make a health care decision.
- (4) An employee, owner, director, or officer of a health care facility where the grantor is a resident or patient shall not be designated or act as surrogate unless related to the grantor within the fourth degree of consanguinity or affinity or a member of the same religious order.

Approved April 7, 1998

CHAPTER 371

(HB 646)

AN ACT relating to retirement.

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

Section 1. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7) and 61.555, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he occupies the position during a legislative biennium subsequent to January 1, 1960;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he occupied the position during a legislative biennium prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service, *except that for an employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems whose prior service was in a position in an office of a Commonwealth's attorney the prior service may be validated by at least twelve (12) months of current service in the Kentucky Employees Retirement System or by at least fifteen (15) years of current service in the County Employees Retirement System. An employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems who wishes to validate prior service in a position in an office of a Commonwealth's attorney with fifteen (15) years of County Employees Retirement System service shall notify the Kentucky Retirement Systems of his or her eligibility for the service prior to January 1, 1999;*

- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees paid to the employee as a result of services performed for the employer, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven thousand five hundred dollars (\$27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the biennium. In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (14) "Final compensation" of a member means the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars (\$27,500). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour work days, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30;
- (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150 and the assistants if employed by the General Assembly for at least six (6) legislative bienniums;
- (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
 - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months; and

- (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty;
- (22) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly-held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;
- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month; and
- (33) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically-demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically-acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests.

Approved April 7, 1998

CHAPTER 372

(HB 644)

AN ACT relating to a purchase of development rights program in urban-counties.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly hereby finds and declares that it is a policy of the Commonwealth to retain agriculture and rural landscapes in urban counties.*
- (2) *The General Assembly further finds and declares that the preservation of agriculture and rural landscapes contributes to the development of tourism and recreation.*
- (3) *The General Assembly further finds and declares that the urban-county form of government promotes industrialization and commercialization, attended by rapid residential development, which threatens the preservation of agriculture and rural landscapes.*
- (4) *The General Assembly further finds and declares that in urban counties a single government embraces the entire county and, by nature, has within its jurisdiction both substantial urban areas and substantial rural areas thereby creating the ability to distribute both the benefits and the financial obligations of a purchase of development rights program fairly among the constituents of a single government.*
- (5) *The General Assembly further finds and declares that conferring responsibility upon the electorate in urban-county governments to make decisions regarding the establishment and funding of programs to retain and enhance agriculture and rural landscapes and to promote tourism and recreation is consistent with the broad home rule concepts embodied in this chapter.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6, 7, and 8 of this Act, unless the context clearly indicates otherwise:

- (1) *"Conservation easement" means an interest in land, less than fee simple, which restricts or prevents the development or improvement of the land in the fashion provided in the instrument of conveyance by which the easement is created;*
- (2) *"Development right" means an interest in real property established under a purchase of development rights program which is made severable from the parcel to which the interest is appurtenant and which may be purchased as provided for in the program; and*
- (3) *"Purchase of development rights program" or "PDR program" or "program" means a comprehensive program providing for the establishment and purchase of development rights in accordance with the requirements of Sections 1 to 6, 7, and 8 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

- (1) *An urban-county government is authorized to place before the public, via referendum according to the procedure established in Section 5 of this Act, the question of whether to fund a purchase of development rights program by means of one (1) or more of the following special tax levies which shall be in addition to all taxes otherwise permitted by law in the urban-county:*
 - (a) *An ad valorem tax not to exceed five cents (\$0.05) per one hundred dollars (\$100) of assessed value upon all taxable property in the urban-county, subject only to the aggregate limits on property taxes set forth in the Kentucky Constitution, but not subject to the recall provisions of KRS 132.017;*
 - (b) *A license fee not to exceed one-eighth of one percent (0.125%) on franchises, trades, occupations and professions in accordance with KRS 92.280(2), except that no fee shall be collected from any individual who is not a resident of the urban-county; and*
 - (c) *A transient room tax as defined in Section 8 of this Act not to exceed one percent (1%) of rents.*
- (2) *The proposal put before the voters shall set forth the following information:*

- (a) *General descriptions of the types and locations of the properties from which development rights may be purchased under the program; and in describing the types of property, general descriptions such as "agricultural," "agriculturally zoned," or "farm" shall be sufficient, and in indicating the locations, general descriptions such as "northern section" and "eastern quadrant" shall be sufficient; and*
- (b) *The type, rate and effective date, including the ending date if the levy is for a specific duration, of the special tax levy, or levies, from among those authorized in subsection (1) of this section, which is proposed to fund the program.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

- (1) *Within one hundred eighty (180) days following the passage of a purchase of development rights proposal by referendum as provided for in Sections 3, 5, and 6 of this Act, an urban-county government shall establish a purchase of development rights program which, in addition to the matters approved by referendum, shall include:*
 - (a) *A statement of the purpose of the program;*
 - (b) *A detailed map showing the locations of the properties from which development rights may be purchased;*
 - (c) *The restrictions upon the use and development of the properties from which development rights have been purchased, and the duration of those restrictions which may be perpetual as the equivalent of covenants running with the land;*
 - (d) *The mechanism, if any, for removing the restrictions;*
 - (e) *The procedure for valuation and transfer of the development rights. The instrument of transfer shall be an instrument drawn, executed, and recorded in accordance with KRS Chapter 382, which shall set forth the terms of the restrictions with specificity;*
 - (f) *The entity authorized by the urban-county government to operate the program;*
 - (g) *Any other provisions the urban-county government deems necessary or appropriate.*
- (2) *The program may provide for the purchase of conservation easements or other comparable interests in real estate in addition to or in lieu of the purchase of development rights.*
- (3) *The provisions of the program, except those elements adopted by referendum, may be amended from time to time by the urban-county government.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

The procedure for a referendum authorized by Section 3 of this Act shall be as follows:

- (1) *A purchase of development rights program proposal authorized by Sections 3 and 4 of this Act may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in subsection (1) of Section 3 of this Act. The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the proposal.*
- (2) *Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last regular mayoral election of the urban-county government.*
- (3) *If, not later than ninety (90) days preceding the day established for a regular election, the county clerk receives a resolution adopted by a three-fifths (3/5) vote of the legislative body of the urban-county government requesting that the question be submitted to the voters or determines that a petition submitted in accordance with this section is sufficient, the legal department of the urban-county government shall prepare to place before the voters of the urban-county government at the next regular election the question, which shall appear on the ballot in the following form:*
 - "() *FOR RATIFICATION OF (summary of proposed program)*
 - () *AGAINST RATIFICATION OF (summary of proposed program)".*

The county clerk shall cause to be published, not fewer than three (3) times within the thirty (30) day period immediately preceding the election in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and a map prepared by the urban-county government showing the general location of the properties from which development rights may be purchased under the program.

- (4) *The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body. If a proposed program is approved, it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

- (1) *At any time not earlier than five (5) years following the passage of a purchase of development rights proposal in a referendum authorized by Sections 3 and 5 of this Act, a referendum may be held on the question of whether to increase, decrease, or eliminate the funding sources of the program, either upon the adoption of a resolution by the legislative body of the urban-county government or upon the filing of a duly certified petition, according to the same procedures set forth in Section 5 of this Act.*
- (2) *The passage of a referendum to decrease or eliminate the funding sources for a purchase of development rights program will not be legally effective prior to the satisfaction of all contractual obligations that have been assumed by pertinent contracting authorities in connection with the program.*

Section 7. KRS 67A.850 is amended to read as follows:

Urban-county government may:

Exercise ad valorem property taxing powers pursuant to the Kentucky Constitution, Section 157, to the limits authorized therein for the class of city to which the largest city in the county belonged on the day prior to the date the urban-county government became effective. The taxing powers must be exercised by the urban-county government consistent with the Kentucky Constitution, Section 172A, and KRS 132.010, 132.023 and 132.027. Provided, in no way will this section and KRS 67A.860 allow an urban-county government to increase the taxes of any district without the urban-county government having first performed its obligations to provide services for such increases. ***Within the privileges and limitations of this section, an urban-county government may impose an additional ad valorem tax, not to exceed five cents (\$0.05) per one hundred dollars (\$100), for the purpose of funding the purchase of development rights program provided for under Section 4 of this Act.***

Section 8. KRS 91A.390 is amended to read as follows:

- (1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action, shall enact an ordinance for the collection and the enforcement of the tax measure enacted pursuant to this section.
- (2) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business and shall include athletic stadiums. The balance of

the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

- (3) *An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under Section 4 of this Act.*
- (4) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.
- (5)~~(4)~~ The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.
- (6)~~(5)~~ A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

Section 9. KRS 91A.392 is amended to read as follows:

- (1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first class may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.
- (2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390~~(5)~~~~(4)~~ to finance in part the expansion of a government-owned convention facility located in the central business district of the city of the first class located in the county.
- (3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

Approved April 7, 1998

CHAPTER 373

(HB 643)

AN ACT relating to the scenic and recreational trails.

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

Section 1. KRS 148.660 is amended to read as follows:

The commissioner shall study and from time to time submit to the Governor *and the General Assembly* proposals for additions to the state scenic trails system~~[, as well as reports on state]~~ *and* recreation trails that have been designated by the department, regarding rights-of-way that have been established and on the program for implementing KRS 148.610 to 148.780. Each proposal shall include a short statement on the significance of the various trails to the system.

Section 2. KRS 148.690 is amended to read as follows:

- (1) The department shall review all formal declarations of railroad right-of-way abandonments by the *Surface Transportation Board or other agency with jurisdiction*~~[Interstate Commerce Commission]~~ *and may review former railroad corridors* for possible inclusion in the state trails system. The commissioner shall, within three (3) years after the route of a trail or trail segment included in the system has been located, determine the boundaries of the right-of-way to be associated with that trail. Such boundaries shall be established in such a manner that they protect the scenic value of the trail.
- (2) The commissioner is authorized to develop effective procedures to assure that, wherever practicable, utility rights-of-way, *abandoned railroad corridors*, or similar properties having value for trail purposes may be made available for such use; *however, the commissioner shall take into consideration the rights of adjacent property owners in the development of any such procedures*. Other departments of state government having jurisdiction, control over, or information concerning the use, abandonment, or disposition of rights-of-way, *railroad corridors*, and similar properties that may be suitable for trail purposes shall cooperate with the commissioner in the transfer of these rights for trail use.

Section 3. KRS 148.750 is amended to read as follows:

The Kentucky Trails System shall be administered by the department according to the policies and criteria set forth in KRS 148.610 to 148.780. The department shall have the responsibility for maintaining the trails and building bridges, campsites, shelters, and related public-use facilities where required. *The department shall establish a trails coordinator to carry out the purposes of KRS 148.610 to 148.780.*

SECTION 4. A NEW SECTION OF KRS 148.610 TO 148.780 IS CREATED TO READ AS FOLLOWS:

The department shall coordinate its efforts with and work with the Transportation Cabinet in so far as the provisions of KRS 148.610 to 148.780 and the provisions of KRS 174.100, 174.120, and 174.125 can be used to develop bicycling opportunities in the state.

Approved April 7, 1998

CHAPTER 374

(HB 640)

AN ACT relating to the financing of water systems.

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

Section 1. KRS 151.118 is amended to read as follows:

- (1) The cabinet, in conjunction with a county and its municipalities and public water systems, shall finance the development of the water supply plans and encourage multicounty cooperation. The county and its municipalities and public water systems shall pay up to twenty percent (20%) of the total cost of plan development. A county and its municipalities and public water systems shall be given credit toward its share of the plan's cost for in-kind services performed.
- (2) The financial assistance of the cabinet shall be available until July 15, ~~1999~~~~[1996]~~.
- (3) After July 15, ~~1999~~~~[1996]~~, the full cost of water supply plan development will be the responsibility of any county and its municipalities and public water systems which has not had a plan approved by the cabinet.

- (4) After July 15, ~~1999~~[1998], the cabinet shall not endorse projects that impact water under the Kentucky intergovernmental review process for any county and its municipalities and public water systems which does not have an approved water supply plan.

Approved April 7, 1998

CHAPTER 375

(HB 639)

AN ACT relating to financing of energy savings projects.

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

Section 1. KRS 45.760 is amended to read as follows:

The provisions of any other law notwithstanding:

- (1) The head of each of the three (3) branches of government shall include in the branch budget recommendation and in the draft branch budget bill for his branch submitted to each regular session of the General Assembly pursuant to KRS 48.130, for the biennium period beginning July 1, 1994, and for each biennium thereafter, a recommended state capital projects program and a recommended program for the purchase of major items of equipment.
- (2) The recommended capital construction program shall include:
 - (a) A complete list and summary description of each specific capital construction project recommended for funding during the biennium; and
 - (b) For each project:
 1. The agency and purpose for which it will be used;
 2. The justification for the project;
 3. Its estimated completion date;
 4. The total estimated cost of completing the project;
 5. The estimated cost of the project during the biennium;
 6. The recommended sources of funds for the entire project; and
 7. The dollar amounts recommended for appropriation and the dollar amounts, listed by source, that are anticipated from every other source of funds for the biennium.
- (3) All information required by subsection (2) of this section shall be included in each branch budget recommendation. Each branch budget bill shall contain only a complete list of the specific capital construction projects recommended for funding during the biennium and, for each project, the information specified in subparagraphs 5., 6., and 7. of subsection (2)(b) of this section.
- (4) A report which details the effect of recommended new debt on the debt position of the Commonwealth shall be submitted at the same time the recommended capital program is submitted. Information shall be presented separately, and in total, for the general fund, the road fund, and for any affected restricted fund account.
- (5) Information in the report shall include, but not be limited to, the following:
 - (a) Debt service on existing appropriation-supported debt as a percent of anticipated total revenues;
 - (b) Debt service on existing appropriation-supported debt as a percent of anticipated available revenues;
 - (c) The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percent of anticipated total revenues;
 - (d) The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percent of anticipated available revenues;
 - (e) The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percent of estimated state total personal income; and

- (f) The sum of existing appropriation-supported debt and recommended new appropriation-supported debt, as a percent of estimated state total personal income.
- (6) During any biennium beginning July 1, 1992, and during each biennium thereafter, the amount allotted, from all sources, for expenditure on any project in the state capital construction program for that biennium shall not exceed the estimated cost of the project during that biennium, as shown in any branch budget bill, statutory budget memorandum, and biennial budget report enacted by the General Assembly, except as provided in this section, KRS 45.770, and 45.780.
- (7) The recommended program for the purchase of major items of equipment, submitted by the head of each of the three (3) branches of government, shall include:
- (a) A complete list and summary description of each specific major item of equipment recommended for purchase during the biennium; and
 - (b) For each major item of equipment:
 - 1. The agency and purpose for which it will be used;
 - 2. The justification for the purchase;
 - 3. The estimated cost of the item, including ancillary expenses and any expenses necessary to make the equipment functional and operational;
 - 4. The recommended sources of funds; and
 - 5. The dollar amounts recommended for appropriation and anticipated from every other source of funds for the purchase.
- (8) All information required by subsection (5) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only a complete list of each specific item of major equipment recommended for purchase during the biennium and, for each item, the information specified in subparagraphs 3., 4., and 5. of subsection (7)(b) of this section.
- (9) When the General Assembly disapproves a project or item of equipment that was previously approved, it shall be eliminated as a project or major item of equipment in the Capital Projects Program. General fund moneys appropriated for that project or item of equipment but not allotted, and general fund moneys allotted but not expended to the project or equipment account, shall be transferred to the capital construction and equipment purchase contingency account in the capital construction fund. Agency or federal funds for a disapproved project or item, that have been appropriated but unallotted or allotted but unexpended, shall be returned to the appropriate agency fund. Road fund moneys for a disapproved project or item that have been appropriated but unallotted or allotted but unexpended, shall be returned to the Road Fund Surplus Account.
- (10) Projects and major items of equipment disapproved under subsection (9) of this section shall be terminated.
- (11) During any biennium beginning July 1, 1992, and during each biennium thereafter, the amount allotted from all sources for expenditure for the purchase of any major item of equipment shall not exceed the estimated cost of the item as shown in any branch budget bill, statutory budget memorandum, and biennial budget report enacted by the General Assembly and authorizing the purchase, except as provided in subsections (12) and (13) of this section and in KRS 45.770 and 45.780.
- (12) A major item of equipment to be used for medical, scientific, or research purposes, excluding computer equipment and aircraft, may be authorized even though it is not specifically listed in any branch budget bill, statutory budget memorandum, and biennial budget report enacted for the current biennium, subject to the following conditions and procedures:
- (a) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be reallocated for expenditure on the item; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs;
 - (b) Funds are available for the purchase and the method of financing the purchase will not require an additional appropriation of state funds to acquire the item; and
 - (c) The purchasing agency shall, within thirty (30) days after making the purchase, report the purchase to the Capital Projects and Bond Oversight Committee. The report shall include a description of the item,

the purpose for which it will be used, the necessity for the purchase, and the amount expended for the purchase from each source of funds used.

- (13) Moneys from any source may be transferred to the allotment account of any capital project authorized by the General Assembly under this section, subject to the following conditions and procedures:
- (a) The total amount transferred shall not exceed fifteen percent (15%) of the amount authorized by the General Assembly unless:
 - 1. The source of funds is private or federal; or
 - 2. An unforeseen decision by a federal or state court or regulatory agency requires the transfer.
 - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the capital project.
 - (c) Moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs.
 - (d) The relevant entity head, or his designee, shall submit the capital project to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. The submission shall include a written certification to the committee that the transfer, in excess of fifteen percent (15%) of the amount authorized by the General Assembly, is:
 - 1. Paid for out of private or federal funds; or
 - 2. Required by an unforeseen decision by a federal or state court or regulatory agency; and
 - 3. Not allotted or reallocated from moneys specifically budgeted and appropriated by the General Assembly for another purpose; and
 - 4. Not jeopardizing any existing program and not requiring the use of any current general funds specifically dedicated to existing programs.
 - (e) If a capital project is financed with road funds, the cost overruns or scope increases shall be paid out of the highway contingency account established pursuant to KRS 45.247.
- (14) A capital construction project or a major item of equipment may be authorized even though it is not specifically listed in any branch budget bill, statutory budget memorandum, and biennial budget report, subject to the following conditions and procedures:
- (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds, and fifty percent (50%) or less of the actual cost shall be funded by moneys appropriated to the capital construction and equipment purchase contingency account *or, if the purpose of the project or equipment is to reduce energy costs, the relevant entity head certifies projected energy cost savings associated with the project or equipment are reasonable and sufficient to produce an aggregate simple payback period, as defined by KRS 56.770, of five (5) years or less;*
 - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the project or major item of equipment; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs; and
 - (c) The relevant entity head, or his designee, shall submit the project or major item of equipment to the committee for review as provided by KRS 45.800.
- (15) The capital construction and equipment purchase contingency fund may be used to advance funds to projects authorized to be financed by bonds, to finance feasibility studies for projects which may be contemplated for future funding, or to audit the capital projects program when authorized by the General Assembly.
- (16) On or before October 1, each of the three (3) branches of government shall submit to the committee the following information:
- (a) A complete list and summary description of every capital construction project and major item of equipment not completed as of June 30 of the prior fiscal year; and
 - (b) For each project and major item of equipment, as of July 1, of the current fiscal year:

1. The project phase;
 2. The project account number, project name, and any other term employed to identify the project or major item of equipment;
 3. The available balance in the project or major item of equipment account, and any sums considered available for that project or major item of equipment;
 4. A statement of the transfers of funds to or from the project or major item of equipment account; and, any account to which transfers from each project or major item of equipment has been made;
 5. The year in which the project or major item of equipment was approved, with specific reference to the legislation by which the project or item was approved;
 6. Total expenditure on the project or major item of equipment;
 7. The current estimated completion cost, including the amount required for annual inflation; and
 8. A statement that additional funds for the completion of the project or major item of equipment are or are not required; and, if required, why sufficient funds for completion are not available; and
- (c) The balance in the appropriated, but unallotted account; and the balance in any account, however designated, that contains appropriated, but unallotted funds for capital construction.

Section 2. KRS 45A.345 is amended to read as follows:

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

- (1) "Aggregate amount" shall mean the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.
- (2) *"Capital cost avoidance" means moneys expended by a local public agency to pay for an energy conservation measure identified as a permanent equipment replacement and whose cost has been discounted by any additional energy and operation savings generated from other energy conservation measures identified in the guaranteed energy savings contract, except that for school districts capital cost avoidance shall also mean moneys expended by the district from one or more of the following sources:*
 - (a) *General fund;*
 - (b) *Capital outlay allotment under Section 9 of this Act; and*
 - (c) *State and local funds from the Facilities Support Program of Kentucky under Section 10 of this Act.*
- (3) "Chief executive officer" shall mean the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.
- ~~(4)~~~~(3)~~ "Construction" shall mean the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- ~~(5)~~~~(4)~~ "Contract" shall mean all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.
- ~~(6)~~~~(5)~~ "Established catalogue price" shall mean the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item; and
 - (b) Is either published or otherwise available for inspection by customers; and

- (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- ~~(7)(6)~~ "Evaluated bid price" shall mean the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.
- ~~(8)(7)~~ "Invitation for bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.
- ~~(9)(8)~~ "The legislative body or governing board" shall mean a council, commission, or other legislative body of a city or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.
- ~~(10)(9)~~ "Local public agency" shall mean a city, county, urban-county, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.
- ~~(11)(10)~~ "May" shall mean permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.
- ~~(12)(11)~~ "Negotiation" shall mean contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.
- ~~(13)(12)~~ "Noncompetitive negotiation" shall mean informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.
- ~~(14)(13)~~ "Objective measurable criteria" shall mean sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective such as taste and appearance may be established when appropriate.
- ~~(15)(14)~~ "Person" shall mean any business, individual, union, committee, club, or other organization or group of individuals.
- ~~(16)(15)~~ "Procurement" shall mean the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~(17)(16)~~ "Request for proposals" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.
- ~~(18)(17)~~ "Responsible bidder or offeror" shall mean a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- ~~(19)(18)~~ "Responsive bidder" shall mean a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.
- ~~(20)(19)~~ "Services" shall mean the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.
- ~~(21)(20)~~ "Shall" shall mean imperative.
- ~~(22)(21)~~ "Specifications" shall mean any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- ~~(23)(22)~~ "Supplemental agreement" shall mean any contract modification which is accomplished by the mutual action of the parties.

- (24)~~(23)~~ "Supplies" shall mean all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.
- (25)~~(24)~~ "Energy **conservation**~~efficiency~~ measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
- (a) Insulation of the building structure or systems within the building;
 - (b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
 - (h) Energy conservation measures that provide long-term operating cost reductions; or
 - (i) Any life safety measures that provide long-term operating cost reductions.
- (26)~~(25)~~ "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for **the cost of the design, installation, and maintenance of energy conservation measures**~~the systems~~.
- (27)~~(26)~~ "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy **conservation**~~efficiency~~ measures and is determined to be qualified by the local public agency. **The qualified provider shall be responsible for and shall provide the local public agency with the following information regarding guaranteed energy savings contracts:**
- (a) **Project design and specifications;**
 - (b) **Construction management;**
 - (c) **Construction;**
 - (d) **Commissioning;**
 - (e) **On-going services as required;**
 - (f) **Measurement and verification of savings for guaranteed energy savings contracts; and**
 - (g) **Annual reconciliation statements as provided in subsection (8) of Section 3 of this Act.**

Section 3. KRS 45A.352 is amended to read as follows:

- (1) A local public agency may enter into a guaranteed energy savings contract for innovative solutions for energy **conservation**~~efficiency~~ measures. The local public agency shall submit a request for proposals. The request for proposals **for competitive procurement of guaranteed energy savings contracts** shall include the following:
- (a) The name and address of the governmental unit;
 - (b) The name, address, title, and phone number of a contact person;
 - (c) Notice indicating that the local public agency is requesting qualified providers to propose energy **conservation**~~efficiency~~ measures through a guaranteed energy savings contract;

- (d) The *following* evaluation criteria for assessing the proposals:
1. *Construction management capabilities;*
 2. *Technical approach to facilities included;*
 3. *Financial attributes, as defined by total cost of contract and guaranteed savings and provider's financial strength demonstrating ability to fulfill the guarantee term; and*
 4. *Provider's capability, personnel, track record, and demonstrated ability to accomplish the contract;*
- (e) The date, time, and place where proposals must be received; ~~and~~
- (f) Any other stipulations and clarifications the local public agency may require; *and*
- (g) *An overview prepared by the local public agency stating goals or objectives specific to facility needs to be considered by the qualified providers who are responding to the request. Detailed scope of construction is not required.*
- (2) *Respondents to the request for proposal shall provide the following:*
- (a) *A detailed list of the proposed energy conservation measures and the guaranteed savings which shall be supported with calculations. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol." If due to existing data limitations or the nonconformance of specific project characteristics, none of the methods listed in either the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol" is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the two;*
 - (b) *The estimated cost of the proposed energy conservation measures including engineering, construction, commissioning, measurement and verification, annual reconciliation statements, and required on-going services; and*
 - (c) *Proposed method and costs of financing.*
- (3) *The value for total cost of the contract minus the calculated savings from the energy conservation measures listed in the qualified provider's proposal, shall be within fifteen percent (15%) of the value for the total cost of the contract minus the calculated savings after the final contract has been negotiated. If the difference between the proposed and the final contract is not within fifteen percent (15%) and the local public agency and the qualified provider are unable to renegotiate the final contract to reconcile the difference between the proposed and final contract values, then the local public agency may:*
- (a) *Stop negotiations with the current qualified provider; and*
 - (b) *Select an alternate provider.*
- (4) *The local public agency may, as a component of the request for proposal, solicit and negotiate additional maintenance services for the affected proposed energy conservation measures. Additional services shall be subject to budget appropriations on an annual basis and may be discontinued at any time over the guarantee period with no negative impact to the guaranteed savings contract.*
- (5) *The local public agency shall utilize the request for proposal process to enter into a guaranteed energy savings contract. The local public agency may, at its discretion, utilize a request for qualifications, provided that the local public agency solicits qualification statements from multiple potentially qualified providers. The local public agency shall use the qualification statements to select no fewer than two (2) providers and each provider shall then be subject to the request-for-proposal requirement provided in subsections (1) to (4) of this section.*
- (6) ~~(2)~~ The local public agency shall select the provider best qualified to meet its needs. The local public agency shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the name of the parties to the proposed contract, and the purpose of the contract. The public notice shall be made at least ten (10) days prior to the meeting. After reviewing the proposals, a local public agency may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it

would spend on the energy *conservation*~~[efficiency]~~ measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs *plus capital cost avoidance*~~[, or both,]~~ within *the term of the contract*~~[a ten (10) year period]~~ from the date of installation, if the recommendations in the proposal are followed.

- (7)~~(3)~~ The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings *plus capital cost avoidance*~~[, or both,]~~ will meet or exceed the costs of the energy *conservation*~~[efficiency]~~ measures within *the term of the contract*~~[ten (10) years]~~. The qualified provider shall, *on an annual basis*, reimburse the local public agency for any shortfall in guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the local public agency for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed *the term of the contract*~~[ten (10) years]~~.
- (8) *The qualified provider shall provide the local public agency with an annual reconciliation statement. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a twelve (12) month term commencing from the time that the energy conservation measures became fully operational. The qualified provider shall pay the local public agency any short fall in the guaranteed energy and operation savings within thirty (30) days after the total year savings have been determined. If there is a surplus in the actual guaranteed energy and operational savings in a given year, that surplus savings may be carried forward and applied against any possible savings shortfall in the following guarantee year, except that the surplus carried forward is limited to a period not to exceed one year. If the qualified provider pays the local public agency for a short fall in energy or operational savings incurred during a given guarantee year and there is a surplus in energy or operational savings in future guarantee years, the qualified provider shall bill the local public agency for an amount not to exceed the amount of the short fall in the given guarantee year.*
- (9) *The use of capital cost avoidance shall be subject to the following restrictions:*
- (a) *The amount expended shall not exceed fifty percent (50%) of the project cost; and*
 - (b) *Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:*
 1. *Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;*
 2. *Replacement of heating, ventilating, or air conditioning major components or systems;*
 3. *New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and*
 4. *Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.*
- (10) *The chief state school officer shall review, and approve or disapprove projects from local school districts relating to energy conservation measures under a guaranteed energy savings contract, on the basis of the following guidelines:*
- (a) *The project design's compliance with technical, health, and safety standards as required by administrative regulation;*
 - (b) *The availability of general funds, capital outlay allotments under Section 9 of this Act or local and state funds from the Facilities Support Program of Kentucky as provided by Section 10 of this Act, for projects that will use capital cost avoidance;*
 - (c) *The appropriate use of capital outlay allotments under Section 9 of this Act, local and state funds from the Facilities Support Program of Kentucky as provided by Section 10 of this Act, for projects using capital cost avoidance, based on the project's compliance with the district's approved facility plan;*
 - (d) *The funding capability of the school district; and*

(e) *The financing mechanism and proper financing documentation.*

- (11) *The request for proposal as provided in subsections (1) to (4) of this section shall be deemed to satisfy the requirements set out in KRS 162.070, and shall not be subject to an award determination based on the lowest competitive bid or a separate bidding process for each energy conservation measure listed in the proposal.*

Section 4. KRS 45A.353 is amended to read as follows:

- (1) Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The local public agency shall include in its annual budget and appropriations act, for each subsequent fiscal year, any accounts payable under guaranteed energy savings contracts during the fiscal year.
- (2) The local public agency shall document the operational and energy cost savings *and capital cost avoidance* specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy and operational savings are less than projected under the guaranteed savings contract, the qualified provider shall pay the difference as provided for in KRS 45A.352.
- (3) Notwithstanding any other provisions of law to the contrary, a local public agency may *finance the*~~enter into a lease purchase agreement with the qualified provider for the purchase and~~ installation of energy *conservation*~~efficiency~~ measures for its buildings *through a lease-purchase agreement, bonds, or whichever brings the most economic value to the local public agency*, subject to the local public agency's compliance with all other laws regarding approval of plans for additions, alterations, or renovations of its buildings.
- (4) *The component which is guaranteed as energy savings and as operational savings shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in Section 2 of this Act, shall be limited to current or future debt limitations.*

Section 5. KRS 56.774 is amended to read as follows:

- (1) The Energy Efficiency Program for State Government Buildings shall provide for implementation of low cost/no cost energy *conservation*~~efficiency~~ measures, engineering analyses, energy *conservation*~~efficiency~~ measures, building improvements, and monitoring of results for state-owned buildings.
- (2) Any engineering analysis conducted on a state-owned building shall assess the energy efficiency of the building and make recommendations for improving the efficient use of energy within the building. The analyses shall be performed by qualified engineers, architects, or other persons trained in energy efficiency who ~~may~~*shall* be employees of the Finance and Administration Cabinet or employed pursuant to KRS Chapter 45A, *except that any engineers, architects or other persons trained in energy efficiency and retained under a guaranteed energy savings contract, shall not be subject to the provisions of KRS 45A.800 to 45A.835.*
- (3) Except as provided in subsection (5) of this section, measures to improve the energy efficiency of a state-owned building, which have an aggregate simple payback period of five (5) years or less, shall be implemented as general fund appropriations become available. No more than five percent (5%) of the cost of energy efficiency measures for a building may be utilized for monitoring the results.
- (4) If general fund appropriations are available for energy efficiency improvements, the Finance and Administration Cabinet shall prioritize projects among the various state-owned buildings to determine which projects shall be implemented to best utilize the available funding.
- (5) If general fund appropriations are unavailable, energy *conservation*~~efficiency~~ measures for a state-owned building may be financed by other means. These other means include, but are not limited to, energy performance contracts and guaranteed energy savings contracts *entered into pursuant to KRS 45A.085 and KRS 45A.045(10). Energy performance contracts and guaranteed energy savings contracts shall not be subject to the provisions of KRS 45A.800 to 45A.835.* These energy *conservation*~~efficiency~~ measures shall not be limited to those which have an aggregate simple payback period of five (5) years or less, but shall result in reasonable economic benefit to the Commonwealth. Ownership of the energy *conservation*~~efficiency~~ measures shall remain with the Commonwealth. Energy cost savings may be used to repay the cost of the other means used to finance energy *conservation*~~efficiency~~ measures, with any remaining savings *paid to the Finance and Administration Cabinet to reimburse the cabinet for all its expenses related to the energy conservation measure, including but not limited to, staff time for monitoring, overseeing, and managing the project. Remaining savings shall*~~to~~ be deposited in the state agency account. All energy cost savings

estimated under an energy performance contract or guaranteed energy savings contract shall be guaranteed to the Commonwealth.

Section 6. KRS 58.600 is amended to read as follows:

As used in KRS 58.600 to **58.610**~~[58.615]~~, unless the context requires otherwise:

- (1) "Energy conservation revenue bonds" or "bonds" means securities issued by a **local public**~~[governmental]~~ agency in accordance ~~with~~~~[to]~~ the provisions of KRS 58.600 to **58.610**~~[58.615]~~ to pay for energy conservation **measures under guaranteed energy savings contracts**~~[projects]~~;
- ~~(2) "Debt service payments" means payments made either directly or in the form of lease payments by a governmental agency on an annual basis to meet the principal and interest requirements of energy conservation revenue bonds;~~
- ~~(3) "Energy audit" means an audit conducted by an architect, engineer, or construction manager for a proposed energy conservation project including an analysis of the costs and benefits and an estimate of energy cost savings resulting from the project;~~
- ~~(4) "Energy conservation measure~~~~[project]" means a facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:~~
 - (a) Insulation of building structure or systems within buildings;
 - (b) Storm windows or doors, caulking or weatherstripping, multiple pane windows or doors, heat absorbing or heat reflective glazing for windows and doors, additional glazing, reductions in glass area or other window and door systems modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat as well as electricity for use primarily within a building or complex of buildings;
 - (h) Energy conservation measures that provide long-term operating cost reductions; or
 - (i) Any life safety measures that provide long-term operating cost reductions;
- ~~(3) "Local public agency" means a city, county, charter county, urban-county, school district, special district, or an agency formed by a combination of these agencies under KRS Chapter 79;~~
- ~~(4) "Capital cost avoidance" has the same definition as in subsection (2) of Section 2 of this Act; and~~
- ~~(5) "Guaranteed energy savings contract" has the same definition as in subsection (26) of Section 2 of this Act.~~
- ~~(5) "Governmental agency" means any county, urban county government, charter county government, city, taxing district, special district, school district, other political subdivision of the Commonwealth, or instrumentality of any of the above;~~
- ~~(6) "Principal amount" means that amount of energy conservation revenue bonds which may be issued for one (1) energy conservation project; and~~
- ~~(7) "Energy cost savings" means the annual savings in the expense for electricity, natural gas, or nonutility fuels realized as a result of installation of an energy conservation project.]~~

Section 7. KRS 58.605 is amended to read as follows:

- (1) Subject to the reporting and approval requirements in **Sections 3 and 4 of this Act and** KRS 58.610, any **local public**~~[governmental]~~ agency may issue energy conservation revenue bonds to pay for the cost of energy conservation **measures under guaranteed energy savings contracts**~~[projects]~~ for the purpose of reducing the

cost of energy to buildings owned or operated by the *local public*~~governmental~~ agency by making energy-saving improvements to these buildings.

- (2) *A local public*~~Upon the receipt of a qualified energy audit, including a cost benefit analysis which establishes the expected annual energy cost savings which will result from an energy conservation project, a governmental~~ agency, or an agency acting on its behalf, may issue energy conservation revenue bonds to finance the energy conservation *measures under guaranteed energy savings contracts*~~project~~, with the following limitations:
- (a) *Any energy conservation measure, financed through bonds, shall comply with the provisions set forth in Sections 2, 3, and 4 of this Act;*
 - (b) The term of the bonds shall *run coterminous with the term of guaranteed energy savings contract*~~not exceed ten (10) years from the date of issuance, or the anticipated useful life of the energy conservation project as determined by generally accepted accounting principles, whichever is less;~~
 - ~~(b) The annual debt service payments on the energy conservation revenue bonds shall not exceed eighty percent (80%) of the projected annual energy cost savings resulting from the energy conservation project; and~~
 - ~~(c) The principal amount of the energy conservation revenue bonds issued to finance an energy conservation project shall in no case exceed ten percent (10%) of the estimated replacement cost of the building in which the energy conservation project is installed.~~
 - (c) *A local public agency shall not enter into a guaranteed energy savings contract where the total cost of the energy conservation measures exceeds the cost of the energy savings plus the operational costs plus the capital cost avoidance that is estimated for the term of the guaranteed energy savings contract commencing from the date of the energy conservation measure's installation; and*
 - (d) *The use of capital cost avoidance shall be subject to the following restrictions:*
 1. *The amount expended shall not exceed fifty percent (50%) of the project cost; and*
 2. *Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:*
 - a. *Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;*
 - b. *Replacement of heating, ventilating, or air conditioning major components or systems;*
 - c. *New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and*
 - d. *Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.*
- (3) Energy conservation revenue bonds shall be issued in accordance with the provisions of KRS 58.010 to 58.140 and shall be sold at a publicly advertised, competitive sale and shall bear interest at an interest rate or rates determined by the *local public*~~governmental~~ agency at the time of the sale.

Section 8. KRS 58.610 is amended to read as follows:

- (1) ~~Not~~ Energy conservation revenue bonds authorized under KRS 58.600 to ~~58.610~~~~58.615 shall be~~ issued by or on behalf of a school district *shall be approved or disapproved by the chief state school officer based on consideration of the following criteria:*
- (a) *Funding capability of the school;*
 - (b) *The availability of general fund, capital outlay allotment under Section 9 of this Act, or state and local funds from the Facility Support Program of Kentucky under Section 10 of this Act, that are to be contributed by the school district as capital cost avoidance; and*
 - (c) *Proper bond documentation.*
- (2) *Guaranteed energy savings and guaranteed operational savings of a guaranteed energy savings contract shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in*

Section 6 of this Act, shall not be exempt from current or future debt limitations ~~[without the prior approval of the commissioner of education or the state department of education acting on behalf of the commissioner, except that this approval shall not be required if the principal amount of energy conservation revenue bonds is less than one hundred thousand dollars (\$100,000)].~~

- (3)~~(2)~~ No energy conservation revenue bonds authorized under KRS 58.600 to **58.610**~~[58.615]~~ shall be issued by or on behalf of a county, urban-county government, charter county government, city, or special district without the prior approval of the state local debt officer, except that this approval shall not be required if the principal amount of energy conservation revenue bonds is less than five hundred thousand dollars (\$500,000).
- (4)~~(3)~~ Any issuance of energy conservation revenue bonds shall be reported to the state local debt officer.

Section 9. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) The teachers' salaries allotment for each district from the public school fund and from local sources shall be used only for teachers holding properly authorized certificates. The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year or the allotment under KRS 157.390(3) shall be reduced by an amount equal to the amount by which the district failed to meet the salary requirements.
- (2) The Kentucky Board of Education shall not approve any working budget or salary schedule summary for local boards of education for any school year in which the total amount for one hundred eighty-five (185) days on the salary schedule summary for salaries paid from the base funding is not equal to:
 - (a) The amount for one hundred eighty-five (185) days on the district's salary schedule summary for instructional salaries paid with state funds the preceding year; plus
 - (b) The additional amount for instructional salaries to be received by the district under the biennial budget schedule for a one hundred eighty-five (185) day school term by assuming the same rank and experience of teachers in the current year as in the preceding year.
- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.
- (4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the chief state school officer in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:
 - (a) For direct payment of construction costs;
 - (b) For debt service on voted and funding bonds;
 - (c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
 - (d) For the retirement of any deficit resulting from over-expenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and
 - (e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.

- (5) *The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to Sections 2, 3, and 4 of this Act. Use of these funds, provided in Sections 4, 5, and 6 of this Act, shall be based on the following:*
- (a) *The energy conservation measures shall include facility alteration;*
 - (b) *The energy conservation measures shall be identified in the district's approved facility plan;*
 - (c) *The current facility systems are consuming excess maintenance and operating costs;*
 - (d) *The savings generated by the energy conservation measures are guaranteed;*
 - (e) *The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in subsection (2) of Section 2 of this Act and shall be subject to the restrictions on usage as specified in subsection (9) of Section 3 of this Act; and*
 - (f) *The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.*
- (6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the chief state school officer under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.
- ~~(7)(6)~~ If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the chief state school officer, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.
- ~~(8)(7)~~ In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.
- (a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.
 - (b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.
 - (c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.
- ~~(9)(8)~~ If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.
- Section 10. KRS 157.440 is amended to read as follows:
- (1) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after July 1, 1990, the board of education of each school district may levy an equivalent tax rate as defined in subsection (12)(a) of KRS 160.470 which will produce up to fifteen percent (15%) of those revenues guaranteed by the program to support education excellence in Kentucky. The levy for the 1990-91 school year shall be made no later than October 1, 1989, and no later than October 1, 1990, for the 1991-92 school year, and by October 1 of each odd-numbered year thereafter. Effective with the 1990-

91 school year, revenue generated by this levy shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment.

- (b) To participate in the Facilities Support Program of Kentucky, the board of education of each school district shall commit at least an equivalent tax rate of five cents (\$0.05) to debt service, new facilities, or major renovations of existing school facilities. The five cents (\$0.05) shall be in addition to the thirty cents (\$0.30) required by KRS 160.470(12) and any levy pursuant to paragraph (a) of this subsection. The levy shall be made no later than October 1 of each odd-numbered year. Eligibility for equalization funds for the biennium shall be based on the district funds committed to debt service on that date. The five cents (\$0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment. The equalization funds shall be committed to debt service to the greatest extent possible, but any excess equalization funds not needed for debt service shall be deposited to a restricted building fund account. The funds may be escrowed for future debt service or used to address categorical priorities listed in the approved facilities plan pursuant to KRS 157.420.
 - (c) *The board of education of each school district may contribute the levy equivalent tax rate of five cents (\$0.05) and equalization funds for energy conservation measures under guaranteed energy savings contracts pursuant to Sections 2, 3, and 4 of this Act. Use of these funds, as provided under Sections 4, 5, and 6 of this Act shall be based on the following guidelines:*
 - 1. *Energy conservation measures shall include facility alteration;*
 - 2. *Energy conservation measures shall be identified in the district's approved facility plan pursuant to Section 9 of this Act;*
 - 3. *The current facility systems are consuming excess maintenance and operating costs;*
 - 4. *The savings generated by the energy conservation measures are guaranteed;*
 - 5. *The levy equivalent tax rate of five cents (\$0.05) and equalization funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in subsection (2) of Section 2 of this Act and shall be subject to the restrictions on usage as specified in subsection (9) of Section 3 of this Act; and*
 - 6. *The equipment that is replaced has exceeded its useful life as determined by a life cycle cost analysis.*
 - (d) The rate levied by a district board of education under the provisions of this subsection shall not be subject to the public hearing provisions of KRS 160.470(10) or to the recall provisions of KRS 160.470(11).
 - ~~(e)(d)~~ A school district which is at or above the equivalent tax rates permitted under the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year.
- (2) (a) A district may exceed the maximum provided by subsection (2) of KRS 160.470 provided that, upon request of the board of education of the district, the county board of elections shall submit to the qualified voters of the district, in the manner of submitting and voting as prescribed in paragraph (b) of this subsection, the question whether a rate which would produce revenues in excess of the maximum provided by subsection (2) of KRS 160.470 shall be levied. The rate that may be levied under this section may produce revenue up to no more than thirty percent (30%) of the revenue guaranteed by the program to support education excellence in Kentucky plus the revenue produced by the tax authorized by this section. Revenue produced by this levy shall not be equalized with state funds. If a majority of those voting on the question favor the increased rate, the tax levying authority shall, when the next tax rate for the district is fixed, levy a rate not to exceed the rate authorized by the voters.
 - (b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

- (3) For the 1966 tax year and for all subsequent years for levies which were approved prior to December 8, 1965, no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section and except that a rate which has been approved by the voters under this section but which was not levied by the district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.
- (4) Notwithstanding the limitations contained in subsection (3) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapter 162.
- (5) The chief state school officer shall certify the compensating tax rate to the levying authorities.

Section 11. The following KRS section is repealed:

58.615 Authority for administrative regulations.

Approved April 7, 1998

CHAPTER 376

(HB 638)

AN ACT relating to bankruptcy.

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

Section 1. KRS 427.150 is amended to read as follows:

- (1) To the extent reasonably necessary for the support of an individual and his dependents in addition to property totally exempt under subsection (2) of this section, that individual shall be entitled to exemption of money or property received and rights to receive money or property for alimony, support, or separate maintenance.
- (2) An individual shall be entitled to exemption of the following property:
 - (a) An award under a crime victim's reparation law;
 - (b) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (c) A payment, not to exceed seven thousand five hundred dollars (\$7,500), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;
 - (d) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (e) Assets held, payments made and amounts payable under pensions exempt pursuant to KRS 61.690, 161.700, 427.120 and 427.125; or
 - (f) The right or interest of a person in an individual retirement account or annuity, deferred compensation account, tax sheltered annuity, simplified employee pension, pension, profit-sharing, stock bonus, or other retirement plan described in the Internal Revenue Code of 1986, *or Section 408 or 408A of the Internal Revenue Code*, as amended which qualifies for the deferral of income tax until the date benefits are distributed. This exemption shall also apply to the operation of the Federal Bankruptcy Code, as permitted by Section 522 of Title 11 of the United States Code, 11 U.S.C. 522. This exemption shall not apply to any amounts contributed to an individual retirement account or annuity, deferred compensation account, a pension, profit-sharing, stock bonus, or other qualified retirement plan or annuity if the contribution occurs within one hundred twenty (120) days before the debtor files for bankruptcy. This exemption shall not apply to the right or interest of a person in an individual retirement

account or annuity, deferred compensation account, pension, profit-sharing, stock bonus, or other retirement plan to the extent that that right or interest is subject to any of the following:

1. An order of a court for payment of maintenance;
2. An order of a court for payment of child support.

Approved April 7, 1998

CHAPTER 377

(HB 634)

AN ACT relating to Real Estate Appraisers.

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

Section 1. KRS 324A.010 is amended to read as follows:

As used in KRS 324A.010 to 324A.090, unless the context requires otherwise:

- (1) "Appraisal" means an oral or written communication independently and impartially prepared by a licensed or certified appraiser setting forth an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate, as of a specified date, for or in expectation of compensation;
- (2) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by other parties or the public as acting, as a third party in rendering an unbiased real estate appraisal;
- (3) "Appraisal report" means any communication, written or oral, conveying a real estate appraisal, and all other reports communicating an appraisal analysis, opinion, or conclusion;
- (4) "Board" means the Real Estate Appraisers Board created under KRS 324A.015;
- (5) **"Certificate holder or licensee" means a person certified or licensed by the board under this chapter.**
- (6) "Real estate" or "real property" means real estate in its ordinary meaning and includes any leasehold or other estate or interest in, over, or under land, including leaseholds, all appurtenances and improvements thereto, and may include personal property which is integral to the use of the real property as appraised.
- (7) **"Uniform Standards of Professional Appraisal Practice" means the standards of practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.**

Section 2. KRS 324A.030 is amended to read as follows:

- (1) ~~On April 7, 1992,~~ It shall be unlawful, unless certified or licensed by the board, for any person to:
 - (a) Assume or use any title, designation, or abbreviation likely to create the impression that he **or she** holds a license or certificate issued by the board;
 - (b) Describe or refer to any appraisal or evaluation of real estate by the term, "state certified["], "state licensed["], or words of substantially similar meaning; or
 - (c) Assume or use any title, designation, or abbreviation likely to create the impression of certification or licensure **by the** ~~as a~~ state **as a** ~~certified~~ real estate appraiser firm, partnership, or corporation.
- (2) **A certificate holder or licensee** ~~The holder of a certificate or license issued by the board~~ shall not assume or use any title, designation, or abbreviation likely to create the impression of certification or licensure by the board other than the correct type of certification or licensure.
- (3) Each **certificate holder or licensee who is a resident of Kentucky** ~~appraiser certified or licensed under this chapter~~ shall have and maintain a definite place of business in this state. ~~If the appraiser is~~ A nonresident ~~it~~ is not **required** ~~mandatory~~ to maintain an active place of business in this state if a definite place of business is maintained in the state where the **nonresident** ~~appraiser~~ resides.

- (4) Each **certificate holder or licensee**~~[appraiser certified or licensed under this chapter]~~ shall notify the board of any change of business address, change of company name, or change of surname, within thirty (30) days of the change.
- (5) In the case of the death of **a certificate holder or licensee**~~[an appraiser certified or licensed under the provisions of this chapter]~~, the board may, in its sound discretion, permit a suitable individual to complete the affairs and appraisal assignments of the deceased~~[appraiser]~~.
- (6) For any employee of the Transportation Cabinet **whose job description includes**~~[who performs, as part of his job description,]~~ real estate appraisals~~[for]~~ which **require** certification~~[is required]~~, the Transportation Cabinet shall bear the costs of initial application, examination, continued education, and annual renewal.
- (7) (a) Those Transportation Cabinet employees serving as right-of-way agents or supervisors, who actually perform on-site appraisals as part of their job descriptions and who have obtained an appraiser certification under the provisions of KRS 324A.010 to 324A.090, shall receive a five percent (5%) salary increase effective January 1 following certification. Those right-of-way agents or supervisors who received certification prior to January 1, 1991, shall receive the salary increase effective January 1, 1991.
- (b) The salary increases provided for in subsection (a) of this section shall be made within existing Transportation Cabinet appropriations.

SECTION 3. A NEW SECTION OF KRS 324A.010 TO 324A.090 IS CREATED TO READ AS FOLLOWS:

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

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

- (1) The board may refuse **to issue, refuse to renew, suspend, or revoke a certificate or license, reprimand, admonish, place on probation, or impose a**~~[issuance or renewal of a certificate or license, or may]~~ fine up to

two thousand dollars (\$2000) on a certificate holder or licensee ~~[five hundred dollars (\$500), reprimand, suspend, probate, revoke], or any combination thereof, [a certificate or license] for any of the following reasons:~~

- (a) ~~[(1)]~~ Procuring or attempting to procure a certificate or license by knowingly making a false statement or submitting false information, or through any form of fraud or misrepresentation;
- (b) ~~[(2)]~~ Refusing to provide complete information in response to a question in an application to the board or failing to meet the minimum qualifications established by the board;
- (c) ~~[(3)]~~ Being convicted of any felony, or of a misdemeanor that may result in a sentence which includes or requires incarceration;
- (d) ~~[(4)]~~ Committing an act involving dishonesty, fraud, or misrepresentation;
- (e) ~~[(5)]~~ Violating any of the provisions of KRS 324A.010 to 324A.090, the administrative regulations of the board, or any lawful order of the board;
- (f) ~~[(6)]~~ Violating the confidential nature of records to which the appraiser gained access through employment or engagement as an appraiser;
- (g) ~~[(7)]~~ Committing any other conduct which constitutes or demonstrates bad faith, untrustworthiness, impropriety, fraud, or dishonesty;
- (h) ~~[(8)]~~ Failing or refusing, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;
- (i) ~~[(9)]~~ Being negligent or incompetent in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal; or
- (j) ~~[(10)]~~ Failing to observe one (1) or more of the *Uniform* Standards of Professional Appraisal Practice ~~[established by the board]~~.

- (2) *Three (3) years from the date of a revocation, any certificate holder or licensee whose certificate or license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate, upon a finding that the petitioner has complied with any terms prescribed by the board and is able to engage in the practice of real estate appraisal within the requirements of this chapter and the administrative regulations. The board may, in its discretion, require the petitioner to successfully pass the examination required for the applicable certificate or license.*

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

- (1) *Any person or organization, including the board upon its own volition, may file with the board a written complaint alleging a violation of any provision of this chapter. The board shall investigate each complaint.*
- (2) *If the investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before fining, reprimanding, suspending, revoking, refusing to renew, or any combination thereof, [a license or certificate, the board shall conduct an administrative hearing in accordance with KRS Chapter 13B].*
- (3) *If the investigation reveals that the alleged violation did occur but was not of a serious nature, the board may issue a written admonishment to the certificate holder or licensee. A copy of the admonishment shall be placed in the recipient's permanent file with the board. The recipient shall have the right to file a response to the admonishment within thirty (30) days of its receipt and have the response placed in the permanent file. The recipient may, alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing in accordance with the provisions of KRS Chapter 13B.*
- (4) *After denying an application for a certificate or license or issuing an admonishment, the board shall grant an administrative hearing in accordance with KRS Chapter 13B only upon written request of the applicant made within thirty (30) days of the mailing of the letter of denial or admonishment.*
- (5) *Any party aggrieved by a final order of the board may appeal to Franklin Circuit Court as provided by KRS Chapter 13B.*

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

The board shall establish by regulation and collect the following fees for certification or licensure as an appraiser for:

- (1) Federally-related transactions:
 - (a) Initial application fee in an amount not to exceed two hundred *twelve* dollars (*\$212*), *which shall include a fee for the current edition of the Uniform Standards of Professional Practice*~~[((\$200)]~~;
 - (b) Examination fee in an amount not to exceed two hundred dollars (\$200);
 - (c) An annual certificate or licensure fee in an amount not to exceed two hundred *twelve* dollars (*\$212*), *which shall include a fee for the current edition of the Uniform Standards of Professional Appraisal Practice*~~[((\$200)]~~;
 1. Duplicate certificate fee in an amount not to exceed ten dollars (\$10);
 2. Certificate correction fee in an amount not to exceed ten dollars (\$10);
 - (d) Roster fee not to exceed fifty dollars (\$50).
- (2) Nonfederally-related transactions:
 - (a) Initial application fee in an amount not to exceed one hundred dollars (\$100);
 - (b) Examination fee in an amount not to exceed one hundred dollars (\$100);
 - (c) An annual certificate or licensure renewal fee in an amount not to exceed one hundred dollars (\$100);
 1. Duplicate certificate fee in an amount not to exceed five dollars (\$5);
 2. Certificate correction fee in an amount not to exceed five dollars (\$5);
 - (d) Roster fee not to exceed twenty-five dollars (\$25).
- (3)
 - (a) All fees and charges collected by the board under the provisions of this chapter shall be paid into the Real Estate Appraisers Board's trust and agency account in the State Treasury.
 - (b) All expenses incurred by the board under the provisions of this chapter, including compensation to the board members and staff, shall be paid out of this account, subject to approval of the board.
- (4) All fees and charges collected by the board under the provisions of this chapter shall be paid into the Real Estate Appraisers Board's trust and agency account in the State Treasury. All expenses incurred by the board under the provisions of this chapter, including compensation to the board members and staff, shall be paid out of this account, subject to approval of the board.

Approved April 7, 1998

CHAPTER 378

(HB 614)

AN ACT relating to insurance.

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

Section 1. KRS 304.9-295 is amended to read as follows:

- (1) This section shall apply to resident~~[-natural]~~ persons licensed as agents or solicitors for the following kinds of insurance: life, health, property,~~[-or]~~ casualty, *or surety*.
- (2) This section shall not apply to:
 - (a) Persons holding licenses for which no examination is required by KRS 304.9-170 except that persons exempted from examination by KRS 304.9-170(1) and (2) shall be subject to this section;
 - (b) Persons holding limited or restricted licenses, as exempted by the commissioner;~~[-or]~~
 - (c) Persons not licensed for one (1) full year prior to the end of a continuing education biennium as described in subsection (3) of this section;

- (d) *Persons holding nonresident licenses who have met the continuing education requirements of their state of domicile and whose state of domicile has a current continuing education reciprocal agreement with the commissioner; or*
- (e) *Persons maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the department with a supporting affidavit.*
- (3) The licensees specified in subsection (1) of this section and not exempt under subsection (2) of this section who hold *a license* [~~licenses issued on or after July 1, 1988~~], shall satisfactorily complete a minimum of twenty-four (24) [~~classroom~~] hours of continuing education courses, *of which twelve (12) must be classroom hours*, during each continuing education biennium. A continuing education biennium shall begin on July 1 and end on June 30 two (2) years later.
- (4) Only continuing education courses approved by the commissioner may be used to satisfy the continuing education requirement of subsection (3) of this section.
- (a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:
1. Any part of the Life Underwriter Training Council life course curriculum;
 2. Any part of the Life Underwriter Training Council health course curriculum;
 3. Any part of the American College Chartered Life Underwriter diploma curriculum;
 4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
 5. Any part of the Insurance Institute of America's programs;
 6. Any part of the certified insurance counselor program;
 7. Any insurance related course taught at an accredited college or university, if such course is approved by the commissioner;
 8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;
 9. Any correspondence course approved by the commissioner.
- (b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved pursuant to this subsection.
- (c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to persons who do not successfully complete such written examination.
- (d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.
- (5) A person teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a person taking and satisfactorily completing such course.
- (6) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.
- (7) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but such extension of time shall not exceed two (2) years. What constitutes good cause for such extension of time rests within the discretion of the commissioner.
- (8) Every person subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by such person. Such certification shall be signed by or on behalf of the organization sponsoring the continuing education course. Such certification shall be on a form prescribed by the commissioner.

- (9) The license of any person failing to comply with the continuing education requirement of subsection (3) of this section and who has not been granted an extension of time to comply pursuant to subsection (7) of this section shall be canceled and promptly surrendered to the commissioner without demand.
- (10) The license of any person subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed in lieu thereof, or both, pursuant to KRS 304.9-440 if such person submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.

Section 2. KRS 304.29-331 is amended to read as follows:

- (1) Agents of societies shall be licensed in accordance with the provisions of Subtitle 9 of this chapter regulating the licensing, revocation, suspension, or termination of license of resident and nonresident agents. No examination shall be required of any person licensed as an agent for a society prior to January 1, 1987. ***Agents of societies shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided in Section 1 of this Act and any administrative regulations promulgated thereunder.***
- (2) No examination or license shall be required of any regular salaried officer, employee, or member of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of the contracts no commission or other compensation directly dependent upon the amount of business obtained.
- (3) Any agent, representative, or member of a society who devotes, or intends to devote, less than fifty percent (50%) of the person's time to the solicitation and procurement of insurance contracts for the society shall be exempt from the requirements of subsection (1) of this section. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars (\$50,000), or in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five (25) individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty percent (50%) of time to the solicitation or procurement of insurance contracts for such society.

Section 3. KRS 304.32-180 is amended to read as follows:

- (1) "Agent" means any person authorized by a corporation subject to the provisions of this subtitle and on its behalf to solicit applications for subscription or membership, or offers or assumes to act in the negotiation thereof. To qualify for an agent's license an applicant shall:
 - (a) Be above the age of eighteen (18) years;
 - (b) Be a bona fide resident of and actually reside in this state;
 - (c) Be a trustworthy person;
 - (d) Be appointed as an agent by one (1) or more corporations subject to the provisions of this subtitle;
 - (e) Make application to the commissioner in the manner and form prescribed by him. As a part or in connection with any application, the applicant shall furnish information concerning his identity, personal history, experience, business record, purposes, and any other information the commissioner may reasonably require;
 - (f) Pay the fee provided in Subtitle 4 of this chapter; and
 - (g) Take an examination given by the commissioner as a test of his qualifications and competence.
- (2) Agents' licenses shall expire at midnight on March 31 unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for continuation of license accompanied by payment of the renewal fee as provided in Subtitle 4 of this chapter, except that any request for continuation filed with the commissioner after such March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as prescribed in Subtitle 99 of this chapter.
- (3) ***Agents shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided by Section 1 of this Act and any administrative regulations promulgated thereunder.***

Section 4. KRS 304.38-110 is amended to read as follows:

- (1) The commissioner shall promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents, and the termination or revocation of such license. An "agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a health maintenance organization.
- (2) *Agents shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided in Section 1 of this Act and any administrative regulations promulgated thereunder.*

Section 5. KRS 304.43-080 is amended to read as follows:

- (1) A prepaid dental plan shall register the names of all persons acting as its agents with the commissioner within thirty (30) days after July 15, 1982.
- (2) The commissioner shall, within one (1) year from July 15, 1982, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents, and the termination or revocation of such licenses.
- (3) *Agents shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided by Section 1 of this Act and any administrative regulations promulgated thereunder.*

Approved April 7, 1998

CHAPTER 379

(HB 610)

AN ACT relating to cities of the third, fourth, fifth, and sixth classes.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 81A IS CREATED TO READ AS FOLLOWS:

- (1) *When a city of the third, fourth, or fifth class and a city of the sixth class have a common boundary, and it is determined by the legislative body of the city of the sixth class and of the adjoining city of the third, fourth, or fifth class that the entire area of the city of the sixth class can be better served by the adjoining city, the entire area of the city of the sixth class may be annexed to the adjoining city and the city of the sixth class dissolved after the enactment of identical ordinances by each legislative body according to the provisions of this section.*
- (2) *The ordinances declaring the annexation of the city of the sixth class by the adjoining city shall include, but not be limited to, the following:*
 - (a) *A statement of the financial consideration, if any, between the two (2) cities regarding the area of the city of the sixth class and the terms of any financial arrangements;*
 - (b) *The resolution of any taxes or revenues from the area of the city of the sixth class;*
 - (c) *A statement of the land use or the zoning regulations that would be applicable to the area of the city of the sixth class if planning and zoning is in effect pursuant to KRS Chapter 100 in either city; and*
 - (d) *The date that the annexation of the city of the sixth class by the adjoining city would be effective, which shall not be more than one (1) year after the date on which the last of the identical ordinances is adopted.*
- (3) *In order for the annexation to be completed, either of the following procedures shall be followed and concluded:*
 - (a) *Prior to the effective date of the annexation of the area of the city of the sixth class into the adjoining city, a petition in support of the annexation, containing a number of signatures of residents in the area of the city of the sixth class that is not less than fifty-one percent (51%) of the number of registered voters in the area of the city of the sixth class, shall be submitted to the county clerk of the county in which the city of the sixth class is located. The county clerk shall within ten (10) working*

days of receipt of the petition notify each city of the validity of each signature and address on the petition; or

- (b) *An election shall be held to determine the desire of the voters in the city of the sixth class. An election shall be held at a regular election, or an election may be held at a primary election if an ordinance or municipal order of the legislative body of the city of the sixth class desiring annexation has been filed with the county clerk not later than the second Tuesday in August preceding the primary election. The qualifications of voters and all other matters in regard to the election shall be governed by the general election laws. The question shall be submitted in substantially the following form: "Are you in favor of annexing the city of into the city of and dissolving the city of? Yes..... No.....".*
- (4) *If the requisite number of signatures is verified by the county clerk as provided in subsection (3)(a) of this section, or if a majority of the legal votes cast at the election in the city of the sixth class proposing to be annexed favors the annexation, the annexation shall proceed and become effective, and the city of the sixth class shall be dissolved at the date provided in the identical ordinances adopted by the legislative bodies of the city of the sixth class and of the adjoining city upon the enactment by the legislative body of the adjoining city of an ordinance accepting the annexation of the city of the sixth class.*
- (5) *All assets of the city of the sixth class existing on the date of annexation shall become the property of the annexing city. Any indebtedness for which the city of the sixth class is liable on the date of annexation shall be assumed by the annexing city, so that after annexation the burden of taxation shall be uniform throughout the area of the two (2) cities.*
- (6) *The enactment of ordinances by each city shall be pursuant to KRS 83A.060.*
- (7) *The authority for the annexation of the city of the sixth class shall be exclusive of the provisions of KRS 81A.440.*
- (8) *In addition to other public notice requirements, the annexing city shall comply with the provisions of KRS 81A.470, but shall not be required to comply with the provisions of KRS 81A.475. The city clerk of the city of the sixth class shall, within sixty (60) days after the effective date of the dissolution of the city of the sixth class, give written notice of the dissolution and the date of the dissolution to the Secretary of State who shall properly index and file the notice and date as a permanent record in the secretary's office.*
- (9) *The area of the city of the sixth class being annexed shall assume the local option status of the city by which it is being annexed.*

Approved April 7, 1998

CHAPTER 380

(HB 603)

AN ACT relating to nursing facilities.

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

Section 1. KRS 216.785 is amended to read as follows:

As used in KRS 216.785 to 216.793, unless the context otherwise requires:

- (1) "Crime" means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony in Kentucky if committed in Kentucky.
- (2) "Direct service" means personal or group interaction between the employee and the *nursing facility resident or the* senior citizen.
- (3) "*Nursing pool*" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in nursing facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies.
- (4) "Senior citizen" means a person sixty (60) years of age or older.

Section 2. KRS 216.789 is amended to read as follows:

- (1) No nursing facility *or nursing pool providing staff to a nursing facility* shall knowingly employ a person in a position which involves providing direct services to a nursing facility resident if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.
- (2) A *nursing facility or nursing pool providing staff to a nursing facility* may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each nursing facility *or nursing pool providing staff to a nursing facility* shall request all conviction information from the Justice Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The nursing facility *or nursing pool providing staff to a nursing facility* may temporarily employ an applicant pending the receipt of the conviction information.

Section 3. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer to the applicant for initial employment in a nursing facility *or nursing pool providing staff to a nursing facility* or in a position funded by the Department for Social Services of the Cabinet for Human Resources and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Section 4. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in this Act shall be codified as the Cabinet for Families and Children.

Approved April 7, 1998

CHAPTER 381

(HB 596)

AN ACT relating to executive branch ethics.

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

Section 1. KRS 11A.020 is amended to read as follows:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.
- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

- (3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.
- (4) *The prohibitions imposed by subsection (1)(c) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.*

Section 2. KRS 11A.040 is amended to read as follows:

- (1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
 - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
 - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.
- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- (7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:
- (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- (8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- (9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.
- (10) *The prohibitions imposed by subsection (5) or (9) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.*

Approved April 7, 1998

CHAPTER 382

(HB 593)

AN ACT relating to surface mining permit renewal.

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

Section 1. KRS 350.060 is amended to read as follows:

- (1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.
- (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.
- (3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:
 - (a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;
 - (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;
 - (c) The owner or owners of the coal to be mined;

- (d) The source of the applicant's legal right to mine the coal on the land affected by the permit;
 - (e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;
 - (f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;
 - (g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;
 - (h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and
 - (i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.
- (4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.
- (5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
- (6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:
- (a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;
 - (b) Identify the area to correspond with the application;
 - (c) Show adjacent deep mining;
 - (d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;
 - (e) Be of a scale of 1:24,000 or larger;
 - (f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within five hundred (500) feet of the area;
 - (g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;
 - (h) Show the date on which the map was prepared, the north point, and the quadrangle name; and

- (i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- (7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.
- (8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.
- (9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.
- (10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.
- (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed three hundred seventy-five dollars (\$375), plus a fee set by administrative regulation but not to exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.
- (12) Surface coal mining and reclamation operations which affected two (2) acres or less, as defined by administrative regulations of the cabinet, which were conducted pursuant to two (2)-acre-or-less permits issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, shall be exempt from the requirements of this chapter, except as follows. Reclamation of the operations shall be accomplished in accordance with administrative regulations promulgated by the cabinet for operations of two (2) acres or less. The cabinet shall not require that the highwalls left by the operations be eliminated. Bond shall be maintained until reclamation is successfully completed. All procedural provisions and the penalty provisions of KRS 350.990 shall apply to operations conducted pursuant to this subsection. The cabinet shall enforce this subsection consistent with this chapter, except that the cabinet shall not issue orders requiring cessation of operations for mere failure to abate a violation.

- (13) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.
- (14) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed three hundred seventy-five dollars (\$375). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:
- (a) The terms and conditions of the existing permit are not being satisfactorily met;
 - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;
 - (c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;
 - (d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or
 - (e) Any additional revised or updated information required by the cabinet has not been provided.
- Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.
- (15) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.
- (16) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit. ***However, if a permit has expired or if a permit renewal application has not been timely filed, and the operator or permittee desires to continue the surface coal mining operation, the cabinet shall forthwith cause a notice of noncompliance to be issued. The notice of noncompliance shall be deemed to have been complied with, and the permit may be renewed, if the cabinet receives a permit renewal application within thirty (30) days of the receipt of the notice of noncompliance. Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal. Failure to comply with the remedial measures of the notice of noncompliance shall result in the cessation of the surface coal mining operation.***
- (17) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.
- (18) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to

augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.

- (19) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

Approved April 7, 1998

CHAPTER 383

(HB 592)

AN ACT relating to prison labor.

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

Section 1. KRS 197.120 is amended to read as follows:

- (1) The Department of Corrections may enter into contracts with any other state agency for the use and employment of prisoners who may be eligible for the assignments. The contracts shall specifically set forth the compensation to be paid to the Department of Corrections for the use and employment of the prisoners, for the payment of the expenses of transporting, guarding, housing, disciplining, and maintaining the prisoners while so employed. The amount to be paid shall be certified by the contracting parties to the Finance and Administration Cabinet at the end of each month and shall be charged to the appropriation of the agency liable for the payment thereof and credited to the budget of the department to be disbursed and expended as it directs. Any contract may provide for a fixed per diem compensation to be paid to the department for each day's work performed by the prisoner and the department shall pay, out of the per diem compensation, the expenses of transporting, guarding, disciplining, housing, and maintaining prisoners as may be provided in the contracts.
- (2) *The Department of Corrections shall not enter into any contract with the Revenue Cabinet for the use or employment of prisoners in any capacity that allows prisoners access to taxpayer information, including but not limited to tax returns, informational reporting returns, social security numbers, telephone numbers, or addresses.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

The Revenue Cabinet shall not enter into any contract with the Department of Corrections, the United States Government, any local government, or any private contractor operating a correctional institution on behalf of the Department of Corrections, the United States Government, or any local government for the use or employment of prisoners in any capacity that allows prisoners access to taxpayer information, including but not limited to tax returns, informational reporting returns, social security numbers, telephone numbers, or addresses.

Approved April 7, 1998

CHAPTER 384

(HB 591)

AN ACT relating to patient safety.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All health care facilities and services licensed under this chapter, with the exception of personal care homes, family care homes, and boarding homes, shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems related to the quality of health care facilities and

services. These standards shall be made available upon request to the public during regular business hours and shall include:

- (1) An ongoing written internal quality assurance or improvement program;*
- (2) Specific, written guidelines for quality care studies and monitoring;*
- (3) Performance and clinical outcomes-based criteria;*
- (4) Procedures for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;*
- (5) A plan for data gathering and assessment;*
- (6) A peer review process; and*
- (7) A summary of process outcomes and follow-up actions related to the overall quality improvement program for the health care facility or service.*

Current federal or state regulations which address quality assurance and quality improvement requirements for nursing facilities, intermediate care facilities, and skilled care facilities shall suffice for compliance with the standards in this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes but is not limited to:

- (1) Defined roles and responsibilities of licensed and unlicensed health care personnel;*
- (2) A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;*
- (3) A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;*
- (4) A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and*
- (5) A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, and for nurses, the professional standards of practice referenced in KRS Chapter 314, and facility and service policies.*

If a nursing facility, intermediate care facility, or skilled care facility meets the most current state or federal regulations which address safe and consistent staffing levels of licensed and unlicensed personnel, those shall suffice for compliance with the standards in this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) Any agent or employee of a health care facility or service licensed under this chapter who knows or has reasonable cause to believe that the quality of care of a patient, patient safety, or the health care facility's or service's safety is in jeopardy shall make an oral or written report of the problem to the health care facility or service, and may make it to any appropriate private, public, state, or federal agency.*
- (2) Any individual in an administrative or supervisory capacity at the health care facility or service who receives a report under subsection (1) of this section shall investigate the problem, take appropriate action, and provide a response to the individual reporting the problem within seven (7) working days.*
- (3) No health care facility or service licensed under this chapter shall by policy, contract, procedure, or other formal or informal means subject to reprisal, or directly or indirectly use, or threaten to use, any authority or influence, in any manner whatsoever, which tends to discourage, restrain, suppress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any agent or employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the health care facility or service the circumstances or facts to form the basis of a report under subsections (1) or (2) of this section. No health care facility or service shall require any agent or employee to give notice prior to making a report, disclosure, or divulgence under subsections (1) or (2) of this section.*

- (4) *All reports, investigations, and action taken subject to this chapter shall be conducted in a manner that protects and maintains the confidentiality of patients and personnel and preserves the integrity of data, information, and medical records.*
- (5) *All health care facilities and services licensed under this chapter shall, as a condition of licensure, abide by the terms of Section 1 of this Act and this section.*
- (6) *No agent or employee of a health care facility or service shall file a report under subsection (1) or (2) of this section in bad faith and shall have a reasonable basis for filing a report.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *All health care facilities and services licensed under this chapter shall require all persons, including students, who examine, observe, or treat a patient or resident of the health care facility or service to wear identification which readily identifies, at a minimum, the person's first name, licensure credential, and position title or department.*
- (2) *The identification shall be of a size and type and appropriately displayed so that it may be easily detected and read.*

Approved April 7, 1998

CHAPTER 385

(HB 588)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents (\$0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents (\$0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

- (2) (a) An annual ad valorem tax for state purposes of one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
 2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
 3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
 4. Tobacco base allotments.
- (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.
- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$0.30) of the thirty-one and one-half cents (\$0.315) state tax rate on real property and thirty cents (\$0.30) of the forty-five cents (\$0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570 except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.

- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.
- (12) ***An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes.***

Section 2. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture. Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
- (8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;

- (13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460 based on the vehicle's fair market value at the time of sale;
- (14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;
- (16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095;~~and~~
- (17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800; *and*
- (18) ***Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs.***

Section 3. The amendments contained in Sections 1 and 2 of this Act shall apply to property assessed on or after January 1, 1999.

Approved April 7, 1998

CHAPTER 386

(HB 587)

AN ACT relating to absentee voting and declaring an emergency.

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

Section 1. KRS 117.085 is amended to read as follows:

- (1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. ***Except as provided in paragraph (b) of this subsection***, all applications for an absentee ballot shall be transmitted only by mail or in person as specifically provided by this section. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted, no paper absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for a paper absentee ballot as provided in this section and who is properly registered as stated in his application.
 - (a) The following voters may apply to cast their votes by paper absentee ballot at any time not later than the close of business hours seven (7) days before the election:
 - 1. Voters permitted to vote by paper absentee ballot pursuant to KRS 117.075 or KRS 117.077;
 - 2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
 - 3. Students who live outside the county of their residence and other voters who live outside the state but who are still eligible to vote in this state; and
 - 4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime.

Any other qualified voter in any county who is not permitted to vote by paper absentee ballot who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above. Requests for an application for a paper absentee ballot may

be transmitted by telephone, facsimile machine, by mail, or in person. All applications for a paper absentee ballot shall be made in person or by mail, at the option of the voter, except that the county clerk shall hand an application for a paper absentee ballot to a voter permitted to vote by paper absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The paper absentee ballot application shall be restricted to use of the voter or the spouse, parents, or children of the voter.

- (b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for a paper absentee ballot by means of the federal post-card application, *which may be transmitted to the county clerk's office by mail or by facsimile machine*. The application may be used to register, reregister, and to apply for a paper absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.
 - (c) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.
 - (d) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.
 - (e) Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.
- (2) The clerk shall type the name of the voter permitted to vote by paper absentee ballot on the application form for that person's use and no other. The paper absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for a paper absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.
- (3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive a paper absentee ballot, he shall mail to the voter a paper absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. *An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky*

who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.

- (4) Paper absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and paper absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.
- (5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and ten (10) days prior to each runoff primary.
- (6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.
- (7) Any person who has received a paper absentee ballot but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his paper absentee ballot and vote in person. He shall return his paper absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the paper absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent paper absentee ballots, and the voter may vote in the precinct in which he is properly registered.

Section 2. KRS 117.086 is amended to read as follows:

- (1) The voter returning his paper absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. *A resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas who has received an absentee ballot transmitted by facsimile machine shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the state board by administrative regulation.* In order to be counted, the paper ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.
- (2) Any voter who shall be absent from the county on election day, but who does not qualify to receive a paper absentee ballot by mail under the provisions of KRS 117.085, and all members of county boards of elections and precinct election officers qualified to vote prior to the election under the provisions of KRS 117.085, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:
 - (a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.
 - (b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.
- (3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."

- (4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.
- (5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.
- (6) The clerk shall deposit all of the returned paper absentee ballots in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.
- (7) The clerk shall keep a list of all persons who return their paper absentee ballots or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by paper absentee ballots and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.

Section 3. Whereas the date of the next political party primary precedes the normal effective date for legislation enacted during this regular session, and whereas some Kentucky residents who are serving in the military, their dependents, and other citizens residing overseas may be disenfranchised in that primary without the change in procedures for requesting and receiving an absentee ballot as prescribed in this Act being applied to that primary, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 7, 1998

CHAPTER 387

(HB 577)

AN ACT relating to gas pipeline safety.

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

Section 1. KRS 278.992 is amended to read as follows:

- (1) Any person who violates any ***minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. sec. 60101 et seq., or any amendments thereto, or any*** regulation adopted and filed pursuant to KRS Chapter 13A by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act ~~of 1968, U. S. Congress~~, shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed ***twenty-five*** ~~ten~~ thousand dollars ***(\$25,000)*** ~~(\$10,000)~~ for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed five hundred thousand dollars (\$500,000) for any related series of violations. Any civil penalty assessed for such a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.

- (2) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the Natural Gas Pipeline Safety Act or any regulation or order issued pursuant to it shall, upon conviction, be subject for each offense to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not to exceed one (1) year, or both.

Approved April 7, 1998

CHAPTER 388

(HB 572)

AN ACT relating to a certificate to extend or operate a utility.

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

Section 1. KRS 278.020 is amended to read as follows:

- (1) No person, partnership, public or private corporation, or combination thereof shall **commence providing utility service to or for the public or** begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until ~~that~~~~such~~ person has obtained from the Public Service Commission a certificate that public convenience and necessity require **the service or**~~such~~ construction. Upon the filing of an application for~~such~~ a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.
- (2) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.
- (3) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.
- (4) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.
- (5) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any~~such~~ acquisition of control without~~such~~ prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any~~such~~ individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that~~such~~ ownership does not in fact confer control. Application for any~~such~~ approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in ~~a~~~~such~~ form and contain **the**~~such~~ information as the commission requires. The commission shall approve any~~such~~ proposed acquisition when it finds that the same is to be made in accordance with law, for a proper

purpose and is consistent with the public interest. The commission may make~~[-such]~~ investigation and hold~~[-such]~~ hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with~~[-such]~~ modification and upon~~[-such]~~ terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor or on a later date mutually acceptable to the commission and the acquirer. In the absence of ~~that~~~~any~~~~such~~ action within ~~that~~~~such~~ period of time, any~~[-such]~~ proposed acquisition shall be deemed to be approved.

- (6) Subsection (5) of this section shall not apply to any acquisition of control of any:
- (a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (5) of this section;
 - (b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, ~~the~~~~such~~ utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or
 - (c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of~~[-such]~~ indebtedness was approved by the commission.
- (7) If any provision of this section or the application thereof to any person or circumstance is held invalid, ~~the~~~~such~~ invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

Approved April 7, 1998

CHAPTER 389

(HB 562)

AN ACT relating to retirement.

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

Section 1. KRS 21.420 is amended to read as follows:

- (1) After the death of a member who at the time of his death was receiving a service retirement allowance (other than an actuarially reduced allowance under subsection (3) of KRS 21.400), or was receiving a disability retirement allowance, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of that he was receiving.
- (2)
 - (a) If a member dies before retirement and before reaching normal retirement age, without regard to length of service, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of the monthly allowance the member would have received commencing at his normal retirement date if he had continued in service until that date and had then retired, computed however on the basis of his final compensation at time of death.
 - (b) If a member dies before retirement and after reaching normal retirement age, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of the monthly allowance the member would have been entitled to, on the basis of his years of service, had he retired on the date of his death.
- (3) If a member dies after retirement and was at the time of his death receiving an actuarially reduced allowance under subsection (3) of KRS 21.400, or was not at the time of his death receiving a retirement allowance but had acquired the vested right under subsection (2) of KRS 21.400 to have received an allowance upon reaching normal retirement age, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of the monthly allowance the member would have received when he reached normal retirement age.
- (4) A member, or a retiree who has not commenced drawing retirement benefits pursuant to KRS 21.400, who dies without a spouse or eligible children entitled to survivor's benefits, may designate a beneficiary who shall

receive the accumulated contributions of the member. Absent a designation by the member or retiree, the accumulated contributions shall be paid to the member's estate.

- (5) A member who commences drawing retirement benefits pursuant to KRS 21.400 or 21.410, who dies without a spouse or eligible children entitled to survivor's benefits and before the benefits received by the member equal the personal contributions of the member, may designate a beneficiary who shall receive the balance of the accumulated contributions of the member. Any offset of contributions by reason of benefits received shall be deducted from the contributions first made to the system. Absent a designation by the member, the accumulated contributions shall be paid to the member's estate.
- (6) A member may designate a beneficiary who shall receive the balance of the accumulated contributions of the member, in the event survivor's benefits are being paid pursuant to subsection (1), (2), or (3) of this section, and the survivor dies prior to receiving benefits equal to the member's contributions. In this event, the provisions of subsection (5) of this section shall apply as to offset and payment.
- (7) A member may, **prior to the drawing of benefits**~~before retirement~~, elect in writing to the executive secretary of the Judicial Form Retirement System, to take an optional retirement allowance which shall be actuarially equivalent to the amount of retirement allowance otherwise payable to the member **and the member's spouse**. If the member dies after retirement, the option chosen shall prevail over the provisions of subsections (1) and (3) of this section. If the member dies prior to retirement, the option chosen shall prevail over the provisions of subsection (2) of this section. The options shall include:
 - (a) Survivorship one hundred percent (100%). The member may elect to receive a decreased retirement allowance during the member's lifetime and have the retirement allowance continued after death to the spouse during the lifetime of the spouse.
 - (b) Survivorship sixty-six and two-thirds percent (66 2/3%). The member may elect to receive a decreased retirement allowance during the member's lifetime and have two-thirds (2/3) of the retirement allowance continue after death to the spouse during the lifetime of the spouse.

If a retiree, living or deceased, chose either of the optional retirement benefit allowances specified in paragraphs (a) or (b) of this subsection from July 15, 1994, to the effective date of this Act, the optional allowance shall be adjusted accordingly, and the new benefit shall commence August 1, 1998. Each recipient of benefits from the plan, who retired from July 15, 1994, to the effective date of this Act, shall have a one-time opportunity to select an optional retirement allowance. The election by the recipient shall be prior to August 1, 1998, at which time the new benefit shall commence. The option chosen shall prevail, subsections (1), (2), and (3) of this section notwithstanding.

Section 2. KRS 21.425 is amended to read as follows:

- (1) In any circumstances in which a surviving spouse would be entitled to any allowance under KRS 21.420, but there is no surviving spouse or the surviving spouse subsequently dies, and there is a surviving child or children of the member under the age of **twenty-one (21)**~~eighteen (18)~~, the monthly allowance that the surviving spouse would have received or was receiving shall be continued for the benefit of such child or children remaining under the age of **twenty one (21)**~~eighteen (18)~~ until there are none under the age of **twenty-one (21)**~~eighteen (18)~~.
- (2) A member may designate his child or children under the age of **twenty-one (21)**~~eighteen (18)~~ to receive the death benefit payable under KRS 21.420 instead of his spouse, or he may designate that his spouse shall receive a percentage of the death benefit, and his child or children under the age of **twenty-one (21)**~~eighteen (18)~~ shall receive the remainder. The member making such a choice shall designate his beneficiary or beneficiaries in writing to the manager of the Judicial Form Retirement System on a form provided by the manager.

Section 3. KRS 21.427 is amended to read as follows:

- (1) (a) The board of trustees of the Judicial Form Retirement System shall arrange by appropriate contract or on a self-insured basis for a group hospital and medical insurance plan for recipients of a retirement allowance from the Judicial Retirement Plan, and their dependents. For recipients, or dependents, eligible for Medicare coverage, the board shall provide Medicare supplement hospital and medical insurance coverage. For recipients, or dependents, not eligible for Medicare coverage, the board shall provide hospital and medical insurance coverage comparable to that provided under the major state

employees' group insurance, and the board may arrange for the recipients to be included in the major state employees group.

- (b) For the purpose of this section, the "dependent" of a recipient means the spouse or minor children, or both, of a recipient who is a living former member of the Judicial Retirement Plan, or the minor children of a deceased former member whose surviving spouse is the recipient.
- (2) (a) Depending upon the number of months of service credit upon which the retirement allowance was based, and upon there having been at least forty-eight (48) months of judicial service, all or a portion of the premium required to provide hospital and medical benefits under this section shall be paid from the judicial retirement fund, as follows:

Months of Judicial Service	Percentage of Premium
240 or more	100%
180 to 239, inclusive	75%
120 to 179, inclusive	50%
48 to 119, inclusive	25%

The foregoing payments shall be made by the fund only if the recipient agrees to pay the remaining, if any, percentage of the premium by deduction from his retirement allowance or by another method equally insuring the payment by him.

- (b) Notwithstanding any other statute to the contrary, any member with at least forty-eight (48) months of judicial service who is also eligible for benefits, **or who is receiving benefits from any retirement plan or system administered by the Commonwealth**~~[under KRS 78.510 to 78.852]~~ shall be entitled to hospital and medical benefits as described in paragraph (a) of this subsection except that the number of months of service credit used in calculating the level of benefits shall be the sum of service credited to the member in **all the state-administered retirement systems or plans**~~[Judicial Retirement System and the County Employees Retirement System]~~.
- Upon request of the member, the Judicial Retirement System shall compute the member's combined service in **all the state-administered retirement systems or plans**~~[Judicial Retirement System and the County Employees Retirement System]~~ and calculate the portion of the member's premium to be paid by the Judicial Retirement Plan, according to the criteria established in paragraph (a) of this subsection. The **state-administered retirement systems or plans**~~[County Employees Retirement System annually]~~ shall pay to the Judicial Retirement **Plan**~~[Fund]~~ the **applicable** percentage of the **plan's**~~[fund's]~~ cost of the retiree's hospital and medical premium which shall be equal to the percentage of the member's number of months of service in the **applicable state-administered retirement systems or plans**~~[County Employees Retirement System]~~ divided by his total combined service. The amounts paid by **all the state-administered retirement systems or plans**~~[Judicial Retirement Fund and the County Employees Retirement System]~~ shall not be more than one hundred percent (100%) of the ~~[single]~~ premium amount adopted by the respective boards of trustees ~~[or more than the maximum percentage payable under the program established under this section or KRS 61.702]~~.
 - A member who elects hospital and medical benefits under this subsection shall lose any claim to insurance benefits under **any of the other state-administered retirement systems or plans**~~[the County Employees Retirement System described in KRS 61.702, and the election shall be irrevocable]~~.
- (3) Premiums paid for hospital and medical insurance procured under this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the judicial retirement fund shall not constitute income to the recipient. No commission shall be paid for hospital and medical insurance procured under this section.

Section 4. KRS 6.577 is amended to read as follows:

- (1) The board of trustees of the Judicial Form Retirement System shall arrange by appropriate contract or on a self insured basis to provide a group hospital and medical insurance plan for present and future recipients of a

retirement allowance from the Legislators' Retirement Plan. The board may authorize present and future recipients of a retirement allowance from the Legislators' Retirement Plan who are under age sixty-five (65) to be included in the state employees group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status.

- (2) Each employer participating in the Legislators' Retirement Plan shall contribute to the plan the amount necessary to provide hospital and medical insurance as provided for under this section. The employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of the total employer contribution rate to the Legislators' Retirement Plan.
- (3) The premium required to provide hospital and medical benefits under this section shall be paid in full from the insurance fund established by KRS 6.575 for all recipients of a retirement allowance from the Legislators' Retirement Plan, if the recipient had two hundred forty (240) months or more of service upon retirement. If the recipient had less than two hundred forty (240) months of service, but at least one hundred thirty-two (132) months of service, fifty-five percent (55%) of the premium shall be paid from the insurance fund plus an additional five percent (5%) of the premium for each year of service beginning with the completion of twelve (12) years of service and continuing through the completion of nineteen (19) years of service. The recipient shall agree to pay by payroll deduction or another method the difference between what is paid from the insurance fund and one hundred percent (100%) of the premium. If the recipient had at least one hundred twenty (120) months of service, fifty percent (50%) of the premium shall be paid from the insurance fund, if the recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. If the recipient had less than one hundred twenty (120) months of service but at least forty-eight (48) months of service, twenty-five percent (25%) of the premium shall be paid from the insurance fund, if the recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. "Months of service" as used in this section shall not include service added to determine disability benefits.
- (4) The insurance fund shall pay the same percentage of the premium for the spouse and dependents of a recipient, or the beneficiary of the recipient, as the fund pays or paid for the member.
- (5) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.
- (6) *Notwithstanding any other statute to the contrary, any member with at least forty eight (48) months of legislative service who is also eligible for benefits, or who is receiving benefits from any retirement plan or system administered by the Commonwealth shall be entitled to hospital and medical benefits as described in subsection (3) of this section, except that the number of months of service credit used in calculating the level of benefits shall be the sum of the service credited to the member in all the state-administered retirement systems or plans.*
 - (a) *Upon request of the member, the Legislators' Retirement Plan shall compute the member's combined service in all the state-administered retirement systems or plans, and calculate the portion of the member's premium to be paid by the Legislators' Retirement Plan, according to the criteria established in subsection (3) of this section. The state-administered retirement systems or plans shall pay to the Legislators' Retirement Plan the applicable percentage of the plan's costs of the retiree's hospital and medical premium which shall be equal to the percentage of the member's number of months of service in the applicable state-administered retirement system divided by his total combined service. The amounts paid by all the state-administered retirement systems or plans shall not be more than one hundred percent (100%) of the premium amount adopted by the respective boards of trustees.*
 - (b) *A member who elects hospital and medical benefits under this section shall lose any claim to insurance benefits under any of the other state-administered retirement systems or plans.*

Section 5. KRS 6.525 is amended to read as follows:

The Legislators' Retirement Plan shall be governed by KRS 21.560 and by provisions identical in terms with those provided in KRS 21.345(1) and (3), 21.360(1), 21.370, 21.375, 21.380, 21.385, 21.410, 21.420, 21.425, 21.450, 21.460, 21.470, 21.480, 21.525, and 61.552 for the Judicial Retirement Plan, except that:

- (1) Five (5) years of service as a legislator will be sufficient for vesting; and
- (2) A member of the Legislators' Retirement Plan may combine his service credit with his service credit in the Teachers' Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System at the time of his retirement, according to the procedure of KRS 61.680(2)(a). A member of the Legislators' Retirement Plan may retire at the completion of thirty (30) or more years of combined service credit, so long as at least fifteen (15) years of such credit were earned after January 1, 1960, and there shall be no reduction in the retirement allowance because of retirement before the age of sixty-five (65). For the purposes of this section, any reference in the KRS sections listed above to the Judicial Retirement Plan shall also be read as a reference to the Legislators' Retirement Plan, and any reference to the Legislators' Retirement Plan shall also be read as a reference to the Judicial Retirement Plan.
- (3) Any other statute to the contrary notwithstanding, a member of any state-administered retirement system who **has ceased to qualify for membership but subsequently**~~because of a change of employment moves to another state-administered retirement system and because of another change of employment~~ returns to **a qualified status**~~the original state-administered retirement system without a break in service~~, shall, for the purposes of determining the date of entry into the ~~first~~ state-administered retirement system **for the subsequent period or periods of service**, be deemed to have never left the ~~original~~ retirement system.

Section 6. KRS 6.515 is amended to read as follows:

- (1) Service credit in the Legislators' Retirement Plan shall be acquired only by service as a legislator after July 1, 1980, while a member of the plan, by transfer of credit as provided in KRS 6.505, or by purchase of military service credit pursuant to subsection (2) of this section, or by transfer of credit as provided in subsection (6) of this section.
- (2) (a) *I.* Any active member of the Legislators' Retirement Plan who has at least five (5) years of service credit in the Legislators' Retirement Plan, or his beneficiary acting in his place if the member dies prior to retirement, shall receive service credit for a maximum of four (4) years for his period of service in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service by any other retirement system administered by the Commonwealth of Kentucky, by paying the retirement system thirty-five percent (35%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The service credit shall be awarded and the cost shall be determined in conformity with the rate which applies to the legislator in question pursuant to KRS 6.520. Service credit awarded pursuant to this subsection shall be equivalent, for all purposes of the Legislators' Retirement Plan, to other service credit earned in the plan.
- 2.* **Any active member of the Legislators' Retirement Plan who has at least five (5) years of service credit in the Legislators' Retirement Plan may purchase and receive service credit for one (1) month of service for each six (6) months of service in the reserves or the National Guard by paying the retirement system one hundred percent (100%) of the actuarial cost of the service as determined by the board of trustees, based on the assumptions used in the most recent biennial evaluation. The service credit shall be awarded and the cost shall be determined in conformity with the rate that applies to the legislator in question pursuant to KRS 6.520. Service credit awarded as provided in this subsection shall be equivalent, for all purposes of the Legislators' Retirement Plan, to other service credit earned in the plan. The service in the military reserves or the National Guard shall be treated as service earned prior to participation in the plan. The purchase can be made by the member in a lump-sum payment or by installment payments, as set forth in paragraph (b) of this subsection. The payment shall not be picked up by the employer as provided in KRS 6.505(2).**
- (b) The beneficiary may purchase military service credit only at one (1) time by lump-sum payment for the amount of service he wishes to purchase, and the payment shall be made within thirty (30) days of the death of the active member. The member may purchase all of his military service credit at one (1) time, or in increments of no less than one (1) year, unless there is a fraction remaining after all full years have been paid for. Payment of the total or the increment may be made by lump-sum or by monthly installments through payroll deduction. If the member chooses to pay by installment, the cost of the service credit shall be computed in the same manner as for a lump-sum payment, which shall be the principal. Interest, at the annual actuarial rate in effect at the time each payment is made, shall be added

to each monthly payment at the rate of one-twelfth (1/12) of the annual interest rate applied to the declining principal amount. Installment purchases shall be for no less than twelve (12) nor more than sixty (60) months. If the member leaves office before completing his installment payments, he may satisfy his contract by a lump-sum payment of the remaining principal amount, but no further installment payments shall be accepted thereafter. In this case, the member shall be credited with the military service credit for which he has paid, in years or months but no fraction less than a full month, and any payment remaining after credit for full months has been awarded shall be returned to the member.

- (c) The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 6.505(2).
 - (d) No veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for a military pension in the future, unless the military pension is for service primarily on inactive duty in a reserve component of the Armed Forces, or is a disability pension which does not exceed five hundred dollars (\$500) monthly.
- (3) If spouses both serve in the General Assembly, but not simultaneously, they may combine their service credit in the Legislators' Retirement Plan for all purposes of that plan into a single account, and may jointly designate to whom the service retirement allowance shall be paid. The designation shall not be changed once it is made. Assuming equal service credit, the benefits paid, pursuant to this section, to a legislator and his or her spouse who also served as a legislator shall not exceed the benefits that the same legislator and his or her spouse would receive if the spouse had not served as a legislator.
 - (4) In the event of divorce, rights to benefits shall be considered marital property subject to the provisions of KRS 403.190.
 - (5) A former legislator whose spouse currently serves in the General Assembly and who received a refund of contributions pursuant to KRS 21.460 may repurchase service credit which he or she previously had by repaying the amount refunded with interest at six percent (6%) per annum, and the service credit shall become part of the single account authorized by subsection (2) of this section.
 - (6) A member who has qualified for benefits pursuant to KRS 6.525(1) may transfer to the Legislators' Retirement Plan up to ten (10) years of service credit which he has earned in a retirement system administered by Kentucky Retirement Systems. If the member elects to transfer his service credit, the system from which the transfer is made shall transfer to the legislators' retirement fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to date of transfer at the actuarially assumed interest rate of the system from which the transfer is made in effect at the time the contributions were made, compounded annually at that same interest rate. The member shall be entitled to the transferred service credit, at the rate at which he qualifies pursuant to KRS 6.520, when he pays the total difference between the amount of the funds transferred and the cost of the credit to the Legislators' Retirement Plan, as determined by the actuary for the Legislators' Retirement Plan. The member may pay by lump sum or by increments, as provided for in subsection (2)(b) of this section, but an installment contract shall not extend for more than sixty (60) months. The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 6.505(2).

Section 7. KRS 21.370 is amended to read as follows:

- (1) Except as provided in subsection (2) of KRS 21.410 and in subsection (2) of KRS 21.420, no benefits shall be payable under KRS 21.350 to 21.480 to any member or to his surviving spouse, unless he has completed at least eight (8) years of service, including service before becoming a member. No surviving spouse of a retired member shall be entitled to any benefits unless the person was the spouse of the member at the time he retired.
- (2) A member who has qualified for benefits pursuant to this section may transfer to the Judicial Retirement Plan up to ten (10) years of service credit which he has earned in a retirement system administered by Kentucky Retirement Systems, and he may transfer to the Judicial Retirement Plan up to ten (10) years of service credit which he has earned in the Kentucky Legislators' Retirement Plan. If the member elects to transfer his service credit, the system or plan from which the transfer is made shall transfer to the judicial retirement fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to the date of transfer at the actuarially assumed interest rate of the system or plan from which the transfer is made in effect at the time the contributions were made, compounded annually at that same interest rate. The member shall be entitled to the transferred service credit, at the rate at

which he qualifies pursuant to KRS 21.400, when he pays the total difference between the amount of the funds transferred and the cost of the credit to the Judicial Retirement Plan, as determined by the actuary for the Judicial Retirement Plan. The member may pay by lump sum or by increments as set forth in KRS 6.515(2)(b), but an installment contract shall not extend for more than sixty (60) months. The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 21.360(6).

- (3) Any active member of the Judicial Retirement Plan who is vested in the Judicial Retirement Plan pursuant to subsection (1) of this section or KRS 21.375, shall receive service credit for a maximum of four (4) years for his period of service as a city police judge for a city within the Commonwealth of Kentucky, if the service was performed prior to the first Monday in January, 1978, and if the service has not been credited to the member's account with any other public defined benefit plan, by paying the retirement system one hundred percent (100%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The period of service to be purchased shall be certified to the board of trustees by the custodian of the records of the city for which the service was performed. The service credit shall be awarded and the cost shall be determined in conformity with the rate which applies to the member in question pursuant to KRS 21.400. Service credit awarded pursuant to this subsection shall be equivalent, for all purposes of the Judicial Retirement Plan, to other service credit earned in the plan. The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 21.360(6).
- (4) (a) *I.* Any active member of the Judicial Retirement Plan who is vested in the Judicial Retirement Plan pursuant to subsection (1) of this section or KRS 21.375, or his beneficiary acting in his place if the member dies prior to retirement, shall receive service credit for a maximum of four (4) years for his period of service in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service by any other retirement system administered by the Commonwealth of Kentucky, by paying the retirement system thirty-five percent (35%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The service credit shall be awarded and the cost shall be determined in conformity with the rate which applies to the member in question pursuant to KRS 21.400. Service credit awarded pursuant to this subsection shall be equivalent, for all purposes of the Judicial Retirement Plan, to other service credit earned in the plan.
- 2. Any active member of the Judicial Retirement Plan who is vested in the Judicial Retirement Plan may purchase and receive service credit for one (1) month of service for each six (6) months of service in the reserves or the National Guard by paying the retirement system one hundred percent (100%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The service credit shall be awarded and the cost shall be determined in conformity with the rate that applies to the member in question as provided in KRS 21.400. Service credit awarded pursuant to this subsection shall be equivalent, for all purposes of the Judicial Retirement Plan, to other service credit earned in the plan. The service in the military reserves or the National Guard shall be treated as service earned prior to participation in the plan. The purchase can be made by the member in a lump-sum payment or by installment payments, as set forth in paragraph (b) of this subsection. The payment shall not be picked up by the employer as provided in KRS 21.360(6).*
- (b) The beneficiary may purchase military service credit only at one (1) time by lump-sum payment for the amount of service he wishes to purchase, and the payment shall be made within thirty (30) days of the death of the active member. The member may purchase all of his military service credit at one (1) time, or in increments of no less than one (1) year, unless there is a fraction remaining after all full years have been paid for. Payment of the total or the increment may be made by lump sum or by monthly installments through payroll deduction. If the member chooses to pay by installment, the cost of the service credit shall be computed in the same manner as for a lump-sum payment, which shall be the principal. Interest, at the annual actuarial rate in effect at the time each payment is made, shall be added to each monthly payment at the rate of one-twelfth (1/12) of the annual interest rate applied to the declining principal amount. Installment purchases shall be for no less than twelve (12) nor more than sixty (60) months. If the member leaves office before completing his installment payments, he may satisfy his contract by a lump-sum payment of the remaining principal amount, but no further installment

payments shall be accepted thereafter. In this case, the member shall be credited with the military service credit for which he has paid, in years or months but no fraction less than a full month, and any payment remaining after credit for full months has been awarded shall be returned to the member.

- (c) The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 21.360(6).
- (d) No veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for a military pension in the future, unless the military pension is for service primarily on inactive duty in a reserve component of the Armed Forces, or is a disability pension which does not exceed five hundred dollars (\$500) monthly.

Approved April 7, 1998

CHAPTER 390

(HB 559)

AN ACT relating to district boundaries for justices of the peace.

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

Section 1. KRS 67.045 is amended to read as follows:

- (1) For the purposes of this section the word "district" shall mean:
 - (a) Justice's of the peace district in counties having a fiscal court composed of the county judge/executive and the justices of the peace; or
 - (b) County commissioner's district in counties having a fiscal court composed of the county judge/executive and three (3) county commissioners; *or*
 - (c) ***Justice's of the peace district in counties having a fiscal court composed of the county judge/executive and three (3) county commissioners established according to KRS 67.060.***
- (2) In counties where the members of the county fiscal court are nominated or elected by districts, the boundaries of those districts shall be drawn so that the districts are compact, contiguous and the population of each district shall be as nearly equal as is reasonably possible.
- (3) ***In counties where the fiscal court consists of the county judge/executive and three (3) county commissioners established according to KRS 67.060, the justice of the peace districts shall be coextensive with the three (3) county commissioner districts.***
- ~~(4)(3)~~ The fiscal court shall initiate reapportionment proceedings in February of the second year following the decennial census of the United States. The fiscal court may, at other times, review the district boundaries and shall initiate reapportionment proceedings if the district boundaries are in violation of subsection (2) of this section.
- ~~(5)(4)~~ To initiate a reapportionment proceeding, the fiscal court shall publish notice of the planned reapportionment in accordance with KRS Chapter 424 and appoint three (3) competent citizens of the county over twenty-one (21) years of age, and residing in different districts, and the county clerk as a nonvoting member as commissioners to reapportion the county into not less than three (3) nor more than eight (8) justices' districts in counties having a fiscal court composed of the county judge/executive and the justices of the peace or three (3) commissioner's districts in counties having a fiscal court composed of the county judge/executive and county commissioners. The commissioners, before they proceed to act, shall be sworn to faithfully perform their duties. They shall receive out of the county treasury a reasonable compensation for their services, fixed by the fiscal court.
- ~~(6)(5)~~ The commissioners shall, within sixty (60) days after their appointment, lay off the boundary lines of the districts. They shall file in the office of the county clerk and with each member of the fiscal court a written report, showing the boundary of each district and the estimated population in each. Within sixty (60) days of the receipt of the report, the fiscal court shall consider the report of the commissioners and, in accordance with the provisions of KRS 67.075 to 67.077, adopt or amend the report in establishing the districts. In no event shall districts be reapportioned during the period from thirty (30) days prior to the last date for filing for

candidacy for county office as provided in KRS 118.165 and the regular election for candidates for county office.

- (7)~~(6)~~ Precinct lines shall be redrawn when necessary in accordance with the provisions of KRS 117.055. No precinct shall be in more than one (1) district.
- (8)~~(7)~~ Within twenty (20) days of the establishment of the districts by the fiscal court, any registered voter of the county may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the fiscal court has violated the provisions of this section, remand the matter to the fiscal court. The Circuit Court, in its discretion, may allow the prevailing party, other than the fiscal court, a reasonable attorney's fee, to be paid from the county treasury, as part of the costs.
- (9)~~(8)~~ The fiscal court of any county which has not reapportioned its districts since the 1980 decennial census of the United States shall initiate reapportionment proceedings within sixty (60) days of July 15, 1982.

Approved April 7, 1998

CHAPTER 391

(HB 547)

AN ACT relating to property tax administration.

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

Section 1. KRS 132.320 is amended to read as follows:

- (1) Any person who has failed to list for taxation his intangible personal property or tangible personal property, in whole or in part, because he was not called upon by the property valuation administrator or for any other reason, may at any time list the property with the cabinet by reporting to the cabinet the full details and a correct description of the omitted property and its value. The cabinet may determine and fix the fair cash value, estimated at the price it would bring at a fair voluntary sale, of the property so reported and listed for taxation.
- (2) Any person dissatisfied with or aggrieved by the finding or ruling of the cabinet may appeal ~~the~~~~such~~ finding or ruling in the manner provided in KRS 131.110.
- (3) The cabinet ~~may~~~~shall prescribe,~~ promulgate ~~and provide such~~ administrative regulations, **and develop forms**~~form and records as it deems necessary and proper~~ for the listing and assessment of the property ~~so~~ assessed or to be assessed for taxation. The tax ~~so~~ assessed shall be paid to and collected by the cabinet. Taxes collected by the cabinet on behalf of the county, school, and other local taxing districts shall be distributed to each district ~~at least~~~~no less often than~~ quarterly. **From each distribution, the cabinet shall deduct a fee which represents an allocation of cabinet operating and overhead expenses incurred in assessing and collecting the omitted tax. The fee shall be determined by the cabinet and shall apply to all omitted taxes collected after December 31, 1997.**
- (4) All property assessed pursuant to this section shall be liable for the payment of the taxes, interest and penalties provided by law for failure to list the property with the property valuation administrator or other assessment board, commission or authority within the time and in the manner prescribed by law, except that if the taxpayer voluntarily lists property under this section the twenty percent (20%) penalty provided to be paid to the cabinet shall not apply, unless the taxpayer on an appeal from the action of the cabinet attempts to reduce the assessment and is unsuccessful.
- (5) If after demand by the cabinet, any taxpayer refuses to voluntarily list any intangible or tangible personal property omitted from assessment, the cabinet shall make an estimate of the fair cash value of the omitted intangible or tangible personal property from ~~the~~~~such~~ information in its possession and assess the property for taxation and require payment of the taxes, penalties and interest due to the state and local taxing districts from the person assessed. Notice of the assessment shall be mailed to the taxpayer or ~~the taxpayer's~~~~his~~ agent. The finality and review of any assessment made pursuant to this section shall be governed by the provisions of KRS 131.110.

Section 2. KRS 132.486 is amended to read as follows:

- (1) The Revenue Cabinet shall develop and administer a centralized ad valorem assessment system for intangible personal property and tangible personal property. This system shall be designed to provide on-line computer terminals and accessory equipment in every property valuation administrator's office in the state in order to create and maintain a centralized personal property tax roll database.
- (2) State income tax returns and return preparation instructions shall be revised to facilitate the preparation of the personal property tax return; however, the personal property tax return shall be a separate document and shall be listed with the property valuation administrator in the county of taxable situs according to the provisions of KRS 132.220(1) or with the Revenue Cabinet. The Revenue Cabinet shall ~~prescribe,~~ promulgate ~~and provide such~~ administrative regulations **and develop** ~~forms and records as it deems appropriate~~ for the listing and assessment of personal property.
- (3) Appeals of personal property assessments shall not be made to the county board of assessment appeals. Personal property taxpayers shall be served notice under the provisions of KRS 132.450(4) and shall have the protest and appeal rights granted under the provision of KRS 131.110.
- (4) ***No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in a protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.***

Section 3. KRS 132.820 is amended to read as follows:

- (1) The cabinet shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Revenue Cabinet as a distinct interest in real property, separate and apart from the surface real estate.
- (2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, file a return with the cabinet in a form as the cabinet may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, or similar means may also be required by the cabinet to file a return.
- (3) Any property subject to assessment by the cabinet under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be ~~deemed~~ omitted property.
- (4) After the valuation of unmined minerals or other energy sources has been finally fixed by the cabinet, the cabinet shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the county clerk in his office, and shall be certified by **the county clerk** ~~him~~ to the proper collecting officer of the county, city, or taxing district for collection.
- (5) The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.
- (6) ***No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.***
- (7) The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

Section 4. KRS 136.1877 is amended to read as follows:

- (1) The Revenue Cabinet shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the cabinet in the manner outlined in KRS 136.1873 shall have forty-five (45) days from the date of the cabinet's notice of the tentative assessment ~~in which~~ to protest ~~as in the manner~~ provided by KRS 131.110.

- (2) *No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.*
- (3) The state and local taxes on the property ~~are~~ ~~shall become~~ due forty-five (45) days from the date of notice and shall be collected directly by the Revenue Cabinet.
- ~~(4)~~~~(3)~~ The Revenue Cabinet shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.
- ~~(5)~~~~(4)~~ The local taxes collected by the Revenue Cabinet shall be distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Revenue Cabinet by any local taxing district under the provisions of KRS 136.180~~(5)~~~~(4)~~ shall be deducted.

Section 5. KRS 136.180 is amended to read as follows:

- (1) The Revenue Cabinet shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation and the amount of assessment for state and local purposes. When the valuation has been finally determined, the cabinet shall immediately certify, unless otherwise specified, to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount of property liable for county, city, or district tax.
- (2) *No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.*
- (3) The Revenue Cabinet shall compute annually a multiplier for use in establishing the local tax rate for the operating property of railroads or railway companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.
- ~~(4)~~~~(3)~~ The Revenue Cabinet shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due forty-five (45) days from the date of notice and shall be collected directly by the Revenue Cabinet. The local taxes collected by the Revenue Cabinet shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Revenue Cabinet by any local taxing district under the provisions of subsection (4) of this section shall be deducted.
- ~~(5)~~~~(4)~~ The certification of valuation shall be filed by each county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district which has the value certified by the cabinet shall pay an annual fee to the cabinet which represents an allocation of cabinet operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the cabinet and shall apply to valuations for tax periods beginning on or after December 31, 1981.

Approved April 7, 1998

CHAPTER 392

(HB 529)

AN ACT relating to living wills.

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

Section 1. KRS 311.623 is amended to read as follows:

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

Section 2. KRS 311.625 is amended to read as follows:

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

"Living Will Directive

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

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

Any prior designation is revoked.

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

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

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

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

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

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

.... *Authorize the giving of all or any part of my body upon death for any purpose specified in KRS 311.185.*

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

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

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

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

Signed this day of, 19...

Signature and address of the grantor.

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

Signature and address of witness.

Signature and address of witness.

OR

STATE OF KENTUCKY)

.....County)

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

Done this day of, 19...

Signature of Notary Public or other officer.

Date commission expires:.....

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

- (2) An advanced directive shall be in writing, dated, and signed by the grantor, or at the grantor's direction, and either witnessed by two (2) or more adults in the presence of the grantor and in the presence of each other, or acknowledged before a notary public or other person authorized to administer oaths. None of the following shall be a witness to any advance directive made under this section:
 - (a) A blood relative of the grantor;
 - (b) A beneficiary of the grantor under descent and distribution statutes of the Commonwealth;
 - (c) An employee of a health care facility in which the grantor is a patient, unless the employee serves as a notary public;
 - (d) An attending physician of the grantor; or
 - (e) Any person directly financially responsible for the grantor's health care.
- (3) A person designated as a surrogate pursuant to an advance directive may resign at any time by giving written notice to the grantor; to the immediate successor surrogate, if any; to the attending physician; and to any health care facility which is then waiting for the surrogate to make a health care decision.

- (4) An employee, owner, director, or officer of a health care facility where the grantor is a resident or patient shall not be designated or act as surrogate unless related to the grantor within the fourth degree of consanguinity or affinity or a member of the same religious order.

Approved April 7, 1998

CHAPTER 393

(HB 528)

AN ACT relating to public purchasing.

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

Section 1. KRS 45A.470 is amended to read as follows:

- (1) All governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to the Kentucky industries for the blind as described in KRS 163.450 to 163.470 through June 30, 2000, and thereafter to any products produced **by Kentucky Industries for the Blind, Incorporated or any other nonprofit corporation with which** ~~through the authority of~~ the Department for the Blind **contracts under KRS 163.480(2)** to further the purposes of KRS Chapter 163 and agencies of individuals with severe disabilities as described in KRS 45A.465.
- (2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.
- (3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.
- (4) The Department for the Blind within the Workforce Development Cabinet and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.
- (5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

Approved April 7, 1998

CHAPTER 394

(HB 527)

AN ACT relating to the Kentucky Employers' Mutual Insurance Authority Board Members.

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

Section 1. KRS 342.809 is amended to read as follows:

- (1) The board shall elect a chair and other officers it deems necessary from its members. The Governor shall make the initial appointments to the board as follows: three (3) members shall be appointed to terms that expire December 31, 1995, and four (4) members shall be appointed to terms that expire December 31, 1997. Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.
- (2) Senate confirmation of the Governor's appointees is required in accordance with the provisions of KRS 11.160. If a member is not confirmed by the Senate, the Governor, within thirty (30) days of the rejection, shall make another appointment. That member shall serve the remainder of the term in question and shall also be subject

to confirmation should the term extend until the next regular session, or a special session which includes this subject on the call, whichever occurs earlier.

- (3) Four (4) voting members shall constitute a quorum. The board shall meet at least quarterly.
- (4) ***On the effective date of this Act***, each voting member shall be compensated ~~eight~~^{five} thousand ~~five hundred~~ dollars ~~(\$8,500)~~^(\$5,000) annually, ***and beginning on July 15, 1999, twelve***~~except the chair, who shall be paid seven~~ thousand ~~five hundred~~ dollars ~~(\$12,000)~~^(\$7,500) annually. In addition, the voting members of the board shall be reimbursed for necessary travel and lodging expenses in accordance with administrative regulations promulgated by the Cabinet for Finance and Administration for state employees.
- (5) The ex officio nonvoting members of the board shall be: the secretary of the Finance and Administration Cabinet, the commissioner of the Department of Personnel, and the commissioner of the Department of Insurance.
- (6) A voting board member may be removed for cause by the board. Cause shall include, but not be limited to, incompetence or misconduct defined in policies or bylaws formulated by the board and adopted by the policyholders.

Approved April 7, 1998

CHAPTER 395

(HB 518)

AN ACT relating to children in placement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

The Kentucky General Assembly finds that the various departments, agencies, and entities providing care and treatment to children in placement and their families often do so without appropriate collaboration of policies and services or appropriate and necessary sharing of relevant information. The General Assembly declares that the purpose of Section 2 of this Act is to establish a structure for coordinated strategic planning, policy development, and information reporting and sharing among and across departments, agencies, and entities that provide care and services to children in placement.

SECTION 2. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

- (1) ***There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for Social Services. The committee shall be composed of the following:***
 - (a) ***Members who shall serve by virtue of their positions: the commissioner of the Department for Social Services, the commissioner of the Department for Health Services, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for Social Insurance, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and***
 - (b) ***One (1) foster parent selected by the statewide organization for foster parents, one (1) district judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Human Resources, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Human Resources and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.***
- (2) ***The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.***

- (3) *The strategic plan shall, at a minimum, include:*
 - (a) *A mission statement;*
 - (b) *Measurable goals;*
 - (c) *Principles;*
 - (d) *Strategies and objectives; and*
 - (e) *Benchmarks.*
- (4) *The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.*
- (5) *The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in Section 4 of this Act, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.*
- (6) *The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.*
- (7) *As a part of the statewide strategic plan, and in consultation with the Kentucky Information Resources Management Commission, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:*
 - (a) *Number of placements per child;*
 - (b) *Reasons for placement disruptions;*
 - (c) *Length of time between removal and establishment of permanency;*
 - (d) *Reabuse or reoffense rates;*
 - (e) *Fatality rates;*
 - (f) *Injury and hospitalization rates;*
 - (g) *Health care provision rates;*
 - (h) *Educational achievement rates;*
 - (i) *Multiple placement rates;*
 - (j) *Sibling placement rates;*
 - (k) *Ethnicity matching rates;*
 - (l) *Family maintenance and preservation rate; and*
 - (m) *Adoption disruption rates.*
- (8) *The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

For the purposes of Sections 3 to 6 of this Act:

- (1) *"Department" means the Department for Social Services;*
- (2) *"Home county" means the county in which the child's natural parents, adoptive parents, or guardian reside. If the parents are divorced, the home county is the county of residence of the parent with legal custody. If the child is committed, the home county is the county of original commitment or case responsibility;*
- (3) *"Home district" means the Department for Social Services district in which the child's home county is located;*
- (4) *"Type of placement" means the living arrangement, including family foster care, private child care, or other residential alternative that is deemed appropriate for a child as determined by the district placement coordinator and the family services worker with case responsibility; and*
- (5) *"Unmet need" means the type of facility or placement needed to serve the child's needs which is unavailable at the time placement is being sought for the child.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall establish a procedure throughout the state that is designed to determine and expedite the placement of children who are in the custody of the department. The procedure shall utilize a statewide placement coordinator and district placement coordinators who may be state employees or employees of a contracted entity, and who shall be assigned and located in each of the department's districts.*
- (2) *Upon determining that a child shall be removed from the current living arrangement, the family services worker with responsibility for the child shall contact the district placement coordinator to facilitate the placement. In consultation with the family services worker, the district placement coordinator shall determine the appropriate type of placement according to the child's circumstances and needs and shall attempt to locate the appropriate placement within the child's home county.*
- (3) *The living arrangement and placement selected for the child shall be the type of facility that is determined to be the best alternative for the child that is in the closest proximity to the child's home county.*
- (4) *If the type of placement that best suits the child's needs is not available in the child's home county, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in another county located within the home district of the child.*
- (5) *If the type of placement that best suits the child's needs is not available in the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in surrounding districts by contacting the statewide placement coordinator.*
- (6) *If the type of placement that best suits the child's needs is not available in the districts surrounding the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in any district within the state by contacting the statewide placement coordinator.*
- (7) *If the type of placement that best suits the child's needs is not available within the state, the statewide placement coordinator shall contact the commissioner of the department or the commissioner's designee to explore placement options.*
- (8) *The statewide placement coordinator and every district placement coordinator shall compile information that identifies the unmet needs for their jurisdiction, and shall submit the data and recommendations for meeting the unmet needs to the commissioner of the department.*
- (9) *The commissioner shall develop a state placement resource plan that identifies areas of unmet need and strategies to meet the need. The plan shall be used to guide and, if necessary, restrict the development of new facilities, the expansion of existing facilities, and the geographic location of placement alternatives.*
- (10) *The commissioner and the statewide planning coordinator shall assist the statewide Strategic Planning Committee for Children in Placement, created in Section 2 of this Act, in the development of a statewide facilities services plan.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The department shall maintain an inventory of the number and types of placements available for children by county, by district, and for the state. The inventory shall be updated every week and shall show in detail for each facility or foster home how many beds are filled, how many are empty, and the type of child that would be appropriate for referral to the facility or foster home. The inventory shall be readily accessible by the statewide placement coordinator and the district placement coordinators.

Section 6. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the references to the Cabinet for Human Resources appearing in subsection (1)(b) of Section 1 of this Act shall be codified as the Cabinet for Families and Children.

Approved April 7, 1998

CHAPTER 396

(HB 503)

AN ACT relating to reorganization.

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

Section 1. KRS 131.020 is amended to read as follows:

- (1) The Revenue Cabinet shall be organized into the following functional units:
- (a) Office of the Secretary. The Office of the Secretary shall include *the Office of the Taxpayer Ombudsman, the Office of Financial and Administrative Services*, principal assistants and *other* personnel appointed by the secretary pursuant to KRS Chapter 12 as are necessary to enable the secretary to perform functions of the office;
 - (b) *Office of Financial and Administrative Services. The Office of Financial and Administrative Services shall be headed by an executive director. The functions and duties of the office shall include personnel services, administrative support, preparation and administration of the budget, training, and asset management;*
 - (c) *Office of Taxpayer Ombudsman. The Office of Taxpayer Ombudsman shall be headed by a taxpayer ombudsman as established by KRS 131.051(1). The functions and duties of the office shall consist of those established by KRS 131.071;*
 - (d) *Department of Law. The Department of Law shall be headed by a commissioner*~~{Office of General Counsel. The Office of General Counsel shall be headed by an executive director}~~. The functions and duties of the *department*~~{office}~~ shall include establishing Revenue Cabinet tax policies, *providing information to the public*, conducting tax research, *collecting delinquent taxes*, conducting conferences, administering taxpayer protests, issuing final rulings, *administering all activities relating to assessments issued pursuant to KRS 138.885, 139.185, 139.680, 141.340, 142.357, and 143.085, enforcing the criminal laws of the Commonwealth involving revenue and taxation*, and representing the cabinet in legal and administrative actions.~~{For administrative and budgetary purposes, the Office of General Counsel shall be attached to the Office of the Secretary of Revenue.}~~ The *Department of Law*~~{Office of General Counsel}~~ shall consist of the divisions of legal services, protest resolution,~~{and}~~ tax policy, *collections*, and research;
 - ~~(e){(e)}~~ Department of Property *Valuation*~~{Taxation}~~. The Department of Property *Valuation*~~{Taxation}~~ shall be headed by a commissioner. The functions and duties of the department shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuing the property of public service companies, valuing unmined coal and other mineral resources,~~{and}~~ administering tangible and intangible personal property taxes, *and collecting delinquent taxes*. The Department of Property *Valuation*~~{Taxation}~~ shall consist of the Divisions of Local Valuation, State Valuation, and Technical Support;
 - ~~(f){(d)}~~ Department of *Tax Administration*~~{Compliance and Taxpayer Assistance}~~. The Department of *Tax Administration*~~{Compliance and Taxpayer Assistance}~~ shall be headed by a commissioner. The functions and duties of the department shall include *recordkeeping*, conducting audits, reviewing audits, rendering taxpayer assistance, *and* collecting delinquent taxes~~{, administering all activities relating to~~

assessments issued pursuant to KRS 139.185, 139.680, 141.340, and 143.085, enforcing the criminal laws of the state involving revenue and taxation, and representing the cabinet in legal and administrative actions involving the collection of delinquent taxes}. The Department of *Tax Administration*~~[Compliance and Taxpayer Assistance]~~ shall consist of the Divisions of ~~[Collections,]~~ Field Operations, *Revenue Operations*, and *Compliance and Taxpayer Assistance*~~[Tax Administration]~~; and

(g)~~(e)~~ Department of *Information Technology*~~[Administrative Services]~~. The Department of *Information Technology*~~[Administrative Services]~~ shall be headed by a commissioner. The functions and duties of the department shall include *the development and maintenance of technology and information management systems in support of all units of the cabinet*~~[recordkeeping, providing data services, providing liaison with federal and state agencies, preparing publications, and providing personnel, fiscal and financial management services]~~. The Department of *Information Technology*~~[Administrative Services]~~ shall consist of the *Division*~~[Divisions]~~ of *Systems Planning and Development and the Division of Technology Infrastructure Support*~~[Financial and Administrative Services, Information Systems Resources, and Revenue Operations]~~.

- (2) The functions and duties of the cabinet shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the cabinet shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the *cabinet*~~[Department of Compliance and Taxpayer Assistance and the Department of Administrative Services]~~, and to attempt to fairly and equitably resolve tax controversies at the administrative level.
- (3) The cabinet shall fully cooperate with and make tax information available to the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.

Section 2. KRS 12.020 is amended to read as follows:

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

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

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

- (b) Kentucky Council on Agriculture.
 - 7. Superintendent of Public Instruction.
 - 8. Auditor of Public Accounts.
 - 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
- 1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 - 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 - 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.

- (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.

- (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.

- (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property *Valuation*~~[Taxation]~~.
 - (b) Department of *Tax Administration*~~[Compliance and Taxpayer Assistance]~~.
 - (c) *Office of Financial and*~~Department of~~ Administrative Services.
 - (d) *Department of Law*~~[Office of General Counsel]~~.
 - (e) *Department of Information Technology.*
 - (f) *Office of Taxpayer Ombudsman.*
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.

- (i) The Foundation for Adult Education.
- (j) The Kentucky Job Training Coordinating Council.
- (k) Office of General Counsel.
- (l) Office of Communication Services.
- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 3. The General Assembly hereby confirms Executive Order 97-715, dated June 11, 1997, relating to the reorganization of the offices, departments, and divisions within the Kentucky Revenue Cabinet, to the extent it is not otherwise confirmed by this Act.

Approved April 7, 1998

CHAPTER 397

(HB 454)

AN ACT relating to liens.

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

Section 1. KRS 376.250 is amended to read as follows:

- (1) When an attested copy of the lien statement and proof of the delivery of an attested copy as provided in KRS 376.240 is delivered to any public authority which has contracted for the construction or improvement of any bridge, public highway, or other public property owned by the state, ***a subdivision or agency thereof***, or by any ***city***, county, ***urban-county***, or ***charter county government***~~city~~, the public authority shall endorse on the attested copy the date of its receipt, file the copy and deduct and withhold the amount thereof, plus \$1.25 to cover the fee of the county clerk for filing the statement and attesting a copy, from any amount then due the contractor, and if a sufficient amount is not then due the contractor from the next payments which become due.
- (2) Unless the contractor, within thirty days from the date of the delivery of the attested copy, files with the public authority a written protest putting in issue the correctness of the amount due the lien claimant or the liability of the fund for payment thereof, the amount withheld shall be paid by the public authority to the lien claimant and charged to the account of the contractor, which payment shall operate as a pro tanto release of the public authority from any claim of the contractor under the contract for the amount so paid. The filing in the county clerk's office of the statement of lien provided for in subsection (2) of KRS 376.230 shall be constructive notice to the contractor of the filing of the claim.

- (3) If the contractor files a written protest as provided in subsection (2) of this section, the public authority with whom the protest is filed shall endorse thereon the date of its receipt, and shall not pay over to the lien claimant any of the money withheld from the contractor until authorized to do so by the contractor or until directed to do so by an order or judgment of court.
- (4) If suit is not instituted by the lien claimant for the enforcement of the lien and summons in the suit is not served on the public authority or its chairman within thirty days after the filing by the contractor of the protest, then the lien shall automatically be released and the funds withheld pursuant to the filing of the lien statement shall be released and promptly paid to the contractor. If suit is filed and summons served within the time provided, the payment of the funds shall be withheld until ordered to be released or paid over by an order or judgment of the court, and then paid as directed by the order or judgment.
- (5) All suits for the enforcement of these liens on public funds shall be instituted in the Circuit Court of the county in which is located the ~~seat of government of the owner of the~~ property on which the improvement is made, ***except where the property is owned by a public university. Where the property is owned by a public university, the suit shall be instituted in the Circuit Court of the county in which is located the main campus of the public university.*** This court shall have exclusive jurisdiction for the enforcement of liens asserted against the public funds due the contractors, subject to the same rights of appeal as in other civil cases.

Section 2. KRS 376.260 is amended to read as follows:

- (1) Any lien acquired under KRS 376.210 shall be enforced by proper proceedings in equity, to which other lien-holders shall be made parties. ***If a court action is filed to enforce a lien acquired under Section 3 of this Act and the owner of the property is the state, a subdivision or agency thereof, or any city, county, urban-county, or charter county government, that owner shall be given notice of the court action to enforce the lien, but that owner shall not be required to respond to or participate in the court action.*** The proceedings shall be begun within six (6) months from the filing of the claim in the county clerk's office, except as provided in subsection (4) of KRS 376.250.
- (2) If, in any suit brought for the enforcement of a lien, it is shown by evidence that the items embraced in the account were sold and delivered for use on a particular project or public work, that evidence shall make out a prima facie case that those items were used in the performance of the contract.

Section 3. KRS 376.210 is amended to read as follows:

- (1) Any person, firm, or corporation who performs labor or furnishes materials or supplies for the construction, maintenance, or improvement of any canal, railroad, bridge, public highway, or other public improvement in this state by contract, express or implied, with the owner thereof or by subcontract thereunder shall have a lien thereon, and upon all the property and the franchises of the owner, except property owned by the state, a subdivision or agency thereof, or by any ***city, county, urban-county, or charter county government***~~city~~. If the property improved is owned by the state or by any subdivision or agency thereof, or by any ***city, county, urban-county, or charter county government***~~city~~, the person furnishing the labor, materials, or supplies shall have a lien on the funds due the contractor from the owner of the property improved. Except as provided in KRS 376.195, the lien shall be for the full contract price of the labor, materials, and supplies furnished, and shall be superior to all other liens thereafter created.
- (2) Any person undertaking or expecting to furnish labor, materials, or supplies as provided in this section may acquire the lien herein provided by filing in the clerk's office of each county in which he has undertaken to furnish labor, materials, or supplies, except as provided in subsection (3), a statement in writing that he has undertaken and expects to furnish labor, materials, or supplies and the price at which they are to be furnished, and the lien for labor, material, or supplies furnished thereafter shall relate back and take effect from the date of the filing of the statement. In all cases of original construction the liens shall be prior to all liens theretofore or thereafter created on the part so constructed and on no other part.

- (3) In all cases where the labor, materials, or supplies are furnished for the improvement of any public highway or other public property owned by the state or by any *city*, county, *urban county*, or *charter county government*~~[city]~~, the statement shall be filed in the county clerk's office of the county in which is located the seat of government of the owner of the property improved, and the lien shall attach only to any unpaid balance due the contractor for the improvement from the time a copy of the statement, attested by the county clerk, is delivered to the owner or the owner's authorized agent with whom the contract for improving the public highway or other public property was made.

Approved April 7, 1998

CHAPTER 398

(HB 449)

AN ACT relating to children in placement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"State agency child" or "state agency children" means "state agency children" defined in KRS 158.135;*
- (b) *"School or educational facility" means any public school, private school, day treatment center, or any other public or private entity that provides educational services to state agency children; and*
- (c) *"Educational passport" means a standard form completed by a school or educational facility which a state agency child is leaving which provides a receiving school or facility with basic demographic and academic information about the state agency child.*

- (2) *When the placement of a state agency child is changed and the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the Cabinet for Human Resources or the Department of Juvenile Justice. The Cabinet for Human Resources or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.*

- (3) *A standard educational passport form shall be developed by the Kentucky Department of Education in consultation with the Cabinet for Human Resources and the Department of Juvenile Justice. The Kentucky Department of Education shall make the form available to all schools or educational facilities serving state agency children.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

(1) *For the purposes of this section:*

- (a) *A child is deemed to need extraordinary services if the child is mentally or emotionally ill or has symptoms of mental or emotional illness and requires medical attention, and the child's parent, guardian, or other person exercising custodial control or supervision over the child is unable to provide for the required treatment, care, or supervision of the child, and:*
1. *The inability is due primarily to the lack of financial means of the child's parent, guardian, or other person exercising custodial control or supervision unless assistance has been offered and rejected;*
 2. *The child's parent, guardian, or other person exercising custodial control or supervision has made a reasonable effort under the circumstances to meet the needs of the child;*
 3. *The inability is not due to a willful act of commission or act of omission by the child's parent, guardian, or other person exercising custodial control or supervision ; and*
 4. *Commitment is not opposed by the parent, guardian, or other person exercising custodial control or supervision ; and*

- (b) *A child is deemed to need protection if the court determines the child is a dependent, abused, or neglected child and the needs of the child do not meet the definition of a child in need of extraordinary services.*
- (2) *For children committed under KRS 620.140 after the effective date of this Act, the court shall designate in the court order of commitment and the cabinet shall document in the official case file records showing whether the commitment is due to the child needing protection or the child needing extraordinary services.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 605 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall provide information to the individuals and entities contracting with the cabinet and the Department of Juvenile Justice to provide services and care to children committed to the cabinet or the Department of Juvenile Justice necessary to provide adequate care and services to the committed children they are serving. The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall develop a process that will result in the provision and transfer of information as required by Sections 1, 4, 5, 6, and 7 of this Act and this section in a timely and efficient manner, including:*
- (a) *Medical passport or history;*
- (b) *Educational passport;*
- (c) *Treatment history; and*
- (d) *Current case plan.*

If action by a court is necessary to obtain or release information that the cabinet or the Department of Juvenile Justice deems necessary for the provision of care or services to a committed child, then the cabinet or Department of Juvenile Justice, as the case may be, shall promptly petition the court for permission to receive or release the necessary information.

- (2) *If the cabinet, the Department of Juvenile Justice, or a school or educational facility as defined in Section 1 of this Act fails to provide necessary information within the time frames established by Sections 1, 4, 5, and 6 of this Act and this section, the person, agency, or entity providing care or services to a child may petition the court having jurisdiction over the child to hold a hearing, at which time the court, if the request for hearing is granted, shall require the cabinet, the Department of Juvenile Justice, or the school or educational facility as defined in Section 1 of this Act to show cause as to why it has not provided the necessary information in a timely manner.*

Section 4. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
- (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted

to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Human Resources, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.

- (b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
- (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
 - 1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
 - 2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;
 - 3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
 - 4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
 - 5. The funding for school services for state agency children authorized by KRS 158.135; and
 - 6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.
- (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
 - 1. Provide for the development and implementation of interagency agreements that:
 - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
 - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
 - 2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.
- (e) ***When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.***

- (f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 5. KRS 605.090 is amended to read as follows:

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:
- (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
 - (b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;
 - (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(1)(b), (c), or (d) or any child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;
 - (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
 - (e) Treated as provided in KRS Chapter 645;
 - (f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:
- (a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;
 - (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;
 - (c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer

to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

- (d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.
- (3) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.
- (4) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.
- (5) ***The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.***
- (6) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 6. KRS 620.145 is amended to read as follows:

- (1) Within sixty (60) days of the commitment date of a child due to abuse, neglect, or dependency, the Cabinet for Human Resources shall provide the court with jurisdiction an assessment of the child to determine:
 - (a) The child's current and historical educational functioning;
 - (b) The child's emotional and behavioral functioning; and
 - (c) The extent to which the child's life experiences and circumstances of commitment have created a disabling condition requiring special educational programming or other services to provide the child an appropriate public education.
- (2) Upon discerning of an emotional, behavioral, or other disabling condition with negative impact upon a child's educational experience, the Cabinet for Human Resources as guardian of the child shall ensure that whatever services necessary are obtained to allow the child the benefit of a free, appropriate public education.
- (3) Services required to allow the child a free, appropriate public education shall be limited to those required under Section 504 of Public Law 93-112, Public Law 94-142, or other federal statutes affecting children with emotional or behavioral disabilities.

- (4) The Cabinet for Human Resources shall include activities undertaken to ensure a child committed to the Cabinet for Human Resources receives adequate public education in the six (6) month case progress report required by KRS 620.240.
- (5) Any child removed from his home due to abuse, neglect, or dependency and placed in the least restrictive appropriate placement available shall, for the purposes of acquiring an appropriate public education, be considered a resident of the school district where the placement occurs.
- (6) ***The Cabinet for Human Resources shall provide a copy of the assessment required by subsection (1) of this section to the foster parent, or other agency or entity providing residential care to a committed child, within five (5) days of filing the assessment with the court.***

Section 7. KRS 610.120 is amended to read as follows:

- (1) Except as otherwise provided by KRS Chapter 635, an order of commitment or an order of protective supervision or probation made by the court in the case of a child may be reviewed, continued, or terminated at any time prior to expiration on the court's own initiative or on motion by:
 - (a) A child who is affected by an order of juvenile session of District Court;
 - (b) The family, custodian, guardian, or legal representative of such a child;
 - (c) ***The Department of Juvenile Justice or the cabinet;***
 - (d) The county attorney of the county in which the committing court presides; or
 - ~~(e)(d)~~ Any other person having an interest in the welfare of the child.
- (2) Grounds for such action may include but are not limited to allegations that there has been a substantial change of material circumstances, there exists new evidence affecting the disposition of the child, the child is no longer in need of commitment, probation, or placement, the child has not responded to or benefited from treatment or the child has not received adequate and proper treatment, the original proceedings were not conducted in the manner required by law or the public interest requires termination of the order. Upon review of the child's case, the cabinet, any agency, facility or individual responsible for the supervision, care or treatment of the child, shall divulge and communicate such information regarding the child as the court may require.
- (3) ***Except as otherwise provided by KRS Chapter 640 relating to youthful offenders, and KRS 610.110, 620.140, 635.060, or 635.090 relating to extending commitment beyond the age of eighteen (18), an order of commitment, temporary custody, or an order of protective supervision or probation made by the court in the case of a child shall be terminated when the child attains the age of eighteen (18). At least fourteen (14) days prior to the committed child's eighteenth birthday, the Department of Juvenile Justice or the cabinet shall prepare a summary of the information concerning the child and submit it with written notification to the committing court that a child's commitment is due to expire.***

Section 8. KRS 605.120 is amended to read as follows:

- (1) The cabinet is authorized to expend available funds to provide for the board, lodging, and care of children placed by the cabinet in a foster home or boarding home, or may arrange for payments or contributions by any local governmental unit, or public or private agency or organization, willing to make payments or contributions for such purpose. The cabinet may accept any gift, devise, or bequest made to it for its purposes.
- (2) ***The cabinet shall establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children. The cabinet shall consider providing additional reimbursement for foster parents who obtain additional training, and foster parents who have served for an extended period of time. In establishing a reimbursement system, the cabinet shall, to the extent possible within existing appropriation amounts, address the additional cost associated with providing care to children with exceptional needs.***
- (3) ***The cabinet shall review reimbursement rates paid to foster parents on a biennial basis and shall issue a report in October of each odd-numbered year to the Legislative Research Commission comparing the rates paid by Kentucky to the figures presented in the Expenditures on Children by Families Annual Report prepared by the United States Department of Agriculture and the rates paid to foster parents by other states. To the extent that funding is available, reimbursement rates paid to foster parents shall be increased on an annual basis to reflect cost of living increases.***

- (4) ***The cabinet is encouraged to develop pilot projects both within the state system and in collaboration with private child caring agencies to test alternative delivery systems and nontraditional funding mechanisms. Pilot projects may include but not be limited to kinship care.***

Section 9. KRS 610.125 is amended to read as follows:

- (1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a dispositional review hearing no later than ***twelve (12)***~~eighteen (18)~~ months after custody is given to the cabinet, and ***every twelve (12) months***~~annually~~ thereafter if custody and out-of-home placement continues, to determine the future status of the child. The court shall address the following areas:
- (a) If parental rights have not been terminated, whether the child should be returned to the parent;
 - (b) Whether the child should continue in out-of-home care for a specified period of time;
 - (c) Whether the child should be placed for adoption; and
 - (d) Whether special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis.
- (2) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section. The court shall set a time for the hearing and notify the child's parent, ***court-appointed special advocate, attorney for the child, attorney for the parent, if any***, and the Department of Juvenile Justice or the cabinet.
- (3) The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last dispositional hearing, including the following:
- (a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;
 - (b) The number, location, and date for each placement during the total period of the child's commitment;
 - (c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;
 - (d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;
 - (e) The familial and institutional barriers to:
 1. Returning the child to the home;
 2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and
 3. Delivery of appropriate services needed by the child;
 - (f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;
 - (g) An evaluation of the child's current placement and services provided to the child;
 - (h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and
 - (i) Recommendations as to the permanency goal for the child.
- (4) The child's parent, ***attorney for the parent, attorney for the child, or court-appointed special advocate, if deemed appropriate by the court***, may present any evidence relevant to the determination of a permanency goal for the child.
- (5) Upon conclusion of the hearing the court shall make a written determination regarding a plan of transitional independent living services if the child has reached the age of sixteen (16) years, and the most appropriate permanency goal if the child has not reached the age of sixteen (16) years.

Section 10. KRS 620.290 is amended to read as follows:

- (1) The local foster care review board shall submit to the court within fourteen (14) days of the six (6) month review its findings and recommendations. The findings and recommendations for each child under review shall include but need not be limited to:
- (a)~~(1)~~ Whether there is a plan for permanence;
 - (b)~~(2)~~ Whether the plan is progressing; and
 - (c)~~(3)~~ The appropriateness of the current placement or plan for permanence. *If the local foster care review board determines that a current placement or plan for permanence is inappropriate, a separate notification shall be provided to the court, and the cabinet which shall summarize the position of the local foster care review board, the response of the cabinet, if any, to the concerns expressed by the local foster care review board, and any action proposed by the local foster care review board.*
- (2) *The local foster care review board shall submit to the court, with a copy to the cabinet, within fourteen (14) days of each meeting of the board, a list of each case reviewed in which a child has been moved three (3) or more times within a six (6) month period. The list shall include the name of the case, the court number, if available, the cabinet case number, the age, sex, and race of the child, and the number of moves that have occurred.*

Section 11. KRS 620.320 is amended to read as follows:

The duties of the State Foster Care Review Board shall be to:

- (1) Establish, approve, and provide training programs for local foster care review board members;
- (2) Review and coordinate the activities of local foster care review boards;
- (3) Establish reporting procedures to be followed by the local foster care review boards and *publish an annual written report compiling data reported by local foster care review boards which shall include statistics relating, at a minimum, to the following:*
 - (a) *How the needs of children are being met;*
 - (b) *The number of times children are moved and reasons for the moves;*
 - (c) *The average length of time in care;*
 - (d) *Sibling visitation; and*
 - (e) *The total number and frequency of reviews;*
- (4) *Publish an annual written report*~~[to provide information]~~ on the effectiveness of such local foster care review boards; and
- (5)~~(4)~~ Evaluate and make annual recommendations to the Supreme Court, Governor, and the Legislative Research Commission regarding:
 - (a) Laws of the Commonwealth;
 - (b) Practices, policies, and procedures within the Commonwealth affecting permanence for children in out-of-home placement and the investigation of allegations of abuse and neglect; and
 - (c) The effectiveness or lack thereof and reasons therefor of local foster care review of children in the custody of the cabinet in bringing about permanence for the Commonwealth's children.

Approved April 7, 1998

CHAPTER 399

(HB 446)

AN ACT relating to local school districts.

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

Section 1. KRS 160.470 is amended to read as follows:

Legislative Research Commission PDF Version

- (1) Each district board of education shall prepare a general school budget in formats prescribed and furnished by the Kentucky Board of Education, showing the amount of money needed for current expenses, debt service, capital outlay, and other necessary expenses of the schools during the succeeding fiscal year, the estimated total amount that will be received from the common school fund and other sources, the assessed valuation of property subject to local taxation in the school district furnished as provided in subsection (3) of KRS 160.460, an estimate made by the Revenue Cabinet of public service company assessments and assessments of other property in the school district not furnished under the provisions of subsection (3) of KRS 160.460, and the amount that will be needed to be raised by local taxation, including the rate of levy necessary to raise such an amount.
- (2)
 - (a) Notwithstanding any statutory provisions to the contrary, no district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate for 1979-80 which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the maximum general tax rate, voted general tax rate, or voted building tax rate, respectively, that could have been levied in 1978-79, to the 1978-79 assessment, except as provided in subsection (12) of this section and KRS 157.440. In succeeding years, no district board of education shall levy a general tax rate, a voted general tax rate, or a voted building tax rate which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate, maximum voted general tax rate, or maximum voted building tax rate, respectively, that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsection (12) of this section and KRS 157.440.
 - (b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the ". . . general tax rate, maximum voted general tax rate, or maximum voted building tax rate, respectively, that could have been levied in the preceding year. . .," referred to in subsection (2)(a) of this section, for purposes of computing the general tax rate, voted general tax rate, or voted building tax rate for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

- (3) No district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate within the limits imposed in subsection (2) of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsection (12) of this section, KRS 157.440, and KRS 157.621, until the district board of education has complied with the provisions of subsection (10) of this section.
- (4) The chief state school officer shall certify the following to each district board of education, by June 30 of each year:
 - (a) The general tax rate, voted general tax rate, or voted building tax rate that a district board of education could levy under the provisions of subsection (2) of this section, and the amount of revenue expected to be produced by each;
 - (b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate, voted general tax rate, or voted building tax rate, and the amount of revenue expected to be produced by each;
 - (c) The general tax rate, voted general tax rate, or voted building tax rate which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced by each.
- (5) Upon completion of action on property assessment data, the Revenue Cabinet shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.
- (6) Within thirty (30) days after the district board of education has received its assessment data, three (3) copies of the budget shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the district board of education to furnish the budget within the time prescribed shall not invalidate any levy made thereafter.
- (7) The budget shall be disapproved by the Kentucky Board of Education if it is financially unsound or fails to provide for:

- (a) Payment of maturing principal and interest on any outstanding voted school improvement bonds of the school district, authorized and issued pursuant to KRS 162.080 and 162.090 with the written approval of the Kentucky Board of Education; or
- (b) Payment of rentals in connection with any outstanding school building revenue bonds issued for the benefit of a school district by the appropriate city or county as authorized and provided under the provisions of KRS 162.120 to 162.300 and KRS 58.010 to 58.140, with the written approval of the Kentucky Board of Education; or
- (c) Fails to comply with the law.

The Kentucky Board of Education shall state the reason for disapproval and the district board of education shall amend its budget, within the limitations of this section, to obviate the reasons for disapproval and resubmit the budget to the Kentucky Board of Education for final approval.

- (8) If the budget as amended specifies a tax levy different from that levied under the disapproved budget, the tax-levying authority shall amend its levy so that the levy as amended shall comply with the provisions of subsection (1) of KRS 160.460. No general school budget shall become effective and no ad valorem levy shall be made until approved by the Kentucky Board of Education.
- (9)
 - (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May ~~30~~¹⁵ of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.
 - (b) Each district board of education shall submit to the Kentucky Board of Education no later than September ~~30~~¹⁵, a close estimate or working budget which shall conform to the administrative regulations prescribed by the Kentucky Board of Education, and which shall be consistent in its major divisions with the general school budget previously prepared.
- (10)
 - (a) Except as provided in subsection (12) of this section and KRS 157.440, a district board of education proposing to levy a general tax rate, voted general tax rate, or voted building tax rate within the limits of subsection (2) of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.
 - (b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:
 1. The general tax rate, voted general tax rate, and voted building tax rate levied in the preceding year, and the revenue produced by those rates;
 2. The general tax rate, voted general tax rate, and voted building tax rate proposed for the current year, and the revenue expected to be produced by those rates;
 3. The compensating general, voted general, and voted building tax rates, and the revenue expected from them;
 4. The revenue expected from new property and personal property;
 5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
 6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;
 7. The purpose of the hearing; and
 8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.

- (c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.
 - (d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.
- (11) (a) That portion of a general tax rate, a voted general tax rate, or a voted building tax rate, except as provided in subsection (12) of this section, KRS 157.440, and KRS 157.621, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.
- (b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate, voted general tax rate, or voted building tax rate, except as provided in subsection (12) of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:
1. The fact that the district board of education has adopted such a rate;
 2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and
 3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.
- (12) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents (\$0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.
- (b) If a board fails to comply with subsection (12)(a) of this section, its members shall be subject to removal from office for willful neglect of duty pursuant to KRS 156.132.

Approved April 7, 1998

CHAPTER 400

(HB 444)

AN ACT relating to aviation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 183 IS CREATED TO READ AS FOLLOWS:

- (1) *The "Kentucky Aviation Economic Development Fund" is established in the State Treasury. Beginning on July 1, 2000, all receipts collected under KRS Chapter 139 from the sales or use tax on aviation jet fuel shall be deposited in this fund.*
- (2) *The fund may also receive state appropriations, gifts, grants, and federal funds and shall include earnings from investments of moneys from the fund.*

- (3) *Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (4) *The Transportation Cabinet shall use all moneys deposited in the fund or accruing to the fund for the development, rehabilitation, and maintenance of publicly owned or operated aviation facilities and for other aviation programs within the Commonwealth that will benefit publicly owned or operated aviation facilities.*
- (5) *The cabinet shall be prohibited from expending moneys deposited in the fund for administrative costs incurred by the cabinet or for any purpose other than the development, rehabilitation, and maintenance of publicly owned or operated aviation facilities and other aviation programs benefiting publicly owned or operated aviation facilities.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 144 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the provisions of subsection (2) of this section, any certificated air carrier which is engaged in the air transportation of persons or property for hire shall be entitled to a credit against the Kentucky sales and use tax paid on aircraft fuel, including jet fuel, purchased after June 30, 2000, as determined under subsection (2) of this section.*
- (2) *For fiscal years beginning after June 30, 2000, certificated air carriers shall pay the first one million dollars (\$1,000,000) in Kentucky sales and use tax due that is applicable to the purchase of aircraft fuel, including jet fuel. The sales and use tax credit shall be an amount equal to the Kentucky sales and use tax otherwise applicable to the purchase of aircraft fuel, including jet fuel, purchased by the certificated air carrier during each fiscal year beginning after June 30, 2000, in excess of one million dollars (\$1,000,000).*
- (3) *Each certificated air carrier purchasing aircraft fuel, including jet fuel, on which Kentucky sales and use tax for the fiscal year is reasonably expected to exceed one million dollars (\$1,000,000) shall report and pay directly to the Revenue Cabinet the tax applicable to the purchase of aircraft fuel, including jet fuel, purchased for storage use or other consumption during the fiscal year.*
- (4) *Each certificated air carrier claiming the sales and use tax credit authorized pursuant to this section shall file an annual sales and use tax reconciliation report with the Revenue Cabinet on or before October 15 of the fiscal year following the fiscal year for which the credit is claimed. The report shall be filed as provided in KRS 144.137.*

Section 3. KRS 144.137 is amended to read as follows:

The sales and use tax aviation fuel tax credit reconciliation report and the general tax credit reconciliation report required to be filed by qualifying certificated air carriers pursuant to *Section 2 of this Act*, KRS 144.120 and 144.125 shall be submitted to the Revenue Cabinet in a form and contain information and documentation as the cabinet may reasonably require to verify the carrier's computation of the applicable tax credit and the use of the credit against the taxes levied by KRS Chapter 139.

Section 4. Effective July 1, 2000, the following KRS section is repealed:

144.120 Sales and use tax credit -- Qualifications -- Amount -- Reporting requirements.

Section 5. This Act is effective for tax periods beginning on or after July 1, 2000.

Approved April 7, 1998

CHAPTER 401

(HB 430)

AN ACT relating to reorganization.

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

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following *offices and* divisions:

- (1) *Office of Management and Administration, containing the:*
 - (a) *Division of Administrative Services;*
 - (b) *Division of Facilities;*
 - (c) *Bluegrass Station Division; and*
 - (d) *Division of Air Transport*~~[Administrative divisions];~~
- (2) *Division of Disaster and Emergency Services*~~[Facilities division];~~
- (3) *Office of the Chief of Staff for Federal Army Guard*~~[Active militia division];~~
- (4) *Office of the Chief of Staff for Federal Air Guard; and*~~[Army National Guard division];~~
- (5)~~[Air National Guard division;~~
- (6)~~] Kentucky Civil Air Patrol]; and~~
- (7)~~[Division of air transport and capital city airport].~~

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. (1) To the extent that it is not otherwise confirmed by subsection (1) of Section 1 of this Act, the General Assembly confirms Executive Order 96-838, dated June 27, 1996, which creates the Office of Management and Administration within the Department of Military Affairs; creates and places the Bluegrass Station Division within the Office of Management and Administration; and places the following existing divisions within the Office of Management and Administration: the Division of Administrative Services, the Division of Facilities, and the Division of Air Transport. The Office of Management and Administration shall provide policy, management, and administrative support to all areas of the Department of Military Affairs. The Bluegrass Station Division shall manage, maintain, and lease the former Lexington Bluegrass Army Depot.

(2) The General Assembly hereby confirms the remaining organizational structure of the Department of Military Affairs as set forth in subsections (2) to (5) of Section 1 of this Act.

Approved April 7, 1998

CHAPTER 402

(HB 419)

AN ACT relating to revenue and taxation and declaring an emergency.

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

Section 1. KRS 136.500 is amended to read as follows:

As used in KRS 136.500 to 136.575, unless the context requires otherwise:

- (1) "Billing address" means the location indicated in the books and records of the financial institution, on the first day of the taxable year or the date in the taxable year when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed;
- (2) "Borrower located in this state" means a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state or a borrower that is not engaged in a trade or business;
- (3) "Credit card holder located in this state" means a credit card holder whose billing address is in this state;
- (4) "Cabinet" means the Revenue Cabinet;
- (5) "Commercial domicile" means:
 - (a) The location from which the trade or business is principally managed and directed; or

- (b) The state of the United States or the District of Columbia from which the financial institution's trade or business in the United States is principally managed and directed, if a financial institution is organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

It shall be presumed, subject to rebuttal, that the location from which the financial institution's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of the employees are performed, as of the last day of the taxable year;

- (6) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, the determination of whether the payments would constitute gross income to the employees under the Internal Revenue Code shall be made as though the employees were subject to the Internal Revenue Code;
- (7) "Credit card" means credit, travel, or entertainment card;
- (8) "Credit card issuer's reimbursement fee" means the fee a financial institution receives from a merchant's bank because one of the persons to whom the financial institution has issued a credit card has charged merchandise or services to the credit card;
- (9) "Employee" means, with respect to a particular financial institution, "employee" as defined in Section 3121(d) of the Internal Revenue Code;
- (10) "Financial institution" means:
- (a) A national bank organized *as a body corporate* and existing *or in the process of organizing* as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sec. 21 et seq., in effect on December 31, ~~1997~~~~1995~~, exclusive of any amendments made subsequent to that date, ~~or a national bank organized after December 31, 1995, that meets the requirements of the National Bank Act in effect on December 31, 1995~~;
 - (b) Any bank or trust company incorporated or organized under the laws of any state, except a banker's bank organized under KRS 287.135;
 - (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631, in effect on December 31, ~~1997~~~~1995~~, exclusive of any amendments made subsequent to that date, or any corporation organized after December 31, ~~1997~~~~1995~~, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on December 31, ~~1997~~~~1995~~; or
 - (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec. 3101, in effect on December 31, ~~1997~~~~1995~~, exclusive of any amendments made subsequent to that date, or any agency or branch of a foreign depository established after December 31, ~~1997~~~~1995~~, that meets the requirements of 12 U.S.C. sec. 3101 in effect on December 31, ~~1997~~~~1995~~;
- (11) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.
- (a) "Gross rents" includes, but is not limited to:
 1. Any amount payable for the use or possession of real property or tangible property, whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;
 2. Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and
 3. A proportionate part of the cost of any improvement to real property made by or on behalf of the financial institution which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the financial institution, the value of the land is determined by multiplying the gross rent by eight (8) and the value of the building is determined in the same manner as if owned by the financial institution;

- (b) The following are not included in the term "gross rents":
1. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
 2. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
 3. Reasonable amounts payable for storage, if these amounts are payable for space not designated and not under the control of the financial institution; and
 4. That portion of any rental payment which is applicable to the space subleased from the financial institution and not used by it;
- (12) "Internal Revenue Code" means the Internal Revenue Code, Title 26 U.S.C., in effect on December 31, ~~1997~~~~1995~~, exclusive of any amendments made subsequent to that date;
- (13) "Loan" means any extension of credit resulting from direct negotiations between the financial institution and its customer, and the purchase, in whole or in part, of the extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include properties treated as loans under Section 595 of the Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, noninterest-bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment company, or other mortgage-backed or asset-backed security, and other similar items;
- (14) "Loan secured by real property" means a loan or other obligation for which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;
- (15) "Merchant discount" means the fee or negotiated discount charged to a merchant by the financial institution for the privilege of participating in a program where a credit card is accepted in payment for merchandise or services sold to the card holder;
- (16) "Person" means an individual, estate, trust, partnership, corporation, *limited liability company*, or any other business entity;
- (17) "Principal base of operations" means:
- (a) With respect to transportation property, the place from which the property is regularly directed or controlled; and
 - (b) With respect to an employee:
 1. The place the employee regularly starts work and to which the employee customarily returns in order to receive instructions from his or her employer; or
 2. If the place referred to in subparagraph 1. of this paragraph does not exist, the place the employee regularly communicates with customers or other persons; or
 3. If the place referred to in subparagraph 2. of this paragraph does not exist, the place the employee regularly performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points;
- (18) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the financial institution may claim depreciation for federal income tax purposes, or property to which the financial institution holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure;
- (19) "Regular place of business" means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution;
- (20) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country;

- (21) "Syndication" means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount;
- (22) "Taxable year" means calendar year 1996 and every calendar year thereafter;
- (23) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to the property, such as rolling stock, barges, or trailers; ~~and~~
- (24) "United States obligations" means all obligations of the United States exempt from taxation under 31 U.S.C. sec. 3124(a) or exempt under the United States Constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from state or local taxation under the United States Constitution or any statute of the United States; *and*
- (25) ***"Kentucky obligations" means all obligations of the Commonwealth of Kentucky, its counties, municipalities, taxing districts, and school districts, exempt from taxation under the Kentucky Revised Statutes and the Constitution of Kentucky.***

Section 2. KRS 136.515 is amended to read as follows:

- (1) Net capital shall be determined by adding the value determined under subsection (2) of this section for the current taxable and preceding four (4) calendar years and dividing the resulting sum by five (5). If a financial institution has not been in existence for a period of five (5) calendar years, net capital shall be determined by adding together the values determined under subsection (2) of this section for the number of calendar years the financial institution has been in existence and dividing the resulting sum by the number of years ***the financial institution has been in existence***. For purposes of this section, a partial year shall be treated as a full year.
- (2) (a) The value of net capital for each year for purposes of subsection (1) of this section shall be determined by:
1. Adding together the book value of:
 - a. Capital stock paid in;
 - b. Surplus;
 - c. Undivided profits and capital reserves;
 - d. Net unrealized holding gains or losses on available for sale securities; and
 - e. Cumulative foreign currency translation adjustments; and
 2. Deducting from the total determined under subparagraph 1. of this subsection an amount equal to the same percentage of the total as the book value of United States obligations ***and Kentucky obligations*** bears to the book value of the total assets of the financial institution.
- (b) For purposes of this subsection, net capital shall include equity related to investment in subsidiaries.
- (c) For purposes of this subsection, ***except as provided in paragraphs (d) and (e) of this subsection***, the foregoing book values and deductions for United States obligations ***and Kentucky obligations*** for each year shall be determined by the reports of condition for each quarter filed in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or other applicable regulatory authority. Book values shall be calculated by averaging the quarterly book values as determined by the reports of condition.
- (d) For any year in which a financial institution does not file four (4) quarterly reports of condition, book values and deductions for United States obligations ***and Kentucky obligations*** shall be determined by adding together the ***respective*** book values and deductions for United States obligations ***and Kentucky obligations as determined by*** ~~from~~ each quarterly report of condition filed for the year and ***the respective book values and deductions for United States obligations and Kentucky obligations determined in accordance with generally accepted accounting principles as of the end of each of the remaining quarters and*** dividing the resulting sums by ***four (4)*** ~~the number of the reports of condition filed~~.

- (e) For any calendar year in which a financial institution ~~ceases to be~~~~is not~~ in existence for four (4) quarters, ***other than by combination with another financial institution***, the book value for that year shall be determined by adding together the book values ***and deductions for United States obligations and Kentucky obligations*** for each quarter in which the financial institution was in existence and dividing the ~~sums by four (4)~~~~total by the total number of quarters that the financial institution was in existence that calendar year~~.
- (f) In the case of a financial institution which does not file reports of condition, book values shall be determined ***in accordance with***~~by~~ generally~~ly~~ accepted accounting principles.
- (3) For purposes of this section:
- (a) A change in identity, form, or place of organization of one (1) financial institution shall be treated as if a single financial institution had been in existence prior to as well as after the change;~~and~~
- (b) The combination of two (2) or more financial institutions into one (1) shall be treated as if the constituent financial institutions had been a single financial institution in existence prior to as well as after the combination, and the book values and deductions for United States obligations ***and Kentucky obligations*** from the reports of condition of the constituent institutions shall be combined. A combination shall include any acquisition required to be accounted for by the surviving financial institution under the pooling of interest method in accordance with generally-accepted accounting principles or a statutory merger or consolidation; ***and***
- (c) ***1. The combination of one (1) or more financial institutions and one (1) or more savings and loan associations taxable under KRS 136.300 into a single financial institution shall be treated for the taxable year in which the combination occurred as if the single financial institution had been in existence prior to as well as after the combination, and the book values and deductions for United States obligations and Kentucky obligations from the reports of condition of the financial institution and the reports to the federal regulatory agency which are the equivalent of reports of condition for a savings and loan association shall be combined.***
- 2. The conversion of a savings and loan association taxable under KRS 136.300 into a financial institution shall be treated for the taxable year in which the conversion occurred as if the savings and loan association had been a financial institution prior to as well as after the conversion, and the book values and deductions for United States obligations and Kentucky obligations from the reports to the federal regulatory agency which are the equivalent of reports of condition for a savings and loan association shall be used.***
- 3. The savings and loan association shall not be relieved of the responsibilities of filing and paying tax under KRS 136.300 for taxable years prior to the year of any combination or conversion.***
- 4. Notwithstanding any other provision of KRS 136.500 to 136.575, the financial institution resulting from a combination with or conversion of a saving and loan association shall receive a credit on the bank franchise tax return equal to the amount of tax paid under KRS 136.300 for the assessment date occurring within the taxable year during which the combination or conversion takes place for bank franchise tax purposes.***

Section 3. KRS 141.010 is amended to read as follows:

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

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;~~and~~
 - (i)
 - 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 - 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 - 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as

defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

- b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code; *and*
- (j) 1. a. *Exclude the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and*
- b. *Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.*
2. *The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes.*

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
- (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
- (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
- (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
- (b) Exclude all dividend income received after December 31, 1969;
- (c) Include interest income derived from obligations of sister states and political subdivisions thereof;

- (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and
- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 4. The amendment contained in Section 3 of this Act shall apply retroactively to taxable years beginning after December 31, 1996. The amendments contained in Sections 1 and 2 of this Act shall be effective for taxable years beginning after December 31, 1997.

Section 5. Whereas income tax returns are due before the normal effective date of this Act, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 7, 1998

CHAPTER 403

(HB 414)

AN ACT relating to insurance.

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

Section 1. KRS 304.15-020 is amended to read as follows:

- (1) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
- (2) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for such policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees.
- (3) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (4) *"Viatical settlement broker" means an individual, partnership, corporation, or other entity who or that for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces a viator to viatical settlement providers, or offers or attempts to negotiate*

viatical settlements between a viator and one (1) or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, accountant, or financial planner who is retained to represent the viator and whose compensation is not paid by the viatical settlement provider.

- (5) *"Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.*
- (6) *"Viatical settlement provider" means an individual, partnership, corporation, or other entity who or that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:*
- (a) *Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;*
 - (b) *The issuer of a life insurance policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of pecified life-threatening or catastrophic conditions as defined by the policy or rider; or*
 - (c) *Any natural person who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.*
- (7) *"Viator" means the owner of a life insurance policy that insures the life of a person who has a catastrophic or life-threatening illness or condition, or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.*

SECTION 2. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No person may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner. The examination of contracts shall take place simultaneously with the company's approval process. Provided that the viatical settlement provider or viatical settlement broker complies with Sections 1 to 7 of this Act, the provider or broker transacting business in this state prior to the effective date of this Act may continue to transact the business until the commissioner approves or disapproves the provider's or broker's application for license. The application shall be filed on forms provided by the commissioner no later than November 1, 1998.*
- (2) *The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to provide for the licensing of viatical settlement providers and the termination or revocation of the license.*
- (3) *No person shall use any viatical settlement contract in this Commonwealth unless it has been filed with and approved by the commissioner. Any viatical settlement contract form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of filing. The commissioner shall disapprove a viatical settlement contract form if, in the determination of the commissioner, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the policyowner.*

SECTION 3. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interest of the public. The reasonable expenses incurred in conducting any examination shall be paid by the licensee or applicant.*
- (2) *Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.*
- (3) *Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the commissioner for inspection during reasonable business hours.*

SECTION 4. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A viatical settlement provider shall disclose the following information to the viator no later than the date that the viatical settlement contract is signed by all parties:

- (1) *That possible alternatives to viatical settlement contracts may exist for persons with catastrophic or life-threatening illnesses, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;*
- (2) *That some or all of the proceeds of the viatical settlement may be taxable, and that assistance should be sought from a personal tax advisor;*
- (3) *That the viatical settlement could be subject to the claims of creditors;*
- (4) *That receipt of a viatical settlement may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;*
- (5) *That the policyowner has a right to rescind a viatical settlement contract within thirty (30) days of the date it is executed by all parties or within fifteen (15) days of the receipt of the viatical settlement proceeds by the viator, whichever is less; and*
- (6) *That the funds will be available to the viator within two (2) business days of notification from the insurer of the effect of the transfer of ownership.*

SECTION 5. A NEW SECTION OF SUBTITLE 15 KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A viatical settlement provider entering into a viatical settlement contract with any person who has a catastrophic or life-threatening illness or condition shall first obtain:*
 - (a) *A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and*
 - (b) *A witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness, represents that he or she has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.*
- (2) *All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.*
- (3) *All viatical settlement contracts entered into in this state shall contain an unconditional refund provision that provides for a refund within at least thirty (30) days from the date of the contract or fifteen (15) days from the receipt of the viatical settlement proceeds, whichever is less.*
- (4) *Immediately upon receipt from the insurer of the effect of the transfer of ownership of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an account in a custodian bank that meets the qualifications outlined in 806 KAR 7:090 Section 3. The custodian shall be required to transfer the proceeds that are due to the viator within two (2) business days upon receipt of acknowledgment of the transfer from the insurer.*
- (5) *Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.*

- (6) *All licensed viatical settlement providers transacting business in Kentucky must have the viator's medical condition reviewed by a qualified third-party physician or physician firm. Qualification shall be met with the approval of Standard and Poors, Moody's, or any other reviewing entity approved by the commissioner.*

SECTION 6. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall have the authority to:

- (1) *Promulgate administrative regulations in accordance with KRS Chapter 13A implementing Sections 1 to 6 of this Act;*
- (2) *Establish standards for evaluating reasonableness of payments under viatical settlement contracts which will include type of illness, life expectancy, insurance company rating, premium payment amount, policy type, market factors and other reasonable factors as deemed appropriate by the commissioner; and*
- (3) *Establish appropriate licensing requirements and fees for agents and brokers.*

SECTION 7. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The activities regulated by Sections 1 to 6 of this Act shall be deemed the business of insurance and subject to Subtitle 12 of KRS Chapter 304.

Approved April 7, 1998

CHAPTER 404

(HB 369)

AN ACT relating to state designations.

WHEREAS, Kentucky is known for its beautiful covered bridges and its efforts to preserve these reminders of the state's pioneer past; and

WHEREAS, Fleming County has more covered bridges in its boundaries than any other Kentucky county; nearly one-fourth of the state's covered bridges are found there, and

WHEREAS, Ringo's Mill Covered Bridge and Hillsboro Covered Bridge that both span the Fox River were designed by one of the earliest builders of covered bridges, Theodore Burr; and

WHEREAS, the Goddard Covered Bridge that spans Sandlick Creek is the oldest covered bridge in the state and the only one in this part of the country designed by world famous bridge builder Ithiel Town; and

WHEREAS, Fleming county has been the home of several covered bridge builders, such as the Bower family that has had three generations of covered bridge builders, and others who have worked to build and restore covered bridges all across the Commonwealth; and

WHEREAS, Fleming County's covered bridges have been listed in the National Register of Historic Places and The World Guide to Covered Bridges, pictured in countless books and magazines, and recognized by the National Society for the Preservation of Covered Bridges; and

WHEREAS, the preeminent authority on covered bridges in the world, Richard Allen, has included Fleming County's covered bridges in his numerous works and called them "mountain marvels"; and

WHEREAS, the people of Fleming County take pride in these wonderful remnants of Americana and make their maintenance and preservation a priority; and

WHEREAS, the Switzer Covered Bridge in Franklin County, with its beautiful sawtooth edging, carvings, and time-worn timbers, has been painted and photographed more than any other covered bridge in Kentucky, and no other covered bridge in the state has more tradition and is more nostalgic; and

WHEREAS, the Hillsboro Covered Bridge is actually located in closer proximity to Grange City than to Hillsboro in Fleming County;

NOW, THEREFORE,

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

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

- (1) *Fleming County is named and designated as the "Covered Bridge Capital of Kentucky."*
- (2) *The Switzer Covered Bridge in Franklin County is named and designated as the official covered bridge of Kentucky.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

The Hillsboro Covered Bridge in Fleming County is renamed and designated the "Grange City Covered Bridge."

Approved April 7, 1998

CHAPTER 405

(HB 338)

AN ACT relating to insurance.

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

Section 1. KRS 304.17A-300 is amended to read as follows:

- (1) A provider-sponsored integrated health delivery network may be created by health care providers for the purpose of providing health care services.
- (2) No person shall in this Commonwealth be, act as, or hold itself out as a provider-sponsored integrated health delivery network unless it holds a certificate of filing from the commissioner. Each provider-sponsored integrated health delivery network that seeks to offer services shall first be certified by the department.
- (3) Notwithstanding subsection (2) of this section, a provider-sponsored integrated health delivery network which holds a certificate of filing from the Kentucky Health Policy Board as of July 15, 1996, shall have one (1) year from July 15, 1996, to comply with the provisions of this subtitle.
- (4) To qualify as a provider-sponsored integrated health delivery network, an applicant shall submit information acceptable to the department to satisfactorily demonstrate that the provider-sponsored integrated health delivery network:
 - (a) Is licensed and in good standing with the licensure boards for participating providers;
 - (b) Has demonstrated the capacity to administer the health plans it is offering;
 - (c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;
 - (d) Has the ability, policies, and procedures to conduct utilization management activities;
 - (e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;
 - (f) Is financially solvent;
 - (g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;
 - (h) Has the ability and procedures to monitor access to its provider network;
 - (i) Has a satisfactory grievance procedure and the ability to respond to enrollees' inquiries and complaints;
 - (j) Does not limit the participation of any health care provider in its provider network in another provider network;
 - (k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;
 - (l) Does not discriminate in enrolling members;
 - (m) Participates in coordination of benefits;

- (n) Uses standardized electronic claims and billing processes and formats;
 - (o) Discloses to the cooperative reimbursement arrangements with providers; and
 - (p) Assures that all services covered by the provider-sponsored integrated health delivery network are available to all persons enrolled in the plan within fifty (50) miles of each person's place of residence, to the extent those services are available within that area, and assures that all services not available therein shall be offered at sites as proximate to the enrollee as possible.
- (5) Fees for the following services shall be paid to the commissioner by every provider-sponsored integrated health delivery network, and the fees shall be the same as those for insurers as specified in Subtitle 4 of this chapter:
- (a) For filing an application for a certificate of filing or amendment thereto;
 - (b) For filing an annual statement; and
 - (c) For other services deemed necessary by the commissioner.
- (6) Provider-sponsored integrated health delivery networks shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:
- (a) ***Subtitle 1 -- Scope of Code;***
 - (b) Subtitle 2 -- Insurance Commissioner;
 - (c) ***Subtitle 3 -- Authorization of Insurers and General Requirements;***
 - (d) ***Subtitle 4 -- Fees and Taxes;***
 - (e) ***Subtitle 5 -- Kinds of Insurance--Limits of Risk--Reinsurance;***
 - (f) ***Subtitle 6 -- Assets and Liabilities;***
 - (g) ***Subtitle 7 -- Investments;***
 - (h) ***Subtitle 8 -- Administration of Deposits;***
 - (i)~~(b)~~ Subtitle 12 -- Trade Practices and Frauds;~~and~~
 - (j) ***Subtitle 14 -- KRS 304.14-500 to 304.14-560;***
 - (k) ***Subtitle 25 -- Continuity of Management;***
 - (l)~~(e)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation;
 - (m) ***Subtitle 37 -- Insurance Holding Company Systems; and***
 - (n) ***Subtitle 99 -- Penalties.***

Section 2. KRS 304.17A-310 is amended to read as follows:

To qualify as a provider-sponsored integrated health delivery network, the network shall meet the following financial solvency requirements:

- (1) Maintenance of a fidelity bond or fidelity insurance in an amount not less than two hundred fifty thousand dollars (\$250,000) on employees and officers, directors, and partners who receive, collect, disburse, or invest funds of the provider-sponsored network;
- (2) (a) The provider-sponsored network shall have an initial net worth requirement of ~~or surety bond for~~ one million five hundred thousand dollars (\$1,500,000) and shall thereafter maintain the minimum net worth required under paragraph (b) of this subsection.
- (b) Every provider-sponsored network shall maintain a minimum net worth equal to the greater of:
 - 1. One million dollars (\$1,000,000);
 - 2. Two percent (2%) of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars

- (\$150,000,000) of premiums and one percent (1%) of annual premiums on the premiums in excess of one hundred fifty million dollars (\$150,000,000);
3. An amount equal to the sum of three (3) months' uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner of insurance; or
 4. An amount equal to the sum of eight percent (8%) of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the commissioner.
- (c) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated.
1. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.
 2. Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.
- (3) (a) Unless otherwise provided below, each provider-sponsored network shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than three hundred thousand dollars (\$300,000).
- (b) The deposit shall be an admitted asset of the provider-sponsored network in the determination of net worth.
- (c) All income from deposits shall be an asset of the provider-sponsored network. A provider-sponsored network that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being deposited or substituted.
- (d) The deposit shall be used to protect the interests of the provider-sponsored network's enrollees and to assure continuation of health care services to enrollees of a provider-sponsored network which is in rehabilitation or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the provider-sponsored network is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of Subtitle 33 of this chapter.
- (4) Every provider-sponsored network shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the provider-sponsored network is or may be liable, and to provide for the expense of adjustment or settlement of such claims.
- (5) (a) Every contract between a provider-sponsored network and a participating provider of health care services shall be in writing and shall set forth that in the event the provider-sponsored network fails to pay for health care services as set forth in the contract, the enrollee shall not be liable to the provider for any sums owed by the provider-sponsored network.
- (b) If the participating provider contract has not been reduced to writing as required by this subsection or if the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the enrollee sums owed by the provider-sponsored network.
- (6) Each provider-sponsored network shall have a plan for handling insolvency which guarantees the continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits.
- (7) If at any time uncovered expenditures exceed ten percent (10%) of total health care expenditures, a provider-sponsored network shall place an uncovered expenditures insolvency deposit with the commissioner or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, in cash or securities that are acceptable to the commissioner. This deposit shall at all times have a

fair market value in an amount of one hundred twenty percent (120%) of the provider-sponsored network's outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. The provider-sponsored network shall file a report within forty-five (45) days of the end of the calendar quarter with information sufficient to demonstrate compliance with this subsection. The provisions of subsection (6) of this section shall apply to the deposit required in this subsection.

Section 3. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) ***Subtitle 6 -- Assets and Liabilities;***
- (7) Subtitle 7 -- Investments;
- (8) ***Subtitle 8 -- Administration of Deposits;***
- ~~(9)(7)~~ Subtitle 12 -- Trade Practices and Frauds;
- ~~(10)(8)~~ Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- ~~(11)(9)~~ Subtitle 17A -- Health Benefit Plans;
- ~~(12)(10)~~ Subtitle 18 -- KRS 304.18-050;
- ~~(13)(11)~~ Subtitle 25 -- Continuity of Management;
- ~~(14)(12)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- ~~(15)(13)~~ Subtitle 37 -- Insurance Holding Company Systems; and
- ~~(16)(14)~~ Subtitle 99 -- Penalties.

The provisions of KRS 304.18-050 are hereby declared not to be in conflict with the expressed provisions of this subtitle.

Approved April 7, 1998

CHAPTER 406

(HB 325)

AN ACT relating to the Department of Corrections.

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

Section 1. KRS 72.025 is amended to read as follows:

Coroners shall require a post-mortem examination to be performed in the following circumstances:

- (1) When the death of a human being appears to be caused by homicide or violence;
- (2) When the death of a human being appears to be the result of suicide;
- (3) When the death of a human being appears to be the result of the presence of drugs or poisons in the body;
- (4) When the death of a human being appears to be the result of a motor vehicle accident and the operator of the motor vehicle left the scene of the accident or the body was found in or near a roadway or railroad;

- (5) When the death of a human being occurs while the person is in a state mental institution or mental hospital when there is no previous medical history to explain the death, or while the person is in police custody, a jail or penal institution~~[, except pursuant to a sentence of death];~~
- (6) When the death of a human being occurs in a motor vehicle accident and when an external examination of the body does not reveal a lethal traumatic injury;
- (7) When the death of a human being appears to be the result of a fire or explosion;
- (8) When the death of a child appears to indicate child abuse prior to the death;
- (9) When the manner of death appears to be other than natural;
- (10) When human skeletonized remains are found;
- (11) When post-mortem decomposition of a human corpse exists to the extent that external examination of the corpse cannot rule out injury or where the circumstances of death cannot rule out the commission of a crime;
- (12) When the death of a human being appears to be the result of drowning;
- (13) When the death of an infant appears to be caused by sudden infant death syndrome in that the infant has no previous medical history to explain the death;
- (14) When the death of a human being occurs as a result of an accident;
- (15) When the death of a human being occurs under the age of forty (40) and there is no past medical history to explain the death;
- (16) When the death of a human being occurs at the work site and there is no apparent cause of death such as an injury or when industrial toxics may have contributed to the cause of death;
- (17) When the body is to be cremated and there is no past medical history to explain the death;
- (18) When the death of a human being is sudden and unexplained; and
- (19) When the death of a human being occurs and the decedent is not receiving treatment by a licensed physician and there is no ascertainable medical history to indicate the cause of death.

Section 2. KRS 196.270 is amended to read as follows:

There shall be established and maintained within the Department of Corrections a centralized canteen operation which shall be incorporated and self-supporting. Each institution administered by the department ***and each institution which operates under a contract between the state and a private provider*** shall participate in the canteen operation. The directors of the canteen shall be as follows: the commissioner ***of the Department of Corrections***, the deputy commissioner of Adult Institutions, the executive director of the Division of Administrative Services, and the wardens of all state ***and private*** correctional institutions. All profits from the canteen, including the sale of handicrafts made by inmates to the general public, shall be used exclusively for the benefit of the inmates of the department. The directors of the canteen may consolidate the assets of the existing ***state and private*** canteens for this purpose and to employ the staff and inmates necessary to efficiently manage the canteen. ***Assets and profits from the operation of private canteens shall be accounted for separately and utilized exclusively for the benefit of inmates in private prisons.***

Section 3. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
 - (a)~~{(1)}~~ Formulate and prescribe all necessary regulations and bylaws for the government and discipline of the penitentiary, the rules for the government and official conduct of all officials connected with the penitentiary and for the government of the prisoners in their department and conduct;
 - (b)~~{(2)}~~ Prescribe the character of food and diet of the prisoners; rules for the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; and quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
 - (c)~~{(3)}~~ Adopt, amend, and rescind, as the department deems necessary, administrative regulations governing the disposition of abandoned, lost, or confiscated property of prisoners; and

~~(d)(4)~~ Cause the administrative regulations prescribed by them, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.

- (2) *The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.*

Section 4. KRS 197.025 is amended to read as follows:

- (1) KRS 61.884 and 61.878 to the contrary notwithstanding, no person, including any inmate confined in a jail or any facility *or any individual on active supervision* under the jurisdiction of the department, shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.
- (2) *KRS 61.872 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which pertains to that individual.*
- (3) KRS 61.880 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.
- ~~(4)(3)~~ KRS 61.872 to the contrary notwithstanding, the Department of Corrections shall refuse to accept the hand delivery of an open records request from a confined inmate.
- ~~(5)(4)~~ KRS 61.870 to 61.884 to the contrary notwithstanding, all records containing information expunged pursuant to law shall not be open to the public.
- ~~(6)(5)~~ The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions.
- (7) *KRS 61.880(1) to the contrary notwithstanding, upon receipt of a request for any record, the department shall determine within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, whether the record shall be released.*

Section 5. KRS 439.470 is amended to read as follows:

- (1) The commissioner shall have the power and duty to make rules for the conduct of persons placed on probation or parole, except the commissioner shall not make any rule which conflicts with the conditions of probation imposed by the court or conditions of release imposed by the board.
- (2) *The commissioner may utilize an approved monitoring device as defined in KRS 532.200(5) in the supervision of persons placed on probation or parole and to impose a reasonable fee on the probationer or parolee, as a condition of probation or parole, for equipment usage.*
- (3) The commissioner, or his designee shall:
- (a) Be responsible for any reports of investigation and supervision as may be requested by the board or the courts;
 - (b) Divide the state into districts and assign probation and parole officers to serve in the various districts and courts;
 - (c) Direct the work of the officers and other employees assigned to him;
 - (d) Formulate methods of investigation, supervision, record keeping, and reports;
 - (e) Conduct training courses for the staff;
 - (f) Negotiate with public or private groups or institutions for further training of employees and authorize the expenditure of funds for that purpose when needed;

- (g) Develop policies on probation and parole work in the light of other welfare administration policies.

Approved April 7, 1998

CHAPTER 407

(HB 314)

AN ACT providing for the adoption of the Uniform TOD Security Registration Act.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

In Sections 1 to 12 of this Act, unless the context otherwise requires:

- (1) *"Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.*
- (2) *"Devisee" means any person designated in a will to receive a disposition of real or personal property.*
- (3) *"Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.*
- (4) *"Person" means an individual, a corporation, an organization, or other legal entity.*
- (5) *"Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.*
- (6) *"Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.*
- (7) *"Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.*
- (8) *"Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.*
- (9) *"Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.*
- (10) *"Security account" means:*
 - (a) *A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or*
 - (b) *A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.*
- (11) *"State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

Only individuals whose registration of a security shows sole ownership by one (1) individual or multiple ownership by two (2) or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form, and not as tenants in common.

SECTION 3. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent, or its office making registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of the registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

SECTION 4. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

SECTION 5. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

SECTION 6. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

SECTION 7. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

SECTION 8. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by Sections 1 to 12 of this Act.*
- (2) *By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in Sections 1 to 12 of this Act.*
- (3) *A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 7 of this Act and does so in good faith reliance:*
 - (a) *On the registration;*
 - (b) *On Sections 1 to 12 of this Act; and*
 - (c) *On information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.*

The protections of Sections 1 to 12 of this Act do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under Sections 1 to 12 of this Act.

- (4) *The protection provided by Sections 1 to 12 of this Act to the registering entity of a security does not affect the rights of the beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and Sections 1 to 12 of this Act and is not testamentary.*
- (2) *Sections 1 to 12 of this Act does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this Commonwealth.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registrations in beneficiary form, and for implementation of registrations in beneficiary form, including requests for cancellation of previously-registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of a named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one (1) or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.*
- (2) *The following are illustrations of registrations in beneficiary form which a registering entity may authorize:*
- (a) *Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.;*
- (b) *Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.; and*
- (c) *Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown; or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 12 of this Act shall be known as and may be cited as the Uniform TOD Security Registration Act.*
- (2) *Sections 1 to 12 of this Act shall be liberally construed and applied to promote its underlying purposes and policy and to make the uniform the laws with respect to the subject of Sections 1 to 12 of this Act among states enacting it.*
- (3) *Unless displaced by the particular provisions of Sections 1 to 12 of this Act, the principles of law and equity supplement its provisions.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 12 of this Act applies to registrations of securities in beneficiary form made before or after the effective date of this Act, by decedents dying on or after the effective date of this Act.

Section 13. This Act takes effect August 1, 1998.

Approved April 7, 1998

CHAPTER 408**(HB 313)**

AN ACT relating to wills.

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

Section 1. KRS 394.090 is amended to read as follows:

~~A [Every] will shall **not** be revoked by the marriage of the person who made the will, except:~~

- ~~(1) A will made in exercise of a power of appointment when the estate thereby appointed would not, in default of such appointment, pass to the heir, personal representative, or next of kin of the person who made the will;~~
- ~~(2) A will that expressly provides that it is intended that a subsequent marriage shall not revoke the will;~~
- ~~(3) A will that expressly provides for the person who later becomes the spouse of the deceased and is married to the testator on the date of death.~~

Section 2. KRS 394.080 is amended to read as follows:

No will or codicil, or any part thereof, shall be revoked, except:

- ~~(1) [As provided in KRS 394.090;~~
- ~~(2)]~~ By subsequent will or codicil;
- ~~(2) [(3)]~~ By some writing declaring an intention to revoke the will or codicil, and executed in the manner in which a will is required to be executed; or
- ~~(3) [(4)]~~ By the person who made the will, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, canceling, or destroying the will or codicil, or the signature thereto, with the intent to revoke.

Approved April 7, 1998

CHAPTER 409**(HB 312)**

AN ACT relating to structured settlements.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

- (1) **"Annuity issuer"** means an insurer that has issued an annuity contract to be used to fund periodic payments under a structured settlement;
- (2) **"Payee"** means an individual who is receiving tax-free damage payments under a structured settlement and who wants to make a transfer of payment rights under the structured settlement agreement;
- (3) **"Protected parties"** means, with respect to any structured settlement, the payee, any named beneficiary designated in the annuity contract or structured settlement to receive payments following the payee's death, or, if the named beneficiary is a minor, the named beneficiary's parent or guardian, the annuity issuer, and the structured settlement obligor;
- (4) **"Qualified assignment agreement"** means an agreement providing for a qualified assignment that meets the requirements of Section 130 of the Internal Revenue Code, 26 U.S.C. sec. 130, as amended from time to time;
- (5) **"Settled claim"** means the original tort claim resolved by a structured settlement;

- (6) *"Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;*
- (7) *"Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;*
- (8) *"Structured settlement payment rights" means rights to receive periodic payments, including lump sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer, where:*
 - (a) *The payee or any other protected party is domiciled in this state; or*
 - (b) *The settled claim was pending before the courts of this state when the structured settlement was reached;*
- (9) *"Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration; and*
- (10) *"Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

No transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of any transfer of structured settlement payment rights unless the transfer has been approved in advance in an order of a court of competent jurisdiction, based on the court's express findings that:

- (1) *The transfer complies with the requirements of Sections 1 to 3 of this Act and does not contravene other applicable law;*
- (2) *Not less than ten (10) days prior to the date on which the payee entered into the transfer agreement, the transferee has provided to the payee a disclosure statement in bold type, no smaller than fourteen (14) point, setting forth:*
 - (a) *The amounts and due dates of the structured settlement payments to be transferred;*
 - (b) *The aggregate amount of the payments;*
 - (c) *The discounted present value of the payments, together with the discount rate or rates used in determining the discounted present value;*
 - (d) *The gross amount payable to the payee in exchange for the payments;*
 - (e) *An itemized listing of all brokers' commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee; and*
 - (f) *The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of any breach of the transfer agreement by the payee;*
- (3) *The payee has established that the transfer is necessary to enable the payee to avoid imminent financial hardship;*
- (4) *The transferee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and had filed a copy of the notice with the court; and*
- (5) *The payee has consented in writing to the transfer.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

- (1) *The Circuit Court in the county in which the original action was or could have been filed, or the county where the applicant resides, shall have jurisdiction over any application for approval of a transfer of structured settlement payment rights under Section 2 of this Act.*
- (2) *Not less than twenty (20) days prior to the scheduled hearing on any application for court approval of a transfer of structured settlement payment rights under Section 2 of this Act, the payee or transferee shall*

file with the court and serve on all protected parties a notice of the proposed transfer and the application for its approval, including in the notice:

- (a) *A copy of the transferee's application to the court;*
 - (b) *A copy of the disclosure statement required under subsection (2) of Section 2 of this Act; and*
 - (c) *Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than ten (10) days after service of the transferee's notice, in order to be considered by the court.*
- (3) *The provisions of Sections 1 to 3 of this Act may not be waived.*

Section 4. The provisions of Sections 1 to 3 of this Act shall apply to any transfer of structured settlement payment rights under a transfer agreement reached on or after the effective date of this Act.

Approved April 7, 1998

CHAPTER 410

(HB 279)

AN ACT relating to public health taxing districts.

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

Section 1. KRS 212.755 is amended to read as follows:

- (1) If, after the establishment of the public health taxing district as provided for in this section and KRS 212.750, the tax levying authorities of the district, in the opinion of the county or city-county board of health, do not appropriate an amount sufficient to meet the public health needs of the county or the city-county health department or do not appropriate an amount sufficient to meet the standards prescribed by the Cabinet for Human Resources for local health departments, the county or city-county board of health, acting as the governing body of the taxing district shall, with the approval of the Cabinet for Human Resources, request the fiscal court to impose by resolution a special ad valorem public health tax in ~~an~~~~such~~ amount that it deems sufficient, but not in excess of *ten cents (\$0.10)*~~four cents (\$0.04)~~ per one hundred dollars (\$100) of full value assessed valuation. The fiscal court may, upon receipt of a duly certified copy of ~~the~~~~said~~ resolution, include in the next county ad valorem tax levy ~~the~~~~said~~ special public health tax imposed by the county or city-county board of health which shall be in addition to all other county ad valorem taxes. If levied by the fiscal court, ~~the~~~~said~~ special public health tax shall be collected in the same manner as are other county ad valorem taxes and turned over to the county or city-county board of health to be used solely for the maintenance and operation of the county, city-county, or district health department and as provided in KRS 212.740.
- (2) Public health taxing districts~~heretofore~~ organized pursuant to the provisions of KRS 212.720 to 212.740 or organized pursuant to this section and KRS 212.750 shall not be subject to the provisions of the compensating tax rate as defined by KRS 132.010 nor to Chapter 2, 1965 First Extraordinary Session of the General Assembly; provided, however, that no public health taxing district shall impose a rate higher than *ten cents (\$0.10)*~~four cents (\$0.04)~~ per one hundred dollars (\$100) of full value assessed valuation.

Section 2. This Act takes effect January 1, 1999.

Approved April 7, 1998

CHAPTER 411

(HB 267)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 304.13-063 is amended to read as follows:

- (1) Any schedule of rates or rating plan for automobile liability and physical damage insurance filed with the commissioner shall provide for an appropriate reduction in premium charges for a period of *at least* three (3) years *and up to five (5) years* for those insureds fifty-five (55) years of age and older who successfully complete a motor vehicle accident prevention course meeting standards set by the Transportation Cabinet. There shall, however, be no reduction in premiums for a self-instructed course or for a course which does not provide for classroom or field driving instruction for a minimum number of hours, to be determined by the Transportation Cabinet.
- (2) All insurance companies writing automobile liability and physical damage insurance in Kentucky shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.
- (3) Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency a certificate which shall be the basis of qualification for the discount on insurance.
- (4) Each participant shall take an approved course each *five (5)*~~three (3)~~ years to continue to be eligible for the discount on insurance.
- (5) The Transportation Cabinet is hereby empowered to promulgate regulations setting standards for the motor vehicle accident prevention course described in subsection (1) of this section.
- (6) No discount shall be available under this section to those completing the prescribed motor vehicle accident prevention course under a court order as a result of a motor vehicle conviction.

Approved April 7, 1998

CHAPTER 412

(HB 253)

AN ACT relating to sales and use tax.

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

Section 1. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
 - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
 - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to *fifty cents (\$0.50)*~~twenty-five cents (\$0.25)~~ or less, if the retailer is primarily engaged in

making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;

- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include, but not be limited to, natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;
- (b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:
 - 1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
 - 2. Classified as "residential" by a municipally-owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
 - 3. Classified as "residential" by the governing body of a municipally-owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;
- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the seller and the seller maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale are not subject to the sales or use tax. The property shall be regarded as having been purchased for resale. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
 - (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
 - 1. Materials which enter into and become an ingredient or component part of the manufactured product.

2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
 - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
 - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
 3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
 - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170; and
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority.

Section 2. This Act takes effect August 1, 1998.

Approved April 7, 1998

CHAPTER 413

(HB 211)

AN ACT relating to boating.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

- (1) *If a water supply system requests and receives authorization from the Division of Water to designate a prohibition area, no vessel on lake waters of this state shall moor or anchor within one hundred (100) feet of a drinking water intake unless an extension of the area of prohibition is requested and granted under subsection (3) of this section.*
- (2) *The Division of Water shall identify areas on lake waters of this state where a drinking water intake is located. The division shall authorize a water supply system to designate a prohibition area if circumstances are demonstrated justifying the designation. The water supply system shall be responsible for posting signs visible to persons operating vessels indicating areas containing a drinking water intake.*
- (3) *The division shall allow water supply systems with intakes on lake waters of this state to request that the prohibition on mooring or anchoring be extended beyond one hundred (100) feet but no farther than three hundred (300) feet. The division may grant a request if the water supply system demonstrates circumstances that justify extending the area of prohibition. The division shall inform the Department for Fish and Wildlife Resources when an area of prohibition is designated or a request to extend an area of prohibition is granted.*

- (4) *Private or commercial docks shall be exempt from the provisions of subsection (1) of this section.*

Approved April 7, 1998

CHAPTER 414

(HB 206)

AN ACT relating to economic development.

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The purposes of Sections 1 to 15 of this Act are to encourage capital investment in the Commonwealth of Kentucky, to encourage the establishment or expansion of small businesses in Kentucky, to provide additional jobs, and to encourage the development of new products and technologies in the state through capital investments. It is the intent of Sections 1 to 15 of this Act to give investment preference to Kentucky small businesses showing a potential for rapid growth. Insofar as possible, any investment made in a Kentucky small business under the provisions of Sections 1 to 15 of this Act shall be used by that business to leverage additional capital investments from other sources.

SECTION 2. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15 of this Act, unless the context clearly requires otherwise:

- (1) *"Administrative expenses and fees" means expenses and fees incurred by the investment fund in connection with the management and administration of qualified investments;*
- (2) *"Agreement" means an investment fund agreement entered into pursuant to subsection (2) of Section 3 of this Act by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;*
- (3) *"Applicant" means any person or entity who has not received certification from the authority as an investment fund manager, but who has or will submit an application to the authority for certification as an investment fund manager;*
- (4) *"Authority" means the Kentucky Economic Development Finance Authority;*
- (5) *"Cash contribution" means an investment of money by an investor in an investment fund under the terms of Sections 1 to 15 of this Act;*
- (6) *"Commonwealth" means the Commonwealth of Kentucky;*
- (7) *"Credit" means a credit against state income or license tax liability awarded by the authority pursuant to Section 6 of this Act for cash contributions to investment funds;*
- (8) *"Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;*
- (9) *"Financial institution" means any banking corporation or association, trust company, savings and loan association, savings bank, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit;*
- (10) *"Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is certified by the authority to be capitalized with cash contributions pursuant to Sections 1 to 15 of this Act;*
- (11) *"Investment fund manager" means any person or entity that is authorized to act in such capacity by any applicable securities regulator and that has been certified by the authority to manage one (1) or more investment funds authorized under the provisions of Sections 1 to 15 of this Act;*

- (12) *"Investor" means any person or entity, other than a financial institution or an insurance company that is subject to state tax liability and that makes a cash contribution to an investment fund in accordance with the provisions of Sections 1 to 15 of this Act;*
- (13) *"Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any other activity that the authority determines in its discretion to be against the public interest, against the purposes of Sections 1 to 15 of this Act, or in violation of any law;*
- (14) *"Qualified investment" means a contribution of money to a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that contribution and in consideration for which the investment fund acquires or receives any of the following:*
- (a) 1. *An equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; or*
 2. *An unsecured debt instrument the maturity date of which is longer than one (1) year and which is made or issued by the small business; or*
 - (b) *Any other debt instrument issued or made by the small business.*

Excluding any investment of money that has not been certified by the authority as a cash contribution under Sections 1 to 15 of this Act, fifty percent (50%) or more of any investment fund shall be held in interests or debt instruments as specified in paragraph (a) of this subsection;

- (15) *"Small business" means any entity which at the time a qualified investment is made by an investment fund:*
- (a) *Has net worth of three million dollars (\$3,000,000) or less and net income after federal income taxes for each of the two (2) preceding fiscal years of two million dollars (\$2,000,000) or less;*
 - (b) *Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the making of a qualified investment by an investment fund;*
 - (c) *Has no more than one hundred (100) employees; and*
 - (d) *Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.*

The criteria set forth in paragraphs (a) and (c) of this subsection do not apply to any second or subsequent qualified investments.

SECTION 3. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority may commence certification of investment funds, cash contributions, and investment fund managers on or after July 1, 1999. No tax credit authorized by Section 6 of this Act shall become effective until the investment fund to which the cash contribution is made and from which the credit accrues, has been implemented in compliance with applicable state and federal securities laws and regulations. Any investor whose cash contribution to an investment fund has been certified by the authority shall be entitled to a credit equal to forty percent (40%) of that cash contribution as provided in Section 6 of this Act. Except as otherwise provided in subsection (6) of Section 5 of this Act, any investment of money made to an investment fund shall not be considered a part of the investment fund for purposes of Sections 1 to 15 of this Act and accordingly shall not be subject to the requirements of Sections 1 to 15 of this Act unless the investment of money has been certified by the authority as a cash contribution under Sections 1 to 15 of this Act. A person or entity seeking to be certified as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to Section 4 of this Act, in addition to complying with applicable state and federal securities laws and regulations.*

- (2) (a) *Concurrent with certification of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. If an investment fund manager or any investor in an investment fund fails to comply with their respective obligations under the agreement, the authority may, at its option do any one (1) or more of the following:*
1. *Suspend the availability of the credits;*
 2. *Pursue any remedy provided under the agreement, including termination of the agreement; or*
 3. *Pursue any other remedy at law to which it may be entitled.*
- (b) *All remedies provided in this subsection are cumulative.*
- (3) *At least one million dollars (\$1,000,000) in cash contributions approved for tax credits shall be transferred into the investment fund within ninety (90) days from the effective date of the agreement between the authority and the investment fund manager . The effective date of the agreement shall be the date of certification of the investment fund and the investment fund manager by the authority. All cash contributions in excess of one million dollars (\$1,000,000) that have been approved for tax credits as provided in Sections 1 to 15 of this Act in connection with the initial certification of the investment fund shall be transferred into the investment fund within one (1) year of the effective date of the agreement.*
- (4) *An investment fund shall invest cash contributions in qualified investments according to the following schedule:*
- (a) *On average during the second year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;*
 - (b) *On average during the third year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;*
 - (c) *On average during the fourth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;*
 - (d) *On average during the fifth year after the effective date of the agreement, at least ninety percent (90%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;*
 - (e) *On average during the sixth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses;*
 - (f) *On average during the seventh year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses ; and*
 - (g) *On average during the eighth year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses.*

For purposes of determining the percentage invested in small businesses on average during any particular year pursuant to this section, the amount invested in small businesses shall be the average amount so invested at the end of each calendar month during the year, and the amount of the investment fund required to be invested shall be the aggregate amount of cash contributions certified by the authority.

- (5) *No tax credits shall be awarded by the authority for cash contributions to investment funds after December 31, 2004. No investment funds or investment fund managers shall be certified by the authority after December 31, 2003.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The certification of investment funds and investment fund managers shall be made pursuant to an application to the authority, upon compliance with any applicable state and federal securities laws and regulations or a statement by the investment fund and the investment fund manager that such compliance will be obtained either simultaneously with or prior to submission of such application to the authority. In the application, the applicant shall disclose to the authority the following information, all of which shall be considered by the authority in certifying investment funds and investment fund managers:*
 - (a) *The applicant's business plan, including the maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;*
 - (b) *The total amount of commitments for cash contributions the applicant has received from potential investors, including receipt of not less than one million dollars (\$1,000,000) in cash contributions deposited in an escrow account established in accordance with subsection (6) of Section 5 of this Act;*
 - (c) *The name, address, and tax identification or Social Security number of each potential investor and the amount of cash contributions each potential investor has committed to the proposed investment fund;*
 - (d) *The relevant experience of the applicant or the applicant's management, and their demonstrated ability to manage the proposed investment fund;*
 - (e) *A process for disclosing to investors the tax credits available to investors pursuant to Sections 1 to 15 of this Act, which shall include, but not be limited to, the disclosures described in subsection (7) of Section 5 of this Act;*
 - (f) *The location and account number of an escrow account that has been established for investors for the period of time between receipt of cash contributions by the applicant and the certification of the investment fund and the investment fund manager by the authority;*
 - (g) *The disclosure documents to be used in connection with the offering and investment in the investment fund;*
 - (h) *The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to such offering, in compliance with applicable state and federal securities laws and regulations; and*
 - (i) *Any additional information the authority deems necessary or appropriate. An investment fund manager seeking to have certified additional cash contributions to a certified investment fund shall submit to the authority a written amendment to the application in a form acceptable to the authority.*
- (2) *The contents of applications submitted to the authority by applicants shall be treated as confidential by the Commonwealth and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.*
- (3) *The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of Sections 1 to 15 of this Act, including, but not limited to, power to:*
 - (a) *Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;*
 - (b) *Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and*
 - (c) *Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.*

Any payments made by an investment fund manager pursuant to this subsection may be passed on to such investment fund manager's investment fund.

- (4) *An investment fund's stated purpose shall be to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.*
- (5) *The criteria considered by the authority for the certification of investment fund managers shall include, but not be limited to, compliance by those persons with applicable state and federal securities laws and regulations, a review of the applicant and its business plan, the investment strategy for the investment fund, the relevant experience of the applicant or the applicant's management, and the applicant's demonstrated ability to manage the investment fund, and the receipt by the applicant of aggregate cash contributions from investors to the investment fund of not less than one million dollars (\$1,000,000).*
- (6) *Following certification of an investment fund and an investment fund manager and execution of the agreement by the authority and the investment fund manager, the authority shall provide each investor whose cash contribution has been certified by the authority with a certificate setting forth the amount of the tax credits the investor shall be entitled to receive under Section 6 of this Act. Following certification of any additional cash contributions to an investment fund after the initial certification of the investment fund, the authority shall provide each investor making an additional cash contribution with a certificate setting forth the amount of additional credits the investor shall be entitled to receive under Section 6 of this Act. Each investor shall file a copy of the certificate with the investor's state tax return in accordance with Section 8 of this Act.*
- (7) *The authority may establish additional procedures and standards as it deems necessary for the certification of investment funds and investment fund managers by the promulgation of administrative regulations in accordance with KRS Chapter 13A.*

SECTION 5. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An investment fund manager shall have a business office located within the Commonwealth. That office shall have a listed telephone number and shall be open to the public during normal business hours.*
- (2) *The initial capitalization of an investment fund with cash contributions from investors shall not be less than one million dollars (\$1,000,000). Any investment of moneys received by the investment fund in excess of the maximum amount of cash contributions proposed to be solicited in the application shall not be eligible for tax credits. In no event shall any investment of money received by the investment fund in excess of ten million dollars (\$10,000,000) be eligible for credits. Cash contributions for all investment funds shall be raised after the effective date of this Act.*
- (3) *Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using certified cash contributions shall not exceed twenty-five percent (25%) of the cash contributions in the investment fund; provided that this restriction shall not apply to investments of money that have not been certified as cash contributions under Sections 1 to 15 of this Act.*
- (4) *An investment fund manager may operate separate investment funds pursuant to separate applications submitted to and approved by the authority, and assuming this activity is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.*
- (5) *Following the initial certification of an investment fund, any additional cash contributions to that investment fund shall be certified by the authority.*
- (6) *An investment fund manager seeking to establish an investment fund, or to increase the amount of cash contributions to an existing investment fund, shall establish an escrow account with a financial institution located within the Commonwealth into which cash contributions shall be deposited and held for the period of time between their receipt by the investment fund manager and either certification by the authority of the investment fund, or the certification by the authority of the increased cash contributions, whichever is later. No qualified investments shall be made using cash contributions until the new or expanded investment fund is certified by the authority. If the authority denies certification of the new or expanded investment fund, all cash contributions received by the applicant relating to the new or expanded investment fund shall be returned to investors within ten (10) calendar days.*

- (7) *An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an expanded investment fund, shall disclose in advance in writing to each investor, in addition to any other items required by law, that:*
- (a) *No tax credit will be available under the provisions of Sections 1 to 15 of this Act until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations, have been certified by the authority, and an agreement between the authority and the investment fund manager on its behalf and on behalf of the investors has been executed, and the terms of that agreement have been disclosed in writing to each investor;*
 - (b) *No tax credit will be available under the provisions of Sections 1 to 15 of this Act until the investor's cash contribution to the investment fund has been certified by the authority; and*
 - (c) *The Commonwealth shall be immune from liability for any losses or damages investors may incur in connection with any cash contributions made to an investment fund or any qualified investments made by an investment fund in small businesses.*

SECTION 6. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An investor shall be entitled to a nonrefundable credit against the income tax imposed by KRS 141.020 or 141.040, or the corporation license tax imposed by 136.070 in any tax year after December 31, 1998, during which a cash contribution to a certified investment fund is made. The aggregate tax credit amount available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to an investment fund. The aggregate tax credit amount available to each investor shall be certified by the authority as provided in subsection (6) of Section 4 of this Act.*
- (2) *The tax credit amount that may be claimed by an investor in any tax year shall not exceed twenty-five percent (25%) of the initial aggregate credit amount certified by the authority as available to the investor.*
- (3) *If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section exceeds the investor's combined income tax and corporate license tax liabilities for that year, the investor may carry the excess tax credit forward until the tax credit is used, provided that the carry forward of any excess tax credit shall not increase the twenty-five percent (25%) limitation established by subsection (2) of this section, and provided further that any tax credits not used within fifteen (15) years of the initial certification by the authority of the aggregate tax credit amount available to the investor shall be lost.*
- (4) *The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, or any other additions to the investor's tax liability.*
- (5) *The tax credits allowed by this section are not transferable.*

SECTION 7. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The total amount of credits certified by the authority for any single investment fund shall not exceed, in the aggregate, four million dollars (\$4,000,000) for all investors and all taxable years. If aggregate cash contributions to a single investment fund exceed ten million dollars (\$10,000,000) for all investors for all taxable years, the authority shall allocate credits to investors in the order that cash contributions are made by investors to the investment fund.*
- (2) *The total credits certified by the authority for all investors in all investment funds shall not exceed:*
 - (a) *Five million dollars (\$5,000,000), in the aggregate, during the period from July 1, 1999, through June 30, 2000;*
 - (b) *Ten million dollars (\$10,000,000), in the aggregate, during the period from July 1, 2000, through June 30, 2001, including credits authorized by the authority in the prior year;*
 - (c) *Fifteen million dollars (\$15,000,000), in the aggregate, during the period from July 1, 2001, through June 30, 2002, including credits authorized by the authority in prior years; and*
 - (d) *Twenty million dollars (\$20,000,000), in the aggregate, from July 1, 2002, and thereafter, including credits authorized by the authority in prior years.*

The authority shall approve the credits to investors in the order that investment funds and investment fund managers are certified by the authority.

SECTION 8. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *To receive the credit provided by Section 6 of this Act, an investor must:*
 - (a) *Claim the credit on the investor's annual state tax returns in the manner prescribed by the Revenue Cabinet;*
 - (b) *File with the Revenue Cabinet and with the investor's annual state tax returns a copy of the disclosure form submitted by the investment fund manager under subsection (2) of this section; and*
 - (c) *File with the Revenue Cabinet and with the investor's annual state tax returns a copy of the certification of the investor's credit, issued by the authority under subsection (6) of Section 4 of this Act at the time of certification of the investment fund and of the investment fund manager and at the time of certification of additional cash contributions, as applicable.*
- (2) *Each investment fund manager shall complete disclosure forms promulgated by the Revenue Cabinet as administrative regulations under KRS Chapter 13A, detailing the following information with respect to each cash contribution:*
 - (a) *The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;*
 - (b) *The name, address, and Social Security number or employer identification number, as applicable, of each investor; and*
 - (c) *The total amount of all cash contributions made by each investor.*
- (3) *The disclosure forms required under subsection (2) of this section shall be filed by the investment fund manager with the Revenue Cabinet and the authority within thirty (30) days after receipt of certification from the authority. Copies of these forms shall be mailed to each investor by the investment fund manager on or before that same date.*
- (4) *The contents of an investor's filings under subsection (1) of this section and the disclosure form required under subsection (2) of this section shall be treated by the authority and by the Revenue Cabinet as confidential and shall not be considered public records under the Kentucky Open Records Act, KRS 61.870 to 61.884.*

SECTION 9. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (4) of Section 3 of this Act, if a cash contribution which is the basis for a credit under the provisions of Sections 1 to 15 of this Act is redeemed by the investment fund, or if the investment fund allows the cash contribution to be withdrawn by the investor within five (5) years after the date of certification of the cash contributions by the authority, the credit provided by Section 6 of this Act for that cash contribution shall be disallowed, and the investor shall pay to the State Treasurer an amount equal to the amount of credits previously claimed with respect to those cash contributions, plus interest at the rate of two percent (2%) per month, compounded monthly from the date credits were taken by the investor. This payment shall be included with the investor's state tax return or returns for the period in which the redemption or withdrawal occurred. When payments are made to the State Treasurer under this section, the amount remitted shall be handled in the same manner as if no credit had been allowed.*
- (2) *An investment fund that fails to make or maintain investments in small businesses pursuant to Sections 1 to 15 of this Act, or that otherwise violates the provisions of Sections 1 to 15 of this Act, shall pay to the State Treasurer a penalty in an amount equal to the amount of all credits claimed by the investors making cash contributions to the investment fund, plus interest at the rate of two percent (2%) per month, compounded monthly, from the date the cash contributions were certified by the authority. If the investment fund fails to pay the penalty and interest in full as required by the Revenue Cabinet, each investor shall be personally liable to the Revenue Cabinet for that investor's pro rata share of the unpaid penalty and the investment fund manager shall be liable to the Revenue Cabinet for all such interest. Any payment of unpaid penalty by an investor shall be included with the investor's state tax return for the period in which the failure or*

violation occurred. An investor's pro rata share shall be determined by dividing the total amount of cash contributions made by the investor in the investment fund, by the total amount of cash contributions made by all investors in the investment fund. The secretary of the Revenue Cabinet shall give notice in writing to the authority, the investment fund manager, and the investors of any penalties imposed. The secretary of the Revenue Cabinet may abate any imposed penalty upon written request, if the investment fund manager establishes reasonable cause for the failure to make qualified investments in small businesses under the provisions of Sections 1 to 15 of this Act, or to otherwise comply with the provisions of Sections 1 to 15 of this Act. The State Treasurer shall deposit any amounts received pursuant to this section in the Commonwealth's general fund.

- (3) *The administration of this section shall be the responsibility of the Revenue Cabinet.*

SECTION 10. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Each investment fund manager shall file semiannual reports with the secretary of the Revenue Cabinet and with the authority, on or before the sixtieth day, and the two-hundred-fortieth day, of each fiscal year of the investment fund. These reports shall include information that the authority prescribes from time to time, including, but not limited to, the following:*
- (a) *For each small business in which qualified investments are made by the investment fund during the reporting period, the name and address of the small business, the amount of qualified investments made by the investment fund in the small business during the reporting period, and the job creation anticipated and achieved by the small business during the reporting period;*
 - (b) *An affidavit from each small business in which a qualified investment was made during the reporting period, prepared by any authorized officer, partner, trustee, member, or manager of the small business, which sets forth:*
 1. *That the small business qualifies as a small business under Sections 1 to 15 of this Act; and*
 2. *A brief description of the activities of the small business;*
 - (c) *An affidavit prepared by the investment fund manager or, if the investment fund is an entity, by an authorized officer, partner, trustee, member, or manager of the investment fund manager pertaining to:*
 1. *Each small business in which a qualified investment has been made, including, without limitation, qualified investments made prior to the reporting period, that sets forth:*
 - a. *That each small business is or continues to be, as applicable, actively and principally engaged in a qualified activity; and*
 - b. *That each small business qualifies as a small business under the provisions of Sections 1 to 15 of this Act;*
 2. *The amount of each distribution to an investor and redemption of cash contributions made by the investment fund during the reporting period and in the aggregate since the date of certification of the investment fund;*
 3. *The name and address of each investor, and the amount and date of the cash contribution to the investment fund of each investor who is entitled to the credit; and*
 4. *The continued compliance by the investment fund and the investment fund manager with all applicable state and federal securities laws and regulations; and*
 - (d) *A statement from the investment fund manager as to the securities exemption or registration provision relied upon by the small business with respect to the qualified investment by the investment fund in the small business.*
- (2) *The authority shall provide quarterly written status reports to the standing Appropriations and Revenue Committee of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate concerning the activities of the Kentucky Investment Fund for each three (3) month period beginning July 1, 1999. On or before November 1 of each year, the authority shall make an annual report for the fiscal year ending the preceding June 30 to the Governor and the Legislative Research Commission. The quarterly status report and the annual report shall include, but not be limited to, the following information:*

- (a) *The total number of investors and the aggregate amount of cash contributions to all investment funds, categorized by the types of entities through which investors conduct business, amounts of cash contributions, and geographical distribution of investors, including area development districts; and*
 - (b) *The total number and amounts of qualified investments made by each investment fund, categorized by type of businesses, amount of investment, job creation anticipated and achieved, geographical distribution, including area development districts, and new products and technologies developed.*
- (3) *The contents of the semiannual reports from investment fund managers to the authority described in subsection (1) of this section shall be treated by the authority as confidential, and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.*
 - (4) *The authority may charge a fee in connection with the administration and processing of semiannual reports made by investment fund managers.*

SECTION 11. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally-accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of Sections 1 to 15 and Section 16 of this Act, including, but not limited to, those provisions requiring that qualified investments be made within certain time limits. Each year the audit report shall be completed and certified by the independent certified public accountant and delivered to the secretary of the Revenue Cabinet and the authority within ninety (90) days after the end of the investment fund's fiscal year.*
- (2) *The authority and the Revenue Cabinet, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund or an investment fund manager, or if the investment fund manager is a person, an investment fund manager, regarding the affairs and business of the investment fund. The authority and the Revenue Cabinet, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.*
- (3) *In addition to the audits required by this section, the authority or the Revenue Cabinet may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Revenue Cabinet may also audit any small business in which an investment fund has made a qualified investment, or in which an investment fund proposes to make a qualified investment, on a random basis or for cause. Nothing in this section shall be construed to prohibit the Revenue Cabinet from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Revenue Cabinet determines to be appropriate.*
- (4) *If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of Sections 1 to 15 and Section 16 of this Act, the authority and the Revenue Cabinet may consult with one another with respect to this noncompliance and the Revenue Cabinet may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of Sections 1 to 15 and Section 16 of this Act.*
- (5) *The authority may give an investment fund manager written notice of any noncompliance with the provisions of Sections 1 to 15 of this Act and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.*
- (6) *The authority and the Revenue Cabinet may each charge a fee in connection with the administration and review of annual audits of investment funds under this section.*
- (7) *Nothing in this section shall be construed to prohibit the Department of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund*

or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Revenue Cabinet may or may not take with respect to the noncompliance.

SECTION 12. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The Commonwealth, the authority, or any officer, director, official, employee, or agent of the Commonwealth or the authority shall not be liable to any investor or to any investment fund or to any investment fund manager as a result of Sections 1 to 15 of this Act, or any of the activities authorized by Sections 1 to 15 of this Act. This limitation of liability includes, without limitation:

- (1) *Losses or damages investors incur in connection with any cash contributions made to an investment fund or any qualified investments made by an investment fund in small businesses; and*
- (2) *Any claim, liability, obligation, loss, damage, assessment, judgment, cost, and expense of any kind or character relating to federal or state securities laws, rules, regulations, or orders.*

SECTION 13. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An investment fund may be dissolved or liquidated only after notice to and approval of that dissolution or liquidation by the authority in compliance with any applicable state or federal securities laws or regulations. The authority may promulgate administrative regulations in accordance with KRS Chapter 13A to establish procedures for application for approval to dissolve or liquidate an investment fund.*
- (2) *This section shall not prohibit an investment fund from making distributions to investors in compliance with any applicable state or federal securities laws or regulations, if the investment fund is in compliance with the terms of Sections 1 to 15 of this Act and if these distributions are not made in connection with the dissolution or liquidation of the investment fund or prohibited by subsection (4) of Section 3 of this Act or subsection (1) of Section 9 of this Act.*

SECTION 14. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *No qualified investments shall be made in a small business that is the "alter ego" of the investment fund or the investment fund manager. For purposes of this subsection, a business is an "alter ego" of an investment fund or an investment fund manager if any of the following criteria are satisfied:*
 - (a) *The small business is owned in whole or in part by an investor, officer, director, partner, member, manager, trustee or employee of the investment fund or the investment fund manager;*
 - (b) *The small business employs on a full-time or part-time basis an investor, officer, director, partner, member, manager, trustee, or employee of the investment fund or the investment fund manager; or*
 - (c) *An investor, officer, director, partner, member, manager, trustee, or employee of the investment fund or the investment fund manager has a direct or indirect financial interest in the small business, other than by virtue of the qualified investment made by the investment fund to the small business.*
- (2) *No investor, officer, director, partner, member, manager, trustee, or employee of an investment fund or investment fund manager shall occupy any management position in any small business in which that investment fund has made a qualified investment unless:*
 - (a) *The person is filling that management position at the direction of the investment fund manager in an effort to remedy problems arising from a lack of profitability of the small business, or from dishonesty of the persons otherwise managing the small business; or*
 - (b) *The authority approves the investor, officer, director, partner, member, manager, trustee, or employee of an investment fund or investment fund manager serving in the management position in the small business.*
- (3) *No investor, officer, director, partner, member, manager, trustee, or employee of an investment fund or investment fund manager shall have a direct or indirect financial interest in any small business in which the investment fund has a qualified investment, except by virtue of the qualified investment made by the investment fund in the small business.*

- (4) *No officer, member, or employee of the authority shall have a direct or indirect financial interest in any investment fund or investment fund manager.*

SECTION 15. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 15 of this Act shall be known as the Kentucky Investment Fund Act.

SECTION 16. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
- (a) *"Authority" means the Kentucky Economic Development Finance Authority as created pursuant to KRS 154.20-010;*
 - (b) *"Investor" has the same meaning as set forth in Section 2 of this Act;*
 - (c) *"Investment fund" has the same meaning as set forth in Section 2 of this Act;*
 - (d) *"Investment fund manager" has the same meaning as set forth in Section 2 of this Act; and*
 - (e) *"Tax credit" means the credits provided for in Section 6 of this Act.*
- (2) (a) *An investor which is an individual or a corporation shall be entitled to the credit certified by the authority under subsection (6) of Section 4 of this Act against the income tax due computed as provided by KRS 141.020 or 141.040, respectively.*
- (b) *The amount of the certified tax credit that may be claimed in any tax year of the investor shall be determined in accordance with the provisions of Section 6 of this Act.*
- (3) (a) *In the case of an investor that is an S-corporation, partnership, limited partnership, limited liability company, or limited liability partnership, the amount of the tax credit certified by the authority under subsection (6) of Section 4 of this Act shall be apportioned among the shareholders, partners, or members thereof, as applicable, at the same ratio as the shareholders', partners', or members' distributive shares of income are determined for the tax year during which the amount of the credit is certified by the authority.*
- (b) *The amount of the tax credit apportioned to each shareholder, partner, or member that may be claimed in any tax year of the shareholder, partner, or member shall be determined in accordance with the provisions of Section 6 of this Act.*
- (4) (a) *In the case of an investor that is a trust, the amount of the tax credit certified by the authority under subsection (6) of Section 4 of this Act shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the tax credit is certified by the authority.*
- (b) *The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of Section 6 of this Act.*
- (5) *The Revenue Cabinet shall promulgate administrative regulations under KRS Chapter 13A adopting forms and procedures for the reporting and administration of credits authorized by Section 6 of this Act.*

Section 17. KRS 154.12-224 is amended to read as follows:

- (1) There is created in the Cabinet for Economic Development the Department of Financial Incentives. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall coordinate all financial assistance, tax credit, and related programs available for business and industry.
- (2) The department shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:
- (a) The Grant Programs Division, which shall supervise and manage the Economic Development Bond Program, as set forth in KRS 154.12-100, and the Local Government Economic Development Program, as set forth in KRS 42.4588;

- (b) The Direct Loan Programs Division, which shall supervise and manage the Direct Loan Program of the Kentucky Economic Development Finance Authority, as set forth in 307 KAR 1:020, and the Small Business Loans Branch;
 - (c) The Tax Incentive Programs Division, which shall supervise and manage the Kentucky Industrial Development Act Program, as set forth in KRS 154.28-010 et seq., the Kentucky Jobs Development Act Program, as set forth in KRS 154.24-010 et seq., the Kentucky Industrial Revitalization Act Program, as set forth in KRS 154.26-010 et seq., the Kentucky Rural Economic Development Act Program, as set forth in KRS 154.22-010, et seq., and the Kentucky Enterprise Zone Program, as set forth in KRS 154.45-001 et seq., which shall be attached to the division for administrative purposes; and
 - (d) The Program Servicing Division, which shall perform auditing, monitoring and compliance functions for the Grant Programs Division, the Direct Loan Programs Division, and the Tax Incentive Programs Division within the Department of Financial Incentives.
- (3) The department shall also include the following entities:
- (a) The *Kentucky investment*~~[Commonwealth venture capital]~~ fund, established by *Sections 1 to 15 of this Act*~~[KRS 154.20-300 to 154.20-390]~~, which shall be attached to the department for administrative purposes and staff support; and
 - (b) The Bluegrass State Skills Corporation, established by KRS 154.12-204 to 154.12-208, which shall be attached to the department.

Section 18. KRS 304.7-263 is amended to read as follows:

- (1) An insurer may invest in venture capital funds or pools organized to encourage equity capital investment in Kentucky, encourage the establishment and expansion of small business and industry, and encourage the development of new job opportunities in Kentucky.
- (2) The *Kentucky investment*~~[Commonwealth venture]~~ fund established in *Sections 1 to 15 of this Act*~~[KRS 154.20-300 to 154.20-390]~~ shall be eligible for investment under this section.
- (3) An insurer shall not have more than one percent (1%) of its assets invested under this section.

Section 19. KRS 154.47-040 is amended to read as follows:

- (1) Three (3) or more secondary wood products businesses may establish a flexible manufacturing network for the purposes deemed appropriate by those businesses upon application to the Cabinet for Economic Development, and, if approved, may become eligible for business incentives and priority consideration for state economic development loans and grants as provided in KRS 154.47-015 to 154.47-070 and KRS 42.455 and as may be otherwise provided by law.
- (2) The Kentucky Wood Products Competitiveness Corporation, in cooperation and in conjunction with the Cabinet for Economic Development, shall assist with the development and promotion of secondary wood industry business networks and projects. The corporation shall provide development and promotion advice and assistance that seeks to provide a formalized, collaborative mechanism that will allow three (3) or more secondary wood industry businesses to: pool expertise; improve technology, develop new markets, improve employee skills, increase capitalization, improve product and production quality, and develop a system of collective intelligence among participating entities.
- (3) The corporation shall assemble and keep in its office information concerning the various secondary wood products requirements of state capital construction and renovation projects. This information shall be made available to any secondary wood industry business that seeks business with state agencies. The corporation shall assist secondary wood industry businesses and business networks with the collaborative design and product development specifications of state capital construction and renovation projects.
- (4) Applications of secondary wood products businesses as prescribed in subsection (1) of this section shall not be approved by the cabinet unless first reviewed by the board. The board shall upon receipt of an application complete its review and take action thereon within ninety (90) days from the date of receipt.
- (5) Any business firm that is a member of an approved network as set forth in this section shall be eligible for priority consideration for financial incentives, including loans, grants, and tax credits programs under the authority of the Kentucky Economic Development Finance Authority as set forth in this chapter~~[, and investment programs of the Commonwealth Venture Fund as set forth in KRS 154.20-300 to 154.20-390]~~.

- (6) Nothing contained in this section shall be so construed as waiving standard eligibility requirements and sound business qualifications applicable to any business making an application to the Kentucky Economic Development Finance Authority for state financial assistance programs under its authority and responsibility.

Section 20. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual credits permitted by KRS 141.020(3);
 - (b) The economic development credits computed under KRS 141.347, 141.400, 141.403, and 141.407;
 - (c) The health insurance credit permitted by KRS 141.062;
 - (d) The tax paid to other states credit permitted by KRS 141.070;
 - (e) The credit for hiring the unemployed permitted by KRS 141.065;
 - (f) The recycling or composting equipment credit permitted by KRS 141.390;
 - (g) The ~~tax~~ ~~Commonwealth Venture Fund~~ credit *for cash contributions in investment funds* permitted by *Section 6 of this Act*~~[KRS 154.20-340]~~;
 - (h) The low income credit permitted by KRS 141.066; and
 - (i) The household and dependent care credit permitted by KRS 141.067.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual withholding tax credit permitted by KRS 141.350; and
 - (b) The individual estimated tax payment credit permitted by KRS 141.305.
- (3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:
 - (a) The economic development credits computed under KRS 141.347, 141.400, 141.403, and 141.407;
 - (b) The health insurance credit permitted by KRS 141.062;
 - (c) The unemployment credit permitted by KRS 141.065;
 - (d) The recycling or composting equipment credit permitted by KRS 141.390;
 - (e) The coal conversion credit permitted by KRS 141.041;
 - (f) The enterprise zone credit permitted by KRS 154.45-090; and
 - (g) The ~~tax~~ ~~Commonwealth Venture Fund~~ credit *for cash contributions to investment funds* permitted by *Section 6 of this Act*~~[KRS 154.20-340]~~.
- (4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

Section 21. KRS 154.10-070 is amended to read as follows:

- (1) The board shall have authority to direct the cabinet to initiate any new programs that it deems appropriate, including, but not limited to:
 - (a) A seed-stage financing program to provide seed-stage financing to innovative growth-oriented, emerging, and small Kentucky firms as distinguished from seed-capital financing by the level of risk and return associated with the investment~~[. If this program is created, the cabinet may contract for its administration with the Commonwealth venture fund]~~;
 - (b) An applied research and development finance program to provide matching grants to Kentucky's industries and universities to conduct applied research of strategic importance to Kentucky's economy.

If this program is created, the cabinet may contract for its administration with the Kentucky Science and Technology Council, Inc.;

- (c) A government permitting and expediting program to assist businesses in expediting government permits and regulatory requirements;
- (d) A surety bonding program to provide bonding assistance for small businesses in the form of education of the bonding process, bond waivers, and the creation of a bond fund;
- (e) A Kentucky export authority to utilize the services of the Kentucky World Trade Center, university export trade programs, and export programs provided by other agencies within a context to provide financial assistance to Kentucky exporters through the financing of accounts receivable, letters of credit, and loan guarantees, and the use of commissioned sales agents in foreign countries;
- (f) A flexible enterprise networks program to encourage and enable Kentucky firms to apply competitive management practices, modernize, and effectively compete in national and international markets;
- (g) An economic response network to collect data on the needs of existing businesses in order to determine if a particular business or business sector is in trouble and about to fail or relocate, or is contemplating major expansion within Kentucky. The purpose of the program would be to assist the cabinet in developing responses to suit specific needs of Kentucky businesses and industries;
- (h) A Kentucky technology service to integrate, broker, and deliver technology and related business services primarily to small- and medium-sized Kentucky firms. The service would fulfill its mission by brokering firms to the best possible existing public, private or university expert, by consulting directly with firms when no expert is available, and by coordinating seminars on technologies, management practices, and issues of competitive importance to Kentucky firms;
- (i) A multimedia center to develop teleconference capabilities and other specialized marketing presentations for the use of state agencies and regional economic development centers and communities. The center would support Kentucky's marketing efforts, enhance the state's image of being progressive, and provide marketing and informational support to communities throughout the state;
- (j) A community preparedness program to develop a list of criteria to identify those communities which are prepared to accommodate significant new or expanding businesses, to identify deficiencies of those communities which do not meet the criteria, and to provide assistance to those communities to eliminate their economic development deficiencies.
 1. Areas in which criteria would be developed to identify communities' preparedness, would include, but not be limited to: infrastructure, site availability and conditions, environmental conditions, workforce, education, business and community support, housing, and health care.
 2. Communities having deficiencies should meet the stated criteria through assistance from readily available regional and local facilities and institutions; and
- (k) A marketing assistance program to assess the resources of communities and to assist them in marketing and promotional efforts.

Section 22. The following KRS sections are repealed:

- 154.20-300 Short title for KRS 154.20-300 to 154.20-390.
- 154.20-305 Purposes of KRS 154.20-300 to 154.20-390.
- 154.20-310 Definitions for KRS 154.20-300 to 154.20-390.
- 154.20-320 Establishment and operation of fund.
- 154.20-330 Investment by entity not subject to taxes listed in KRS 154.20-310 and 154.20-360.
- 154.20-340 Investment tax credits -- Years -- Carryovers.
- 154.20-350 Maximum credits.
- 154.20-360 Application of tax credit.
- 154.20-370 Procedure to receive tax credit.
- 154.20-380 Loss of credit through early redemption.

154.20-390 Reporting requirements.

Approved April 7, 1998

CHAPTER 415

(HB 165)

AN ACT relating to disposition of property at death.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Co-owners with right of survivorship" means and includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one (1) or more to the whole of the property or account on the death of the other or others;*
- (2) *"Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payment on death (POD) designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a donative, appointive, or nominative instrument of any other type; and*
- (3) *"Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

Except as provided in Section 6 of this Act, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead, or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred and twenty (120) hours is deemed to have predeceased the other individual. This section shall not apply if its application would result in a taking of intestate estate by the state.

SECTION 3. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

Except as provided in Section 6 of this Act, for purposes of a donative provision of a governing instrument, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred and twenty (120) hours is deemed to have predeceased the event.

SECTION 4. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

Except as provided in Section 6 of this Act:

- (1) *If it is not established by clear and convincing evidence that one (1) of two (2) co-owners with right of survivorship survived the other co-owner by one hundred and twenty (120) hours, one-half (1/2) of the property shall pass as if one (1) had survived by one hundred and twenty (120) hours and one-half (1/2) as if the other had survived by one hundred and twenty (120) hours.*
- (2) *If there are more than two (2) co-owners and it is not established by clear and convincing evidence that at least one (1) of them survived the others by one hundred and twenty (120) hours, the property shall pass in the proportion that each bears to the whole number of co-owners.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

In addition to the rules of evidence in courts of general jurisdiction, for the purposes of Sections 1 to 7 of this Act only, the following rules relating to a determination of death and status shall apply:

- (1) *Death shall be deemed to occur when the requirements of KRS 446.400 have been met.*

- (2) *A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred shall be prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.*
- (3) *A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive shall be prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.*
- (4) *In the absence of prima facie evidence of death under subsection (2) or (3) of this section, the fact of death shall be established by clear and convincing evidence, including circumstantial evidence.*
- (5) *An individual whose death is not established under subsection (2), (3), or (4) of this section and who is absent for a continuous period of seven (7) years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, shall be presumed dead. His or her death shall be presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.*
- (6) *In the absence of evidence disputing the time of death stipulated on a document described in subsection (2) or (3) of this section, a document described in subsection (2) or (3) of this section that stipulates a time of death one hundred and twenty (120) hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred and twenty (120) hours.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

Survival by one hundred and twenty (120) hours is not required if:

- (1) *The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;*
- (2) *The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period, but survival of the event or the specified period shall be established by clear and convincing evidence;*
- (3) *The imposition of a one hundred and twenty (120) hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under the Rule Against Perpetuities, but survival shall be established by clear and convincing evidence; or*
- (4) *The application of a one hundred and twenty (120) hour requirement to multiple governing instruments would result in an unintentional failure or duplication of a disposition, but survival shall be established by clear and convincing evidence.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *A payor or other third party shall not be liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party shall be liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.*
- (b) *Written notice of a claimed lack of entitlement under paragraph (a) of this subsection shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party shall pay any amount owed, or transfer or deposit any item of property held by it, to or with the court having jurisdiction of the probate proceedings related to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estate located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to*

or with the court shall discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

- (2) *A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, shall not be obligated under this chapter to return the payment, item of property, or benefit and shall not be liable under this chapter for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter shall be obligated to return the payment, item of property, or benefit or shall be personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.*
- (3) *If this chapter, or any part of this chapter, is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this chapter shall be obligated to return the payment, item of property, or benefit or shall be personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter, or part of this chapter, not preempted.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SECTION 9. A NEW SECTION OF KRS CHAPTER 397 IS CREATED TO READ AS FOLLOWS:

This chapter may be cited as the Uniform Simultaneous Death Act (1991).

SECTION 10. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO READ AS FOLLOWS:

- (1) *A will may validly transfer property to the trustee of a trust:*
- (a) *Established during the testator's lifetime by the testator, by the testator and one (1) or more other persons, or by one (1) or more other persons, including a funded or unfunded life insurance trust, although one (1) or more persons other than the trustee have reserved any or all rights of ownership of the insurance contracts; or*
- (b) *Established at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.*
- (2) *A transfer referred to in subsection (1) of this section shall not be invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.*
- (3) *Unless the testator's will provides otherwise, property transferred to a trust in accordance with subsection (1) of this section shall not be held under a testamentary trust of the testator but shall become a part of the trust to which it is transferred. The property shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments to it made before or after the testator's death.*
- (4) *Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death shall cause the devise or bequest to lapse.*
- (5) *This section shall be effective for any devise or bequest made by wills of decedents dying on or after the effective date of this Act.*
- (6) *This section shall be construed to effectuate its general purpose to make uniform the law of those states that enact it.*
- (7) *This section may be cited as the Uniform Testamentary Additions to Trusts Act.*

Section 11. KRS 391.360 is amended to read as follows:

- (1) ~~A written provision for a nonprobate transfer on death~~~~[Any of the following provisions]~~ in an insurance policy, contract of employment, bond, mortgage, promissory note, *certified or uncertified security account agreement, custodial agreement*, deposit agreement, *compensation plan*, pension plan, *individual retirement plan, employee benefit plan*, trust~~[agreement]~~, conveyance, *deed of gift, marital property agreement*, or ~~any~~ other written instrument ~~of a similar nature is~~~~effective as a contract, gift, conveyance, or trust is deemed to be~~ nontestamentary. ~~These written provisions shall include, but not be limited to, written provisions which provide that:~~ ~~and KRS 391.300 to 391.355 does not invalidate the instrument or any provision;~~
- (a) ~~That~~ Money or other benefits~~[theretofore]~~ due to, controlled, or owned by a decedent *before death* shall be paid after *the decedent's*~~[his]~~ death to a person *whom*~~[designated by]~~ the decedent *designates*~~[in]~~ either *in* the instrument or *in* a separate writing, including a will, executed *before*, at the same time, *or after*~~[as]~~ the instrument *is executed*~~[or subsequently]~~;
- (b) ~~That any~~ Money due or to become due under the instrument shall cease to be payable in *the* event of the death of the promisee or the promissor before payment or demand; or
- (c) ~~That~~ Any property, *controlled by or owned by the decedent before death*, which is the subject of the instrument shall pass to a person~~[designated by]~~ the decedent *designates*~~[in]~~ either *in* the instrument or *in* a separate writing, including a will, executed *before*, at the same time, *or after*~~[as]~~ the instrument *is executed*~~[or subsequently]~~.
- (2) ~~Nothing in~~ This section *shall not limit*~~[limits]~~ the rights of creditors under other laws of this state.

Section 12. The following KRS sections are repealed:

- 394.075 Uniform Testamentary Additions to Trusts Act.
 397.010 No sufficient evidence of survivorship.
 397.020 Survival of beneficiaries.
 397.030 Joint tenants or tenants by the entirety.
 397.040 Insurance policies.
 397.050 Chapter not retroactive.
 397.060 Chapter does not apply if decedent provides otherwise.
 397.070 Uniformity of interpretation.
 397.080 Short title.

Section 13. An act done before this Act's effective date in any proceeding and any accrued right shall not be impaired by Sections 1 to 7 of this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before this Act's effective date, the provisions shall remain in force with respect to that right, notwithstanding Sections 1 to 7 of this Act.

Any rule of construction or presumption provided in Sections 1 to 7 of this Act shall not apply to instruments executed and multiple-party accounts opened before this Act's effective date.

The provisions of Sections 1 to 7 of this Act shall not apply to persons who die prior to the effective date of this Act.

Approved April 7, 1998

CHAPTER 416

(HB 151)

AN ACT relating to local school board members.

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

Section 1. KRS 160.180 is amended to read as follows:

- (1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

- (2) No person shall be eligible to membership on a board of education:
- (a) Unless he has attained the age of twenty-four (24) years; and
 - (b) Unless he has been a citizen of Kentucky for at least three (3) years preceding his election and is a voter of the district for which he is elected; and
 - (c) Unless he has completed at least the twelfth grade or has been issued a GED certificate or has received a high school diploma through participation in the external diploma program and he is elected after July 13, 1990; and
 - (d) An affidavit signed under penalty of perjury certifying completion of the twelfth grade or the equivalent as determined by passage of the twelfth grade equivalency examination held under regulations adopted by the Kentucky Board of Education has been filed with the nominating petition required by KRS 118.315; or
 - (e) Who holds a state office requiring the constitutional oath or is a member of the General Assembly; or
 - (f) Who holds or discharges the duties of any civil or political office, deputyship, or agency under the city or county of his residence; or
 - (g) Who, at the time of his election, is directly or indirectly interested in the sale to the board of books, stationery, or any other property, materials, supplies, equipment, or services for which school funds are expended; or
 - (h) Who has been removed from membership on a board of education for cause; or
 - (i) Who has a relative as defined in subsection (1) of this section employed by the school district and is elected after July 13, 1990. However, this shall not apply to a board member holding office on July 13, 1990, whose relative was not initially hired by the district during the tenure of the board member.
- (3) If, after the election of any member of the board, he becomes interested in any contract with or claims against the board, of the kind mentioned in paragraph (g) of subsection (2) of this section, ~~or becomes a candidate for nomination or election to any office or agency the holding and the discharging of the duties of which would have rendered him ineligible before election,~~ or if he moves his residence from the district for which he was chosen, or if he attempts to influence the hiring of any school employee, except the superintendent of schools or school board attorney, or if he does anything that would render him ineligible for reelection, he shall be subject to removal from office pursuant to KRS 415.050 and 415.060.
- (4) A board member shall be eligible for reelection unless he becomes disqualified.
- (5) The annual in-service training requirements for all school board members shall be as follows:
- (a) Twelve (12) hours for school board members with zero to three (3) years of experience;
 - (b) Eight (8) hours for school board members with four (4) to seven (7) years of experience; and
 - (c) Four (4) hours for school board members with eight (8) or more years of experience.
- The Kentucky Board of Education shall identify the criteria for fulfilling this requirement.

Approved April 7, 1998

CHAPTER 417

(HB 130)

AN ACT relating to child support.

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

Section 1. KRS 237.110 is amended to read as follows:

- (1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. Licenses shall be valid throughout the state for a period of three (3) years from the date of issuance. Any person in compliance with the terms of the license may

carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court.

- (2) The Department of State Police shall issue a license if the applicant:
- (a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;
 - (b) Is twenty-one (21) years of age or older;
 - (c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(g) or KRS 527.040;
 - (d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;
 - (e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;
 - (f) Demonstrates competence with a firearm by any one (1) of the following:
 - 1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of Fish and Game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;
 - 2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or approved by the Department of Criminal Justice Training;
 - 3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or
 - 4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and de-certification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under

this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be deemed to have met the training requirement;

- (g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and
 - (h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.
- (3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.
- (4) *The Department of State Police shall deny, suspend, or revoke a license to carry a concealed deadly weapon upon written notice by the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, or for failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings.*
- (5) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars (\$60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars (\$20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars (\$20) shall be sent to the Department of State Police with the application. Ten dollars (\$10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars (\$10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:
- (a) The name, address, place and date of birth, gender, and Social Security number of the applicant;
 - (b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;
 - (c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;
 - (d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and
 - (e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.
- ~~(6)~~~~(5)~~ The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:
- (a) A completed application as described in subsection ~~(5)~~~~(4)~~ of this section;
 - (b) A recent color photograph of the applicant, as prescribed by administrative regulation; and
 - (c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.
- ~~(7)~~~~(6)~~ The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection ~~(6)~~~~(5)~~ of this section, either:
- (a) Issue the license; or

- (b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence.
- ~~(8)(7)~~ The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.
- ~~(9)(8)~~ Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the district court.
- ~~(10)(9)~~ If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars (\$15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.
- ~~(11)(10)~~ A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.
- ~~(12)(11)~~ Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars (\$15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be

permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections ~~[(4), (5), (6), and (7)]~~ of this section.

- ~~(13)~~~~(12)~~ No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:
- (a) Any police station or sheriff's office;
 - (b) Any detention facility, prison, or jail;
 - (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;
 - (d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;
 - (e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;
 - (f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;
 - (g) An area of an airport to which access is controlled by the inspection of persons and property;
 - (h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose; or
 - (i) Any place where the carrying of firearms is prohibited by federal law.
- ~~(14)~~~~(13)~~ The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee. Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.
- ~~(15)~~~~(14)~~ All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.
- ~~(16)~~~~(15)~~ The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this

section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

- (17)(16) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state and whose state grants to Kentucky residents the right to carry a concealed deadly weapon in the state of the licensee without requiring a separate license to carry a concealed deadly weapon issued by that state, may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.
- (b) A person who holds a valid license issued by another state of the United States whose home state permits Kentucky residents to obtain a license to carry a concealed deadly weapon in that state may apply directly to the Department of State Police for a license to carry concealed deadly weapons in Kentucky. The Department of State Police shall take whatever steps are necessary to verify that the person applying has a valid license to carry a concealed deadly weapon issued by his home state.
- (18)(17) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

SECTION 2. A NEW SECTION OF KRS 205.710 TO 205.800 IS CREATED TO READ AS FOLLOWS:

If any check tendered to the cabinet is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the payor who tendered the check, or the payor for whom the check was tendered, upon notice and demand of the cabinet, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars (\$10) or more than twenty-five dollars (\$25). If the payor who tendered the check shows to the cabinet's satisfaction that the failure to honor payment of the check resulted from error by parties other than the payor, the cabinet shall waive the penalty.

SECTION 3. A NEW SECTION OF KRS 205.710 TO 205.800 IS CREATED TO READ AS FOLLOWS:

For purposes of KRS 205.710 to 205.800, KRS Chapter 403, and KRS Chapter 407, the Circuit Court and the District Court shall have concurrent jurisdiction to establish, modify, and enforce obligations of child support in cases where the determination of paternity is not an issue, except that the jurisdiction of the District Court in cases not involving the determination of paternity shall be limited to those cases where there is no Circuit Court order of this state previously setting child support.

Section 4. KRS 205.750 is amended to read as follows:

- (1) Child support payments made pursuant to a court order shall be made through *the state agency or an* ~~a domestic relations clerk of the county or other person or~~ agency designated by the *state agency* ~~court~~ to receive payments and paid to the cabinet upon notice by the cabinet to the court and the obligor that the child is a recipient of services pursuant to Title IV-D of the Social Security Act.
- (2) Payment of support payments by the obligor directly to a child who is receiving public assistance after the obligor has been notified pursuant to subsection (1) of this section does not abate the obligor's support obligation to the cabinet.

Approved April 7, 1998

CHAPTER 418

(HB 83)

AN ACT relating to county road engineers.

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

Section 1. KRS 179.020 is amended to read as follows:

- (1) The county judge/executive of each county, with the consent of the fiscal court, may employ a county road engineer. Any person so employed shall be either a civil or highway engineer licensed in accordance with KRS Chapter 322, or a person who successfully passed an examination for county road engineer under this section prior to March 24, 1950, and who qualified and served as such.

- (2) If the fiscal court does not provide for a county road engineer, the duties of the county road engineer, except insofar as they may be in conflict with the provisions of KRS Chapter 322, shall be performed by a county road supervisor, who shall be employed by the county judge/executive with the consent of the fiscal court, and who may be removed in the same manner provided for county road engineers. No person shall be employed as county road supervisor unless he meets the following requirements:
- (a) He has at least three (3) years' practical road building experience of a nature satisfactory to examining authorities selected by the Department of Highways for the Commonwealth of Kentucky: ~~and~~ and
 - (b) He has passed an examination, either oral or written, or both, given by the examining authorities, and has received a certificate of qualification from the authorities.
- (3) The county surveyor may be employed as county road engineer, if qualified under subsection (1) of this section, or as county road supervisor if qualified under subsection (2) of this section, and for his services as engineer or supervisor he shall receive a salary in addition to fees allowed by law for his services as county surveyor.
- (4) When no qualified applicant who is acceptable to the fiscal court is available for employment, the county judge/executive, with the consent of the fiscal court, may employ a temporary supervisor not qualified under subsection (2) of this section for a period of three (3) months, but in no event shall a temporary supervisor be used for more than three (3) months during any one (1) term of a county judge/executive.
- (5) This section shall not be construed to prohibit the supervision of the construction and maintenance of roads, without additional compensation, by the county judge/executive, or by committees of the fiscal court, in counties where the position of road engineer or road supervisor has not been established by the fiscal court.
- (6) Two (2) or more counties, by a contract approved by order of the fiscal court of each of the counties, may authorize the county judges/executive of the contracting counties to employ the same employee as county road engineer or county road supervisor to serve in all counties so contracting, and for the apportionment of the amount of his salary to be paid by each county.
- (7) The period of employment for any county road engineer or county road supervisor shall be two (2) or four (4) years, in the discretion of the fiscal court, beginning with the second Tuesday in January of an **odd-numbered** ~~even-numbered~~ year. Other terms of employment, and the salaries of all persons employed under the provisions of this section, shall be fixed by the fiscal court.
- (8) *Those persons serving as a county road engineer or supervisor upon the effective date of this Act shall continue to serve in that capacity until the second Tuesday in January of 1999 at which time the position of county road engineer or supervisor shall be reappointed for a period of employment as provided in subsection (7) of this section.*

Approved April 7, 1998

CHAPTER 419

(HB 81)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 525.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action.
- (2) "Public" means affecting or likely to affect a substantial group of persons.
- (3) "Public place" means a place to which the public or a substantial group of persons has access and includes but is not limited to highways, transportation facilities, schools, places of amusements, parks, places of business, playgrounds and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or

apartments designed for actual residence. An act is deemed to occur in a public place if it produces its offensive or proscribed consequences in a public place.

- (4) "Transportation facility" means any conveyance, premises, or place used for or in connection with public passenger transportation by air, railroad, motor vehicle, or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad, and bus terminals and stations and all appurtenances thereto.
- (5) "Riot" means a public disturbance involving an assemblage of five (5) or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
- (6) *"Service animal" includes a:*
 - (a) *"Bomb detection dog" means a dog that is trained to locate bombs or explosives by scent;*
 - (b) *"Narcotic detection dog" means a dog that is trained to locate narcotics by scent;*
 - (c) *"Patrol dog" means a dog that is trained to protect a peace officer and to apprehend a person;*
 - (d) *"Tracking dog" means a dog that is trained to track and find a missing person, escaped inmate, or fleeing felon;*
 - (e) *"Search and rescue dog" means a dog that is trained to locate lost or missing persons, victims of natural or man-made disasters, and human bodies;*
 - (f) *"Accelerant detection dog" means a dog that is trained for accelerant detection, commonly referred to as arson canines;*
 - (g) *"Cadaver dog" means a dog that is trained to find human remains;*
 - (h) *"Guide dog" means any dog that is trained to meet the requirements of KRS 258.500;*
 - (i) *Any dog that is trained in more than one (1) of the disciplines specified in paragraphs (a) to (h) of this subsection; or*
 - (j) *"Police horse" means any horse that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in detection of criminal activity, enforcement of laws, and apprehension of offenders.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of assault on a service animal in the first degree when he intentionally and without legal justification or lawful authority kills or causes physical injury to a service animal to the extent that a service animal becomes physically incapable of ever returning to service.*
- (2) *Assault on a service animal in the first degree is a Class D felony.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of assault on a service animal in the second degree when he intentionally and without legal justification or lawful authority causes physical injury to a service animal.*
- (2) *Assault on a service animal in the second degree is a Class B Misdemeanor.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

Sections 2 and 3 of this Act shall apply whether or not the service animal is on duty or off duty.

SECTION 5. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

In any case in which a defendant is convicted of a violation of the provisions of Section 2 or 3 of this Act, the defendant may be ordered to make restitution to the person or agency owning the animal for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the animal handler for the period of time his services are lost to the agency or self-employment.

SECTION 6. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

No person shall be convicted of assault on a service animal when:

- (1) *He has also been convicted of a violation of KRS 525.125, 525.130, 512.020, 512.030, or 512.040 arising out of the same incident; or*

- (2) *He has destroyed or treated a service animal that is injured, diseased, or suffering or which constitutes a hazard to public safety if not destroyed; or*
- (3) *He has used physical force against the service animal in protection of himself or a third person; or*
- (4) *He has used physical force without knowledge that the animal was a service animal.*

Approved April 7, 1998

CHAPTER 420

(HB 61)

AN ACT relating to civil actions.

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

Section 1. KRS 391.035 is amended to read as follows:

- (1) ~~If/Whenever~~ real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in ~~the/such~~ will, proceedings may be had in the District Court to determine the persons entitled to ~~the/such~~ property.
- (2) (a) If an estate is in process of administration the executor, administrator, or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or, ~~if/~~ ~~the event~~ the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;
 - (b) The motion shall set forth all of the facts known to ~~the~~ movant relating to the matter, including the names, ages, and addresses of all persons who are or may be entitled to share in ~~the/such~~ property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value;
 - (c) The motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action and shall set forth the place and time, ~~{~~which shall not be less than twenty (20) days from the date of service,~~}~~ when the motion will come on for hearing.
- (3) Upon the hearing on the motion any person claiming an interest in the property may introduce proof in support of his claim and the court may entertain the admission of any other relevant evidence to aid the court in determining the persons entitled to share in the property.
- (4) After hearing all the evidence the court shall enter judgment in which the names, ages, and addresses of the persons entitled to share in the property are set forth and the proportionate interest of each. ***The judgment shall be conclusive evidence of the facts determined therein as against all parties, whether known or unknown, to the proceeding.***
- (5) In a case where some or all of the property is real ~~property/estate~~ located in this state, a certified copy of the judgment shall be recorded in the office of the appropriate county clerk in lieu of the affidavit required by KRS 382.120. ***The judgment shall be conclusive evidence of the facts determined therein as against all parties, whether known or unknown, to the proceeding.***
- (6) Any party may at any time prior to judgment institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).
- (7) Any aggrieved party may no later than thirty (30) days from the date of the judgment, institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).
- (8) Any unknown defendants before the court by constructive service alone shall be entitled to the protection afforded by Civil Rule 4.11.
- (9) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 2. KRS 396.205 is amended to read as follows:

Notwithstanding any other statute to the contrary, no cause of action on any claim not otherwise barred by the provisions of KRS 396.011 and subsection (1) of KRS 396.055, or any other applicable statute of limitations, shall be brought against the personal representative or against any distributee after the expiration of two (2) years from the date of the order of discharge of the personal representative. The foregoing limitation shall not preclude an action by any claimant against the personal representative *or any distributee* for fraud~~, misrepresentation or inadequate disclosure related to the settlement of the decedent's estate~~.

Approved April 7, 1998

CHAPTER 421

(HB 60)

AN ACT relating to legal representatives.

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

SECTION 1. A NEW SECTION OF KRS 311.621 TO 311.643 IS CREATED TO READ AS FOLLOWS:

If, following the execution of an advance directive under KRS 311.623, a court of the grantor's principal domicile appoints a fiduciary charged with the care and protection of the grantor's person, the fiduciary shall be bound by the terms of the grantor's advance directive. If the advance directive designates a surrogate to make health care decisions for the grantor, the surrogate may continue to act.

Section 2. KRS 386.093 is amended to read as follows:

- (1) *As used in this section, "durable power of attorney" means a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time", or "This power of attorney shall become effective upon the disability or incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.*
- (2) *All acts done by an attorney in fact under a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.*
- (3) *The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.*
- (4) *The disability or incapacity of the principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.*
- (5) *If the power of attorney is to become effective upon the disability or incapacity of the principal, the principal may specify the conditions under which the power is to become effective and may designate the person, persons, or institution responsible for making the determination of disability or incapacity. If the principal fails to so specify, the power shall become effective upon a written determination by two (2) physicians that the principal is unable, by reason of physical or mental disability, to prudently manage or care for the principal's person or property, which written determination shall be conclusive proof of the attorney in fact's power to act pursuant to the power of attorney. The two (2) physicians making the determination shall be licensed to practice medicine*~~[When a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by the disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, then the authority of the attorney in fact or agent is~~

~~exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent, pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive, have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a fiduciary is thereafter appointed by the court for the principal the power of the attorney in fact shall thereupon terminate and he shall account to the court's appointed fiduciary].~~

Section 3. KRS 387.530 is amended to read as follows:

- (1) A petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator may be filed by any interested person or by an individual needing guardianship or conservatorship. The petition shall set forth the following:
 - (a) The name and address of the respondent;
 - (b) The date of birth of the respondent, if known;
 - (c) The nature and degree of the alleged disability of the respondent;
 - (d) The facts and reasons supporting the need for guardianship or conservatorship;
 - (e) A description and approximation of the value of the respondent's financial resources, including government benefits, insurance entitlements, and anticipated yearly income, if known;
 - (f) The names and addresses of the respondent's next of kin, if known;
 - (g) The name and address of the individual or facility, if any, having custody of the respondent;
 - (h) The name, address and interest of the petitioner;~~and~~
 - (i) The name and address of the petitioner's attorney, if any; *and*
 - (j) *The name and address of any person or entity appointed by the respondent as respondent's attorney in fact under a durable power of attorney, as defined in subsection (1) of Section 2 of this Act, or as respondent's surrogate to make health care decisions under an advance directive.*
- (2) The petition shall be accompanied by a verified application of the person or entity desiring appointment as limited guardian, guardian, limited conservator, or conservator. The application shall state the name, address and qualifications of the applicant and his relationship to the respondent. If it is proposed that a standby limited guardian, guardian, limited conservator, or conservator be designated, the petition shall also be accompanied by the application of the person or entity desiring to be so designated. Additional petitions may be filed prior to the date of the hearing by other persons desiring appointment.

Approved April 7, 1998

CHAPTER 422

(HB 39)

AN ACT relating to agriculture and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "tobacco grower" means any person who is a resident of Kentucky engaged in the production of growing tobacco or receives proceeds from the sale of tobacco in Kentucky for consumption or use. "Tobacco grower" as used in this section includes, but is not limited to, farm operator, owner/operator, cash tenant, landlord of a share tenant, share tenant, or share cropper.*
- (2) *As used in this section, "warehouseman" means the owner, operator, manager, lessee, or proprietor of a warehouse engaged in selling tobacco, or his or her agents or employees.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 452 IS CREATED TO READ AS FOLLOWS:

- (1) *Venue in a civil action against a tobacco grower for damages alleged as a result of use or consumption of tobacco products that may have been grown by that tobacco grower shall lie only in the county of residence of the tobacco grower.*
- (2) *Venue in a civil action against a warehouseman for damages alleged as a result of use or consumption of tobacco products that may have been sold by that warehouseman shall lie only in the county in which the tobacco warehouse is located.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

- (1) *In a civil action against a tobacco grower for damages alleged to have occurred as a result of use or consumption of tobacco products, in order for liability to be found against a tobacco grower, the plaintiff shall prove by clear and convincing evidence that the tobacco that caused the alleged damage was planted, cultivated, and harvested by that specific tobacco grower and not by any other person.*
- (2) *In a civil action against a warehouseman for damages alleged to have occurred as a result of use or consumption of tobacco products, in order for liability to be found against a warehouseman, the plaintiff shall prove by clear and convincing evidence that the tobacco that caused the alleged damage was sold by that specific warehouseman and not by any other person.*
- (3) *If a suit against a tobacco grower or a warehouseman is dismissed or the defendant prevails at trial, the defendant may be entitled to three (3) times the entire costs of defending the action, including but not limited to legal fees, expert witnesses, and other expenses arising from the defense of the action.*

Section 4. Whereas the threat of lawsuits against tobacco growers and warehousemen is ever present, and suits against cigarette manufactures and the tobacco industry have grown ever more common in recent years, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 7, 1998

CHAPTER 423

(HB 3)

AN ACT relating to state financial administration.

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

SECTION 1. A NEW SECTION OF KRS 45.750 TO 45.810 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any statutory provisions to the contrary, any state agency as defined in KRS 7A.010, institution of higher education defined as an institution in KRS 164A.550, or affiliated corporation as defined in KRS 164A.550, shall obtain authorization from the General Assembly prior to entering into an agreement identified in subsection (2) of this section. The General Assembly authorization shall occur only when the General Assembly enacts legislation specifically authorizing the agreement.*
- (2) *General Assembly authorization shall be required for an agreement for the use, purchase, or acceptance of real property of any value, or equipment with a value in excess of four hundred thousand dollars (\$400,000), if:*
 - (a) *The agreement provides that the state, a state agency, institution of higher education, or affiliated corporation will become the owner of the real property or equipment at any time; and*
 - (b) *All or any portion of the purchase price of the real property or equipment is funded through the issuance of a financial instrument which requires payment of principal and interest over time, including, but not limited to, notes, bonds, securities, and certificates of participation, regardless of the identity of the issuer.*

Section 2. KRS 45.760 is amended to read as follows:

The provisions of any other law notwithstanding:

- (1) The head of each of the three (3) branches of government shall include in the branch budget recommendation and in the draft branch budget bill for his branch submitted to each regular session of the General Assembly pursuant to KRS 48.130, for the biennium period beginning July 1, 1994, and for each biennium thereafter, a

recommended state capital projects program and a recommended program for the purchase of major items of equipment.

- (2) The recommended capital construction program shall include:
 - (a) A complete list and summary description of each specific capital construction project recommended for funding during the biennium; and
 - (b) For each project:
 1. The agency and purpose for which it will be used;
 2. The justification for the project;
 3. Its estimated completion date;
 4. The total estimated cost of completing the project;
 5. The estimated cost of the project during the biennium;
 6. The recommended sources of funds for the entire project; and
 7. The dollar amounts recommended for appropriation and the dollar amounts, listed by source, that are anticipated from every other source of funds for the biennium.
- (3) All information required by subsection (2) of this section shall be included in each branch budget recommendation. Each branch budget bill shall contain only a complete list of the specific capital construction projects recommended for funding during the biennium and, for each project, the information specified in subparagraphs 5., 6., and 7. of subsection (2)(b) of this section.
- (4) A report which details the effect of recommended new debt on the debt position of the Commonwealth shall be submitted at the same time the recommended capital program is submitted. Information shall be presented separately, and in total, for the general fund, the road fund, and for any affected restricted fund account.
- (5) Information in the report shall include, but not be limited to, the following:
 - (a) Debt service on existing appropriation-supported debt as a percent of anticipated total revenues;
 - (b) Debt service on existing appropriation-supported debt as a percent of anticipated available revenues;
 - (c) The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percent of anticipated total revenues;
 - (d) The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percent of anticipated available revenues;
 - (e) The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percent of estimated state total personal income; and
 - (f) The sum of existing appropriation-supported debt and recommended new appropriation-supported debt, as a percent of estimated state total personal income.
- (6) During any biennium beginning July 1, 1992, and during each biennium thereafter, the amount allotted, from all sources, for expenditure on any project in the state capital construction program for that biennium shall not exceed the estimated cost of the project during that biennium, as shown in any branch budget bill, statutory budget memorandum, and biennial budget report enacted by the General Assembly, except as provided in this section, KRS 45.770, and 45.780.
- (7) The recommended program for the purchase of major items of equipment, submitted by the head of each of the three (3) branches of government, shall include:
 - (a) A complete list and summary description of each specific major item of equipment recommended for purchase during the biennium; and
 - (b) For each major item of equipment:
 1. The agency and purpose for which it will be used;
 2. The justification for the purchase;

3. The estimated cost of the item, including ancillary expenses and any expenses necessary to make the equipment functional and operational;
 4. The recommended sources of funds; and
 5. The dollar amounts recommended for appropriation and anticipated from every other source of funds for the purchase.
- (8) All information required by subsection (5) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only a complete list of each specific item of major equipment recommended for purchase during the biennium and, for each item, the information specified in subparagraphs 3., 4., and 5. of subsection (7)(b) of this section.
- (9) When the General Assembly disapproves a project or item of equipment that was previously approved, it shall be eliminated as a project or major item of equipment in the Capital Projects Program. General fund moneys appropriated for that project or item of equipment but not allotted, and general fund moneys allotted but not expended to the project or equipment account, shall be transferred to the capital construction and equipment purchase contingency account in the capital construction fund. Agency or federal funds for a disapproved project or item, that have been appropriated but unallotted or allotted but unexpended, shall be returned to the appropriate agency fund. Road fund moneys for a disapproved project or item that have been appropriated but unallotted or allotted but unexpended, shall be returned to the Road Fund Surplus Account.
- (10) Projects and major items of equipment disapproved under subsection (9) of this section shall be terminated.
- (11) During any biennium beginning July 1, 1992, and during each biennium thereafter, the amount allotted from all sources for expenditure for the purchase of any major item of equipment shall not exceed the estimated cost of the item as shown in any branch budget bill, statutory budget memorandum, and biennial budget report enacted by the General Assembly and authorizing the purchase, except as provided in subsections (12) and (13) of this section and in KRS 45.770 and 45.780.
- (12) A major item of equipment to be used for medical, scientific, or research purposes, excluding computer equipment and aircraft, may be authorized even though it is not specifically listed in any branch budget bill, statutory budget memorandum, and biennial budget report enacted for the current biennium, subject to the following conditions and procedures:
- (a) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be reallocated for expenditure on the item; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs;
 - (b) Funds are available for the purchase and the method of financing the purchase will not require an additional appropriation of state funds to acquire the item; and
 - (c) The purchasing agency shall, within thirty (30) days after making the purchase, report the purchase to the Capital Projects and Bond Oversight Committee. The report shall include a description of the item, the purpose for which it will be used, the necessity for the purchase, and the amount expended for the purchase from each source of funds used.
- (13) Moneys from any source may be transferred to the allotment account of any capital project authorized by the General Assembly under this section, subject to the following conditions and procedures:
- (a) The total amount transferred shall not exceed fifteen percent (15%) of the amount authorized by the General Assembly unless:
 1. The source of funds is private or federal; or
 2. An unforeseen decision by a federal or state court or regulatory agency requires the transfer.
 - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the capital project.
 - (c) Moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs.
 - (d) The relevant entity head, or his designee, shall submit the capital project to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. The submission

shall include a written certification to the committee that the transfer, in excess of fifteen percent (15%) of the amount authorized by the General Assembly, is:

1. Paid for out of private or federal funds; or
 2. Required by an unforeseen decision by a federal or state court or regulatory agency; and
 3. Not allotted or reallocated from moneys specifically budgeted and appropriated by the General Assembly for another purpose; and
 4. Not jeopardizing any existing program and not requiring the use of any current general funds specifically dedicated to existing programs.
- (e) If a capital project is financed with road funds, the cost overruns or scope increases shall be paid out of the highway contingency account established pursuant to KRS 45.247.
- (14) A capital construction project or a major item of equipment may be authorized even though it is not specifically listed in any branch budget bill, statutory budget memorandum, and biennial budget report, subject to the following conditions and procedures:
- (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds, and fifty percent (50%) or less of the actual cost shall be funded by moneys appropriated to the capital construction and equipment purchase contingency account;
 - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the project or major item of equipment; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs; and
 - (c) The relevant entity head, or his designee, shall submit the project or major item of equipment to the committee for review as provided by KRS 45.800.
- (15) The capital construction and equipment purchase contingency fund may be used to advance funds to projects authorized to be financed by bonds, to finance feasibility studies for projects which may be contemplated for future funding, or to audit the capital projects program when authorized by the General Assembly.
- (16) On or before October 1, each of the three (3) branches of government shall submit to the committee the following information:
- (a) A complete list and summary description of every capital construction project and major item of equipment not completed as of June 30 of the prior fiscal year; and
 - (b) For each project and major item of equipment, as of July 1, of the current fiscal year:
 1. The project phase;
 2. The project account number, project name, and any other term employed to identify the project or major item of equipment;
 3. The available balance in the project or major item of equipment account, and any sums considered available for that project or major item of equipment;
 4. A statement of the transfers of funds to or from the project or major item of equipment account; and, any account to which transfers from each project or major item of equipment has been made;
 5. The year in which the project or major item of equipment was approved, with specific reference to the legislation by which the project or item was approved;
 6. Total expenditure on the project or major item of equipment;
 7. The current estimated completion cost, including the amount required for annual inflation; and
 8. A statement that additional funds for the completion of the project or major item of equipment are or are not required; and, if required, why sufficient funds for completion are not available; and

- (c) The balance in the appropriated, but unallotted account; and the balance in any account, however designated, that contains appropriated, but unallotted funds for capital construction.

(17) *When the General Assembly authorizes a capital construction item in the capital construction section of a branch budget bill, the entity head charged with executing the branch budget shall construct the capital construction item according to the requirements set forth in the branch budget bill, statutory budget memorandum, supporting documentation considered by the General Assembly, and branch budget records. The entity head shall not deviate from these requirements with regard to:*

- (a) *Purpose or location to the extent that the capital construction item no longer meets the identified needs; or*
- (b) *Configuration for reasons other than practical accommodation to the construction site or specific program to be accommodated within that capital construction item.*

Approved April 7, 1998

CHAPTER 424

(HB 621)

AN ACT relating to long-term care facilities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Long-term care facilities as defined in KRS 216.510 shall not be operated by or employ any person who is listed on the nurse aide abuse registry required by 42 CFR 483.156.

Approved April 3, 1998

CHAPTER 425

(HB 732)

AN ACT relating to the Kentucky Personnel Board.

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

Section 1. KRS 13B.050 is amended to read as follows:

- (1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing, unless otherwise required by federal law. An agency shall make reasonable effort to schedule a hearing on a date that is convenient to the parties involved.
- (2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service, ***with the exception of notices of Personnel Board hearings and all board orders which may be served by first-class mail.*** Service by ***certified*** mail shall be complete upon the date on which the agency receives the return receipt or the returned notice.
- (3) The notice required by this section shall be in plain language and shall include:
- (a) A statement of the date, time, place, and nature of the hearing;
- (b) The name, official title, and mailing address of the hearing officer;
- (c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;
- (d) A statement of the factual basis for the agency action along with a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;
- (e) A reference to the specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in the hearing;

- (f) A statement advising the person of his right to legal counsel;
 - (g) A statement of the parties' right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and
 - (h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.
- (4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief statement of the agency's reasons and any administrative review available to the petitioner.

Section 2. KRS 18A.095 is amended to read as follows:

- (1) (a) The provisions of this section shall not apply to employees commissioned pursuant to the provisions of KRS 281.770.
- (b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of KRS 281.771 and 281.772.
- (2) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the intent to dismiss is based;
 - 3. The date, time, and place of such action or activity; and
 - 4. The name of the parties involved; and
 - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (4) The department shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (5) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (6) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (7) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
 - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (8) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
 - (a) The effective date of his dismissal or other penalization;

- (b) The specific reason for this action, including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the dismissal or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved;
 - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (9) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
- (a) The demotion, suspension, or other penalization;
 - (b) The effective date of the demotion, suspension, or other penalization;
 - (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
 - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.
- (10) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (11) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
- 1. The reallocation; and
 - 2. His right to request reconsideration by the commissioner within ten (10) working days of receipt of the notice, excluding the day he receives notification;
- (b) He shall be provided with a form prescribed by the commissioner on which to request reconsideration; and
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the commissioner in a manner and form prescribed by the commissioner and shall be given a reasonable opportunity to be heard thereon by the commissioner. The commissioner shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the commissioner, the employee may appeal to the board.
- (12) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (13) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

- (14) When an eligible's name is removed from a register, the commissioner shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the commissioner or in accordance with the decision of the board.
- (15) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board;
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the commissioner pending reconsideration by the board;
- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly;
- (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- (16) An evaluation may be appealed to the board if an employee has complied with the review procedure established under KRS 18A.112.
- (17) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The department shall be responsible for the distribution of these forms;
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney;
- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal; and
- (d) Upon receipt of the appeal by the board, the appointing authority and the Department of Personnel shall be notified and the board shall schedule a hearing.
- (18) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (19) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100;
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
- (b) Conduct test representative cases.
- (21) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.

- (22) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (23) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
- (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action;
- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (25) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (27) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (28) For the purposes of subsections (3), (4), (5), (6), (7), and (8) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- (29) ***Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.***

Approved April 8, 1998

CHAPTER 426

(HB 132)

AN ACT relating to the reorganization of the Cabinet for Human Resources.

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

SECTION 1. KRS CHAPTER 194A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

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

- (1) ***"Cabinet" means the Cabinet for Health Services; and***

- (2) *"Secretary" means the secretary for health services.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The cabinet is the primary state agency for operating the public health, Medicaid, certificate of need and licensure, and mental health and mental retardation programs in the Commonwealth. The function of the cabinet is to improve the health of all Kentuckians, including the delivery of population, preventive, reparative, and containment health services in a safe and effective fashion, and to improve the functional capabilities and opportunities of Kentuckians with disabilities. The cabinet is to accomplish its function through direct and contract services for planning and through the state health plan and departmental plans for program operations, for program monitoring and standard setting, and for program evaluation and resource management.

SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary for health services and the secretary's designated representatives in the discharge of the duties of the secretary may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.*
- (2) *The secretary may delegate any duties of the office of secretary to employees of the cabinet as the secretary deems necessary and appropriate, unless otherwise prohibited by statutes.*
- (3) *The secretary may enter into any contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities, and other units of government as may be deemed necessary to carry out the general intent and purposes of the cabinet.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

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

- (1) *Office of the Secretary;*
- (2) *Office of Program Support. The Office of Program Support shall provide professional support in personnel activities; planning; budgeting; contract management; policy analysis, including but not limited to the appraisal of needs; evaluation of programs; review of citizen complaints about services of the cabinet when complaints cannot be resolved through normal administrative remedies; and fiscal, facility, and information management functions of the cabinet. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050;*
- (3) *Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under with KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;*
- (4) *Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;*

- (5) *Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall develop and administer programs for the prevention of mental illness, mental retardation, and chemical dependency and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, who have mental retardation, or who are chemically dependent. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;*
- (6) *Office of the Inspector General. The Office of the Inspector General shall be responsible for:*
- (a) *The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;*
 - (b) *Licensing and regulatory functions as the secretary may delegate;*
 - (c) *Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.235 and KRS 311.241, 311.243, 311.245, and 311.247; and*
 - (d) *The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.*

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

- (7) *Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;*
- (8) *Office of Certificate of Need. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office;*
- (9) *Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary shall, subject to the provisions of KRS Chapter 12, establish the internal organization of the offices and departments not established in 1974 Ky. Acts ch. 74, Art. VI or this Act, and shall organize the*

cabinet into offices, divisions, regions, districts, and other administrative units as the secretary deems necessary to perform the functions, exercise the powers, and fulfill the duties of the cabinet.

- (2) *The secretary shall have any and all necessary powers and authority subject to appropriate provisions of the statutes to create positions that enable the cabinet to fulfill all functions assigned to it. The secretary shall designate a person to act as deputy to exercise the duties of the office in case of absence.*
- (3) *The secretary shall, with the approval of the Governor, elect coverage for employees of the cabinet under the unemployment insurance law when required by federal law.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary shall formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.*
- (2) *The secretary shall utilize the Public Health Services Advisory Council to review and make recommendations on contemplated administrative regulations. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless they are issued under the authority of the secretary, and the secretary shall not delegate that authority. All administrative regulations prepared within the cabinet shall be attested as to form and legality by the Office of the General Counsel.*
- (3) *Except as otherwise provided by law, the secretary shall have authority to establish by administrative regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars (\$100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the cabinet. All fees collected for inspections shall be deposited in the State Treasury and credited to a revolving fund account to be used for administration of those programs of the cabinet. The balance of the account shall lapse to the general fund at the end of each biennium. Fees shall not be charged for investigation of complaints.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary shall develop and promulgate administrative regulations that protect the confidential nature of all records and reports of the cabinet that directly or indirectly identify a client or patient or former client or patient of the cabinet and that insure that these records are not disclosed to or by any person except as, and insofar as:

 - (a) *The person identified or the guardian, if any, shall give consent; or*
 - (b) *Disclosure may be permitted under state or federal law.**
- (2) *The cabinet shall share pertinent information from within the agency's records on clients, current and former clients, recipients, and patients as may be permitted by federal and state confidentiality statutes and regulations governing release of data with other public, quasi-public, and private agencies involved in providing services to current or former clients or patients subject to confidentiality agreements as permitted by federal and state law if those agencies demonstrate a direct, tangible, and legitimate interest in the records. In all instances, the individual's right to privacy is to be respected.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The cabinet is authorized to utilize and promote available or potential community resources for the delivery of services and shall, when it deems appropriate, contract for services with local, community, and private agencies when services would not otherwise be available without cost. The cabinet and local, community, and private agencies operating on contract with the cabinet may charge for services rendered when this would be in accordance with applicable state law.

SECTION 9. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The secretary shall arrange for the development of a cost allocation plan by the cabinet. The cost allocation shall be developed in accordance with generally recognized accounting practices and shall make provisions for the distribution of operational and administrative costs of all organizational units of the cabinet to all programs operated by the cabinet that receive services or are otherwise benefited by the operations of those organizational units.

SECTION 10. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall include citizen advisory bodies within its structure to provide independent advice from the general public.*
- (2) *A Public Health Services Advisory Council is created within the cabinet.*
 - (a) *The council shall advise the secretary for health services, the commissioner for public health, and officials of the Commonwealth on policy matters concerning the delivery of health services, including the assessment of needs, the development of program alternatives, the determination of priorities, the formulation of policy, the allocation of resources, and the evaluation of programs. The council shall be utilized by the cabinet to fulfill federal requirements for citizen's advisory councils associated with programs designed to provide health services and to advise the cabinet on the development and content of the state health plan.*
 - (b) *The council shall be composed of no more than nineteen (19) citizen members appointed by the Governor. Six (6) members of the council shall be chosen to broadly represent public interest groups concerned with health services, recipients of health services provided by the Commonwealth, minority groups, and the general public. Thirteen (13) members of the council shall represent providers of health care and not less than one-half (1/2) of the providers shall be direct providers of health care. At least one (1) of the direct providers of health care shall be a person engaged in the administration of a hospital, and one (1) shall be a physician in active practice. At least one (1) member shall be a registered sanitarian or sanitary engineer, one (1) a public health nurse, one (1) a member of the current minority advisory council, and one (1) a practicing public health physician. Nominations for health care provider members of the council shall be solicited from recognized health care provider organizations. Membership of the council shall be geographically distributed in order that area development districts are represented. Members shall serve for terms of three (3) years. If a vacancy occurs, the person appointed as a replacement shall serve only for the remainder of the vacated term. Members shall serve until the term begins for their appointed successors. No member shall serve more than two (2) consecutive terms. The chair of the council shall be appointed by the Governor. The secretary for health services and the commissioner for public health shall be nonvoting, ex officio members of the council, and the commissioner for public health shall be a staff director for, and secretary to, the council. The council shall meet at least quarterly and on other occasions as may be necessary on the call of the secretary for health services or the commissioner for public health. A majority of the appointed members shall constitute a quorum.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The Advisory Council for Medical Assistance, established by KRS 205.540, and its associated bodies are attached to the Department for Medicaid Services for administrative and support purposes. The Advisory Council for Medical Assistance shall advise the secretary for health services and the commissioner for Medicaid services on the administration and operation of the Medical Assistance Program.

SECTION 12. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The Commission for Children with Special Health Care Needs and the State Interagency Council for Services to Children with an Emotional Disability shall be the only statutory bodies attached to the cabinet that shall have the authority to issue administrative regulations. No other corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, presently attached to the cabinet, shall issue administrative regulations but shall operate only in an advisory capacity.

SECTION 13. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

No corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, attached to or within the cabinet, shall expend funds, hire employees, issue grants, or otherwise engage in the normal administrative process of the cabinet. All of these bodies shall be provided administrative and support services by the cabinet.

SECTION 14. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Developmental Disabilities Planning Council is created within the cabinet.*
- (2) *The Developmental Disabilities Planning Council is established to comply with the requirements of the Developmental Disabilities Act of 1984 and any subsequent amendment to that act.*
- (3) *The members of the Developmental Disabilities Planning Council shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of twenty-four (24) members, of whom twelve (12) are representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973; the state agency that administers funds provided under the Education of the Handicapped Act; the state agency that administers funds provided under the Older Americans Act of 1965; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in the Commonwealth; the protection and advocacy system established under Public Law 101-496; and local agencies, nongovernmental agencies, and private, nonprofit groups concerned with services to persons with developmental disabilities.*
 - (a) *At least twelve (12) of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Act of 1984 and who are not employees of a state agency that receives funds or provides services under this section. Of these members, at least four (4) members shall be persons with developmental disabilities, and at least four (4) members shall be the immediate relatives or guardians of persons with mentally impairing developmental disabilities meeting the conditions listed in this subsection. At least one (1) of these relatives or guardians shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability. At least one (1) member of the council shall represent and advocate for the interests and rights of disabled, newborn infants.*
 - (b) *Members not representing principal state agencies shall be appointed for a term of three (3) years, except the initial appointments shall be made in the following manner: four (4) members shall be appointed for a term of three (3) years, four (4) members shall be appointed for a term of two (2) years, and four (4) members shall be appointed for a term of one (1) year.*
 - (c) *The planning council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The cabinet shall provide personnel adequate to insure that the council has the capacity to fulfill its responsibilities.*
- (4) *The Developmental Disabilities Planning Council shall develop jointly with the cabinet and any other agencies designated to administer or supervise the administration of the state plan as required by Part B of the Developmental Disabilities Act of 1984, Public Law 98-527, including the specification of priority services required by that plan; monitor, review, and evaluate, not less often than annually, the implementation of this plan; to the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities; and submit to the secretary of the cabinet any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the cabinet finds necessary to verify the reports.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

When the Public Health Services Advisory Council is assigned responsibility for qualifying the Commonwealth for federal programs with representation and membership formulas that conflict with a particular council's membership, the secretary shall have the authority to create special subcommittees to these citizens' councils that meet federal requirements.

SECTION 16. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

When federal programs require a particular citizens' council within or attached to the cabinet to include state officials as voting members, the secretary shall, for the specific purposes of those federal programs, be authorized to vote in those council meetings and shall further be authorized to call upon either the secretary of the Cabinet for Families and Children, the secretary of the Finance and Administration Cabinet, the chief state school officer,

the secretary of the Justice Cabinet, the secretary for Natural Resources and Environmental Protection Cabinet, the secretary of the Cabinet for Economic Development, the executive director of the Council on Higher Education, the secretary of the Public Protection and Regulation Cabinet, the secretary of the Labor Cabinet, or any combination of the above as may be appropriate, to be voting members of expanded citizens' councils for the purposes of these federal programs. The secretary shall exercise this prerogative only when the federal programs specifically require that state officials be voting members of the citizens' councils.

SECTION 17. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The secretary and other state officials with the approval of the secretary may designate alternatives or representatives to serve in their capacity as members of all boards, commissions, councils, institutes, and other similar bodies within or attached to the cabinet. The secretary or the secretary's designee shall be an ex officio member of all boards, committees, councils, institutes, and other similar bodies within or attached to the cabinet.

SECTION 18. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The secretary is authorized to create special task forces, technical advisory committees, and other citizens' panels as may be necessary to support the operations of the cabinet. No other officials of the cabinet shall be authorized to create citizens' panels associated with the cabinet, its programs, or suborganizational units, and the secretary shall not delegate this authority.

SECTION 19. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

All administrative regulations, acts, determinations, and decisions of and by the corporate bodies or instrumentalities of the Commonwealth, advisory committees, interstate compacts, or other statutory bodies, transferred in whole or in part to the Public Health Services Advisory Council and the Advisory Council for Medical Assistance, shall remain in effect as the administrative regulations, acts, determinations, and decisions of the cabinet unless duly modified or repealed by the secretary.

SECTION 20. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The Public Health Services Advisory Council and the Advisory Council for Medical Assistance shall be empowered to accept gifts and grants, but all of these moneys shall be administered by the cabinet, which shall administer these funds through appropriate trust and agency accounts.

SECTION 21. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The members of the Public Health Services Advisory Council shall receive no compensation for their services but shall be allowed the necessary expenses incurred through the performance of their duties as members of this citizens' council. No member of a citizens' council shall be held to be a public officer by reason of membership on a council.

SECTION 22. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary of the cabinet is authorized to purchase liability insurance for the protection of physicians, hospital administrators, and directors employed by the cabinet to protect them from liability for acts, omissions, and claims of medical malpractice arising in the course and scope of their employment of service to the cabinet.*
- (2) *The secretary may purchase the type and amount of liability coverage deemed appropriate to best serve the cabinet's interest.*

SECTION 23. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

As used in Section 24 of this Act:

- (1) *"Assistance program" means any program administered by the cabinet;*
- (2) *"Benefit" means receipt of money, goods, or anything of pecuniary value from an assistance program;*
- (3) *"False statement or misrepresentation" means a statement or representation knowingly made by a person to be false; and*
- (4) *"Provider" means an individual, corporation, association, facility, or institution that is providing or has been approved to provide medical assistance to recipients under the Medical Assistance Program.*

SECTION 24. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall, with intent to defraud, knowingly make a false statement or misrepresentation or by other means fail to disclose a material fact used in determining the person's qualification to receive benefits under any assistance program.*
- (2) *No person shall, with intent to defraud, fail to report a change in the factors affecting the person's eligibility for benefits.*
- (3) *No person shall, with intent to defraud, knowingly use, attempt to use, acquire, transfer, forge, alter, traffic, counterfeit, or possess a medical identification card or unique electronic authorization codes or numbers or electronic personal identification numbers in any manner not authorized by law.*
- (4) *No person having responsibility for the administration of an assistance program shall, having knowledge that it is in violation of the law, knowingly aid or abet any person in obtaining benefits to which the person is not legally entitled, or in obtaining a benefit amount greater than that to which the person is fully entitled.*
- (5) *No person shall misappropriate or attempt to misappropriate a Medicaid identification card or misappropriate other benefits from any program with which the person has been assigned responsibility, nor shall the person knowingly fail to report any of these activities when it is clearly in violation of the law.*
- (6) *No person shall, with intent to defraud or deceive, devise a scheme or plan a scheme or artifice to obtain benefits from any assistance program by means of false or fraudulent representations or intentionally engage in conduct that advances the scheme or artifice.*
- (7) *No person shall aid and abet another individual in acts prohibited in subsections (1) to (6) of this section knowing it to be in violation of the law.*
- (8) *The Attorney General on behalf of the Commonwealth of Kentucky may commence proceedings to enforce this section, and the Attorney General shall in undertaking these proceedings exercise all powers and perform all duties that a prosecuting attorney would otherwise perform or exercise.*

SECTION 25. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

In any prosecution for the violation of Section 24 of this Act, it shall be a defense if the person relied on the advice of an employee or agent of the cabinet.

SECTION 26. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

For the purpose of enforcing the provisions of Section 24 of this Act and KRS 205.8451 to 205.8483 and of investigating any assistance program administered by the cabinet, the designated agents of the cabinet shall have the same access as peace officers to records maintained under KRS 17.150.

SECTION 27. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary for health services shall, in consultation with the applicable licensure board, develop domestic violence-related training courses that are appropriate for the following professions:*
 - (a) *Mental health professionals licensed or certified under KRS Chapters 309, 319, and 335;*
 - (b) *Physicians who practice primary care, as defined in KRS 164.925, and who are licensed under KRS Chapter 311; and*
 - (c) *Nurses licensed under KRS Chapter 314.*
- (2) *The courses shall include the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.*
- (3) *No later than June 30, 1999, every health care or mental health professional licensed or certified under KRS Chapter 309, 311, 314, 319 or 335, on or after July 15, 1996, shall successfully complete a three (3) hour training course that meets the requirements of subsection (2) of this section. Persons who are granted licensure or certification after July 15, 1996, shall successfully complete the training within three (3) years of the date of initial licensure or certification.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who violates the provisions of subsection (1), (2), or (7) of Section 24 of this Act shall be guilty of a Class A misdemeanor, unless the sum total of benefits received in excess of that to which the person was entitled at the time of the offense was committed is valued at or over one hundred dollars (\$100), in which case it is a Class D felony.*
- (2) *Any person who violates subsection (3) of Section 24 of this Act shall be guilty of a Class D felony.*
- (3) *Any person who violates the provisions of subsections (4) to (5) of Section 24 of this Act shall be guilty of a Class C felony.*
- (4) *Any person who violates the provisions of subsection (6) of Section 24 of this Act shall be guilty of a Class D felony, unless the purpose of the violation is to obtain ten thousand dollars (\$10,000) or more, in which case it shall be a Class C felony.*
- (5) *Any person who violates subsections (1) to (6) of Section 24 of this Act shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.*
- (6) *Any provider who violates subsections (1) to (6) of Section 24 of this Act shall, in addition to any other penalties provided by law, including the penalty set forth in subsection (5) of this section, forfeit and pay civil penalties of:*
 - (a) *Payment to the State Treasury's general revenue fund in an amount equal to three (3) times the amount of the benefits and payments to which the person was not entitled; and*
 - (b) *Payment to the State Treasury's general revenue fund of all reasonable expenses that the court determines have been necessarily incurred by the state in the enforcement of this section.*

SECTION 29. KRS CHAPTER 194B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Cabinet" means the Cabinet for Families and Children; and*
- (2) *"Secretary" means the secretary for families and children.*

SECTION 30. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The cabinet is the primary state agency responsible for leadership in protecting and promoting the wellbeing of Kentuckians through the delivery of quality human services. Recognizing that children are the Commonwealth's greatest natural resource and that individuals and their families are the most critical component of a strong society, the cabinet shall deliver social services to promote their safety and security and preserve their dignity. The cabinet shall promote collaboration and accountability among local, public, and private programs to improve the lives of families and children. The cabinet also is to administer income supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth.

SECTION 31. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary for families and children and the secretary's designated representatives in the discharge of the duties of the secretary may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.*
- (2) *The secretary may delegate any duties of office to employees of the cabinet as the secretary deems necessary and appropriate, unless otherwise prohibited by statutes.*
- (3) *The secretary may enter into contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities, and other units of government as may be deemed necessary to carry out the general intent and purposes of the cabinet.*

SECTION 32. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

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

- (1) *Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor.*
- (2) *Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the General Counsel as an assistant attorney general under the provisions of KRS 15.105.*
- (3) *Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, contract monitoring, quality assurance, quality control, outcome assessment, and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.*
- (4) *Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.*
- (5) *Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.*
- (6) *Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.*
- (7) *Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.*
- (8) *Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by*

experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

- (9) *Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. sec. 3001 et. seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.*

SECTION 33. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary shall, subject to the provisions of KRS Chapter 12, establish the internal organization of the offices and departments not established in 1974 Ky. Acts ch. 74, Art. VI and this Act, and shall organize the cabinet into the offices, divisions, regions, districts, and other administrative units as the secretary deems necessary to perform the functions, exercise the powers, and fulfill the duties of the cabinet.*
- (2) *The secretary shall have any and all necessary powers and authority subject to appropriate provisions of the statutes to create the positions and employ the necessary personnel in the positions to enable the cabinet to fulfill all functions assigned to it. The secretary shall designate a person to act as deputy for the secretary in the exercise of duties in the secretary's absence.*
- (3) *The secretary shall, with the approval of the Governor, elect coverage for employees of the cabinet under the unemployment insurance law when required by federal law.*

SECTION 34. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary shall formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.*
- (2) *The secretary shall utilize the Institute for Aging or the Council for Families and Children to review and make recommendations on contemplated administrative regulations. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless issued under the authority of the secretary, and the secretary shall not delegate this authority. All administrative regulations prepared within the cabinet shall be attested as to form and legality by the Office of the General Counsel.*
- (3) *Except as otherwise provided by law, the secretary shall have authority to establish by administrative regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars (\$100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the cabinet. The balance of the account shall lapse to the general fund at the end of each biennium. Fees shall not be charged for investigation of complaints.*

SECTION 35. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary shall develop and promulgate administrative regulations that protect the confidential nature of all records and reports of the cabinet that directly or indirectly identify a client or patient or former client or patient of the cabinet and that insure that these records are not disclosed to or by any person except as, and insofar as:*
- (a) *The person identified or the person's guardian, if any, shall give consent; or*
- (b) *Disclosure may be permitted under state or federal law.*

- (2) *The cabinet may share pertinent information from within the agency's records on clients, current and former clients, recipients, and patients as may be permitted by federal and state confidentiality statutes and regulations governing release of data with other public, and quasi-public, and private agencies involved in providing services to current or former clients or patients subject to confidentiality agreements as permitted by federal and state law if those agencies demonstrate a direct, tangible, and legitimate interest in the records. In all instances, the individual's right to privacy is to be respected.*

SECTION 36. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The cabinet is authorized to utilize and promote available or potential community resources for the delivery of services and shall, when it deems appropriate, contract for services with local, community, and private agencies when the services would not otherwise be available without cost. The cabinet and local, community, and private agencies operating on contract with the cabinet may charge for services rendered when this would be in accordance with applicable state law.

SECTION 37. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The secretary shall arrange for the development of a cost allocation plan by the cabinet. The cost allocation shall be developed in accordance with generally recognized accounting practices and shall make provisions for the distribution of operational and administrative costs of all organizational units of the cabinet to all programs operated by the cabinet that receive services or are otherwise benefited by the operations of those organizational units.

SECTION 38. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The cabinet shall include citizen advisory bodies within its structure to provide independent advice from the general public. The citizen bodies within the cabinet shall have the following structure:

- (1) *A Council for Families and Children is created within the cabinet.*
- (a) *The council shall advise the secretary for families and children, the commissioner for social insurance, the commissioner for social services, and other officials of the Commonwealth on policy matters relating to the human service needs.*
- (b) *The council shall be composed of no more than twenty-one (21) citizen members appointed by the Governor. Members of the council shall be chosen to broadly represent public interest groups concerned with social insurance and social service programs operated by the Commonwealth, professionals involved in the delivery of human services, minority groups, the poor, the disadvantaged, recipients of human services provided by the state, and the general public. The Governor shall appoint the chair of the council. The secretary for families and children, the commissioner for social insurance, and the commissioner for social services shall be nonvoting, ex officio members of the council, and the commissioners for social insurance and social services shall be staff directors for, and secretaries to, the council. The council shall meet at least quarterly and on other occasions as may be necessary, on call of the secretary for families and children. A majority of appointed members shall constitute a quorum.*
- (2) *An Institute for Aging is created within the cabinet.*
- (a) *The institute shall advise the secretary for families and children and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.*
- (b) *The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged, minority groups, recipients of state-provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for families and children shall be a nonvoting, ex officio member of, staff director for, and secretary to, the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for families and children. A majority of the appointed members shall constitute a quorum.*

SECTION 39. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

No corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, attached to or within the cabinet, shall expend funds, hire employees, issue grants, or otherwise

engage in the normal administrative processes of the cabinet. All of these bodies shall be provided administrative and support services by the cabinet.

SECTION 40. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

When the Institute for Aging and the Council for Families and Children are assigned a responsibility for qualifying the Commonwealth for federal programs with representations and membership formulas that conflict with a particular council's membership, the secretary shall have the authority to create special subcommittees to these citizens' bodies that meet federal requirements.

SECTION 41. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

Whenever federal programs require a particular citizens' council within or attached to the cabinet to include state officials as voting members, the secretary shall, for the specific purposes of those federal programs, be authorized to vote in those council meetings and shall further be authorized to call upon either the secretary of the Cabinet for Health Services, the secretary of the Finance and Administration Cabinet, the chief state school officer, the secretary of the Justice Cabinet, the secretary for Natural Resources and Environmental Protection, the secretary of the Cabinet for Economic Development, the executive director of the Council on Higher Education, the secretary of the Public Protection and Regulation Cabinet, or the secretary of the Labor Cabinet or any combination of the above as may be appropriate, to be voting members of expanded citizens' councils for the purposes of these federal programs. The secretary shall exercise this prerogative only when the federal programs specifically require that state officials be voting members of the citizens' councils.

SECTION 42. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The secretary and other state officials with the approval of the secretary may designate alternates or representatives to serve in their capacity as members of all boards, committees, councils, institutes, and other similar bodies within or attached to the cabinet, and the secretary or the secretary's designee shall be an ex officio member of all boards, committees, councils, institutes, commissions, and other similar bodies within or attached to the cabinet.

SECTION 43. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The secretary is authorized to create special task forces, technical advisory committees, and other citizens' panels as may be necessary to support the operations of the cabinet. No other officials of the cabinet shall be authorized to create citizens' panels associated with the cabinet, its programs, or suborganizational units, and the secretary shall not delegate this authority.

SECTION 44. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

All administrative regulations, acts, determinations, and decisions of or by the corporate bodies or instrumentalities of the Commonwealth, advisory committees, interstate compacts, or other statutory bodies, transferred in whole or in part to the Institute for Aging, shall remain in effect as administrative regulations, acts, determinations, and decisions of the cabinet unless duly modified or repealed by the secretary.

SECTION 45. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The Institute for Aging and the Council for Families and Children shall be empowered to accept gifts and grants, but all of these moneys shall be administered by the cabinet, which shall administer these funds through appropriate trust and agency accounts.

SECTION 46. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The members of the Institute for Aging and the Council for Families and Children shall receive no compensation for their services but shall be allowed the necessary expenses incurred through the performance of their duties as members of these citizens' councils. No member of a citizens' council shall be held to be a public officer by reason of membership on a council.

SECTION 47. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The cabinet shall make an annual report to the Governor, the General Assembly, and the Chief Justice. The report shall be tendered not later than December 1 of each year and shall include information for the previous fiscal year. The report shall include, but not be limited to, the following information:

- (1) *The number of children under an order of dependent, status, public, or voluntary commitment to the cabinet, according to: permanency planning goals, current placement, average number of placements, type of commitment, and the average length of time children remain committed to the cabinet;*

- (2) *The number of children in the custody of the cabinet in the following types of residential placements, the average length of stay in these placements, and the average number of placements experienced by these children: family foster homes, private child care facilities, and placement with biological parent or person exercising custodial control or supervision;*
- (3) *The number of children in the custody of the cabinet eligible for adoption, the number placed in an adoptive home, and the number ineligible for adoption and the reasons therefor;*
- (4) *The cost in federal and state general funds to care for the children defined in subsections (1) and (2) of this section, including the average cost per child for each type of placement, direct social worker services, operating expenses, training, and administrative costs; and*
- (5) *Any other matters relating to the care of foster children that the cabinet deems appropriate and that may promote further understanding of the impediments to providing permanent homes for foster children.*

SECTION 48. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The Cabinet for Families and Children shall provide professional development for staff employed by the cabinet or by local public agencies in child development, the dynamics of physical and sexual abuse, the impact of violence on child development, the treatment of offenders, and related issues. Each staff person who is employed by the cabinet or by a local public agency and who works with children or with families shall successfully complete the professional development program in order to remain assigned to child or family programs. The cabinet shall specify the manner of professional development and related matters by administrative regulation.

SECTION 49. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

As used in Section 50 of this Act:

- (1) *"Assistance program" means any program administered by the cabinet.*
- (2) *"Benefit" means receipt of money, goods, or anything of pecuniary value from an assistance program; and*
- (3) *"False statement or misrepresentation" means a statement or representation knowingly made by a person to be false.*

SECTION 50. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall, with intent to defraud, knowingly make a false statement or misrepresentation or by other means fail to disclose a material fact used in determining the person's qualification to receive benefits under any assistance program.*
- (2) *No person shall, with intent to defraud, fail to report a change in the factors affecting the person's eligibility for benefits.*
- (3) *No person shall, with intent to defraud, knowingly use, attempt to use, acquire, transfer, forge, alter, traffic, counterfeit, or possess a food stamp or food stamp identification card or unique electronic authorization code or number or electronic personal identification number in any manner not authorized by law.*
- (4) *No person having responsibility for the administration of an assistance program shall, having knowledge that it is in violation of the law, knowingly aid or abet any person in obtaining benefits to which the person is not legally entitled, or in obtaining a benefit amount greater than that to which the person is fully entitled.*
- (5) *No person shall misappropriate or attempt to misappropriate a food stamp authorization to purchase card, food stamp identification card, or misappropriate other benefits from any program with which the person has been assigned responsibility, nor shall the person knowingly fail to report any of these activities when it is clearly in violation of the law.*
- (6) *No person shall, with intent to defraud or deceive, devise a scheme or plan a scheme or artifice to obtain benefits from any assistance program by means of false or fraudulent representations or intentionally engage in conduct that advances the scheme or artifice.*
- (7) *No person shall aid and abet another individual in acts prohibited in subsections (1) to (6) of this section knowing it to be in violation of the law.*

- (8) *The Attorney General on behalf of the Commonwealth of Kentucky may commence proceedings to enforce this section, and the Attorney General shall in undertaking these proceedings exercise all powers and perform all duties that the prosecuting attorney would otherwise perform or exercise.*

SECTION 51. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

In any prosecution for the violation of Section 50 of this Act, it shall be a defense if the person relied on the advice of an employee or agent of the cabinet.

SECTION 52. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

For the purpose of enforcing the provisions of Section 50 of this Act and of investigating any assistance program administered by the cabinet, the designated agents of the cabinet shall have the same access as peace officers to records maintained under KRS 17.150.

SECTION 53. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary for families and children shall develop an initial training course and continuing education courses for employees of the Department for Social Services concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.*
- (2) *Each person employed by the Department for Social Services who provides supervisory or direct service at the local, district, or state level shall successfully complete the initial training course and, at least once every two (2) years, the continuing education course developed under subsection (1) of this section.*

SECTION 54. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary for families and children shall promulgate administrative regulations under KRS Chapter 13A setting forth the requirements for initial training courses and continuing education courses for staff of agencies providing protective shelter services for victims of domestic violence. The components of the training shall include the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.*
- (2) *Each agency providing protective shelter services for victims of domestic violence shall develop and provide initial training courses and, at least once every two (2) years; continuing education courses which comply with the requirements developed pursuant to subsection (1) of this section, for staff of the agency.*

SECTION 55. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

As used in Sections 55 to 58 of this Act:

- (1) *"Cabinet" means the Cabinet for Families and Children;*
- (2) *"Council" means the Alzheimer's Disease and related Disorders Advisory Council;*
- (3) *"Dementia" means Alzheimer's disease and related dementia illnesses and disorders; and*
- (4) *"Office" means the Office on Alzheimer's Disease and Related Disorders.*

SECTION 56. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The Office of Alzheimer's Disease and Related Disorders is established within the cabinet. The purpose of the office is to oversee information and resources related to policy and services affecting the sixty thousand (60,000) residents of Kentucky with dementia, and the caregivers and families of the residents.*
- (2) *The director of the office shall be a full-time, permanent employee and shall be responsible for the staffing and operational details of the office. A report on the start-up and implementation of the office shall be made to the Interim Joint Committee on Health and Welfare by September 30, 1998, and on a quarterly basis thereafter.*
- (3) *The office shall:*
 - (a) *Enhance the quality of life for persons affected by dementia and for their caregivers;*

- (b) *Recommend the delivery of services in the most effective and efficient manner possible to facilitate the needs of people with dementia and their caregivers, after consultation with other agencies of state government that work with dementia-related illness;*
- (c) *Determine ways the Commonwealth may secure additional federal and private funding to provide additional services and programs through a coordinated effort;*
- (d) *Apply for any public or private funding relating to dementia that will enhance the office's abilities to perform its duties under this section;*
- (e) *Promote public and professional awareness and education of dementia and access to needed services and programs;*
- (f) *Oversee and receive reports from the Alzheimer's Disease and Related Disorders Advisory Council; and*
- (g) *Coordinate and oversee the implementation of the recommendations of the 1995 Governor's Task Force on Alzheimer's Disease and Related Disorders.*

SECTION 57. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *The Alzheimer's Disease and Related Disorders Advisory Council is created. The council shall report directly to the office.*
- (2) *The council shall be comprised of a minimum of fifteen (15) members appointed by the Governor. Three (3) members shall represent agencies of state government dealing with dementia, three (3) shall represent local health departments, one (1) shall represent the University of Kentucky Alzheimer's Disease Research Center at the Sanders-Brown Center on Aging, at least one (1) shall be appointed from each of the chapters of the Alzheimer's Disease and Related Disease Association that serve the Commonwealth, and the remainder shall represent consumers, health care providers, and the medical research community. Members who are not state employees shall be reimbursed for necessary and actual expenses. The council shall meet quarterly. A majority of the members shall constitute a quorum for the transaction of the council's business.*
- (3) *The council shall:*
 - (a) *Elect its own chairperson and establish other officers and subcommittees as needed to execute the duties of the council;*
 - (b) *Adopt bylaws and operate under its bylaws;*
 - (c) *Select the director of the office;*
 - (d) *Establish and evaluate goals and outcomes for the office that may facilitate treatment and care of persons with dementia;*
 - (e) *Assist with the dissemination of information about the availability of program materials, education materials, and curriculum guides; and*
 - (f) *Prepare a report of its activities, at least annually, for submission to the office.*
- (4) *The office shall provide requested personnel to assist the council in fulfilling its responsibilities.*

SECTION 58. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

The cabinet shall promulgate administrative regulations under KRS Chapter 13A sufficient to implement Sections 55 to 58 of this Act.

SECTION 59. A NEW SECTION OF KRS CHAPTER 194B IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who violates the provisions of subsections (1), (2), and (7) of Section 50 of this Act shall be guilty of a Class A misdemeanor, unless the sum total of benefits received in excess of that to which the person was entitled at the time the offense was committed is valued at or over one hundred dollars (\$100), in which case it is a Class D felony.*
- (2) *Any person who violates subsection (3) of Section 50 of this Act shall be guilty of a Class D felony.*

- (3) *Any person who violates the provisions of subsections (4) and (5) of Section 50 of this Act shall be guilty of a Class C felony.*
- (4) *Any person who violates the provisions of subsection (6) of Section 50 of this Act shall be guilty of a Class D felony, unless the purpose of the violation is to obtain ten thousand dollars (\$10,000) or more, in which case it shall be a Class C felony.*
- (5) *Any person who violates subsections (1) to (6) of Section 50 of this Act shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.*

Section 60. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice Cabinet, the Education, Arts, and Humanities Cabinet, the Natural Resources and Environmental Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Public Protection and Regulation Cabinet, the Cabinet for ***Health Services, the Cabinet for Families and Children***~~(Human Resources)~~, the Finance and Administration Cabinet, the Revenue Cabinet, the Tourism Cabinet, the Labor Cabinet, the commissioner of the Department of Personnel, the secretary of the Governor's Executive Cabinet, the State Budget Director, the Governor's Chief of Staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 61. KRS 12.020 is amended to read as follows:

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

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

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
4. Department of Law.
 - (a) Attorney General.
5. Department of the Treasury.
 - (a) Treasurer.

6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 7. Superintendent of Public Instruction.
 8. Auditor of Public Accounts.
 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.

- (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.

7. Cabinet for *Families and Children* ~~[Human Resources]~~:
- (a) ~~[Department for Health Services.~~
 - ~~(b) —] Department for Social Insurance.~~
 - (b) ~~[(e)]~~ Department for Social Services.
 - ~~[(d) — Department for Medicaid Services.~~
 - ~~(e) — Department for Mental Health and Mental Retardation Services.~~
 - ~~(f) — Commission for Children with Special Health Care Needs.]~~
 - (c) ~~[(e)]~~ Public Assistance Appeals Board.
 - (d) *Office of the Secretary.*
 - ~~[(h) — Office of Administrative Services.~~
 - ~~(i) — Office of Communications.]~~
 - (e) ~~[(j)]~~ Office of *the* General Counsel.
 - (f) *Office of Program Support.*
 - (g) *Office of Family Resource and Youth Services Centers.*
 - (h) *Office of Technology Services.*
 - ~~[(k) — Office of Inspector General.~~
 - ~~(l) — Office of Policy and Budget.]~~
 - (i) ~~[(m)]~~ Office of the Ombudsman.
 - (j) *Office of Aging Services.*
8. *Cabinet for Health Services.*
- (a) *Department for Public Health.*
 - (b) *Department for Medicaid Services.*
 - (c) *Department for Mental Health and Mental Retardation Services.*
 - (d) *Kentucky Commission on Children with Special Health Care Needs.*
 - (e) *Office of Certificate of Need.*
 - (f) *Office of the Secretary.*
 - (g) *Office of the General Counsel.*
 - (h) *Office of Program Support.*
 - (i) *Office of the Inspector General.*
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.

- (i) Kentucky Pollution Abatement Authority.
- (j) Kentucky Savings Bond Authority.
- (k) Deferred Compensation Systems.
- (l) Office of Equal Employment Opportunity Contract Compliance.
- (m) Capital Plaza Authority.
- (n) County Officials Compensation Board.
- (o) Kentucky Employees Retirement Systems.
- (p) Commonwealth Credit Union.
- (q) State Investment Commission.
- (r) Kentucky Housing Corporation.
- (s) Governmental Services Center.
- (t) Kentucky Local Correctional Facilities Construction Authority.
- (u) Kentucky Turnpike Authority.
- (v) Historic Properties Advisory Commission.

~~10.9~~ Labor Cabinet:

- (a) Department of Workplace Standards.
- (b) Department of Workers' Claims.
- (c) Kentucky Labor-Management Advisory Council.
- (d) Occupational Safety and Health Standards Board.
- (e) Prevailing Wage Review Board.
- (f) Workers' Compensation Board.
- (g) Kentucky Employees Insurance Association.
- (h) Apprenticeship and Training Council.
- (i) State Labor Relations Board.
- (j) Kentucky Occupational Safety and Health Review Commission.
- (k) Office of Administrative Services.
- (l) Office of Labor Management Relations.
- (m) Office of General Counsel.
- (n) Workers' Compensation Funding Commission.
- (o) Employers Mutual Insurance Authority.

~~11.10~~ Revenue Cabinet:

- (a) Department of Property Taxation.
- (b) Department of Compliance and Taxpayer Assistance.
- (c) Department of Administrative Services.
- (d) Office of General Counsel.

~~12.11~~ Tourism Cabinet:

- (a) Department of Travel Development.
- (b) Department of Parks.

- (c) Department of Fish and Wildlife Resources.
- (d) Kentucky Horse Park Commission.
- (e) State Fair Board.
- (f) Office of Administrative Services.
- (g) Office of Film Promotion.
- (h) Office of General Counsel.
- ~~13.142.~~ Cabinet for Workforce Development:
 - (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 62. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice Cabinet.
- (2) Education, Arts, and Humanities Cabinet.

- (3) Natural Resources and Environmental Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Public Protection and Regulation Cabinet.
- (7) Cabinet for *Health Services* ~~{Human Resources}~~.
- (8) ***Cabinet for Families and Children.***
- (9) Finance and Administration Cabinet.
- ~~(10){(9)}~~ Tourism Cabinet.
- ~~(11){(10)}~~ Revenue Cabinet.
- ~~(12){(11)}~~ Labor Cabinet.
- ~~(13){(12)}~~ Cabinet for Workforce Development.

Section 63. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
 - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
 - (a) Finance and Administration Cabinet
 - 1. Higher Education Assistance Authority
 - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410

- b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
- (b) **Cabinet for Health Services**~~[Health Policy Board]~~
 - 1. **Office of Certificate of Need**
 - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
 - ~~b.~~ Licensure revocation hearings conducted under authority of KRS Chapter 216B
- (c) Cabinet for **Families and Children**~~[Human Resources]~~
 - 1. ~~[Department for Employment Services~~
 - ~~a. Unemployment insurance hearings conducted under authority of KRS Chapter 344~~
 - ~~2. Department for Health Services~~
 - ~~a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404~~
 - ~~3. Department for Social Services~~
 - a. Supervised placement revocation hearings conducted under authority of KRS **Chapter**~~[Chapters] 630~~~~[and 635]~~
 - 2. **Department for Social Insurance**
 - a. **Disability determination hearings conducted under authority of 20 C.F.R. sec. 404**
- (d) Justice Cabinet
 - 1. Department of State Police
 - a. State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
 - 2. Department of Corrections
 - a. Parole Board hearings conducted under authority of KRS Chapter 439
 - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
 - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
 - 3. **Department for Juvenile Justice**
 - a. **Supervised placement revocation hearings conducted under authority of KRS Chapter 635**
- (e) Labor Cabinet
 - 1. Department of Workers' Claims
 - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
- (f) Natural Resources and Environmental Protection Cabinet
 - 1. Department for Surface Mining Reclamation and Enforcement
 - a. Surface mining hearings conducted under authority of KRS Chapter 350
 - 2. Department for Environmental Protection
 - a. Wild River hearings conducted under authority of KRS Chapter 146
 - b. Water resources hearings conducted under authority of KRS Chapter 151
 - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223

- d. Environmental protection hearings conducted under authority of KRS Chapter 224
 - (g) Kentucky Occupational Safety and Health Review Commission
 - 1. Occupational safety and health hearings conducted under authority of KRS Chapter 338
 - (h) Public Protection and Regulation Cabinet
 - 1. Board of Claims
 - a. Liability hearings conducted under authority of KRS Chapter 44
 - 2. Public Service Commission
 - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
 - (i) **Workforce Development Cabinet**
 - 1. **Department for Employment Services**
 - a. **Unemployment Insurance hearings conducted under authority of KRS Chapter 341**
 - (j) Secretary of State
 - 1. Registry of Election Finance
 - a. Campaign finance hearings conducted under authority of KRS Chapter 121
 - ~~(k)(j)~~ State universities and colleges
 - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
 - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
 - 3. Campus residency hearings conducted under authority of KRS Chapter 164
 - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
 - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
 - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; **or**
 - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

Section 64. KRS 15.290 is amended to read as follows:

- (1) There is hereby established in the Department of Law the Child Support Enforcement Commission which shall consist of nine (9) members as prescribed below:
- (a) The Attorney General, or ~~a~~^{his} designee, who shall also serve as chairman;
 - (b) The secretary of the Cabinet for **Families and Children**~~[Human Resources]~~, or his designee, who shall also serve as vice chairman;
 - (c) The director of the Administrative Office of the Courts, or his designee;
 - (d) The director of the Division ~~of~~^{for} Child Support Enforcement within the Cabinet for **Families and Children**~~[Human Resources]~~; and
 - (e) The remaining five (5) members shall be appointed by the Governor for terms of four (4) years, except that the initial appointments shall be made in the following manner: One (1) member for two (2) years, two (2) members for three (3) years, and two (2) members for four (4) years. Each member shall serve until a successor is named and any appointment, due to vacancy, shall be for the unexpired term. The remaining five (5) members shall be appointed in the following manner: three (3) members from a list of nine (9) nominees submitted by the Kentucky County Attorney Association, with one (1) of the three members representing either a first class or urban-county government, and two (2) citizen-at-large members.
- (2) The secretary of the cabinet shall reimburse to the Department of Law such an amount as incurred related to the function of the commission. The secretary shall provide such information as may be requested by the commission.
- (3) The commission shall meet at least quarterly and may meet additional times as may be deemed necessary by the chairman.
- (4) Reimbursement for actual travel expenses shall be paid by the Department of Law for commission members, if members are not otherwise eligible for such reimbursement from their respective agency.
- (5) The commission shall have the following responsibilities:
- (a) Advise the Governor on any issue related to the child support program;
 - (b) Advise the Cabinet for **Families and Children**~~[Human Resources]~~ on any issue related to the child support program;
 - (c) Advise the Department of Law on any issue related to the child support program;
 - (d) Advise the Administrative Office of the Courts on any issue related to the child support program;
 - (e) Provide a regular forum for all parties involved in the child support program to address any aspect of the administrative or judicial process;
 - (f) Develop and prepare reports and recommendations related to administrative procedures, prosecution, judicial procedures, state or federal legislation; or any other matters which might improve program effectiveness and efficiency; and
 - (g) Initiate recommendations to facilitate interaction between local officials and the cabinet.
- (6) The commission shall prepare and issue an annual report not later than August 15 of each year for the preceding fiscal year which includes a performance assessment for all aspects of the program. The report shall include recommendations to improve performance and service delivery. The report shall be submitted to the Governor and the Legislative Research Commission. The first report shall be due August 15, 1989.
- (7) Nothing in this section shall be construed as modifying the designation of the single state agency as required under the Federal Title IV-D plan.

Section 65. KRS 15.333 is amended to read as follows:

- (1) The Kentucky Law Enforcement Council shall develop in conjunction with the Cabinet for ***Families and Children***~~[Human Resources]~~ an educational program on human immunodeficiency virus infection and acquired immunodeficiency virus syndrome of not more than four (4) hours to be delivered by the Department of Criminal Justice Training to all law enforcement officers subject to the provisions of KRS 15.440 or 61.300. The educational program shall be completed annually.
- (2) The educational program may be a part of any continuing education program offered by the Department of Criminal Justice Training.

Section 66. KRS 15.706 is amended to read as follows:

- (1) The Prosecutors Advisory Council shall collect statistical data regarding the investigation, prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense defined by KRS Chapter 510 involving a minor, incest involving a minor, use of a minor in a sexual performance, or unlawful transaction with a minor.
- (2) Each Commonwealth's attorney, each county attorney, the secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~, the commissioner of the Kentucky State Police, each Circuit Court clerk, and the Administrative Office of the Courts shall provide any data requested by the council for this purpose, on a form prescribed by the council, at intervals as the council may direct.
- (3) The council may contract with any other public agency to collect the data in lieu of collecting the data itself.
- (4) The Prosecutors Advisory Council may promulgate administrative regulations to specify information to be reported.
- (5) The information required to be reported by this section shall be provided by each Commonwealth's attorney and county attorney at the end of each quarter of the calendar year or as otherwise directed by the Prosecutors Advisory Council.
- (6) The Prosecutors Advisory Council and the Office of the Attorney General shall compile the information by county and issue a public report at least annually.
- (7) The public report shall not contain the name or identifying information of a victim or person not formally charged with the commission of child sexual abuse. Information collected by the Commonwealth's attorney or county attorney or by the Prosecutors Advisory Council containing data which cannot be published shall be excluded from inspection, unless by court order, from the Open Records Law.
- (8) Any Commonwealth's attorney or any county attorney who fails to report information as defined by this section or administrative regulation shall be subject to salary reduction as authorized by KRS 61.120.

Section 67. KRS 15.910 is amended to read as follows:

- (1) The state board shall be composed of the following members:
 - (a) The secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~, the secretary of the Finance and Administration Cabinet, the chief state school officer, the commissioner of the State Police, and the Attorney General, or designees authorized to speak on their behalf; and
 - (b) Ten (10) public members appointed by the Governor. It is recommended that, as a group, the public members shall demonstrate knowledge in the area of child sexual abuse and exploitation prevention; shall be representative of the demographic composition of this state; and, to the extent practicable, shall be representative of all the following categories: parents, school administrators, law enforcement, the religious community, the legal community, the medical community, professional providers of child sexual abuse and exploitation prevention services, and volunteers in child sexual abuse and exploitation prevention services.
- (2) The term of each public member shall be three (3) years, except that of the public members first appointed, three (3) shall serve for three (3) years, three (3) for two (2) years, and four (4) for one (1) year. A public member shall not serve more than two (2) consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.
- (3) The Attorney General shall serve as chairman or designate a chairperson of the state board in which case the chairperson shall serve in that position at the pleasure of the Attorney General. The state board may elect other officers and committees as it considers appropriate.

- (4) There shall be no per diem compensation; however, the schedule for reimbursement of expenses for the public members of the state board shall be the same as for state employees. The reimbursement, executive director and staff salaries, and all actual and necessary operating expenses of the state board shall be paid from the trust fund, pursuant to an authorization as provided in KRS 15.935.

Section 68. KRS 15.942 is amended to read as follows:

The Justice Cabinet, the Attorney General, the Administrative Office of the Courts, and the Cabinet for *Families and Children*~~[Human Resources]~~ shall develop a training plan for investigation of child sexual abuse cases and protection of child sexual abuse victims within the Commonwealth. They may seek assistance from any educational, legal, and mental and physical health care professionals needed for implementation of training programs.

Section 69. KRS 15.944 is amended to read as follows:

The Attorney General, Justice Cabinet, Administrative Office of the Courts, and Cabinet for *Families and Children*~~[Human Resources]~~ shall provide an in-service training program for Commonwealth's and county attorneys and their assistants in child development, the dynamics of physical and sexual abuse, the impact of violence on child development, the treatment of offenders, and related issues. Each Commonwealth's and county attorney and each assistant Commonwealth's and county attorney shall attend the in-service training.

Section 70. KRS 15A.065 is amended to read as follows:

- (1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:
- (a)~~{(1)}~~ Prevention of juvenile crime;
 - (b)~~{(2)}~~ Identification of juveniles at risk of becoming status or public offenders and early intervention strategies for these children;
 - (c)~~{(3)}~~ Providing services to law enforcement, prosecution, victims, defense attorneys, and the public relating to juvenile crime, its prevention, detection, trial, punishment, and rehabilitation, and services for youth adjudicated delinquent or found guilty of public offenses or as youthful offenders;
 - (d)~~{(4)}~~ The operation of or contracting for the operation of preadjudication facilities for children charged with public offenses;
 - (e)~~{(5)}~~ The operation of or contracting for the operation of postadjudication treatment facilities for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;
 - (f)~~{(6)}~~ The operation of or contracting for the operation of preadjudication alternatives to detention and follow-up programs for children who are before the court and who enter pretrial diversion or informal adjustment programs;
 - (g)~~{(7)}~~ The operation of or contracting for the operation of postadjudication alternatives to detention and follow-up programs, including but not limited to community based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of detention while achieving solutions to the child's problems and ensuring public safety;
 - (h)~~{(8)}~~ The operation or contracting for the operation of by the department, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;
 - (i)~~{(9)}~~ Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;
 - (j)~~{(10)}~~ Conducting research and comparative experiments to find the most effective means of:
 - 1.~~{(a)}~~ Preventing delinquent behavior;
 - 2.~~{(b)}~~ Identifying predelinquent youth;
 - 3.~~{(c)}~~ Preventing predelinquent youth from becoming delinquent;
 - 4.~~{(d)}~~ Assessing the needs of predelinquent and delinquent youth;

- 5.~~(e)~~ Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;
- 6.~~(f)~~ Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and
- 7.~~(g)~~ Keeping the department, the educational community, police, prosecutors, the courts, and the public abreast of the latest programs, technology, counseling tools, and other aspects of juvenile counseling, correction, and treatment; **and**
- ~~(h)~~~~(11)~~ Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.
- ~~(2)~~~~(12)~~ The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.
- ~~(3)~~~~(13)~~ The Department of Juvenile Justice may contract with the cabinet for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments.
- ~~(4)~~~~(14)~~ The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall provide a formulation of and recommendations for meeting the requirements of this section not less than semiannually to the Governor, the Justice Cabinet, the Department of Juvenile Justice, the Cabinet for **Families and Children**~~[Human Resources]~~, the Interim Joint Committees on Judiciary and Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and Appropriations and Revenue committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall meet not less than quarterly. The advisory board shall be chaired by a private citizen member appointed by the Governor. The advisory board shall consist of one (1) member of each of the following:
1. Justice Cabinet;
 2. Department of Juvenile Justice;
 3. Cabinet for **Families and Children**~~[Human Resources]~~;
 4. Department for Medicaid Services;
 5. Department of Education;
 6. Department of Public Advocacy;
 7. Administrative Office of the Courts;
 8. Workforce Development Cabinet;
 9. Attorney General;
 10. Kentucky Developmental Disabilities Council;
 11. Circuit Judges Association;
 12. District Court Judges Association;
 13. Commonwealth's Attorneys Association;
 14. County Attorneys Association;
 15. County Judge/Executives Association;
 16. A person eighteen (18) to twenty-five (25) years of age not associated with any other group listed in this paragraph;

17. A person from the business community not associated with any other group listed in this paragraph;
18. A parent not associated with any other group listed in this paragraph;
19. A youth advocate not associated with any other group listed in this paragraph;
20. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
21. A local school district special education administrator not associated with any other group listed in this paragraph;
22. A peace officer not associated with any other group listed in this paragraph; and
23. A college or university professor specializing in law, criminology, corrections, or similar discipline with an interest in juvenile corrections programs.

Section 71. KRS 15A.190 is amended to read as follows:

- (1) The Justice Cabinet in consultation with the Cabinet for *Families and Children*~~[Human Resources]~~, the Kentucky Commission on Women, and any other agency concerned with particular acts of criminal activity, shall design, print and distribute to all law enforcement agencies in the Commonwealth, a uniform reporting form which provides statistical information relating to the crimes involving domestic violence, child abuse, victimization of the elderly, or any other particular area of criminal activity deemed by the secretary of justice to require research as to its frequency.
- (2) The provision of subsection (1) of this section concerning the distribution of forms shall become effective on January 1, 1979.

Section 72. KRS 15A.200 is amended to read as follows:

As used in KRS 15A.210 to 15A.240 and **KRS** 15A.990:

- (1) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for *Families and Children*~~[Human Resources]~~ and other appropriate state agencies;
- (2) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (3) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed exclusively by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners; and
- (4) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lock-up, intermittent holding facility, or any building which is a part of or attached to any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined.

Section 73. KRS 16.095 is amended to read as follows:

- (1) The Justice Cabinet shall require all officers employed by them to complete an educational course approved by the Cabinet for *Health Services*~~[Human Resources]~~ on human immunodeficiency virus infection and acquired immunodeficiency syndrome. The Justice Cabinet shall develop literature on the human immunodeficiency virus infection and acquired immunodeficiency syndrome and a training curriculum of not more than four (4) hours for the instruction of officers. The literature and training curriculum shall include information of known modes of transmission and methods of controlling and preventing these diseases with an emphasis on appropriate behavior and attitude change. This training may be part of any other training required and for which law enforcement officers receive an allowance to attend. However, nonreceipt of allowance does not exclude a law enforcement officer from the training required in this section.

- (2) All officers shall successfully complete the training required. Any person holding the position of officer shall not exercise that position for more than one (1) year without successfully completing the required training. If an officer does not successfully complete the required training within the time specified, he shall be suspended from further service as an officer until he successfully completes the required training.

Section 74. KRS 17.150 is amended to read as follows:

- (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for **Health Services; Cabinet for Families and Children**~~[Human Resources]~~; Transportation Cabinet; Department of Corrections; and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:
- (a) Install and maintain records needed for reporting data required by the cabinet;
 - (b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal **the juvenile's or the juvenile's**~~[his or his]~~ parents' identity;
 - (c) Give the cabinet or its accredited agent access for purpose of inspection; and
 - (d) Cooperate with the cabinet to the end that its duties may be properly performed.
- (2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:
- (a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;
 - (b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;
 - (c) Information which may endanger the life or physical safety of law enforcement personnel; or
 - (d) Information contained in the records to be used in a prospective law enforcement action.
- (3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.
- (4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.
- (5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.
- (6) The secretary of justice shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of State Police.
- (7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice.

Section 75. KRS 17.460 is amended to read as follows:

- (1) Upon notification by a parent, guardian, person exercising custodial control or supervision, or the authorized representative of the Department for Social Services of the Cabinet for *Families and Children*~~Human Resources~~ if the child is a ward of the state, that a child is missing, the law enforcement agency receiving notification shall immediately complete a missing person's report in a form prescribed by the Justice Cabinet which shall include information the Justice Cabinet deems necessary for the identification of the missing child, including the child's physical description, last known location and known associates.
- (2) Within twenty-four (24) hours after completion of the missing person's report form, the law enforcement agency shall transmit the report for inclusion within the Kentucky Missing Child Information Center computer and shall cause the report to be entered into the National Crime Information Center computer.
- (3) Within twenty-four (24) hours thereafter, the law enforcement agency shall investigate the report, shall inform all appropriate law enforcement officers of the existence of the missing child report, and shall communicate the report to every other law enforcement agency having jurisdiction in the area.
- (4)
 - (a) Upon location of the missing child and verification of the National Crime Information Center entry, the law enforcement agency shall transport the child to the parent, guardian, or person exercising custodial control or supervision.
 - (b) If the child is a ward of the state, the law enforcement agency shall transport the child to the authorized representative of the Department for Social Services of the Cabinet for *Families and Children*~~Human Resources~~ in the jurisdiction of the law enforcement agency.
 - (c) If the law enforcement agency is unable to return the child to the appropriate caretaker pursuant to paragraph (a) of this subsection, the law enforcement agency shall contact the court designated worker with jurisdiction for placement determination.
 - (d) If the child is in custody on a charge of committing an offense pursuant to KRS Chapters 600 to 645, the law enforcement agency shall proceed according to the provisions therein.
- (5) Within twenty-four (24) hours after a missing child is located and returned to the appropriate caretaker pursuant to subsection (4) of this section, the law enforcement agency which transported, found, or returned the missing child shall notify both the Missing Child Information Center and the National Crime Information Center of that fact.

Section 76. KRS 17.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
- (2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five hundred dollars (\$500), or both.
- (3)
 - (a) Any child-care center which violates subsection (4) of KRS 17.165 may be liable for license revocation and the imposition of a civil penalty of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) to be imposed and collected by the Cabinet for *Families and Children*~~Human Resources~~; and
 - (b) In addition to penalties listed in this subsection, any child-care center which violates subsection (4) of KRS 17.165 shall be fined not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

Section 77. KRS 18A.030 is amended to read as follows:

- (1) The commissioner shall be the executive and administrative head of the department and shall supervise and control all examinations and work of the department. He shall advise the board on matters pertaining to the classified service of this state. Within the limitations of the budget, the commissioner shall appoint and supervise the staff needed in the department to carry out the purposes of KRS 18A.005 to 18A.200 except employees of the board who shall be appointed as provided in KRS 18A.090.

- (2) Subject to the provisions of this chapter and KRS Chapter 13A, the commissioner shall, with the aid of his staff:
- (a) Attend all meetings of the board;
 - (b) As provided by this chapter, promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and with federal standards for the administration of a personnel system in the agencies of the state government receiving federal grants;
 - (c) Establish general procedures for personnel recruitment, for certification, and for improving the efficiency of employed personnel;
 - (d) Appoint the examiners and technicians necessary for the conduct of the personnel program, whether on a permanent or temporary basis;
 - (e) Prepare and maintain a record of all employees, showing for each employee his name, address, title of position held, rate of compensation, changes in status, compensation, or title, transfer, and to make the data and the class specifications for all positions available to the press and public;
 - (f) Prepare, in accordance with the provisions of KRS 18A.005 to 18A.200 and the administrative regulations adopted thereunder, examinations, eligible lists, and ratings of candidates for appointment;
 - (g) Make certification for appointment or promotion within the classified service, in accordance with the provisions of KRS 18A.005 to 18A.200;
 - (h) Make investigations concerning all matters touching the enforcement and effect of the provisions of KRS 18A.005 to 18A.200 and administrative regulations prescribed thereunder;
 - (i) Prepare, in cooperation with appointing authorities and others, programs for employee training, safety, morale, work motivation, health, counseling, and welfare, and exercise leadership in the development of effective personnel administration within the several departments of the Commonwealth, and make available the facilities of the department to this end;
 - (j) Provide personnel services to unclassified employees in agreement with the agencies involved not otherwise provided for *in KRS 18A.005 to 18A.200*~~herein~~;
 - (k) Present, in accordance with the provisions of KRS Chapter 48, budget requests for the support of the personnel system created by KRS 18A.005 to 18A.200, excluding the board, which shall present its own budget estimates;
 - (l) Make a report and submit the same to the board, the Legislative Research Commission and the Governor not later than October first of each year; *and*
 - (m) Discharge the other duties imposed upon him by KRS 18A.005 to 18A.200.
- (3) The commissioner on behalf of the department may join or subscribe to any association or service having as its purpose the interchange of information relating to the improvement of the public service and especially improvement of personnel administration.
- (4) The commissioner shall keep records relative to employee turnover and report to the board, the Governor and the Legislative Research Commission quarterly. The report shall reflect employee turnover rates by cabinet, department, bureau, division, and section. If any cabinet, department, bureau, division, or section has a turnover rate of fifteen percent (15%) or more in any twelve (12) month period, the commissioner shall conduct an investigation into the reasons for the turnover and report the findings to the board, the Governor and the Legislative Research Commission.
- (5) The commissioner shall provide to each new state employee and to each state employee, classified or otherwise, on an annual basis an informational pamphlet about human immunodeficiency virus infection and acquired immunodeficiency syndrome. The pamphlet shall be approved by the Cabinet for *Health Services*~~Human Resources~~ and shall contain information about the nature and extent of these diseases, methods of transmission, preventive measures and referral services.

Section 78. KRS 18A.180 is amended to read as follows:

- (1) Subject to the approval of the board, the commissioner may enter into agreements with any municipality or other political subdivision of the Commonwealth to furnish services and facilities of the department to ~~the~~~~such~~ municipality or political subdivision in the administration of its personnel on merit principles. Any

such agreement shall provide for the reimbursement to the department, under contract, of the reasonable cost of the services and facilities furnished, as determined by the commissioner. All municipalities and political subdivisions of the Commonwealth are hereby authorized to enter into ~~these~~^{such} agreements.

- (2) The commissioner may cooperate with the governmental agencies of other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of KRS 18A.005 to 18A.200.
- (3) The commissioner may, upon the request of the secretary of the Cabinet for ~~Health Services~~^{Human Resources} and upon the approval of the board, furnish merit system services to "local" departments of health.

Section 79. KRS 27A.080 is amended to read as follows:

- (1) The Administrative Office of the Courts shall be the primary repository of court records of juveniles charged with, arrested for, and against whom complaints have been filed, involving status offenses, public offenses, and youthful offender proceedings, together with all court records of the handling and disposition of those cases, and shall keep and maintain these records.
- (2) The Administrative Office of the Courts shall make juvenile records available to the agencies and persons specified by law.
- (3) All courts, law enforcement agencies, prosecutors, the Department of Juvenile Justice, the Cabinet for ~~Families and Children~~^{Human Resources}, the Justice Cabinet, and other agencies holding records coming within the purview of subsection (1) of this section shall make them available to the Administrative Office of the Courts in the manner and at the times specified by the Administrative Office of the Courts.

Section 80. KRS 39.407 is amended to read as follows:

In performing his duties under this chapter, the adjutant general, with approval of the Governor, is authorized and empowered:

- (1) To prepare a comprehensive plan and program for the disaster and emergency response of this state, such plan and program to be integrated into and coordinated with the disaster and emergency response plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs by areawide organizations, metropolitan governments, counties, and cities of this state for disaster and emergency response, such plans to be integrated into and coordinated with the disaster and emergency response plan and program of this state to the fullest possible extent;
- (2) In accordance with such plan and program for the disaster and emergency response of this state, to ascertain the requirements of the state and of the counties and cities thereof for food or clothing or other necessities of life in the event of disaster or attack and to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state, for the purposes set forth in this chapter; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of disaster and emergency response organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of disaster and emergency response personnel in time of need;
- (3) To cooperate with the President of the United States, the chiefs of the Armed Forces, and the civil preparedness agency of the United States, and officers and agencies of other states in matters pertaining to the disaster and emergency response of the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies, for any action looking to civil preparedness, including the direction or control of blackouts and practice blackouts, mobilization of disaster and emergency response forces, and other tests and exercises, warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, the effective screening or extinguishing of all lights and lighting devices and appliances, the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services, the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack, public meetings or gatherings and the evacuation and reception of the civilian population;
- (4) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter, and with the orders, rules, and regulations made pursuant thereto;

- (5) To employ such measures and give such directions to the secretary for **health services**~~[human resources]~~ or the local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter, or with the findings or recommendations of such secretary or boards of health by reason of conditions arising from disasters, emergency situations, enemy attack, or the threat thereof or otherwise;
- (6) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof; and all such officers and agencies shall cooperate with and extend their services and facilities to the director as he may request;
- (7) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this chapter;
- (8) To delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority;
- (9) On behalf of this state, pursuant to executive order of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local county or city basis or with a neighboring state or province of a foreign country. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies, engineering services, emergency housing, police services, national or state guards while under the control of the state, health, medical, and related services, firefighting, rescue, transportation, and construction services and equipment, personnel necessary to provide or conduct these services, and such other supplies, equipment, facilities, personnel, and services as may be needed, the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, and police units and health units, and on such terms and conditions as are deemed necessary;
- (10) To sponsor and develop mutual aid plans and agreements among the areawide organizations, metropolitan governments, counties, and cities of the state, similar to the mutual aid arrangements with other states referred to above;
- (11) To recommend to the state planning committee the allocation of such funds as may be necessary to the Department of Local Government to be distributed to the area development districts for the development of emergency response plans and programs for the local governments and the area served by the area development districts, or a functional committee thereof.

Section 81. KRS 42.560 is amended to read as follows:

- (1) There is ~~hereby~~ established in the Treasury of the Commonwealth a trust fund to be known as the "Energy Assistance Trust Fund" ~~herein~~ referred to **in KRS 42.560 to 42.574** as the "trust fund."
- (2) The trust fund shall consist of any oil overcharge refunds which become available to the state as a result of litigation for alleged overcharges for crude oil or refined petroleum products sold during the period of time in which federal price controls on such products were in effect, any moneys as may be appropriated by the general fund, and any investment interest earned on the fund.
- (3) The fund shall be managed by the state Office of Financial Management and Economic Analysis and all moneys in excess of the amount to be disbursed in a given fiscal year shall be invested to maximize returns. The principal and any interest earnings of the trust fund shall at no time lapse to the general fund.
- (4) The trust fund and all accumulated interest shall be disbursed over a period of time not exceeding ten (10) years from February 19, 1988. Interest accumulated during the 1987-88 fiscal year shall immediately be available for disbursement. Fifty thousand dollars (\$50,000) of the interest shall be allocated to the Legislative Research Commission for consultant costs for a study of energy conservation and weatherization programs as directed by the 1988 General Assembly. The remainder of the accumulated interest shall be made available to the Cabinet for **Families and Children**~~[Human Resources]~~ with fifty percent (50%) of the interest allocated to weatherization services to low income households and fifty percent (50%) of the interest allocated to low income energy assistance services. The funds to be available for expenditure in any fiscal year shall be appropriated by the General Assembly from the trust fund as provided in KRS 48.300.

Section 82. KRS 42.566 is amended to read as follows:

- (1) The funds appropriated by the General Assembly shall be expended in a manner consistent with the judgments and settlements, as amended, which produced the oil overcharge refunds, as follows:

- (a) The sum of five hundred thousand dollars (\$500,000) or eight percent (8%) of the amount appropriated each fiscal year, whichever is greater, shall be distributed annually to the Natural Resources and Environmental Protection Cabinet for expenditure in the Institutional Conservation Program established pursuant to Part G of Title III of the Energy Policy and Conservation Act, 42 U.S.C. Section 6371 et seq. The source of these funds shall be deemed to be the trust funds produced by the Stripper Well litigation, In Re Department of Energy Stripper Well Exemption Litigation, D.C. Kan., M.D.L. No. 378, and the Diamond Shamrock litigation, Diamond Shamrock Refining Co. v. Standard Oil of Indiana, D.C. Ind., Civil Action No. C-84-1432, and interest accumulated thereon.
- (b) The balance of the trust funds appropriated for expenditure in any fiscal year shall be distributed to the Cabinet for **Families and Children**~~[Human Resources]~~ and allocated as follows:
 - 1. Forty percent (40%) of the trust funds received by the cabinet in any fiscal year shall be allocated to the cabinet's program for weatherization of low-income households established pursuant to Part A of the Energy Conservation and Existing Buildings Act of 1976, 42 U.S.C. Section 6861 et seq.; and
 - 2. Sixty percent (60%) of the trust funds received by the cabinet in any fiscal year shall be allocated to the cabinet's program for energy crisis or prevention services for low-income households established pursuant to the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. Section 8621 et seq.

Section 83. KRS 42.665 is amended to read as follows:

- (1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the Finance and Administration Cabinet.
- (2) The membership of the board shall consist of the following:
 - (a) The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee;
 - (b) The commissioner of the Department for **Public Health**~~[Services]~~, or the commissioner's designee;
 - (c) The commissioner of the Department of Education, or the commissioner's designee;
 - (d) The commissioner of the Kentucky State Police, or the commissioner's designee;
 - (e) The Kentucky state fire marshal, or the fire marshal's designee;
 - (f) The executive director of the Division of Disaster and Emergency Services, or the executive director's designee;
 - (g) The Attorney General, or the Attorney General's designee;
 - (h) One (1) representative of local community crisis response teams appointed by the Governor;
 - (i) Four (4) members appointed by the Governor to represent mental health disciplines;
 - (j) Two (2) members appointed by the Governor to represent emergency services disciplines; and
 - (k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board.
- (3) All board members appointed pursuant to subsections (2)(h) to (2)(k) of this section shall be approved members of the existing community crisis response team.
- (4) All board members appointed pursuant to subsections (2)(h) to (2)(k) of this section shall have demonstrated a commitment to the provision of community crisis response services.
- (5) The members of the board appointed by the Governor shall serve for two (2) years, and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.

- (6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.
- (7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.
- (8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in KRS 42.670(7), nothing in KRS 42.660 to 42.680 shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

Section 84. KRS 45.236 is amended to read as follows:

Notwithstanding the provisions of KRS 45.229 and notwithstanding any other provision of the Kentucky Revised Statutes, any unexpended or unencumbered balance of any social security appropriation, made available for expenditure by the Cabinet for **Families and Children**~~Human Resources~~ in the administration of its child welfare functions for the first fiscal year of each biennium, remaining at the end of ~~that~~~~such~~ fiscal year, shall be carried forward and be available for expenditure at any time during the ensuing fiscal year within the biennium and no portion shall lapse to the general expenditure fund.

Section 85. KRS 45.850 is amended to read as follows:

- (1) Appropriations for the capital construction and for the operating budget of a nuclear waste disposal site owned by the Commonwealth shall be set forth as a major program cost in the executive budget document for the Natural Resources and Environmental Protection Cabinet.
- (2) Appropriations for the regulating and monitoring of a nuclear waste disposal site owned by the Commonwealth shall be set forth as a major program cost in the executive budget document for the Cabinet for **Health Services**~~Human Resources~~. Monitoring and water sampling and analyses shall be maintained and budgeted for at a level to provide frequent and continuing evidence of the safety of the site.
- (3) Operating costs associated with the daily maintenance of the site in excess of allocations budgeted to the Natural Resources and Environmental Protection Cabinet, regulating and monitoring costs associated with normal surveillance of the site in excess of allocations budgeted to the Cabinet for **Health Services**~~Human Resources~~ and costs associated with an emergency at the site so declared by the Governor shall be deemed necessary governmental expenses.
- (4) In the event a request for funds is made pursuant to subsection (3) of this section, a copy of ~~the~~~~such~~ request and the justification for additional funds shall be forwarded to the office of the Legislative Research Commission and to the Governor at the time the request is made but no later than fifteen (15) days prior to the actual expenditure of additional funds. The Legislative Research Commission or its designated subcommittee may request further explanation of the need for additional funds.
- (5) Subsections (3) and (4) of this section shall apply only to sites located in the Commonwealth prior to July 15, 1980.

Section 86. KRS 61.945 is amended to read as follows:

- (1) There is hereby created an independent agency of state government to be known as the Kentucky Information Resources Management Commission, hereafter called the "commission." It shall be the responsibility of the commission to coordinate and guide the application of information technologies and resources in the executive branch of state government.
- (2) The commission shall consist of:
 - (a) Three (3) cabinet secretaries from the executive branch, at least one (1) of whom shall be from either the Transportation ~~or Human Resources~~ Cabinet, **the Cabinet for Families and Children, or the Cabinet for Health Services**, appointed by the Governor, or their respective designees;
 - (b) The state budget director or his designee;
 - (c) The commissioner of the Department of Information Systems;
 - (d) The State Librarian or his designee;

- (e) One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 - (f) Two (2) citizen members from the private sector with information resources management knowledge and experience to be appointed by the Governor;
 - (g) One (1) representative of local government appointed by the Governor from a list of six (6) persons, three (3) to be submitted by the president of the Kentucky League of Cities, and three (3) to be submitted by the president of the Kentucky Association of Counties;
 - (h) One (1) member of the press to be appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Press Association;
 - (i) The executive director of the Kentucky Authority for Educational Television;
 - (j) The chairman of the Communications Advisory Council as an ex officio, nonvoting member; and
 - (k) The chairman of the Geographic Information Advisory Council as an ex officio, nonvoting member.
- (3) The commission shall select from its membership a chairperson and any other officers it considers essential. A member of the commission shall not:
- (a) Be an officer, employee, registered legislative agent, Executive Branch lobbyist, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the information resources technology industry;
 - (b) Own, control, or have directly or indirectly, more than a ten percent (10%) interest in a business entity that has a substantial interest in the information resources technology industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any state governmental body with information resources systems, the computers on which they are automated, or a service related to information resources systems; or
 - (d) Receive anything of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise.
- (4) (a) It shall be a ground for removal of a member of the commission if the member:
- 1. Does not maintain during service on the commission the qualifications or status required for initial appointment to the commission;
 - 2. Violates a prohibition established by subsection (3) of this section; or
 - 3. Is absent from three (3) consecutive meetings or more than half of the regularly-scheduled commission meetings that the member is eligible to attend during a state fiscal year unless the absence is excused by majority vote of the commission.
- (b) The validity of an action of the commission shall not be affected by the fact that it was taken when a ground for removal of a member existed. If the chairperson of the commission has knowledge that a potential ground for removal of a commission member exists, the chairperson shall notify the Governor of the potential ground for removal.
- (5) (a) The term of office of the members specified in subsection (2)(b), (c), (d), (i), (j), and (k) of this section shall be the same as the term of office by virtue of which they serve upon the commission.
- (b) The terms of the cabinet secretaries appointed pursuant to subsection (2)(a) of this section shall be established in the commission's operating policies or bylaws not to be less than two (2) years.
- (6) Members of the commission appointed pursuant to subsection (2)(e), (f), (g), and (h) of this section shall serve for a term of four (4) years. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments. If a nominating organization changes its name, the subsequent organization having the same responsibilities and purposes shall be the nominating organization.
- (7) Members of the commission shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their duties.

- (8) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at commission meetings.

Section 87. KRS 61.958 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council, hereinafter called the "council," to the Kentucky Information Resources Management Commission to advise the Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Resources Management Commission on issues as they relate to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of **twenty-six (26)**~~twenty-five (25)~~ members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
- (a) The council shall consist of:
1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for **Health Services and Families and Children**~~Human Resources~~ or his designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Revenue Cabinet or his designee;
 5. The commissioner of the Department of Information Systems or his designee;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Department of Local Government or his designee;
 8. The secretary of the Justice Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;
 13. The commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Public Protection and Regulation Cabinet or his designee;
 15. The secretary of the Tourism Cabinet or his designee;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;

21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 88. KRS 62.160 is amended to read as follows:

- (1) The state officers elected by the voters of the state at large, except the Governor, Lieutenant Governor and the Superintendent of Public Instruction, the heads of departments and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.
- (2) The minimum sum of the bond for the following offices shall be as follows:
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ACTS OF THE GENERAL ASSEMBLY

Secretary of State	\$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education and humanities	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Secretary of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice	50,000
Secretary of corrections	25,000
Commissioner for health services	10,000
Secretary of labor	5,000
Commissioner of surface mining reclamation and enforcement	50,000
State librarian	5,000
Commissioner of mines and minerals	5,000
Commissioner of alcoholic beverage control	10,000
Commissioner of financial institutions	25,000
Secretary for natural resources and environmental protection	10,000
Commissioner of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for <i>health services</i> [human resources]	20,000
Secretary for families and children	20,000
Commissioner for environmental protection	10,000
Secretary for public protection and regulation	10,000
Secretary of tourism	25,000
Commissioner for social insurance	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000
Member of Fish and Wildlife Resources Commission	1,000
Member of Kentucky Board of Tax Appeals	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

Section 89. KRS 62.170 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees or deputies of the Commonwealth of Kentucky, including all judges, clerks and employees of the Court of Justice, including all other members of boards or commissions or employees of ~~those~~^{such} boards or commissions, and including all superintendents, receivers or employees of penal or eleemosynary institutions managed or directed by the Justice Cabinet, ~~the~~ Cabinet for **Health Services, the Cabinet for Families and Children,**~~Human Resources~~ or any other department or agency of the Commonwealth of Kentucky. Nothing in this paragraph shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency or institutional basis.
- (2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Department of Personnel and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.
- (3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the Department of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. ~~The~~^{Such} bonds may be written with or without cosureties. Further, ~~the~~^{such} bonds are to be a percentage of the total risks, the Department of Insurance to approve the amount of the risk written by any one (1) company.
- (4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Department of Personnel and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

Section 90. KRS 64.625 is amended to read as follows:

Physicians employed by county, city-county, and district health departments may, upon written recommendation of the hiring and paying authorities expressly approved in writing by the secretary for **health services**~~Human Resources~~, receive compensation in excess of, and without regard to, any limitation imposed by any existing statute, as employees of local health units. Such rates shall be based upon studies of the duties and responsibilities of the positions and upon a comparison for rates being paid for similar or comparable services elsewhere. The secretary for **health services**~~Human Resources~~ may also take into consideration other appropriate factors, including the scarcity of physicians qualified for public health work and the availability of local funds therefor.

Section 91. KRS 65.710 is amended to read as follows:

In order to enable cities and counties to fulfill their obligations regarding the public health, safety, and welfare, the General Assembly does hereby allow cities and counties to contract with private persons, partnerships, or corporations for providing ambulance service to the residents of such cities and counties subject to the following conditions:

- (1) ~~These~~^{All such} contracts must be in writing and must be approved by the city council or board of aldermen if a city is party thereto, or by the fiscal court in case a county is party thereto.
- (2) No contract shall be made with an ambulance service or other organization or person unless ~~the~~^{such} contract shall stipulate that at least one (1) person on each ambulance run shall possess currently valid emergency medical technician certification.
- (3) All contracts made with any ambulance service or other organization or person shall stipulate that all vehicles used for operation of the service comply with vehicle and equipment **administrative** regulations issued by the Cabinet for **Health Services**~~Human Resources~~.
- (4) All contracts shall include the stipulation that at least two (2) trained persons, one (1) driver and one (1) attendant, shall be carried on each ambulance for each ambulance call which is covered by ~~the~~^{such} contract.
- (5) No contract shall be made for a period of time greater than one (1) year.

- (6) The vehicle, equipment, training, and personnel requirements of subsections (2), (3), and (4) of this section shall also apply to the operation of an ambulance service by a city or a county or by a city and a county jointly.
- (7) No provisions of this section shall be construed as to limit the power of any city or county to contract for or operate ambulance services under requirements which are stricter than those of this section, or to require insurance, or bonding of contractors, provided ~~these~~^{such} provisions are not in conflict with the requirements of this section.

Section 92. KRS 67.082 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 150.370, 525.130, or any other statute that may be in conflict herewith, any county fiscal court may, whenever an epidemic or potential epidemic of a disease transmissible to man and domestic animals exists or is threatened in any species of wildlife, declare all or any portion of ~~that~~^{said} county to be an epidemic area. Following ~~a~~^{such} declaration, the fiscal court may, with approval of the Cabinet for **Health Services**~~Human Resources~~ and ~~the~~ Department of Fish and Wildlife Resources conduct control programs, including population reduction programs, against any species of wildlife including, but not limited to, red and gray foxes, skunks and rodents which may be serving as reservoirs and/or vectors of any disease transmissible to human beings and/or domestic animals including but not limited to rabies, leptospirosis, salmonellosis and Rocky Mountain spotted fever. ~~These~~^{Such} control programs may include but shall not be limited to hunting, trapping, vaccination and use of poisons. Technical and operational assistance for ~~the~~^{such} programs shall be made available by the Cabinet for **Health Services**~~Human Resources~~, the Department of Fish and Wildlife Resources, and the Department of Agriculture. A control program established under authority of this section may be conducted by the individual or joint action of the referred-to state agencies, the local health department or individual property owners designated as agents of said cabinets and departments. In the event poisonous baits are used to control an outbreak of rabies in wildlife, ~~those~~^{such} programs shall be under the direction of the Cabinet for **Health Services**~~Human Resources~~. All pet animals in the area shall be quarantined for the duration of the program by action of the local board of health. ~~These~~^{Such} programs shall be regulated to provide specific identification of bait station locations, daily check of each bait station, and positive pickup and destruction of all unconsumed baits at the end of the program.
- (2) No liability shall be imposed upon any state agency or local agency or any employee or agent thereof for any injury occurring to domesticated animals, individuals or property in carrying out programs in good faith authorized by this section, but all persons and agencies shall be liable to the extent otherwise provided by law for ordinary and gross negligence.

Section 93. KRS 72.029 is amended to read as follows:

Every coroner or other official performing a coroner's functions shall, on or before the tenth day of each month, report to the Department for **Public Health**~~Services~~ the death of any child under the age of eighteen (18) years occurring within the county during the preceding month, and the circumstances of the death. The report shall be made on the form required pursuant to administrative regulations promulgated pursuant to KRS Chapter 13A by the department. The form shall be developed in consultation with the Kentucky Coroners' Association.

Section 94. KRS 72.225 is amended to read as follows:

An advisory commission is hereby established to act in a general advisory capacity to the medical examiner services. The commissioner of State Police, the commissioner of training, the secretary of justice, and the secretary for **health services**~~human resources~~ shall be ex officio members of the advisory commission. The secretary of justice shall appoint five (5) additional members for terms of four (4) years each or until their successors are appointed and qualify. Members of the advisory commission shall receive no compensation for their services but shall be repaid their actual expenses incurred in attending meetings.

Section 95. KRS 72.415 is amended to read as follows:

- (1) For the purpose of enforcing the provisions of KRS 72.410 to 72.470, coroners and deputy coroners shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon public or private premises for the purpose of making investigations, to seize evidence, to interrogate persons, to require the production of medical records, books, papers, documents, or other evidence, and to impound vehicles involved in vehicular deaths, employ special investigators and photographers, and to expend funds for the purpose of carrying out the provisions of KRS 72.410 to 72.470. The fiscal court or urban-county government shall pay all reasonable expenses incurred by the coroner and his deputy in carrying out his responsibilities under the provisions of KRS 72.410 to 72.470.

- (2) No person shall be eligible to hold the office of deputy coroner unless he holds a high school diploma or its recognized equivalent. Every deputy coroner, other than a licensed physician, shall be required as a condition of office to take during every calendar year he is in office the training course of at least eighteen (18) hours provided by the Department of Criminal Justice Training or other courses approved by the Justice Cabinet after having completed the basic training course the first year of employment. The training course shall include material developed by the cabinet and approved by the Cabinet for **Health Services**~~[Human Resources]~~ on the human immunodeficiency virus infection and acquired immunodeficiency syndrome. The material shall include information on known modes of transmission and methods of controlling and preventing these diseases with an emphasis on appropriate behavior and attitude change.

Section 96. KRS 72.465 is amended to read as follows:

- (1) The coroner shall in his sound discretion determine the extent of inquiry to be made into any death occurring under natural circumstances and falling within the provisions of KRS 72.410 to 72.470, and if inquiry reveals that the physician of record has sufficient knowledge to reasonably state the cause of a death occurring under natural circumstances, the coroner may authorize ~~that such~~ physician to sign the certificate of death. In all other instances, the coroner shall sign the death certificate in coroner's cases.
- (2) In the event an autopsy is performed under the provisions of KRS 72.410 to 72.470 subsequent to the time that a death certificate has been filed with the Cabinet for **Health Services**~~[Human Resources]~~, Office of Vital Statistics, the coroner shall notify the Office of Vital Statistics of any change that may be necessary in the original certificate.

Section 97. KRS 95A.262 is amended to read as follows:

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for **Health Services**~~[Human Resources]~~, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.
- (2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot five thousand dollars (\$5,000) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.
- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to

the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

- (4) Applications for funding low-interest loans and firefighters training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.
- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:
 - (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
 - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
 - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
 - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
 - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;
 - (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and
 - (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.

- (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
- (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
- (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
- (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 98. KRS 96.931 is amended to read as follows:

As used in KRS 96.930 to 96.943, unless the context otherwise requires:

- (1) "City" means an incorporated municipality of any class;
- (2) "Governing body" means the body vested by law with the legislative power of a city;
- (3) "Sewer body" means the body vested with responsibility for the control, operation, and maintenance of a city's sewer facilities, which may be the governing body or a board, commission, or agency, created by statute or by city ordinance, or a private person, performing such functions under lawful contract with the city;
- (4) "Water supplier" means any person supplying water intended to be used, or actually used, in any manner resulting in contamination and includes the city itself, other cities and public bodies, and private operators of water-supplying facilities;
- (5) "Public health standards" means such standards as are lawfully prescribed from time to time by the secretary for **health services**~~human resources~~, the United States Public Health Service, or any lawfully constituted county, city, or other public board, department, or agency, vested with responsibility in this area.

Section 99. KRS 116.113 is amended to read as follows:

- (1) Upon receipt of notification from the Cabinet for **Health Services**~~Human Resources~~ of the death of a person, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, general or special election.
- (2) Upon receipt of notification from the circuit clerk that a person has been declared incompetent, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, general or special election.
- (3) Upon receipt of notification from the Administrative Office of the Courts that a person has been convicted of a felony offense, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, general or special election.

- (4) Following the purge of a name from the records of the State Board of Elections, the state board shall notify the clerk of the county in which the voter lived of the action; and the county clerk shall within ten (10) days update the county voter registration files to reflect the necessary change. If a protest is filed by the voter, the county board shall hear it at its next regular monthly meeting. If the county board decides in favor of the protesting voter, the voter's registration record shall be restored, including his voting record. If the protest is filed while the registration books are closed and the county board decides in favor of the protesting voter, the county board shall issue the voter an "Authorization to Vote" for the upcoming election and the voter's record shall be restored when the registration books open following the election.

Section 100. KRS 141.065 is amended to read as follows:

- (1) For the purposes of this section, "code" or "Internal Revenue Code" means the Internal Revenue Code in effect as of December 31, 1981.
- (2) There shall be allowed as a credit for any taxpayer against the tax imposed by this chapter for any taxable year, an amount equal to one hundred dollars (\$100) for each person hired by the taxpayer, ~~if that~~~~provided such~~ person has been classified as unemployed by the Department for Social Insurance of the Cabinet for **Families and Children**~~Human Resources~~, and has been so classified for at least sixty (60) days prior to his employment by the taxpayer, and ~~if further~~~~provided~~ that~~such~~ person has remained in the employ of the taxpayer for at least one hundred eighty (180) consecutive days during the taxable year in which the taxpayer claims the credit.
- (3) No credit shall be allowed to any taxpayer for any person hired under any of the following circumstances:
- (a) A person for whom the taxpayer receives federally funded payments for on-the-job training;~~or~~
 - (b) For any person who bears any of the relationships to the taxpayer described in paragraphs (1) through (8) of Section 152(a) of the Internal Revenue Code, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of the corporation as determined with the application of Section 267(c) of the code;~~or~~
 - (c) If the taxpayer is an estate or trust, to any person who is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of Section 152(a) of the code to a grantor, beneficiary, or fiduciary of the estate or trust; or
 - (d) To any person who is a dependent of the taxpayer as described in code Section 152(a)(9), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
- (4) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year by such a controlled group of corporations. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to ~~that~~~~such~~ term by code Section 1563(a), except that "more than fifty percent (50%)" shall be substituted for "at least eighty percent (80%)" each place it appears in code Section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(c) of code Section 1563.
- (5) For purposes of this section, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and in no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year.
- (6) No credit shall be allowed under subsection (2) of this section to any organization which is exempt from income tax by this chapter.
- (7) In the case of an electing small business corporation, the amount of the credit determined under this section for any taxable year shall be apportioned pro rata among the persons who are shareholders of ~~the~~~~such~~ corporation on the last day of the taxable year, and any person to whom~~such~~ an amount is so apportioned shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for ~~that~~~~such~~ amount.
- (8) In the case of an estate or trust, the amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each, and any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for ~~that~~~~such~~ amount.

- (9) In no event shall the credit allowed, pursuant to this section, for any taxable year exceed the tax liability of the taxpayer for the taxable year.

Section 101. KRS 142.301 is amended to read as follows:

As used in KRS 142.301 to 142.359:

- (1) "Cabinet" means the Revenue Cabinet;
- (2) "Charitable provider" means any provider which does not charge its patients for health care items or services, and which does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government. The collaboration with public hospitals, agencies, or other providers in the delivery of patient care; affiliation with public institutions to provide health care education; or the pursuit of research in cooperation with public institutions or agencies shall not be considered as the receipt of government support by a charitable provider;
- (3) "Dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug;
- (4) "Entity" means any firm, partnership, joint venture, association, corporation, company, joint stock association, trust, business trust, syndicate, cooperative, or other group or combination acting as a unit;
- (5) "Gross revenues" means the total amount received in money or otherwise by a provider for the provision of health care items or services in Kentucky, less the following:
 - (a) Amounts received by any provider as an employee or independent contractor from another provider for the provision of health care items or services if:
 1. The employing or contracting provider receives revenue attributable to health care items or services provided by the employee or independent contractor receiving payment; and
 2. The employing or contracting provider is subject to the tax imposed by KRS 142.303, 142.307, 142.309, and 142.311 on the receipt of that revenue;
 - (b) Amounts received as a grant or donation by any provider from federal, state, or local government or from an organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code for:
 1. Research; or
 2. Administrative or operating costs associated with the implementation and operation of an experimental program;
 - (c) Salaries or wages received by an individual provider as an employee of a charitable provider, the federal government, or any state or local governmental entity;
 - (d) Salaries or wages received by an individual provider as an employee of a public university for the provision of services at a student health facility; and
 - (e) Amounts received by an HMO on a fixed, prepayment basis as premium payments.
- (6) "Health care items or services" means:
 - (a) Inpatient hospital services;
 - (b) Outpatient hospital services;
 - (c) Nursing facility services;
 - (d) Services of intermediate care facilities for the mentally retarded;
 - (e) Physicians' services provided prior to July 1, 1999;
 - (f) Licensed home health care agency services;
 - (g) Outpatient prescription drugs; and
 - (h) HMO services;

- (7) "Health maintenance organization" or "HMO" means an organization established and operated pursuant to the provisions of Subtitle 38 of KRS Chapter 304;
- (8) "Hospital" means an acute care, rehabilitation, or psychiatric hospital licensed under KRS Chapter 216B;
- (9) "Hospital services" means all inpatient and outpatient services provided by a hospital. "Hospital services" does not include services provided by a noncontracted, university-operated hospital, or any freestanding psychiatric hospital, if necessary waivers are obtained by the Cabinet for Human Resources from the Health Care Financing Administration, or hospitals operated by the federal government;
- (10) "~~Health Services~~~~Human Resources~~ secretary" means the secretary of the Cabinet for *Health Services*~~Human Resources~~ or that person's authorized representative;
- (11) "Inpatient hospital services," "outpatient hospital services," "intermediate care facility services for the mentally retarded," "physician services," "licensed home health care agency services," and "outpatient prescription drugs" have the same meaning as set forth in regulations promulgated by the Secretary of the Department of Health and Human Services and codified at 42 C.F.R. part 440, as in effect on December 31, 1993;
- (12) "Medicaid" means the state program of medical assistance as administered by the Cabinet for *Health Services*~~Human Resources~~ in compliance with 42 U.S.C. sec. 1396;
- (13) "Nursing facility services" means services provided by a licensed skilled care facility, nursing facility, nursing home or intermediate care facility, excluding intermediate care facilities for the mentally retarded;
- (14) "Person" means any individual, firm, partnership, joint venture, association, corporation, company, joint stock association, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit and the legal successor thereof;
- (15) "Provider" means any person receiving gross revenues for the provision of health care items or services in Kentucky, excluding any facility operated by the federal government; and
- (16) "Secretary" means the secretary of the Revenue Cabinet or that person's authorized representative.

Section 102. KRS 142.307 is amended to read as follows:

A tax is hereby imposed at a rate of two percent (2%) on gross revenues received by each provider on or after July 15, 1994, for the provision of nursing facility services, intermediate care facility services for the mentally retarded, licensed home health care services and HMO services. The tax imposed by this section shall apply to freestanding psychiatric hospitals if necessary waivers are obtained by the Cabinet for *Health Services*~~Human Resources~~ from the Health Care Financing Administration. The tax imposed by this section shall not apply to gross revenues received for dispensing outpatient prescription drugs subject to tax under KRS 142.311.

Section 103. KRS 142.347 is amended to read as follows:

- (1) Except when the *health services*~~human resources~~ secretary has been granted specific authority in KRS 142.301 to 142.359, the cabinet shall administer the provisions of KRS 142.301 to 142.359, and shall have all of the powers, rights, duties, and authority with respect to the assessment, collection, refunding, and administration of the taxes imposed by KRS 142.303, 142.307, 142.309, and 142.311, conferred generally by the Kentucky Revised Statutes including KRS Chapters 131, 134, and 135.
- (2) The Cabinet for *Health Services*~~Human Resources~~ shall be responsible for compliance with all federal reporting requirements regarding the taxes imposed by KRS 142.303, 142.307, 142.309, and 142.311.
- (3) The Cabinet for *Health Services*~~Human Resources~~ shall fully cooperate with the cabinet and shall provide the cabinet with any information requested to carry out the provisions of KRS 142.301 to 142.359.

Section 104. KRS 142.351 is amended to read as follows:

- (1) A report of revenue receipts from the taxes imposed by KRS 142.303, 142.307, 142.309, and 142.311 shall be provided on a quarterly basis by the cabinet to the *health services*~~human resources~~ secretary on or before the tenth day of the second month following the close of each fiscal quarter.
- (2) It is the responsibility of each provider, subject to tax under KRS 142.303, 142.307, 142.309, and 142.311 to register with the cabinet, and comply with the tax and reporting provisions of KRS 142.301 to 142.359.

Section 105. KRS 151.035 is amended to read as follows:

- (1) The Kentucky Geological Survey shall be designated as the Commonwealth's official repository for all information relating to the occurrence and quality of ground water as defined in KRS 151.100.
- (2) The Cabinet for Natural Resources and Environmental Protection, the Cabinet for **Health Services**~~[Human Resources]~~, and any other cabinet, department, commission, board, or governmental agency, except as provided in subsection (4) of this section, that, by statute, administrative regulation, or as part of its routine activities, collects or generates information about ground water, shall transmit or cause to be transmitted that information to the Kentucky Geological Survey within ninety (90) days of receipt or generation, or a time determined between the Geological Survey and the other party.
- (3) The information to be transmitted may include:
 - (a) Drillers logs and completion reports of wells drilled or dug for the purpose of producing, testing, or monitoring ground water;
 - (b) Geophysical logs of water wells;
 - (c) Water quality analyses of both organic and inorganic constituents;
 - (d) Results of all pump, extraction, and injection tests;
 - (e) Flow determinations of surface discharges of ground water; and
 - (f) Any additional data as the Kentucky Geological Survey shall require.
- (4) All institutions of higher learning shall be encouraged, but not required, to submit to the Kentucky Geological Survey copies of all research data, including theses and dissertations relating to the occurrence or quality of ground water.

Section 106. KRS 151B.0235 is amended to read as follows:

- (1) The State Advisory Council for Adult Education and Literacy is~~[hereby]~~ created and attached to the Department for Adult Education and Literacy. The members of the council shall be appointed by the Governor and shall be representative of the education community, business, industry, private citizens, public officials, and others with an interest in adult education and literacy programs. The council shall consist of twenty-one (21) members, each of whom shall serve for a term of three (3) years or until a successor is appointed and qualified, except that upon initial appointment, one-third (1/3) shall serve a one (1) year term, one-third (1/3) shall serve a two (2) year term, and one-third (1/3) shall serve a three (3) year term. The secretary of the Cabinet for Workforce Development, the secretary of the Cabinet for Education, Arts and Humanities, and the secretary of the Cabinet for **Families and Children**~~[Human Resources]~~ shall serve as ex officio members. Eleven (11) members of the council shall constitute a quorum. A member may be removed for cause in accordance with procedures established by the council and shall serve without salary but shall be reimbursed for expenses in the same manner as state employees. Any vacancy occurring on the council shall be filled by the Governor for the unexpired term.
- (2) The duties of State Advisory Council for Adult Education and Literacy are to advise the secretary of the Cabinet for Workforce Development and the Governor on:
 - (a) The development and implementation of measurable literacy and adult education goals;
 - (b) The coordination and monitoring of literacy training programs to ensure progress toward the long-term goals of the state;
 - (c) Improvement of the quality of literacy programs by supporting the integration of services, staff training, technology-based learning, and the integration of literacy program resources conducted by various agencies of state government; and
 - (d) Private sector initiatives that would improve adult education and literacy programs.

Section 107. KRS 151B.220 is amended to read as follows:

- (1) There is~~[hereby]~~ created a Kentucky Job Training Coordinating Council which for administrative, budget, and support purposes shall be attached to the Cabinet for Workforce Development.
 - (a) The council shall advise the secretary of the Cabinet for Workforce Development, the Kentucky Occupational and Information Coordinating Committee (KOICC), the Citizens' Commission for Human

Resources, the secretary for *Families and Children*~~Human Resources~~, the secretary for economic development, the commissioner for employment services, and other officials of the Commonwealth on Job Training Partnership Act policy matters concerning the delivery of skills development services including the assessment of needs, the development of program alternatives, the determination of priorities, the formulation of policy, the allocation of resources, and the evaluation of programs. The council shall be utilized by the Cabinet for Workforce Development and the Cabinet for *Families and Children*~~Human Resources~~ to fulfill federal requirements for citizens' advisory councils associated with programs designed to provide skills development services.

- (b) The council shall:
1. Perform the functions assigned to it in the Job Training Partnership Act, 29 U.S.C. sec. 1501 et seq., and any amendments thereto, including those contained in the Economic Dislocation and Worker Adjustment Assistance Act, Pub. L. 100-418, 102 Stat. 1524, 1536;
 2. Plan, coordinate, monitor, and provide advice to the secretary for workforce development and the Governor regarding the provisions of programs and services set forth in the Job Training Partnership Act as amended; and
 3. Execute other employment and training responsibilities not enumerated in Pub. L. 97-300, as amended, as determined by the Governor or the secretary for workforce development.
- (c) The council shall consist of twenty-one (21) members who shall be appointed by the Governor and who shall serve for a term of three (3) years or until a successor is appointed and qualified except that upon initial appointment, six (6) of the members shall serve for a term of one (1) year, six (6) of the members shall serve for a term of two (2) years, and five (5) of the members shall serve for a term of three (3) years. The secretary of the Cabinet for Workforce Development, the commissioner of the Department for Adult Education and Literacy, and the secretary of the Cabinet for *Families and Children*~~Human Resources~~ or his designee shall serve as ex officio members. In the event of a vacancy, the Governor shall appoint a replacement to serve for the remainder of the unexpired term. Composition of the council shall be in conformity with 29 U.S.C. sec. 1532. From the membership of the council, the Governor shall annually appoint a chairman who shall not be an employee of state government. The secretary of the Cabinet for Workforce Development or his designee shall serve as secretary of the council. The Cabinet for Workforce Development shall provide the council with professional, technical, and clerical staff, and other necessary support services. Funding for the expenses of the council shall be in accordance with 29 U.S.C. sec. 1532(a)(1) and 29 U.S.C. sec. 1602(b)(4). Council members shall not receive any compensation but shall be reimbursed for their expenses in attending meetings and other authorized activities as provided by regulation.
- (d) The council shall meet as often as necessary to perform the tasks as outlined in paragraph (b) of this subsection. Meetings shall be called by the chairman or by the secretary of the Cabinet for Workforce Development in consultation with the chairman and notice of the meetings shall be either in writing or by telephone. For the purpose of conducting business, a majority of the membership, excluding vacancies, shall constitute a quorum.
- (e) The council shall be empowered to accept gifts and grants, but all such moneys shall be administered by the cabinet, which shall administer these funds through the appropriate trust and agency accounts.

Section 108. KRS 154.12-203 is amended to read as follows:

- (1) There is created the Kentucky Commission on Military Affairs. The commission shall be a separate administrative body of state government within the meaning of KRS Chapter 12.
- (2) It shall be the purpose of the Kentucky Commission on Military Affairs to:
 - (a) Address matters of military significance to Kentucky;
 - (b) Maintain a cooperative and constructive relationship between state agencies and the military entities in Kentucky;
 - (c) Advise the Governor, the General Assembly, the Kentucky congressional delegation, and other appropriate government officials on all matters in which the military services and the Commonwealth have mutual interests, needs, and concerns;

- (d) Take action to promote and optimize state and Department of Defense initiatives that will improve the military value of Kentucky's National Guard, active, and reserve military force structure and installations, and improve the quality of life for military personnel residing in the Commonwealth;
 - (e) Coordinate, as necessary, the state's interest in future Department of Defense base closure and restructuring activities;
 - (f) Recommend state, federal, and local economic development projects which would promote, foster, and support economic progress through military presence in the Commonwealth;
 - (g) Promote and assist the private sector in developing spin-off investments, employment, and educational opportunities associated with high technology programs and activities at Kentucky's military installations;
 - (h) Recommend to the Kentucky Economic Development Partnership the long-range options and potential for the defense facilities located in Kentucky; and
 - (i) Develop strategies to encourage military personnel to retire and relocate in Kentucky and promote those leaving the military as a viable quality workforce for economic development and industrial recruitment.
- (3) The Kentucky Commission on Military Affairs shall consist of:
- (a) The Governor, or his designated representative;
 - (b) The secretary of the Cabinet for Economic Development, or his designated representative;
 - (c) The adjutant general of the Commonwealth, or his designated representative;
 - (d) The secretaries of the following cabinets, or their designees:
 - 1. Finance and Administration;
 - 2. ***Families and Children***~~[Human Resources]~~;
 - 3. Justice;
 - 4. Natural Resources and Environmental Protection;
 - 5. Transportation; and
 - 6. Workforce Development;
 - (e) The Attorney General, or his designee;
 - (f) Kentucky's Civilian Aide to the Secretary of the United States Army;
 - (g) The commander or his designee of each of the following, as nonvoting, ex-officio members:
 - 1. Fort Campbell;
 - 2. Fort Knox;
 - 3. United States Army Recruiting Command;
 - 4. Bluegrass Army Depot;
 - 5. Louisville District of the United States Army Corps of Engineers;
 - 6. Any other installation or organization with a major military mission in the Commonwealth;
 - 7. The One Hundredth Training Division; and
 - (h) Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.
- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.

- (5) The Governor shall appoint the chair and vice chair of the commission from the five (5) at-large members, by September 30, 1996. The chair shall call a meeting of the commission by October 31, 1996, for the purpose of creating an executive committee.
 - (a) The commission shall establish an executive committee consisting of the Secretary of the Cabinet for Economic Development, the Adjutant General of the Commonwealth, and the five (5) at-large members.
 - (b) The chair and vice chair of the commission shall serve as chair and vice chair of the executive committee.
 - (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
- (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business.
- (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (8) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds and operate the normal business activities of the commission with approval of the executive committee.
- (9) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Section 109. KRS 154.20-020 is amended to read as follows:

- (1) The secretary shall be authorized to commit the cabinet to any project or proposal, subject to approval of the committee as necessary except that any state incentive agreement requiring the participation of other agencies of state government shall require the concurrence of the board.
- (2) No project shall be funded in whole or part by the authority unless first approved by its committee pursuant to administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (3) Lending decisions made by the authority shall be based, if possible, feasible, and not otherwise precluded by federal or state law, on utilizing state funds to leverage private sector investment.
- (4) The authority shall cooperate with the Cabinet for **Health Services**~~Human Resources~~ in facilitation of KRS 194.245(1).

Section 110. KRS 154.45-060 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 154.45-020 to 154.45-110, there is ~~hereby~~ created the Enterprise Zone Authority of Kentucky consisting of eleven (11) members. The authority shall be appointed as follows: one (1) member appointed by the Governor from a list of three (3) persons nominated by the Labor Management Advisory Council; one (1) member appointed by the Governor from a list of three (3) persons nominated by the Kentucky League of Cities; one (1) member appointed by the Governor from a list of three (3) persons nominated by the Kentucky Association of Counties; one (1) member appointed by the Governor who is qualified to represent the interests of Kentucky's small business community; one (1) member appointed by the Governor from a list of three (3) persons nominated by the AFL-CIO of Kentucky; two (2) members appointed by the Governor to serve at large; one (1) member appointed by the Governor from a list of five (5) persons nominated by the secretary of the Cabinet for Economic Development; the secretary of the Cabinet for Economic Development or his designee; the secretary of the Revenue Cabinet or his designee; and the secretary of the Cabinet for **Families and Children**~~Human Resources~~ or his designee.
- (2) Authority members shall serve a term of four (4) years and, except for the secretary of the Cabinet for Economic Development, the secretary of the Revenue Cabinet, and the secretary of the Cabinet for **Families and Children**~~Human Resources~~, shall not be eligible to succeed themselves.
- (3) The authority shall meet at least four (4) times per year. A majority of the total authority membership shall be required to designate an area as an enterprise zone and to certify businesses as qualified businesses. The

authority shall keep official minutes of all meetings. All members shall serve until such time as their successors are qualified and appointed. Each member of the authority shall receive one hundred dollars (\$100), not to exceed twelve hundred dollars (\$1,200) per calendar year, as compensation for attending official meetings of the authority. Each member of the authority shall be reimbursed for travel expenses actually incurred in the discharge of his duties on the authority.

- (4) The Cabinet for Economic Development shall serve as staff for the authority and carry out the administrative duties and functions as directed by the authority.

Section 111. KRS 154.45-120 is amended to read as follows:

The Cabinet for **Workforce Development**~~{Human Resources}~~ shall verify employment information relating to the hiring requirements of qualified businesses to select and maintain employees from the targeted workforce. The Cabinet for **Workforce Development**~~{Human Resources}~~ shall fully cooperate with the authority in the development of a system to monitor employment information supplied by qualified businesses.

Section 112. KRS 157.317 is amended to read as follows:

- (1) The Kentucky Board of Education through administrative regulations shall develop and implement a statewide Early Childhood Education Program which shall include basic principles of child development, early childhood education, and all other related concepts which deal with generally-accepted early childhood programs, including the delivery of health and social services to children as needed.
- (2) (a) The Kentucky Early Childhood Advisory Council is created to advise the chief state school officer on the implementation of early childhood education programs. The Department of Education shall provide staff and administrative support for the council.
- (b) The Kentucky Early Childhood Advisory Council shall consist of one (1) member of the Kentucky Board of Education appointed by the chairman and sixteen (16) members appointed by the Governor. The sixteen (16) appointed members shall include one (1) representative from each of the following agencies or groups: preschool teachers, public school teachers, elementary school principals, parents, child care providers, community education, the Interagency Task Force on Family Resource Centers and Youth Services Centers, the Head Start Association, the Head Start director, the Head Start Program, the Infant/Toddler Coordinating Council, the Department for **Public Health**~~{Services}~~, the Department for Social Services, the Department for Social Insurance, the colleges of education, and the colleges of home economics.
- (c) Members shall serve a four (4) year term, except initial appointments shall be set so that four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, four (4) members shall serve three (3) years, and four (4) members shall serve four (4) years.

Section 113. KRS 158.035 is amended to read as follows:

Except as provided in KRS 214.036, no child shall be eligible to enroll as a student in any public or private elementary or secondary school without first presenting a certificate from a medical or osteopathic physician licensed in any state. The certificate shall state that the child has been immunized against diphtheria, tetanus, poliomyelitis, rubeola, and rubella in accordance with the provisions of this section and KRS 214.010, 214.020, 214.032 to 214.036, and 214.990 and the regulations of the secretary for **health services**~~{human resources}~~. The governing body of private and public schools shall enforce the provisions of this section.

Section 114. KRS 158.037 is amended to read as follows:

Each public or private elementary or secondary school shall report tuberculin skin test and immunization results to its local health department in accordance with regulations promulgated by the Cabinet for **Health Services**~~{Human Resources}~~.

Section 115. KRS 158.135 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
- (a) "State agency children" means:
1. Those children of school age committed to or in custody of the Cabinet for **Families and Children**~~{Human Resources}~~ and placed, or financed by the cabinet, in a Cabinet for **Families**

- and Children*~~[Human Resources]~~ operated or contracted institution, treatment center, or facility, or placed or financed by the Cabinet for *Families and Children*~~[Human Resources]~~ in a private facility pursuant to child care agreements other than those for foster care;
2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the mentally retarded; and
 3. Those children committed to or in custody of the Department of Juvenile Justice, except for children placed in a juvenile detention facility or jail as defined in KRS 15A.067.
- (b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if identified on an individual educational plan, and more intensive educational programming.
- (2) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.
 - (3) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for *Families and Children*~~[Human Resources]~~ unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.
 - (4) The Cabinet for *Families and Children*~~[Human Resources]~~ shall contract with a university-affiliated training resource center utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.
 - (5) Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

Section 116. KRS 158.160 is amended to read as follows:

- (1) A parent, legal guardian, or other person or agency responsible for a student shall notify the student's school if the student has any medical condition which is defined by the Cabinet for *Health Services*~~[Human Resources]~~ in administrative regulation as threatening the safety of the student or others in the school. The notification shall be given as soon as the medical condition becomes known and upon each subsequent enrollment by the student in a school. The principal, guidance counselor, or other school official who has knowledge of the medical condition shall notify the student's teachers in writing of the nature of the medical condition.
- (2) If any student is known or suspected to have or be infected with a communicable disease or condition for which a reasonable probability for transmission exists in a school setting, the superintendent of the district may order the student excluded from school. The time period the student is excluded from school shall be in accordance with generally accepted medical standards which the superintendent shall obtain from consultation with the student's physician or the local health officer for the county in which the school district is located. During the presence in any district of dangerous epidemics, the board of education of the school district may order the school closed.

Section 117. KRS 160.305 is amended to read as follows:

- (1) The Cabinet for *Families and Children*~~[Human Resources]~~ may enter into a contract with the local board of education of any school district in the Commonwealth for the use of school buses to transport persons eligible for transportation services at times when the buses are not needed to transport students to or from school or school events. Persons eligible for *these*~~[such]~~ transportation services shall be:
 - (a) Sixty-two (62) years of age or older;
 - (b) Those with physical or mental disabilities; or

- (c) Any other person designated by the Cabinet for *Families and Children*~~[Human Resources]~~ as appropriate for *these*~~[such]~~ transportation services.
- (2) Before *this*~~[such a]~~ contract is entered into, the Cabinet for *Families and Children*~~[Human Resources]~~ shall formulate a plan for the use of school buses for *these*~~[such]~~ purposes and shall submit it to the local board of education for its approval or disapproval. The plan for the use of school buses for *these*~~[such]~~ transportation purposes shall include routes, schedules, cost, and any other matters deemed necessary by both parties.
- (3) The cost of transporting persons eligible under the provisions of subsection (1) of this section shall be borne by the Cabinet for *Families and Children*~~[Human Resources]~~.

Section 118. KRS 163.086 is amended to read as follows:

- (1) There shall be a Governor's Council on Vocational Education, consisting of thirteen (13) members appointed by the Governor.
- (2) Members shall be appointed for three (3) year terms. Any vacancy occurring on the council shall be filled by the Governor for the unexpired term. All appointments shall conform to the requirements of Section 112 of Public Law 98-524. Members shall be representative of citizens and groups within the state having an interest in vocational education as follows: five (5) members shall represent business, industry, and agriculture, including one (1) member who represents small business concerns and one (1) member who is a private sector member of the Kentucky Job Training Coordinating Council; two (2) members shall represent labor organizations; and six (6) members shall represent secondary and postsecondary vocational institutions, career guidance, special education, counseling organizations, and special populations to include women, the disadvantaged, individuals with disabilities, individuals with limited English proficiency, and minorities.
- (3) Members shall select from among its membership a chairperson who shall be representative of the private sector. A quorum of the council shall consist of seven (7) members, and a quorum at any duly-called meeting may act on any matter before it for consideration. Each member shall have one (1) vote.
- (4) Members shall be reimbursed only for actual expenses incurred in the discharge of official business, subject to *administrative* regulations *promulgated*~~[established]~~ by the Finance and Administration Cabinet. All expenses reimbursed to members shall be paid from operating funds available to the Governor's Council on Vocational Education.
- (5) The council shall be assigned duties, responsibilities and operation requirements as specified in Public Law 98-524 to include the following:
- (a) Meet with the State Board for Adult and Technical Education or its representatives during the planning year to advise on the development of the state plan;
 - (b) Advise the State Board for Adult and Technical Education and make reports to the Governor, the business community and the general public of the state concerning the policies the state should pursue to strengthen vocational education, with particular attention to programs for individuals with disabilities; and initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;
 - (c) Analyze and report on the distribution of spending for vocational education in the state and on the availability for vocational education activities and services within the state;
 - (d) Furnish consultation to the State Board for Adult and Technical Education on the establishment of evaluation criteria for vocational education programs within the state;
 - (e) Submit recommendations to the State Board for Adult and Technical Education on the conduct of vocational education programs conducted in the state;
 - (f) Assess the distribution of financial assistance furnished under the Carl D. Perkins Vocational Education Act (Public Law 98-524), particularly with the analysis of the distribution of financial assistance between secondary and postsecondary vocational education programs;
 - (g) Recommend procedures to the State Board for Adult and Technical Education to ensure and enhance the participation of the public in the provision of vocational education at the local level within the state, particularly the participation of local employers and local labor organizations;

- (h) Report to the State Board for Adult and Technical Education on the extent to which special populations are provided with equal access to quality vocational education programs;
 - (i) Evaluate at least once every two (2) years the vocational education program delivery systems and make recommendations to the State Board for Adult and Technical Education on the adequacy and effectiveness of the coordination that takes place between vocational education and the Job Training Partnership Act; and
 - (j) Advise the Governor, the State Board for Adult and Technical Education, Kentucky Job Training Coordinating Council, the secretary of the Cabinet for *Workforce Development*~~Human Resources~~, and the secretary of labor of these findings and recommendations.
- (6) The council shall be authorized to adopt bylaws providing for the call of its meetings, which shall be held at least quarterly, and for its operating procedures for the official conduct of business. The council shall hold not less than one (1) public meeting each year at which the public shall be given an opportunity to express views concerning the vocational education program of the state.
- (7) The council may obtain the services of the professional, technical, and clerical personnel necessary to carry out its functions and to contract for the services necessary to enable the council to carry out its evaluation functions, independent of programmatic and administrative control by other state boards, agencies, and individuals.
- (8) The council shall be authorized to accept and use all available funds including, but not limited to, federal grants. The funds shall not be diverted or reprogrammed for any other purpose by any state agency or individual. The council shall designate an agency within the Cabinet for Workforce Development to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

Section 119. KRS 163.506 is amended to read as follows:

- (1) The Commission on the Deaf and Hard of Hearing shall consist of:
- (a) Seven (7) members appointed by the Governor as follows:
 1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;
 2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;
 3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;
 4. One (1) person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term; **and**
 5. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;
 - (b) One (1) representative of the Cabinet for *Health Services*~~Human Resources~~ appointed by the secretary;
 - (c) **One representative of the Cabinet for Families and Children appointed by the secretary;**
 - (d) The secretary of the Education, Arts, and Humanities Cabinet or his designee;
 - ~~(e)(d)~~ The president of the Kentucky Association for the Deaf or his designee;
 - ~~(f)(e)~~ The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and
 - ~~(g)(f)~~ Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)~~(f)(e)~~ of this section, appointed as follows:
 1. One (1) parent of a hard of hearing or deaf child;
 2. One (1) representative of a private organization providing consistent services to the deaf and hard of hearing; and
 3. One (1) member at large.

- (2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsections (1)(a)2. through (1)(a)5. and subsection (1)(g)~~(f)~~ of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.
- (3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

Section 120. KRS 164.935 is amended to read as follows:

- (1) As used in this section:
 - (a) "Physician" means a medical doctor practicing full-time family medicine, general obstetrics and gynecology, general pediatrics, or general internal medicine; and
 - (b) "Underserved geographic area" means a county in which the ratio between physicians practicing full time in that county and the county's population results in each physician serving two thousand five hundred (2,500) or more residents, based on population data acceptable to either the University of Kentucky or the University of Louisville.
- (2) The University of Kentucky and University of Louisville shall establish and maintain physician recruitment and placement services, the principal function of which shall be to recruit or place family or general practice physicians in underserved geographic areas. The Cabinet for **Health Services**~~Human Resources~~ shall pay each university fifty thousand dollars (\$50,000) annually for basic administrative costs in addition to the fees enumerated in subsection (4) of this section.
- (3) Physician recruitment and placement services may be contracted by licensed health care facilities or services to assist in recruiting physicians in underserved geographic areas. Fees shall be charged by the University of Kentucky or the University of Louisville to the contracting party in an amount not to exceed ten thousand dollars (\$10,000) per physician.
- (4) If no licensed health care facility or service has contracted for recruitment services, when the University of Kentucky or the University of Louisville places a physician in an underserved geographic area or a psychiatrist in a state mental health facility, the following fees shall be paid to the university by the Cabinet for **Health Services**~~Human Resources~~, the total of which shall not exceed fifty thousand dollars (\$50,000) per university in addition to the fifty thousand dollars (\$50,000) per university enumerated in subsection (3) of this section:
 - (a) Ten thousand dollars (\$10,000) for a family practice physician entering permanent, full-time practice;
 - (b) Ten thousand dollars (\$10,000) for a psychiatrist entering full-time permanent employment in a state mental health facility;
 - (c) Eight thousand dollars (\$8,000) for a general obstetrician-gynecologist entering permanent, full-time practice;
 - (d) Two thousand dollars (\$2,000) for a general pediatrician or general internal medicine practitioner entering permanent, full-time practice; and
 - (e) One thousand dollars (\$1,000) for any other licensed medical practitioner entering permanent, full-time practice.
- (5) Fees paid to the universities under the provisions of subsection (3) of this section shall be made only after sufficient proof has been presented documenting the university's principal role in influencing the physician's practice location. Correspondence from physicians placed, as well as all other parties directly involved, shall state that the university substantially influenced the physician's choice of practice location and describe in detail the services provided by the university.

Section 121. KRS 174.410 is amended to read as follows:

- (1) The secretary shall be responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported by all carrier modes within the Commonwealth.
- (2) The secretary, in consultation with the secretary of the Natural Resources and Environmental Protection Cabinet and the secretary of the Cabinet for **Health Services**~~Human Resources~~, shall adopt by reference or in

entirety, the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 to 174.425.

- (3) The cabinet and the Justice Cabinet shall cooperate with and assist the Natural Resources and Environmental Protection Cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets, and all activities shall occur in accordance with the terms of the agreement. The agreement shall address and include, but not necessarily be limited to, the following items:
 - (a) As a part of routine and periodic transportation checks and inspections, ensure that shipments of hazardous waste do not present a threat to the public or the environment; are accompanied by the required hazardous waste manifest or such other shipping or delivery documents as may be acceptable to the Natural Resources and Environmental Protection Cabinet; and comply with applicable shipping standards;
 - (b) Upon receipt of a written request from the secretary or general counsel of the Natural Resources and Environmental Protection Cabinet, actively conduct field investigations relating to the illegal, improper, or unauthorized transport of hazardous waste in the state. Such investigations may, at a minimum, include passive and active surveillance, apprehension, and reporting, with the scope and extent of each investigation to be previously agreed to by the involved cabinets;
 - (c) Compile and maintain such necessary records ~~that as~~ may normally be required to carry out the provisions of this subsection and shall for minor violations report quarterly, and for major violations report weekly, to the Natural Resources and Environmental Protection Cabinet on the status of the interagency hazardous waste transportation monitoring and enforcement activity for irregularities or violations;
 - (d) Provide ~~any such~~ information, evidence, and other support, either in written form or in the form of oral testimony during a legal proceeding or both, as may be required by the Natural Resources and Environmental Protection Cabinet to fully carry out its statutory responsibility under the appropriate sections of KRS Chapter 224;
 - (e) The Natural Resources and Environmental Protection Cabinet shall, unless specifically agreed otherwise, have primary responsibility for initiating and conducting all legal proceedings arising from the terms and provisions of this subsection; and
 - (f) The Natural Resources and Environmental Protection Cabinet shall provide sufficient training, technical assistance, and other support to the appropriate cabinets to prepare representatives of the cabinets to adequately carry out the responsibilities set forth in this subsection.

Section 122. KRS 175.525 is amended to read as follows:

- (1) The authority or the cabinet shall establish by administrative regulation promulgated pursuant to KRS Chapter 13A a toll road identification card to be provided to paying and nonpaying users of toll facilities. The toll road identification cards shall be issued through an application process. A fee that shall not exceed five dollars (\$5) may be established for the issuance of each card.
- (2) Upon application, nonpaying accounts shall be established for:
 - (a) State police, local police, and fire department vehicles while the vehicles are being operated in an official capacity on a turnpike project;
 - (b) Emergency vehicles operated by an ambulance service while the vehicles are being operated in an official capacity, in both emergency and nonemergency situations on a turnpike project; and
 - (c) Funeral processions on turnpike projects.
- (3) To receive the exemption contained in subsection (2) of this section, an ambulance service shall be licensed by the Cabinet for **Health Services**~~Human Resources~~.

Section 123. KRS 186.570 is amended to read as follows:

- (1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of

operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:

- (a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.
 - (b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.
 - (c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability of these persons. The board shall consist of licensed medical and rehabilitation specialists. The non-state government members of the Medical Review Board shall be paid a fee of one hundred dollars (\$100) per day plus reasonable expenses for performing this service.
 - (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.
 - (e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.
 - (f) A person required by KRS 186.480 to take an examination has been issued a license without first having passed the examination.
 - (g) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.
 - (h) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.
 - (i) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
 - (j) That person has failed to provide proof of motor vehicle security pursuant to KRS 186A.040.
- (2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for **Families and Children**~~[Human Resources]~~ that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied or suspended. The denial or suspension shall continue until the arrearage has been eliminated, or payments on the child support arrearage are being made in accordance with a court or administrative order. Before the license may be reinstated, proof of elimination of the child support arrearage from the Cabinet for **Families and Children**~~[Human Resources]~~ shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for **Families and Children**~~[Human Resources]~~ and the Transportation Cabinet.
 - (3) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by first class mail to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
 - (4) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which if committed in this state would be grounds for the suspension or revocation of an operator's license. If a person so convicted is not the holder of a Kentucky operator's license, the cabinet shall deny him a license for the same period as if he had possessed a license and license had been suspended. The cabinet may, upon receiving a record of the conviction in this state of a nonresident

driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.

- (5) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a commercial driver's license.
- (6) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.
- (7) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

Section 124. KRS 189.910 is amended to read as follows:

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

Section 125. KRS 189A.040 is amended to read as follows:

- (1) In addition to any other penalty prescribed by subsection (4)(a) of KRS 189A.010, the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender:
 - (a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.
 - (b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment.
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the ninety (90) day period.
 - (d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.
- (2) In addition to any other penalty prescribed by subsection (4)(b) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:
 - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.

- (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment.
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period.
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.
- (3) In addition to any other penalty prescribed by subsection (4)(c) or (d) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:
- (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential type program.
 - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program.
 - (c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period.
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.
- (4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.
- (5) For the purposes of this section, treatment means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for **Health Services**~~[Human Resources]~~ for services as required under this section.
- (6) The Cabinet for **Health Services**~~[Human Resources]~~ shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for **Health Services**~~[Human Resources]~~ shall include:
- (a) Manner of assessment;
 - (b) Appropriate education and treatment plans; and
 - (c) Referrals to other treatment providers.
- (7) The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.
- (8) Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. Section 126. KRS 195.105 is amended to read as follows:
- (1) The ~~secretaries~~~~[secretary]~~ for **health services and for families and children**~~[human resources]~~ in coordination with the ~~Department of~~ Personnel **Cabinet are**~~[is]~~ authorized to establish formal training programs within the Cabinet for **Health Services and the Cabinet for Families and Children**~~[Human Resources]~~ or within any of the departments, divisions, or sections of the ~~cabinets~~~~[cabinet]~~ for the training of necessary personnel for the administration of the programs of the ~~cabinets~~~~[cabinet]~~. When courses of study, applicable to the program processes of the ~~cabinets~~~~[cabinet]~~, are not available through instruction within the ~~cabinets~~~~[cabinet]~~,

arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose, and ~~this~~^{such} training shall be deemed to be a part of the ~~cabinets'~~^{training} program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, ~~these~~^{such} assignments to relate directly to the work assignment of the employee. After consulting with the ~~Personnel Cabinet~~^{Department of Personnel}, position classifications in the research series shall be established for employees on ~~such~~ work study assignments, and funds of the ~~cabinets~~^{cabinet} may be used to pay salaries commensurate with the appropriate classification while the employee is receiving such training.

- (2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of such training, the state will hold a claim against ~~that person~~^{him} for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

Section 127. KRS 195.020 is amended to read as follows:

- (1) The ~~Cabinet for Health Services and the Cabinet for Families and Children~~^{Cabinet} shall exercise all functions of the state in relation to:
 - (a) Administration and supervision of all forms of public assistance including general home relief, outdoor and indoor care for persons in need, old age assistance, aid to dependent children, and aid to individuals who are blind and other individuals with disabilities.
 - (b) Administration and supervision of services to needy, neglected, and dependent children.
- (2) All administrative functions of the nature outlined above, heretofore performed by other agencies of the state, are hereby transferred to and shall hereafter be performed by the Cabinet for ~~Health Services or the Cabinet for Families and Children~~^{Human Resources}.

Section 128. KRS 195.180 is amended to read as follows:

The duties of the Cabinet for ~~Families and Children~~^{Human Resources} shall be to:

- (1) Promote and aid in the establishment of local programs supporting the employment of individuals with disabilities;
- (2) Conduct continuing programs of public information and promotion to educate the public as to problems of employment of individuals with disabilities;
- (3) Review existing state programs for employment of individuals with disabilities and make recommendations to the Governor, to the appropriate departments and agencies of the state, and to the General Assembly for improvements in and additions to such programs;
- (4) Assist and encourage governmental and private agencies to coordinate their efforts on behalf of employment of individuals with disabilities;
- (5) Cooperate with the federal government and with the governments of other states and cities in programs relating to individuals with disabilities;
- (6) Cooperate with all groups interested in job adjustment and employment of individuals with disabilities, including government agencies, organizations, private groups, and individuals.

Section 129. KRS 196.081 is amended to read as follows:

- (1) To facilitate the need for comprehensive planning for the Department of Corrections and for related matters the Kentucky State Corrections Commission is created and is attached to the office of the secretary of the Justice Cabinet. The commission shall consist of twelve (12) members as follows:
 - (a) The Attorney General;
 - (b) The secretary of the Justice Cabinet;
 - (c) The commissioner of the Department of Corrections;
 - (d) The chairman of the Parole Board;

- (e) The secretary of the Cabinet for *Families and Children*~~[Human Resources]~~;
 - (f) A county jailer chosen by the Governor;
 - (g) A Circuit Judge chosen by the Governor from a list of three (3) submitted by the Chief Justice;
 - (h) Two (2) criminal justice professionals who are familiar with correctional research, theory, and program implementation, appointed by the Governor;
 - (i) A representative from a law enforcement agency, appointed by the Governor;
 - (j) A Commonwealth's attorney chosen by the Governor from a list of three (3) submitted by the Prosecutors Advisory Council; and
 - (k) The state Public Advocate.
- (2) The terms of those representatives appointed by the Governor shall be three (3) years. These members shall serve at the pleasure of the Governor and shall be eligible for reappointment. If there is a vacancy, the Governor shall immediately make an appointment effective for the unexpired term.
- (3) The Governor shall appoint a chairman of the corrections commission from among its members. The members of the commission shall elect from among its members a vice chairman who shall preside and exercise the functions of chairman during absence or disability of the chairman.
- (4) Regular meetings of the commission shall be held at least once every three (3) months at a place, day, and hour determined by the commission. Special meetings shall be held when needed as determined by the chairman. If six (6) or more members of the commission request in writing that the chairman call a special meeting, the chairman shall call a special meeting.
- (5) Members of the commission shall receive reimbursement for necessary expenses for attendance at official commission meetings or public hearings. The commission shall be staffed by a director and other staff.
- (6) The commission shall:
- (a) Develop and approve the methodology to be used by the commission to project and maintain current six (6) year projections of prison populations;
 - (b) Develop a six (6) year plan for Department of Corrections operations, including both construction and programmatic elements; this plan shall be developed with information supplied by the agencies, departments, and groups represented on the commission, and other public and private agencies and citizens with a vested interest in corrections;
 - (c) Monitor, modify, and update the six (6) year plan as necessary but not less frequently than semiannually and submit the current plan to the Legislative Research Commission not later than six (6) months prior to the commencement of every regular session of the General Assembly;
 - (d) Assist the Department of Corrections in preparing and submitting legislative proposals, including budget requests necessary to implement and update the six (6) year plan;
 - (e) Review and make recommendations to the General Assembly concerning legislative proposals, including Department of Corrections budget proposals, to insure consistency with the six (6) year plan;
 - (f) Develop, in cooperation with the Department of Public Advocacy, the Administrative Office of the Courts, the Prosecutors Advisory Council, and other interested parties, a schedule of punitive and rehabilitative alternatives to imprisonment for dissemination to judges, prosecutors, and defense attorneys. The schedule shall include, but shall not be limited to, rehabilitation treatment and counseling, community work and service, and drug and alcohol testing;
 - (g) Receive regular reports from the Department of Corrections, on a schedule established by the commission, as to the department's progress in complying with the six (6) year plan;
 - (h) Review and make recommendations to the department on any significant change in programs, policies, procedures, staffing, classification, or other component of corrections operations which departs from the six (6) year plan;

- (i) Assist the Legislative Research Commission in the preparation of corrections impact statements for proposed legislation;
 - (j) Make recommendations to the Governor and the General Assembly concerning legislation affecting corrections including, but not limited to, legislation relating to sentencing, probation, and parole;
 - (k) In cooperation with the Administrative Office of the Courts, the Prosecutors Advisory Council, the Department ~~for~~ Social Services of the Cabinet for **Families and Children**~~[Human Resources]~~, and the Kentucky Bar Association, conduct educational seminars for judges, attorneys, and probation officers, to disseminate information concerning the availability and appropriate utilization of community service, rehabilitation, and other types of alternative sentences and conditions of probation; and
 - (l) Administer the provisions of KRS 196.700 to 196.735.
- (7) The six (6) year plan shall consist of at least the following elements:
- (a) The location, capacity, classification, and staffing of each penal institution and program administered by the Department of Corrections;
 - (b) The location, capacity, classification, staffing, and anticipated cost and time of construction of each new facility to be constructed or each facility expansion to be constructed during the six (6) year plan period;
 - (c) The administrative structure of the Department of Corrections;
 - (d) Prison population projections for the six (6) year plan period;
 - (e) Education, rehabilitation, and prison industries programs administered by the Department of Corrections;
 - (f) The inmate labor program administered by the department; and
 - (g) Contingency plans to deal with unexpected increases in prison population.
- (8) The six (6) year plan shall be submitted to the General Assembly and approved by the General Assembly with the additions, deletions, or modifications the General Assembly shall deem advisable. Upon adoption by the General Assembly, all new facilities, and renovations and expansions of existing facilities, shall be in accordance with the plan, except in the case of an emergency declared by the Governor after the adoption of the plan. All other material changes in the plan shall be presented to the Corrections Commission for review and recommendation prior to implementation. While a change may be implemented without commission approval, the Corrections Commission shall advise the Legislative Research Commission of any material change request that is not favorably recommended by the commission.

Section 130. KRS 196.171 is amended to read as follows:

- (1) The Department of Corrections shall develop an educational course on the human immunodeficiency virus infection and acquired immunodeficiency syndrome approved by the Cabinet for **Health Services**~~[Human Resources]~~ of not more than four (4) hours for the instruction of corrections personnel who have day to day contact with incarcerated persons and personnel who may be expected to respond to crisis situations. The literature and training curriculum shall include information of known modes of transmission and methods of controlling and preventing these diseases with an emphasis on appropriate behavior and attitude change. The training may be part of any continuing education program.
- (2) All persons referred to in subsection (1) of this section shall successfully complete the training required. Any person holding the position referred to in subsection (1) of this section shall not fill that position for more than one (1) year without successful completion of the required training. If the persons do not successfully complete the required training within the time specified, he shall be suspended from further service until he successfully completes the required training.

Section 131. KRS 197.055 is amended to read as follows:

- (1) The Department of Corrections, in conjunction with the Cabinet for **Health Services**~~[Human Resources]~~, shall establish a mandatory introductory and continuing education program on human immunodeficiency virus and acquired immunodeficiency syndrome for all inmates. Programs shall be specifically designed for inmates while incarcerated and in preparation for release into the community. Consideration shall be given to cultural and other relevant differences among inmates in the development of educational materials and shall include

emphasis on behavior and attitude change. The education program shall be continuously updated to reflect the latest medical information available.

- (2) If there is evidence that an inmate, while in the custody of the department, has engaged in behavior which places the inmate at a high risk of transmitting or contracting a human immunodeficiency disorder, the department shall begin a testing program which is consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority and shall target persons who have been involved in or reasonably thought to have been involved in a high risk behavior. For purposes of this subsection, "high-risk behavior" includes:
 - (a) Sexual contact with any person within the institution;
 - (b) The use of intravenous drugs;
 - (c) Tattooing; and
 - (d) Any other activity medically known to transmit the virus.
- (3) The results of the tests shall become a part of that inmate's medical file, accessible only to persons designated by agency administrative regulations.
- (4) The department shall establish policies consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority on the housing, physical contact, dining, recreation, and exercise hours or locations for inmates with immunodeficiency disorders as are medically indicated and consistent with the proper operation of its facilities.
- (5) The department shall report to the General Assembly by July 1 each year as to the implementation of this program and the participation by inmates and staff.
- (6) If an inmate is involved in a situation with a department employee which could result, according to the institution's physician, in the transmission of the human immunodeficiency virus infection, the inmate shall be tested.
- (7) All testing procedures, disclosure, and payment shall be pursuant to KRS 438.250.

Section 132. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
 - (a) The following ten (10) state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department of Local Government; commissioner of the Department of Housing, Buildings and Construction; secretary of the Cabinet for Economic Development; secretary of the Cabinet for *Families and Children* [~~Human Resources~~]; secretary of the Natural Resources and Environmental Protection Cabinet; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.
 - (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:
 1. Public housing authorities;
 2. Mortgage banking industry;
 3. Manufactured housing industry;
 4. Realtors;
 5. Homebuilders;
 6. Urban nonprofit housing organizations;
 7. Rural nonprofit housing organizations;
 8. Urban advocates for the homeless;

9. Rural advocates for the homeless;
10. Residents of economically-diverse urban neighborhoods;
11. Residents of economically-diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties.

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed pursuant to subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
- (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
- (4) Any vacancy shall be filled pursuant to the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
- (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
- (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.
- (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
- (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.
- (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
- (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 133. KRS 198B.020 is amended to read as follows:

- (1) There is ~~hereby~~ created the Kentucky Board of Housing, Buildings and Construction within the Kentucky Department of Housing, Buildings and Construction comprised of twenty (20) members to include: the commissioner of the department, one (1) local government fire chief selected by the Governor from a list of three (3) submitted by the Kentucky Firemen's Association; the executive director of the Kentucky Housing Corporation; the commissioner of the Department for **Public Health**~~Services~~, Cabinet for **Health Services**~~Human Resources~~; the Attorney General or any assistant attorney general he may designate to represent the interests of consumers; one (1) professional homebuilder selected by the Governor from a list of three (3) submitted by the Home Builders Association of Kentucky; one (1) registered architect selected by the Governor from a list of three (3) submitted by the Kentucky Society of Architects; one (1) registered structural engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional

Engineers; one (1) registered mechanical engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered electrical engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) citizen member selected by the Governor to represent the interests of low and moderate income housing consumers within the Commonwealth of Kentucky; one (1) citizen member at large; one (1) practicing general contractor selected by the Governor from a list of three (3) submitted by the Kentucky Association of General Contractors; one (1) practicing code administrator selected by the Governor from a list of three (3) submitted by the Codes Administrators Association of Kentucky; one (1) realtor selected by the Governor from a list of three (3) submitted by the Kentucky Association of Realtors; one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky State Building Trades Council; one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky Association of Plumbing, Heating and Cooling Contractors; one (1) member selected by the Governor from a list of three (3) submitted by the Mechanical Contractors Association; one (1) electrical contractor member selected by the Governor from a list of three (3) submitted by the National Electrical Contractors Association; and one (1) retailer member selected by the Governor from a list of three (3) submitted by the Kentucky Retail Federation.

- (2) Except for the commissioner of the department, the commissioner of the Department for **Public Health Services**, the executive director of the Kentucky Housing Corporation and the Attorney General or his designee who shall serve on the board during the term of their existing office and shall be voting members, board members shall be appointed for four (4) year terms, except that initially four (4) shall be appointed for two (2) year terms, four (4) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms. No board member shall be appointed for more than one (1) successive term except as provided in subsection (3) of this section. The Governor shall, within the limitations of this subsection, set the length of term of each of the initial appointees to the board.
- (3) Vacancies occurring on the board among those members appointed by the Governor shall be filled by seeking nominations as in subsection (1) of this section from the organization which originally nominated the member who is to be replaced. A replacement for a board member shall be appointed immediately upon the expiration of the departing board member's term of service. Should a board member vacate his position on the board prior to the expiration of his term, his replacement shall be appointed for the period of the unexpired term. Should the unexpired term be less than two (2) years, the person selected to fill the unexpired term may subsequently be appointed to one (1) successive four (4) year term.
- (4) Members may be removed from the board by the Governor for unethical conduct or for failure to attend three (3) or more successive meetings of the board without reasonable cause.
- (5) The board shall meet at least quarterly, and the first meeting shall occur no later than August 31, 1978. Before assuming their duties, members of the board shall take an oath as specified in Section 228 of the Constitution of Kentucky.
- (6) The commissioner of the department shall serve as chairman of the board. The board may elect from its members other officers as are required to conduct its business, except that neither the commissioner of the Department for **Public Health Services**, the executive director of the Kentucky Housing Corporation nor the Attorney General or his designee shall be elected to office on the board.
- (7) The board may adopt such rules, regulations and bylaws as are necessary to conduct its internal business.
- (8) No member of the board may vote on any matter which will result in his direct or indirect financial gain.
- (9) Those members of the board who are not salaried governmental employees shall be compensated for their time when attending board meetings or attending to official duties as directed by the board at the rate of fifty dollars (\$50) per day. All board members shall be compensated for expenses incurred in the conduct of board business.

Section 134. KRS 199.011 is amended to read as follows:

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

- (1) "Secretary" means the secretary for **families and children**~~human resources~~;
- (2) "Cabinet" means the Cabinet for **Families and Children**~~Human Resources~~;
- (3) "Department" means the Department for Social Services;

- (4) "Child" means any person who has not reached his eighteenth birthday;
- (5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;
- (6) "Child-caring facility" means any institution or group home other than a state facility, or one (1) certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency licensed by the cabinet other than a state agency which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;
- (8) "Adoption worker" means an employee of the cabinet *so* designated ~~as such~~ by the secretary for *families and children* ~~human resources~~, a social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, adoption placement services to children, or a social worker employed by or under contract to a child-placing adoption agency;
- (9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;
- (10) "Group home" means a homelike facility for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;
- (11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;
- (12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons; ~~and~~
- (13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social services to all the parties involved in an adoption; ~~and~~
- (14) "Voluntary and informed consent" means that at the time of the execution of the consent the consenting person was fully informed of the legal effect of the consent, that the consenting person was not given or promised anything of value except those expenses allowable under KRS 199.590(6), that the consenting person was not coerced in any way to execute the consent, and that the consent was voluntarily and knowingly given. If at the time of the execution of the consent the consenting person was represented by independent legal counsel, there shall be a presumption that the consent was voluntary and informed. In the event the person was not represented by independent legal counsel, the consent shall be in writing, signed and sworn to by the consenting person and include the following:
 - (a) Date, time, and place of the execution of the consent;
 - (b) Name of the child, if any, to be adopted and the date and place of the child's birth;
 - (c) Consenting person's relationship to the child;
 - (d) Identity of the proposed adoptive parents or a statement that the consenting person does not desire to know the identification of the proposed adoptive parents;
 - (e) A statement that the consenting person understands that the consent will be final and irrevocable twenty (20) days after the execution of the consent if the placement was previously approved, if approval of the placement is required;
 - (f) Disposition of the child if the adoption is not adjudged;
 - (g) A statement that the consenting person has received a completed and signed copy of the consent at the time of the execution of the consent;

- (h) A statement that the consenting person understands that the consent may only be withdrawn by written notification sent by certified or registered mail addressed to either the attorney for the consenting person or to the attorney for the adoptive parents, within thirty (30) days following the execution of the consent;
- (i) Name and address of the person who prepared the consent, name and address of the person who reviewed and explained the consent to the consenting person, and a verified statement from the consenting person that the consent has been reviewed with and fully explained to the consenting person; and
- (j) Total amount of the consenting person's legal fees, if any, for any purpose related to the execution of the consent and the source of payment of the legal fees.

Section 135. KRS 199.420 is amended to read as follows:

- (1) The secretary shall have the power and authority to adopt, amend, or rescind *those administrative*~~such rules and~~ regulations *that the secretary*~~as he~~ deems necessary or suitable for the proper administration of the functions of the cabinet, including qualification for the receipt of federal funds and for cooperation with other state and federal agencies. *These administrative*~~Such rules and~~ regulations shall become effective in the manner and at the time prescribed by the secretary.
- (2) In the administration of KRS 199.410 to 199.670 the secretary shall cooperate to the fullest extent possible with any agency of this state or any other state of the United States.
- (3) The secretary is authorized, subject to the provisions of KRS Chapters 12, 18A, 42, 45, and 64, to appoint, fix the compensation and prescribe the duties and powers of *any*~~such~~ officers and employees as *are*~~may be~~ necessary in the performance of *the secretary's*~~his~~ duties under KRS 199.410 to 199.670. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, in accordance with merit standards established by law. The secretary shall not employ or pay any person who is an officer or committee member of any political party organization. The secretary may delegate to any~~such~~ person so appointed *that*~~such~~ power and authority as *the secretary*~~he~~ deems reasonable and proper for the effective administration of KRS 199.410 to 199.670.
- (4) The secretary shall have the power and authority to elect coverage for the workers in the cabinet, under the provisions of KRS Chapter 341, and may elect coverage for *these*~~such~~ workers under the workers' compensation law of this state. In the event *the*~~such~~ coverage is elected the payment of contributions under KRS Chapter 341 and premiums under the workers' compensation law shall be deemed a proper cost of administration.
- (5) The salaries and expenses of the secretary and *the secretary's*~~his~~ staff shall be considered a proper cost of administration and charged to the funds allocated to the Cabinet for *Families and Children*~~Human Resources~~.

Section 136. KRS 199.440 is amended to read as follows:

The secretary may authorize the destruction of *any*~~such~~ original reports and records *that*~~as~~ have been properly recorded or summarized in the permanent records of the cabinet or are no longer considered necessary to the proper administration of the cabinet. *The*~~Such~~ destruction or disposition shall be made only by order of the secretary. Any money received from the disposition of *the*~~such~~ records shall be deposited and credited to the use of the Cabinet for *Families and Children*~~Human Resources~~.

Section 137. KRS 199.461 is amended to read as follows:

- (1) As used in this section, "family service worker" means a social worker employed by the Cabinet for *Families and Children*~~Human Resources~~, Department for Social Services, to provide direct casework services in foster care, child protection, juvenile services, or adult protection.
- (2) As used in this section, "active case" includes the total number of cases for which the family service worker has responsibility.
- (3) The monthly statewide caseload average for family service workers in the area of foster care, child protection, juvenile services, or adult protection shall not exceed twenty-five (25) active cases.
- (4) Nothing in this section shall prevent the department or a family service worker from handling emergencies to carry out statutory mandates. If the monthly statewide caseload average for family service workers exceeds

twenty-five (25) active cases for ninety (90) consecutive days, the department shall report the fact to the Governor and to the Legislative Research Commission together with a description of the factors contributing thereto and shall make recommendations related thereto. The report shall include, by county and district, family service worker caseload averages; the number of established family service worker positions; and the number of vacant family service worker positions.

Section 138. KRS 199.462 is amended to read as follows:

- (1) Before any applicant to provide foster care home services to a minor may be approved, the Cabinet for **Families and Children**~~Human Resources~~ shall request from the Justice Cabinet records of all conviction information for the applicant. The Justice Cabinet shall furnish the information to the Cabinet for **Families and Children**~~Human Resources~~ and shall also send a copy of the information to the applicant.
- (2) The request for records shall be on a form approved by the Justice Cabinet and the Justice Cabinet may charge a fee to be paid by the applicant for the actual cost of processing the request.

Section 139. KRS 199.467 is amended to read as follows:

Pursuant to the requirements of the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, the secretary for **families and children**~~human resources~~ shall adopt by regulation specific goals for each fiscal year for the cabinet as to the maximum number of children, (either in absolute numbers or as a percentage of all children in foster care with respect to whom assistance is provided in that year) who, at any time during such fiscal year, will remain in foster care after having been in such care for a period in excess of twenty-four (24) months, together with a description of the steps to be taken by the state to achieve such goals.

Section 140. KRS 199.473 is amended to read as follows:

- (1) All persons other than a child-placing agency or institution, the department, or persons excepted by KRS 199.470(4) or (5) who wish to place or receive a child shall make written application to the secretary for permission to place or receive a child. Prior to the approval of an application to place or receive a child, together with the fee required pursuant to subsection (6) of this section, the secretary shall cause the investigation to be made by a Cabinet for **Families and Children**~~Human Resources~~ social worker unless the applicant specifies in the application that the investigation shall be done by an adoption worker of the home and the background of the person or persons wishing to receive the child. The portion of the investigation pertaining to the home and family background shall be valid for one (1) year following the date of its completion by an adoption worker. The purpose of the investigation shall be to determine the suitability of the applicants to receive a child, taking into account at all times the best interest of the child for whom application to receive has been made. The adoption worker making the investigation shall make a finding in writing recommending either that the application be granted or that the application be denied. In either case, reasons for the adoption worker's recommendation shall be given in writing. The recommendation of the adoption worker shall then be reviewed by the secretary. Based on the report and recommendation of the adoption worker making the investigation, the secretary shall grant or refuse permission for the applicant to place or receive a child as early as practicable, but, in any case, the decision shall be made within sixty (60) days after the receipt of the application. In reaching ~~a~~^{his} decision, the secretary shall be guided by the ability of the persons wishing to receive the child to give the child a suitable home, and shall at all times consider the best interest of the child from a financial, medical, psychological, and psychiatric standpoint. If the application is refused, the secretary shall in general terms furnish in writing the reasons for his refusal.
- (2) Upon a finding by the Circuit Court that the child should be placed prior to the secretary's ruling on the application, the Circuit Court may grant the applicant temporary custody of the child pending the decision of the secretary. If the application is denied, the temporary custody order shall be set aside and, upon motion of the cabinet or of the child's parent or parents, the Circuit Court may order the child returned to the biological parent or parents or the child's custody may be awarded to the cabinet, another licensed child-placing agency, or ~~such~~ other individuals deemed appropriate by the court. This section shall not be deemed to permit the completion of any adoption proceeding without the approval of the secretary and compliance with KRS 615.030, if required.
- (3) In any case where the cabinet refuses to approve the placement of a child for adoption when requested by the parent or parents of the child, or refuses the request of any person or persons that a child be placed with **that person or those persons**~~him or them~~ for adoption, the decision of the secretary in so refusing shall be final unless within ten (10) days after notice of refusal, the biological or proposed adopting parent or parents shall appeal to the Circuit Court of the county in which the adoption is proposed. No placement shall be disapproved

on the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, if the placement is made with the consent of the parent. The cabinet may refuse to approve the placement of a child for adoption if the child's custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family. The cabinet may approve or deny the placement, in spite of the fact that the custodial parent or parents are unwilling to be interviewed by the cabinet or other approving entity, or if, after diligent efforts have been made, the adoption worker is unable to locate or interview the custodial parent or parents. The cabinet shall be made a party defendant to the appeal. In the hearing of an appeal, the court shall review the findings of the secretary and shall determine if the secretary has acted arbitrarily, unlawfully, or in ~~such~~ a manner *that constitutes* ~~as to constitute~~ an abuse of discretion.

- (4) If a child who does not fall within the exception provided for in KRS 199.470(4) or (5) is placed or received in a home without the permission of the secretary for *families and children* ~~human resources~~, or if permission to receive a child has been denied, a representative of the cabinet may petition the juvenile session of District Court of the county in which the child is found setting out the facts concerning the child. When the petition has been filed, the court shall take jurisdiction of the child and shall provide for it as it would provide for a dependent, neglected, or abused child under KRS Chapter 620, except that the child may not be placed in the home of the applicants *who are* to receive *the child* ~~him~~ unless permission to do so is granted by the secretary or the action is ordered by a Kentucky court of competent jurisdiction.
- (5) When either the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out-of-state, the requirement of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet gives approval for the child's placement.
- (6) The secretary of the Cabinet for *Families and Children* ~~Human Resources~~ shall be paid a nonrefundable fee of one hundred fifty dollars (\$150) upon the filing of the written application for permission to place or receive a child. Payment shall be made by certified or cashier's check only. All funds collected under this section shall be deposited in a restricted account, which is hereby created, for the purpose of subsidizing an adoptive parent for suitable care of a special needs child as authorized in KRS 199.555.
- (7) Nothing in this statute shall be construed to limit the authority of the cabinet or a child-placing institution or agency to determine the proper disposition of a child committed to it by the juvenile session of District Court or the Circuit Court, prior to the filing of an application to place or receive.

Section 141. KRS 199.490 is amended to read as follows:

- (1) The petition shall allege:
 - (a) The name, date, place of birth, place of residence, and mailing address of each petitioner, and, if married, the date and place of their marriage;
 - (b) The name, date, place of birth, place of residence, and mailing address, if known, of the child sought to be adopted;
 - (c) Relationship, if any, of the child to each petitioner;
 - (d) Full name by which the child shall be known after adoption;
 - (e) A full description of the property, if any, of the child so far as it is known to the petitioner;
 - (f) The names of the parents of the child and the address of each living parent, if known. The name of the biological father of a child born out of wedlock shall not be given unless paternity is established in a legal action, or unless an affidavit is filed stating that the affiant is the father of the child. If certified copies of orders terminating parental rights are filed as provided in subsection (2) of this section, the name of any parent whose rights have been terminated shall not be given;
 - (g) The name and address of the child's guardian, if any, or of the cabinet, institution, or agency having legal custody of the child;
 - (h) Any further facts necessary for the location of the person or persons whose consent to the adoption is required, or whom KRS 199.480 requires to be made a party to or notified of the proceeding; and
 - (i) If any fact required by this subsection to be alleged is unknown to the petitioners, the lack of knowledge shall be alleged.

- (2) There shall be filed with the petition certified copies of any orders terminating parental rights. Any consent to adoption shall be filed prior to the entry of the adoption judgment.
- (3) If the petitioner was not excepted by KRS 199.470(4) or (5), a copy of the written approval of the secretary of the Cabinet for *Families and Children*~~[Human Resources]~~ or the secretary's designee shall be filed with the petition.

Section 142. KRS 199.500 is amended to read as follows:

- (1) An adoption shall not be granted without the voluntary and informed consent of the living parent or parents of a child born in lawful wedlock or the mother of the child born out of wedlock, or the father of the child born out of wedlock if paternity is established in a legal action or if an affidavit is filed stating that the affiant is the father of the child, except that the consent of the living parent or parents shall not be required if:
 - (a) The parent or parents have been adjudged mentally disabled and the judgment shall have been in effect for not less than one (1) year prior to the filing of the petition for adoption;
 - (b) The parental rights of the parents have been terminated under KRS Chapter 625;
 - (c) The living parents are divorced and the parental rights of one (1) parent have been terminated under KRS Chapter 625 and consent has been given by the parent having custody and control of the child; or
 - (d) The biological parent has not established parental rights as required by KRS 625.065.
- (2) A minor parent who is a party defendant may consent to an adoption but a guardian ad litem for the parent shall be appointed.
- (3) In the case of a child twelve (12) years of age or older, the consent of the child shall be given in court. The court in its discretion may waive this requirement.
- (4) Notwithstanding the provisions of subsection (1) of this section, an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as a part of the adoption proceedings that any of the provisions of KRS 625.090 exist with respect to ~~the~~~~[such]~~ child.
- (5) An adoption shall not be granted or a consent for adoption be held valid if the consent for adoption is given prior to seventy-two (72) hours after the birth of the child. A voluntary and informed consent may be taken at seventy-two (72) hours after the birth of the child and shall become final and irrevocable twenty (20) days after either the interstate or the intrastate placement approval by the secretary of the Cabinet for *Families and Children*~~[Human Resources]~~, or twenty (20) days after the execution of the consent if placement approval was given prior to the signing of the consent, if approval is required.

Section 143. KRS 199.555 is amended to read as follows:

- (1) A "special needs child" means:
 - (a) A child which the state has determined cannot or should not be returned to the home of ~~the child's~~~~[his]~~ parents; and
 - (b) A child which the state has first determined:
 1. That there exists a specific factor or condition the existence of which leads to the reasonable conclusion that the child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX; and
 2. That except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of ~~these~~~~[such]~~ parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX.
- (2) "State-funded adoption assistance" means payment of monthly maintenance to assist in meeting the special needs of a child which was placed by the Cabinet for *Families and Children*~~[Human Resources]~~. The state-funded adoption assistance shall also include payment of nonrecurring adoption expenses, and may include reimbursement of extraordinary medical expenses.
- (3) "Nonrecurring adoption expenses" means those expenses which are incurred in the legal adoption of a special needs child for which parents are ultimately responsible which include reasonable and necessary adoption fees,

court costs, attorney fees, and other expenses which are directly related to the special needs adoption and which are not incurred in violation of state or federal law.

- (4) "Extraordinary medical expenses" means those expenses which are related to the child's special needs which existed prior to the adoption and are not reimbursed by private insurance, Medicaid, or other third-party payors or government programs.
- (5) If the secretary of the Cabinet for *Families and Children*~~{Human Resources}~~ or his designated representative finds that a child may benefit from being adopted and that the payment of a subsidy to adoptive parents after the adoption will increase the likelihood of adoption, funds may be paid to the adoptive parents after completion of the adoption of the child if the following conditions exist:
 - (a) The child was considered a special needs child prior to the adoption;
 - (b) The child is committed to the Cabinet for *Families and Children*~~{Human Resources}~~ and the cabinet has authority to consent to the child's adoption; and
 - (c) The adoptive parents can give suitable care to the child if a subsidy is paid.
- (6) Agreements for the payments of funds under this section shall be made prior to the adoption of the child. However, if the secretary for *families and children*~~{human resources}~~ or his designated representative finds that the adoption is likely to disrupt, extraordinary medical expenses may be reimbursed contingent upon availability of resources, if the following conditions exist:
 - (a) The child was placed for adoption by the Cabinet for *Families and Children*~~{Human Resources}~~;
 - (b) The child was considered a special needs child prior to the adoption;
 - (c) The parents have made a reasonable effort under the circumstances to meet the needs of the child without reimbursement for extraordinary medical expenses.

This subsection shall apply to any child meeting the conditions of this subsection who at the time of application for the post-adoption extraordinary medical expenses is under the age of eighteen (18). This subsection shall have retroactive as well as prospective effect.

- (7) The payments shall be out of funds appropriated to the cabinet and those funds collected pursuant to KRS 199.473(5) which shall be deposited in a restricted account for the purpose of subsidizing special needs adoptions, and shall be in accordance with regulations promulgated by the secretary. The payments shall not exceed the amount which would be paid for foster care for the child. Monthly maintenance payments shall not exceed the amount which would be paid for foster care for the child and may include reimbursement for extraordinary medical expenses. Payment of nonrecurring adoption expenses shall only be reimbursed up to the limit established by the secretary for *families and children*~~{human resources}~~ in accord with 42 U.S.C. *sec.* 673. However, payments under agreements entered into under subsection (6) of this section shall be limited to reimbursement of authorized extraordinary medical expenses related to problems or conditions that existed prior to the adoption.
- (8) State-funded adoption assistance payments shall not be made to parents if:
 - (a) The child has attained the age of eighteen (18), except that if the child is enrolled in a state or federal educational program, the payments may continue through age twenty-one (21);
 - (b) The cabinet determines the parents are no longer legally responsible for the support of the child; or
 - (c) The cabinet determines that the child is no longer receiving any support from the parents.
- (9) Parents who have been receiving adoption assistance payments under this section shall keep the cabinet informed of circumstances which would, pursuant to subsection (8) of this section, make them ineligible for assistance, or eligible for assistance in a different amount.
- (10) The cabinet shall establish criteria to be followed for the adoption of children under provisions of this section and shall promulgate the criteria by administrative regulations.

Section 144. KRS 199.557 is amended to read as follows:

- (1) For the purpose of this section, unless the context requires otherwise, "Federal Title IV-E adoption assistance" means the payment of monthly maintenance to assist in meeting the special needs of the child and of

nonrecurring adoption expenses which include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to legal adoption of a special needs child and which are not incurred in violation of state or federal law.

- (2) If the secretary of the Cabinet for **Families and Children**~~[Human Resources]~~ or his designated representative finds that payment of a subsidy to adoptive parents after the adoption will increase the likelihood of ~~the [such]~~ adoption, funds may be paid to the adoptive parents after conclusion of the adoption if the child meets the eligibility criteria established at 42 U.S.C. *sec.* 673.
- (3) Agreements for Federal Title IV-E adoption assistance under this section shall be made prior to the adoption of the child.
- (4) Payment shall be out of funds appropriated to the cabinet and Federal Title IV-E funds of the Social Security Act as amended (42 U.S.C. *sec.* 673 et seq.). All payments shall be in accordance with administrative regulations promulgated by the Cabinet for **Families and Children**~~[Human Resources]~~. Payments shall not exceed the amount which would be paid for foster care for the child. Nonrecurring adoption expenses shall only be reimbursed up to the limit established by the secretary of the Cabinet for **Families and Children**~~[Human Resources]~~ or his designated representative in accordance with 42 U.S.C. *sec.* 673 et seq.

Section 145. KRS 199.570 is amended to read as follows:

- (1) The files and records of the court during adoption proceedings shall not be open to inspection by persons other than parties to ~~the [such]~~ proceedings, their attorneys, and representatives of the cabinet except under order of the court expressly permitting inspection. Upon the entry of the final order in the case, the clerk shall place all papers and records in the case in a suitable envelope which shall be sealed and shall not be open for inspection by any person except on written order of the court, except that upon the written consent of the biological parents and upon written order of the Circuit Court all papers and records including all files and records of the Circuit Court during proceedings for termination of parental rights provided in KRS 625.108 shall be open for inspection to any adult adopted person who applies in person or in writing to the Circuit Court as provided in KRS 199.572. No person having charge of any adoption records shall disclose the names of any parties appearing in such records or furnish any copy of any such records, except upon order of the court which entered the judgment of adoption. Health information received pursuant to KRS 199.525 shall be added to the adoption case file. The clerk of the Circuit Court shall set up a separate docket and order book for adoption cases and these files and records shall be kept locked.
- (2) After entry of the adoption judgment, the clerk of the Circuit Court shall promptly report to the Cabinet for **Health Services**~~[Human Resources]~~ of Kentucky full information as called for on forms furnished by the Cabinet for **Health Services**~~[Human Resources]~~, necessary to make a new birth certificate conforming to the standard birth certificate form. Upon receipt of this information, the Cabinet for **Health Services**~~[Human Resources]~~ shall cause to be made a new record of the birth and it shall be filed with the original certificate, and the original certificate shall be stamped with the words, "CONFIDENTIAL -- subject to copy and/or inspection only on written order of the court."
- (3) The new certificate shall set forth the new name, if any, of the adopted child, the names of the adoptive parents and such other information deemed necessary in accordance with rules and regulations promulgated by the Cabinet for **Health Services**~~[Human Resources]~~ in issuing of birth certificates. If the adopted child is under eighteen (18) years of age, the birth certificate shall not contain any information revealing the child is adopted and shall show the adoptive parent or parents as the biological parent or parents of the child. If requested by the adoptive parents, the new birth certificate when issued shall contain the location of birth, hospital, and name of doctor or midwife. This information should be given only by an order of the court in which the child was adopted. The new birth certificate shall recite the residence of the adoptive parents as the birthplace of the child and this shall be deemed for all legal purposes to be the birthplace of the child. If no birth certificate is on file for a child born in Kentucky, the Cabinet for **Health Services**~~[Human Resources]~~ shall prepare a certificate of birth in accordance with the information furnished the cabinet by the clerk of the Circuit Court which issued the adoption order. The Cabinet for **Health Services**~~[Human Resources]~~ shall furnish to the clerks of the Circuit Courts the necessary forms to carry out the provisions of this section. If the child was born in another state, the order of adoption shall be forwarded to the division of vital statistics of the state concerned to be changed in accordance with the laws of such state. If the child was born in a foreign country, the report of adoption shall be returned to the attorney or agency handling the adoption for submission to the appropriate federal agency.

- (4) Thereafter when any copy of the certificate of birth of any child is issued it shall be a copy of the new certificate of birth, except when an order of the court granting the judgment of adoption shall request the issuance of the copy of the original certificate of ~~the~~~~such~~ child's birth.
- (5) If any judgment of adoption is reversed, modified, or vacated in any particular, the clerk of the Circuit Court shall notify the Cabinet for **Health Services**~~Human Resources~~ of the reversal or modification and the effect of same, and the cabinet shall make any necessary changes in its records.

Section 146. KRS 199.572 is amended to read as follows:

- (1) At the time the biological parents give up the child for adoption, they shall be asked by the cabinet whether they consent to the inspection of the adoption records, to personal contact by the child, or to both when he becomes an adult. If consent is then given, it can later be revoked. If consent is withheld at that time, the biological parents may give consent at any later time. The initial written statement of consent or refusal of consent to inspection of records and personal contact shall be filed with the Circuit Court not later than the date of finalization of the adoption proceedings. When a written consent is on file, the records shall be available to the adult adopted person, upon his request therefor in writing.
- (2) When any adult adopted person applies in person or in writing to the Circuit Court for authorization to inspect all papers and records pertaining to the adoption proceedings of ~~that adult~~~~such~~ adopted person as provided in KRS 199.570(1), and the biological parents have previously refused consent to inspection of records and to personal contact, the court may, if satisfied as to the identity of ~~the~~~~such~~ adult adopted person, authorize the adult adopted person to inspect the papers and records if written consent is obtained from the biological parents identified on the adult adopted person's original birth certificate.
- (3) The Circuit Court shall, within seven (7) working days of the receipt of the request, direct the secretary of the cabinet to notify each biological parent identified on the adult adopted person's original birth certificate that ~~the~~~~said~~ person has applied to the court for information identifying ~~the~~~~such~~ biological parent. Within six (6) months of receiving the notice of the request of the adult adopted person, the secretary of the cabinet shall make complete and reasonable efforts to notify each biological parent identified on the adult adopted person's original birth certificate. The secretary may charge a reasonable fee not to exceed two hundred fifty dollars (\$250) to the adult adopted person for making ~~this~~~~such a~~ search. Every child-caring facility and child-placing agency in the Commonwealth shall cooperate with the secretary in his efforts to notify ~~these~~~~such~~ biological parents.
- (4) The notification of the biological parents shall not be by mail and shall be by personal and confidential contact. The notification shall be done without disclosing the identity of the adult adopted person. The personal and confidential contact with the biological parents shall be evidenced by filing with the Circuit Court an affidavit of notification executed by the person who notified each parent and certifying each parent was given the following information:
 - (a) The nature of the information requested by the adult adopted person;
 - (b) The date of the request of the adult adopted person;
 - (c) The right of the biological parent to file, within sixty (60) days of receipt of the notice, an affidavit with the Circuit Court stating that the adult adopted person shall be authorized to inspect all papers and records pertaining to his adoption proceedings;
 - (d) The right of the biological parent to file at any time an affidavit authorizing the adult adopted person to inspect all papers and records pertaining to his adoption proceedings; and
 - (e) The right of a biological parent to file an affidavit with the Circuit Court stating that all papers and records pertaining to the adoption proceedings of the adult adopted person shall not be open for inspection by the adult adopted person.
- (5) The adult adopted person shall not be authorized to inspect the papers and records pertaining to his *or her* adoption proceedings unless those biological parents identified on the original birth certificate agree in writing to ~~that~~~~such~~ inspection.
- (6) If after diligent and reasonable effort, the secretary of the cabinet certifies that both biological parents identified in the original birth certificate are deceased or the secretary is unable to locate said parents, then a judge of the Circuit Court, upon motion of the adult adopted person, may order that all papers and records of

the Cabinet for *Families and Children*~~[Human Resources]~~ and those of the Circuit Court pertaining to the adoption shall be open for inspection to ~~the~~^{such} adult adopted person. In any case, the court shall order that only identifying information about the biological parents be shared with the adult adopted person.

Section 147. KRS 199.575 is amended to read as follows:

In situations where a pre-adoptive brother or sister relationship existed, and one (1) or more of these siblings was then adopted, the following procedures shall be followed on an inquiry by one (1) or more of the siblings to the Cabinet for *Families and Children*~~[Human Resources]~~ seeking information about his brother or sister:

- (1) In all cases, an adopted person eighteen (18) years of age or older or a pre-adoptive sibling eighteen (18) years of age or older of an adopted person may file information concerning himself, his present location, and his known antecedents with the Cabinet for *Families and Children*~~[Human Resources]~~, stating his interest in being reunited with his pre-adoptive siblings and authorizing the cabinet to release such information to his pre-adoptive siblings who may make similar inquiry.
- (2) In any case in which a person eighteen (18) years of age or older requests information about or expresses a desire in being reunited with a pre-adoptive sibling, the cabinet shall first determine whether such sibling has made similar inquiry pursuant to subsection (1) of this section. If ~~the~~^{such} sibling has previously authorized release of information about himself, the cabinet shall release ~~the~~^{such} information to the sibling making inquiry.

Section 148. KRS 199.590 is amended to read as follows:

- (1) A person, corporation, or association shall not advertise in any manner that it will receive children for the purpose of adoption. A newspaper published in the Commonwealth of Kentucky or any other publication which is prepared, sold, or distributed in the Commonwealth of Kentucky shall not contain an advertisement which solicits children for adoption or solicits the custody of children.
- (2) A person, agency, institution, or intermediary shall not sell or purchase or procure for sale or purchase any child for the purpose of adoption or any other purpose, including termination of parental rights. This section shall not prohibit a child-placing agency from charging a fee for adoption services. This section shall not be construed to prohibit in vitro fertilization. For purposes of this section, "in vitro fertilization" means the process by which an egg is removed from a woman, and fertilized in a receptacle by the sperm of the husband of the woman in whose womb the fertilized egg will thereafter be implanted.
- (3) No person, association, or organization, other than the cabinet or a child-placing institution or agency shall place a child or act as intermediary in the placement of a child for adoption or otherwise, except in the home of a stepparent, grandparent, sister, brother, aunt, or uncle, or upon written approval of the secretary. This subsection shall not be construed to limit the Cabinet for *Families and Children*~~[Human Resources]~~ in carrying out its *public assistance under Title IV-A of the federal Social Security Act*~~[Aid to Dependent Children]~~ Program in accordance with KRS Chapter 205. This section shall not be construed to prohibit private independent adoption or the right to seek legal services relating to a private independent adoption.
- (4) A person, agency, institution, or intermediary shall not be a party to a contract or agreement which would compensate a woman for her artificial insemination and subsequent termination of parental rights to a child born as a result of that artificial insemination. A person, agency, institution, or intermediary shall not receive compensation for the facilitation of contracts or agreements as proscribed by this subsection. Contracts or agreements entered into in violation of this subsection shall be void.
- (5) A person, organization, group, agency, or any legal entity, except a child-placing agency, shall not accept any fee for bringing the adoptive parents together with the child to be adopted or the biological parents of the child to be adopted. This section shall not interfere with the legitimate practice of law by an attorney.
- (6)
 - (a) In every adoption proceeding, the expenses paid, including but not limited to any fees for legal services, placement services, and expenses of the biological parent or parents, by the prospective adoptive parents for any purpose related to the adoption shall be submitted to the court, supported by an affidavit, setting forth in detail a listing of expenses for the court's approval or modification.
 - (b) In the event the court modifies the expense request as it relates to legal fees and legal expenses only, the attorney for the adoptive parents shall not have any claim against the adoptive parents for the amount not approved.

Section 149. KRS 199.595 is amended to read as follows:

- (1) The General Assembly finds that:
 - (a) Finding adoptive families for children, for whom state assistance is desirable pursuant to KRS 199.555, and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and
 - (b) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.
- (2) The purposes of KRS 199.5951 to 199.5955 are to:
 - (a) Authorize the Cabinet for *Families and Children*~~[Human Resources]~~ to enter into interstate agreements with agencies of other states for protection of children on behalf of whom adoption assistance is being provided by the Cabinet for *Families and Children*~~[Human Resources]~~; and
 - (b) Provide procedures for interstate children's adoption assistance payments, including medical payments.

Section 150. KRS 199.5951 is amended to read as follows:

- (1) The Cabinet for *Families and Children*~~[Human Resources]~~ is authorized to develop, participate in the development of, negotiate and enter into one (1) or more interstate compacts on behalf of this state with other states to implement one (1) or more of the purposes set forth in KRS 199.595 to 199.5955. When so entered into, and for so long as it shall remain in force, such a compact shall have the force and effect of law.
- (2) For the purposes of KRS 199.595 to 199.5955, the term "state" shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.
- (3) For the purposes of KRS 199.595 to 199.5955, the term "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.
- (4) For the purposes of KRS 199.595 to 199.5955, the term "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

Section 151. KRS 199.5954 is amended to read as follows:

- (1) A child with special needs residing in this state, who is the subject of an adoption assistance agreement with another state, shall be entitled to receive medical assistance from this state upon the filing in the Department for Social Insurance, Cabinet for *Families and Children*~~[Human Resources]~~, a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department for Medicaid Services, Cabinet for *Health Services*~~[Human Resources]~~, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.
- (2) The Department for Medicaid Services, Cabinet for *Health Services*~~[Human Resources]~~ shall consider recipients of medical assistance pursuant to this section as any other recipient of medical assistance under the laws of this state and shall process and make payment on claims on account of the recipient in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.
- (3) The Department for Medicaid Services, Cabinet for *Health Services*~~[Human Resources]~~ shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department for Social Services, Cabinet for *Families and Children*~~[Human Resources]~~ for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Cabinet for *Families and Children*~~[Human Resources]~~ shall make regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.
- (4) The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should

know to be false, misleading or fraudulent shall be punishable as perjury and shall also be subject to a fine not to exceed ten thousand dollars (\$10,000) or imprisonment for not more than two (2) years, or both such fine and imprisonment.

- (5) The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

Section 152. KRS 199.5955 is amended to read as follows:

Consistent with federal law, the Cabinet for *Families and Children*~~[Human Resources]~~, in connection with the administration of KRS 199.595 to 199.5955 and any compact pursuant hereto shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV (e) and XIX of the Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The Cabinet for *Families and Children*~~[Human Resources]~~ shall apply for and administer all relevant federal aid in accordance with law.

Section 153. KRS 199.641 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
- (a) "Allowable costs" means all allowable costs as defined by the Federal Office of Management and Budget circular A-122, "cost principles for nonprofit organizations," utilizing cost data from the child-caring facility's most recent yearly audited financial statement;~~;~~
 - (b) "Child-caring facility" means any institution or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility; ~~and~~;
 - (c) "Department" means the Department for Social Services of the Cabinet for *Families and Children*~~[Human Resources]~~.
- (2) When the Department for Social Services chooses to place a child in a nonprofit child-caring facility, the department shall reimburse that facility the allowable cost of the child's care, subject to the limitation set forth in subsection (3) of this section.
- (3) When the Department for Social Services chooses to place a child in a nonprofit child-caring facility, the rate of reimbursement for ~~the~~~~[such]~~ child's care shall not exceed seventy-five percent (75%) of the average cost in the most comparable residential facility operated by the department. The rate shall be based on actual total facility occupancy for the most recent audited year or ninety percent (90%) of the facility capacity for the audited year, whichever is greater.
- (4) The secretary shall, to the extent funds are appropriated, implement the reimbursement methodology set forth in this section, or may promulgate administrative regulations in accordance with KRS Chapter 13A to establish the rate of reimbursement for child-caring facilities which are consistent with the level of service provided. If funds are insufficient in any given fiscal year to fully fund this provision, rates shall be adjusted by determining the reimbursement schedule and adjusting by the ratio of available funds to estimated full cost.

Section 154. KRS 199.645 is amended to read as follows:

The Cabinet for *Families and Children*~~[Human Resources]~~ shall issue and enforce administrative regulations specifically addressing the unique situation of child-caring facilities and child-placing agencies which provide nonsecure care for children during the preadjudication phase of proceedings under KRS Chapters 630 and 635. ~~These~~~~[Such]~~ facilities and agencies shall include those operated privately and those operated by units of local government. These *administrative* regulations shall include standards relating to the following:

- (1) Administration;
- (2) Personnel;
- (3) Training and staff development;
- (4) Recordkeeping;

- (5) Physical plant;
- (6) Security and control;
- (7) Safety and emergency procedures;
- (8) Sanitation and hygiene;
- (9) Medical ~~and health~~ services;
- (10) Food services;
- (11) Intake and classification;
- (12) Programs and services;
- (13) Resident rights;
- (14) Rules and discipline;
- (15) Admission procedures;
- (16) Communication, including mail, visitation and telephone;
- (17) Release preparation and transfer programs; and
- (18) Volunteer involvement.

Section 155. KRS 199.892 is amended to read as follows:

In enacting legislation relating to the regulation of day-care centers, it is the intention of the General Assembly to enable the Cabinet for *Families and Children*~~Human Resources~~ to qualify to receive federal funds under provisions of the Federal Social Security Act and to provide for effective regulation of day-care centers.

Section 156. KRS 199.894 is amended to read as follows:

As used in KRS 199.892 to 199.896, unless the context otherwise requires:

- (1) "Cabinet" means the Cabinet for *Families and Children*~~Human Resources~~;
- (2) "Secretary" means secretary for *families and children*~~human resources~~;
- (3) "Day-care center" means any child-care facility which provides full or part-time care, day or night, to at least seven (7) children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator. Day-care center shall not include any child-care facility operated by a religious organization while religious services are being conducted, or a youth development agency. For the purposes of this section, "youth development agency" means a program with tax-exempt status under 26 U.S.C. sec. 501(c)(3), which operates continuously throughout the year as an outside-school-hours center for youth who are six (6) years of age or older, and for which there are no fee or scheduled care arrangements with the parent or guardian of the youth served.

Section 157. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any day-care center or home without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for the day-care center and procedures for enforcement of penalties.
- (3) If the day-care center does not meet the standards prescribed for licensing by the secretary, a provisional license may be issued and remain in effect for a period of six (6) months.
- (4) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars (\$50) and shall, excepting provisional licenses, be renewable annually upon expiration and reapplication when accompanied by a fee of twenty-five dollars (\$25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.

- (5) No day-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (6) All fees collected under the provisions of KRS 199.892 to 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.
- (7) Any advertisement for child-care services shall include the address of where the service is being provided.
- (8) All inspections of licensed and unlicensed day-care centers by the Cabinet for *Families and Children and the Cabinet for Health Services*~~[Human Resources]~~ shall be unannounced.
- (9) All employees and owners of a day-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:
 - (a) Basic health, safety, and sanitation;
 - (b) Recognizing and reporting child abuse; and
 - (c) Developmentally appropriate child-care practice.
- (10) All employees and owners of a day-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- (11) The Cabinet *for Families and Children* shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (9) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (9) of this section.
- (12) Child day-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

Section 158. KRS 199.8982 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Cabinet" means the Cabinet for *Families and Children*~~[Human Resources]~~;
 - (b) "Department" means the Department for Social Services; and
 - (c) "Family child-care home" means a private home which provides full or part-time care day or night for six (6) or fewer children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the provider.
- (2) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall meet the following minimum requirements:
 1. Submit two (2) written character references;
 2. Provide a written statement from a physician that the applicant is in good health;
 3. Submit to a criminal record check as provided by KRS 17.165;
 4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;

5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and
 6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
 - a. Basic health, safety, and sanitation;
 - b. Recognizing and reporting child abuse; and
 - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) The cabinet shall promulgate administrative regulations which establish standards for the issuance, monitoring, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:
1. Certification requirements and procedures;
 2. Information about available child-care training; and
 3. Child-care food sponsoring organizations.
- (3) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- (4) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.

Section 159. KRS 199.8984 is amended to read as follows:

- (1) The Child-Care Policy Council is created within the Cabinet for *Families and Children* ~~(Human Resources)~~. The council shall:
- (a) Promote coordination and communication among state agencies responsible for child-care and early childhood education services;
 - (b) Serve as an advisor for state agencies responsible for child-care programs;
 - (c) Review state child-care programs and make recommendations to state agencies and the General Assembly related to program implementation, access to child care, the supply of child care, and coordination of child-care and other early childhood programs;
 - (d) Review and make recommendations on administrative regulations relating to child-care programs and services;

- (e) Advise the cabinet on application requirements and distribution of contracts to local child-care resource and referral agencies; and
 - (f) Submit biennially to the Legislative Research Commission by October 1 in each odd-numbered year a report on the status of child care.
- (2) The council shall be composed of seventeen (17) citizen members appointed by the Governor and shall include one (1) member of the House of Representatives appointed by the Speaker of the House and one (1) member of the Senate appointed by the Senate President. Members of the council shall serve for a term of four (4) years and until their successors are appointed and qualified; they shall be chosen to broadly represent public interest groups concerned with child-care services, professionals involved in the delivery of child-care services, nonprofit child-care providers, for-profit child-care providers, family child-care providers, employers, labor, resource and referral programs, parents, and the general public. The Governor shall appoint the chairman of the council, who shall also serve as one of the voting members of the council. The secretary for **families and children**~~[human resources]~~, the commissioner for social insurance, and the commissioner for social services shall be nonvoting, ex officio members of the council. The commissioner for social services shall be staff director for, and shall provide staff to, the council. The council shall meet at least quarterly and on other occasions as may be necessary. A majority of the appointed members shall constitute a quorum.

Section 160. KRS 199.899 is amended to read as follows:

- (1) The Cabinet for **Families and Children**~~[Human Resources]~~ shall conduct a market-rate survey at least biennially to determine the rates paid by the cabinet for child-care services receiving public funds in the Commonwealth. The market-rate survey shall:
 - (a) Survey all child-care programs in the Commonwealth licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982;
 - (b) Determine market rates; and
 - (c) Make public its findings.
- (2) By October 1, 1993, the cabinet shall report to the General Assembly on the feasibility of paying a higher rate for child-care programs which attain accreditation from a national organization that the cabinet determines has accreditation standards that contribute to high quality child care.
- (3) In counties containing no more than two (2) child-care programs of the same type regulated by the cabinet, the cabinet shall pay the rate charged by the program up to the maximum allowable market rate, set in accordance with federal regulations, paid to a program of the same type in that Area Development District.

Section 161. KRS 199.8992 is amended to read as follows:

- (1) To the extent possible with available funds, the Cabinet for **Families and Children**~~[Human Resources]~~ shall develop through a system of contracts, a statewide network of community-based child-care resource and referral services. The network shall include one (1) resource and referral agency per area development district as designated by the cabinet. To avoid duplication of services, priority for receiving designation by the cabinet shall be given to existing child-care resource and referral organizations which are public or private, nonprofit, community-based agencies. Each resource and referral agency shall:
 - (a) Maintain a uniform database in a format developed by the cabinet of all child-day-care providers licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 in the service area, including information on the availability of care;
 - (b) Provide consumer education to families seeking child-day-care services;
 - (c) Provide timely referrals of available child-day-care providers to families seeking child-day-care services;
 - (d) Recruit child-day-care providers in areas where there is an identified need as identified pursuant to paragraph (f) of this subsection;
 - (e) Coordinate, with the cabinet, training for child-day-care providers and provide technical assistance to employers, current and potential child-day-care providers, and the community at large;
 - (f) Collect and analyze data on the supply of, and demand for, child-day-care in the community;

- (g) Stimulate employer involvement in improving the affordability, availability, safety, and quality of child care for their employees and for the community;
 - (h) Provide written educational materials to parents and child-day-care providers; and
 - (i) Not operate a child-day-care center on behalf of an employer or on their own unless no existing provider is willing or able to provide the service at the current market rate. This paragraph shall not apply to child care provided by a resource and referral agency to an employer prior to July 14, 1992.
- (2) To the extent possible with available funds, the cabinet shall award contracts in accordance with KRS Chapter 45A to:
- (a) Coordinate existing resource and referral services;
 - (b) Expand resource and referral services to unserved areas; and
 - (c) Improve services provided by the designated resources and referral agency.
- (3) When awarding the contracts provided for in subsection (2) of this section, priority shall be given to agencies which demonstrate the ability to provide local matching funds in an amount equal to twenty-five percent (25%) of the total amount of the contract. Contracts shall be awarded for a minimum period of up to one (1) year. Start-up contracts may be awarded in up to four (4) area development districts per year until each area development district has one (1) designated child-care resource and referral agency. The awarding of a contract pursuant to this section shall not create a continuing obligation for the cabinet to fund a resource and referral agency. The cabinet shall require applicants to submit a plan for providing the services required by subsection (1) of this section.

Section 162. KRS 199.8994 is amended to read as follows:

- (1) All child-day-care funds administered by the cabinet, including ~~Title~~~~Titles~~ XX ~~and IV A~~ of the Social Security Act, shall be administered by the **Cabinet for Families and Children**~~cabinet's Department for Social Services~~ to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. To the extent permitted by federal law or regulations, requirements relating to application, eligibility, provider agreements, and payment for child-care services shall be the same regardless of the source of public funding.
- (2) The cabinet shall, to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served, develop a system which provides a single intake point in each county through which parents seeking public subsidies for child-care services can make application.
- (3) The cabinet shall, subject to the extent funds are available, **cooperate with the Cabinet for Health Services to fund** establish dedicated child-care licensing surveyor positions within the Division of Licensing and Regulation to conduct all the cabinet's child-care licensing activities. Where possible, dedicated child-care surveyors shall have expertise or experience in child-care or early childhood education.

Section 163. KRS 199.8996 is amended to read as follows:

The Cabinet for **Families and Children**~~Human Resources~~ shall prepare the following reports to the General Assembly on child-care programs, and shall make them available to the public:

- (1) A quarterly report detailing the number of children and amounts of child-care subsidies provided in each area development district;
- (2) A quarterly report on administrative expenses incurred in the operation of child-care subsidy programs;
- (3) A quarterly report on disbursements of federal child-care block grant funds for training, resource and referral, and similar activities; and
- (4) Beginning July 15, 1993, an annual report summarizing the average child-care subsidy activities per month in all Kentucky counties.

Section 164. KRS 199.900 is amended to read as follows:

- (1) The secretary for **families and children**~~human resources~~ in coordination with the Department of Personnel is authorized to establish formal training programs within the Cabinet for **Families and Children**~~Human Resources~~ or within any of the divisions or sections of the cabinet for the training of necessary personnel for

the administration of the programs of the cabinet. When courses of study, applicable to the program processes of the cabinet, are not available through cabinet instruction, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose and such training shall be deemed to be a part of the cabinet training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, **and these**~~such~~ assignments **are** to relate directly to the work assignment of the employee. After consulting with the Department of Personnel, position classifications in the research series shall be established for employees on such work study assignments, and funds of the cabinet may be used to pay salaries commensurate with the appropriate classification while the employee is receiving~~such~~ training.

- (2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of~~such~~ training, the state will hold a claim against him for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

Section 165. KRS 200.010 is amended to read as follows:

As used in KRS Chapter 200, unless the context requires otherwise, "cabinet" means Cabinet for **Families and Children**~~Human Resources~~.

Section 166. KRS 200.505 is amended to read as follows:

There is hereby created a State Interagency Council for Services to Children with an Emotional Disability. The chairman of the council shall be designated by the Governor and shall establish procedures for the council's internal procedures.

- (1) This council shall be composed of the following:
- (a) Members who shall serve by virtue of their positions: the commissioner of the Department of Education, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner of the Department for Social Services, the commissioner of the Department for **Public Health**~~Services~~, the commissioner of the Department of Medicaid Services, and the executive director of the Administrative Offices of the Courts, or their designees; and
 - (b) The Governor shall appoint one (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability to serve as a member of the council, and one (1) parent who meets the same criteria to serve as the parent member's alternate to serve in the absence of the parent member. For each appointment to be made, the State Family Advisory Council shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment. The alternate parent member may attend and participate in all council meetings but shall vote only in the absence of the parent member. The parent member and alternate parent member shall receive no compensation in addition to that which they may already receive as service providers or state employees, but the parent member and alternate parent member shall be reimbursed for expenses incurred through the performance of their duties as council members.
- (2) The State Interagency Council for Services to Children with an Emotional Disability shall:
- (a) Consider issues and make recommendations annually to the Governor and the Legislative Research Commission regarding the provision of services for children with an emotional disability;
 - (b) Direct each regional interagency council to coordinate services to children with an emotional disability and identify factors contributing to a lack of coordination;
 - (c) Develop a form to be signed by the parent or other legal guardian of a child referred for services to any interagency council for children with an emotional disability. The form shall enable the agencies involved with the child to share information about the child as necessary to identify and provide services for the child;~~;~~

- (d) Review service and treatment plans for children for whom reviews are requested, and provide any advice and assistance that the state council determines to be necessary to meet the needs of children with an emotional disability referred by regional councils;
 - (e) Assess the effectiveness of regional councils in meeting the service needs of children with an emotional disability;
 - (f) Establish a uniform grievance procedure for the state, to be implemented by each regional interagency council. Appeals may be initiated by the child, parent, guardian, person exercising custodial control or supervision, or other authorized representative about matters relating to the interagency service plan for the child or the denial of services by the regional interagency council. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B;
 - (g) Meet at least monthly and maintain records of meetings, except that records that identify individual children shall only be disclosed as provided by law;
 - (h) Adopt interagency agreements as necessary for coordinating services to children with an emotional disability by the agencies represented in the state council; and
 - (i) Develop services to meet the needs of children with an emotional disability.
- (3) The State Interagency Council for Services to Children with an Emotional Disability may promulgate administrative regulations necessary to comply with the requirements of KRS 200.501 to 200.509.

Section 167. KRS 200.507 is amended to read as follows:

The secretary for *families and children* ~~(human resources)~~, the designee of the State Department of Education, and the executive director of the Administrative Offices of the Courts shall ensure that the State Interagency Council for Services to Children with an Emotional Disability is formed by August 1, 1990. No member of the State Interagency Council shall receive compensation other than that received as a state employee.

Section 168. KRS 200.509 is amended to read as follows:

- (1) There are hereby created regional interagency councils for services to children with an emotional disability. These councils shall be formed in each area development district within the Commonwealth of Kentucky, except that those area development districts that contain a county with a population greater than one hundred thousand (100,000) may form up to three (3) such councils. The regional interagency councils for services to children with an emotional disability shall be chaired by the district supervisor of the Department for Social Services or a program specialist with expertise in this service area as the district supervisor's designee. Each council shall be composed of the following members:
- (a) The children's services coordinator from each regional community mental health center or their designee in the case of a multicouncil district;
 - (b) One (1) court designated worker chosen by the Chief Regional District Judge within the region;
 - (c) One (1) specialist in special education chosen by the school district superintendents in the area served by the regional council;
 - (d) One (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability, and one (1) parent who meets the same criteria to serve as the parent member's alternate, who may attend and participate in all council meetings, but shall vote only in the absence of the parent member. For each appointment to be made, the regional interagency council for which the appointment is to be made shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment; and
 - (e) Any other local public or private agency that provides services to children with an emotional disability which the regional interagency council may invite to have a representative become a permanent or temporary member of the council.
- (2) No member of a regional interagency council for services to children with an emotional disability shall be given compensation in addition to that which they already receive as service providers or state employees,

except that the parent members and alternate parent members of regional interagency councils shall be reimbursed for all expenses incurred through the performance of their duties as council members.

- (3) Each regional interagency council for services to children with an emotional disability shall perform the following functions:
 - (a) Review case histories of children referred to it by its members or any other entity within its geographical area to coordinate service provision;
 - (b) Coordinate the development of interagency service plans for children with an emotional disability in the least restrictive alternative mode of treatment;
 - (c) Identify the time frames necessary and the parties responsible for the timely development of the interagency service plans for children with an emotional disability;
 - (d) Verify that services identified in interagency service plans are developed, accessed, and delivered in a coordinated and timely manner;
 - (e) Initiate and adopt interagency agreements as necessary for providing services to children with an emotional disability by the agencies represented in the regional council;
 - (f) Advise the state interagency council regarding service delivery to children with an emotional disability within the region;
 - (g) Refer those children for whom the regional councils cannot provide adequate services to the state interagency council;
 - (h) Implement the uniform grievance procedure established by the state interagency council;
 - (i) Make periodic reports to the state interagency council regarding the number of children referred to the regional council and the progress made in meeting the needs of each child; and
 - (j) Recognize local interagency councils for services to children with an emotional disability when it determines the council would be beneficial to service delivery.
- (4) The secretary for *families and children*~~[human resources]~~ and the designee of the State Department of Education shall ensure that regional councils for services to children with an emotional disability are formed by October 1, 1990.
- (5) Local interagency councils for services to children with an emotional disability may be formed as necessary to enhance service provision, better coordinate services, or initiate special projects and fundraising activities for children with an emotional disability within a city, county, or other local community.

Section 169. KRS 200.580 is amended to read as follows:

The secretary for *families and children*~~[human resources]~~ shall:

- (1) Make those services to children and their families known as "family preservation services" accessible to forty percent (40%) of children at imminent risk of being placed outside their homes by 1995 and eventually to all cases where the removal of a child is imminent and provision of such services appropriate;
- (2) Ensure that the state-wide availability of family preservation services be accomplished in an orderly fashion allowing the development and evaluation of different program models necessary to provide services across the geographic diversity of the state; and
- (3) Accomplish the implementation of family preservation services by consultation with professionals in the child welfare field, using any technical assistance available from the National Conference of State Legislatures and the Center for the Study of Social Policy.

Section 170. KRS 200.585 is amended to read as follows:

- (1) The Department for Social Services shall be the lead administrative agency for family preservation services and may receive funding for the implementation of *these*~~[such]~~ services. The Department for Social Services shall:
 - (a) Provide the coordination of and planning for the implementation of family preservation services;
 - (b) Provide standards for family preservation services programs;

- (c) Monitor ~~these~~[such] services to ensure they meet measurable standards of performance as set forth in state law and as developed by the Department for Social Services; and
 - (d) Provide the initial training and approve any ongoing training required by providers of family preservation services.
- (2) The Department for Social Services may provide family preservation services directly or may contract with a private, nonprofit social service agency to provide ~~these~~[such] services. In the event the department provides family preservation services with state caseworkers, those caseworkers and cases shall be excluded for the overall caseworker/case averages provided on a quarterly basis to the Legislative Research Commission and the Governor's office under KRS 199.461. Family preservation services caseworkers and cases shall be included in the report as a separate category.
- (3) In the event a nonprofit social service agency is contracted by the Department for Social Services, to provide family preservation services, the contract shall include:
- (a) Requirements for provider acceptance of any client referred by the Cabinet for ***Families and Children***~~[Human Resources]~~ for family preservation services;
 - (b) Limitation of caseload to four (4) or fewer families per caseworker;
 - (c) Provision of twenty-four (24) hour crisis intervention services to families served by the program;
 - (d) Provision for training of family preservation services staff to meet the following minimum standards:
 1. Intensive training of not less than forty (40) hours to any therapist before family preservation services clients are assigned. This training is to be provided by individuals with recognized expertise regarding family preservation services and is to concern itself with the required knowledge skills, and techniques for success within the family preservation services model;
 2. A plan for the continuing education of staff therapists after the initial forty (40) hours;
 3. Training of not less than twenty (20) hours for a paraprofessional family aide before provision of services without the direct supervision of a family preservation services caseworker;
 - (e) Provide for and conduct internal program evaluation and cooperate with external evaluation as directed by the Department for Social Services;
- (4) To qualify for continued funding under subsection (3) of this section, an agency contracting to provide family preservation services shall demonstrate an annual success rate of seventy-five percent (75%) in avoiding out-of-home placement six (6) months after the cessation of family preservation services.

Section 171. KRS 200.595 is amended to read as follows:

- (1) The provision of family preservation services to a family shall constitute a reasonable effort by the Cabinet for ***Families and Children***~~[Human Resources]~~ to prevent the removal of a child from the child's home under KRS 620.140, provided that the family has received timely access to other services from the Cabinet for ***Families and Children***~~[Human Resources]~~ for which the family is eligible.
- (2) Acceptance of family preservation services shall not be considered an admission of any allegation that initiated the investigation of the family, nor shall refusal of family preservation services be considered as evidence in any proceeding except where the issue is whether the Cabinet for ***Families and Children***~~[Human Resources]~~ has made reasonable efforts to prevent removal of a child.
- (3) No family preservation services program shall compel any family member to engage in any activity or refrain from any activity which is not reasonably related to remedying a condition or conditions that gave rise or which could reasonably give rise to any finding of child abuse, neglect or dependency.

Section 172. KRS 200.600 is amended to read as follows:

- (1) The secretary for ***families and children***~~[human resources]~~ shall conduct a yearly evaluation of family preservation services which shall include the following:
 - (a) The number of families in which family preservation services would be an available alternative to placement of the child if available;

- (b) The number of families receiving family preservation services, the number of children in those families, and the number of children in those families who would have been placed in out-of-home care if family preservation services had not been available;
- (c) Among those families receiving family preservation services, the number of children placed outside the home;
- (d) The average cost per family of providing family preservation services;
- (e) The estimated cost of out-of-home placement which would have been expended on behalf of those children who received family preservation services based on average lengths of stay and average costs of out-of-home placements;
- (f) The number of children who remain unified with their families six (6) months and one (1) year after completion of family preservation services; and
- (g) An overall evaluation of the progress of family preservation services programs during the preceding year, recommendations for improvements in delivery of this service, and a plan for the continued development of family preservation services to ensure progress toward statewide availability.

Section 173. KRS 200.605 is amended to read as follows:

- (1) The secretary for *families and children*~~[human resources]~~ may redirect funds from amounts budgeted to serve children in out-of-home placement for the purposes of providing family preservation services to children who would otherwise be removed from their homes.
- (2) The secretary for *families and children*~~[human resources]~~ may use any funds that become available through an increase in reimbursement of funds from Title 4-E of the Social Security Act as amended by P.L. 96-272 for the purposes of providing family preservation services to children who would otherwise be removed from their homes.

Section 174. KRS 200.654 is amended to read as follows:

As used in KRS 200.650 to 200.676, unless the context requires otherwise:

- (1) "Awards and contracts" means the state and federal funds designated by the cabinet for projects relating to planning, resource development, or provision of direct early intervention services, as defined in this section, to infants and toddlers with disabilities and their families;
- (2) "Cabinet" means the Cabinet for *Health Services*~~[Human Resources]~~;
- (3) "Child find" means a system to identify, locate, and evaluate all infants and toddlers with disabilities who are eligible for early intervention services, determine which children are receiving services, and coordinate the effort with other state agencies and departments;
- (4) "Council" means the Kentucky Early Intervention System Interagency Coordinating Council;
- (5) "District" means one (1) of the fifteen (15) area development districts;
- (6) "District early intervention committee" means an interagency coordinating committee established within each of the fifteen (15) area development districts to facilitate interagency coordination at the district level;
- (7) "Early intervention services" means services for infants and toddlers with disabilities and their families delivered according to an individualized family service plan developed by the child multidisciplinary team to meet the developmental needs of eligible children, as defined in this section, and provided by entities receiving public funds using qualified personnel. The individualized family services plan is developed and the services are provided in collaboration with the families and, to the maximum extent appropriate, in natural environments, including home and community settings in which infants and toddlers without disabilities would participate. These services are necessary to enable the child to reach maximum potential. Services to be made available shall include, but not be limited to, the following:
 - (a) Screening services;
 - (b) Evaluation services;
 - (c) Assessment services;
 - (d) Service coordination;

- (e) Transportation and related costs for accessing early intervention services;
 - (f) Family services including counseling, psychological, and social work services;
 - (g) Health services including medical services for diagnostic and evaluation purposes only;
 - (h) Nutrition services;
 - (i) Occupational therapy services;
 - (j) Physical therapy services;
 - (k) Communication development services;
 - (l) Sensory development services;
 - (m) Developmental intervention services;
 - (n) Assistive technology services; and
 - (o) Respite services;
- (8) "Early intervention system" means the management structure established in KRS 200.654 to 200.670 and which is comprised of the interdependent array of services and activities for the provision of a statewide, comprehensive, coordinated, multidisciplinary, interagency program for infants and toddlers with disabilities and their families;
- (9) "Individual family service plan" means the singular comprehensive written service plan developed by the child's multidisciplinary team, with the child's parents serving as fully participating members of the team, to be followed by all agencies and other entities involved in providing early intervention services to an infant or toddler with disabilities and the child's family;
- (10) "Infants and toddlers with disabilities" and "eligible children" mean children from birth to thirty-six (36) months of age in need of early intervention services as a result of one (1) of the following circumstances:
- (a) The child is experiencing developmental delays, as measured by diagnostic instruments and procedures in one (1) or more of the following skill areas: physical; cognitive; communication; social or emotional; or adaptive development; or
 - (b) The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay;
- (11) "Multidisciplinary team" means the child-specific group responsible for determining the services needed by the infant or toddler with disabilities and the child's family, and development of the individualized family services plan. The team for each child shall include the parent or guardian of the child and individuals representing at least two (2) applicable disciplines which may include but need not be limited to the following: physical therapy; speech therapy; social work; nursing; or education;
- (12) "Point of entry" means an easily-identifiable, highly-accessible nonstigmatized entry into services; and
- (13) "Qualified service provider" means an entity, including but not limited to, an individual, program, department or agency, responsible for the delivery of early intervention services to eligible infants and toddlers with disabilities and their families who has met the highest minimum standards of state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the entity is providing early intervention services.

Section 175. KRS 200.656 is amended to read as follows:

There is hereby created in state government the Kentucky Early Intervention System to provide services for infants and toddlers with a disability and their families. For administrative purposes, the Kentucky Early Intervention System shall be attached to the Cabinet for **Health Services**~~Human Resources~~.

Section 176. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the

Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Cabinet for **Health Services**~~[Human Resources]~~. Pursuant to federal law and regulations, the membership shall be as follows:

- (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
 - (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
 - (c) At least one (1) member shall be a member of the Kentucky General Assembly;
 - (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
 - (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for **Public Health**~~[Services]~~;
 - (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
 - (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;
 - (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Social Services;
 - (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
 - (j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and
 - (k) At least one (1) member shall be a representative of the Commission for Handicapped Children.
- (2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:
- (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;
 - (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
 - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;
 - (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
 - (e) Provision of appropriate services for children from birth to five (5) years of age;
 - (f) Identify sources of fiscal and other support services for early intervention programs;
 - (g) Preparing applications to Part H of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and
 - (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
- (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

Section 177. KRS 202A.011 is amended to read as follows:

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

- (1) "Authorized staff physician" means a physician who is a bona fide member of the hospital's medical staff;
- (2) "Danger" or "threat of danger to self, family or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food or clothing;
- (3) "Cabinet" means the Kentucky Cabinet for **Health Services**~~[Human Resources]~~;
- (4) "Psychiatric facility" means a crisis stabilization unit or any facility licensed by the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation, emergency, and consultation and education services for the diagnosis and treatment of persons who have a mental illness;
- (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill or mentally retarded persons who have been charged with or convicted of a felony;
- (6) "Hospital" means:
 - (a) A state mental hospital or institution or other licensed public or private hospital, institution, health care facility, or part thereof, approved by the Kentucky Cabinet for **Health Services**~~[Human Resources]~~ as equipped to provide full-time residential care and treatment for mentally ill or mentally retarded persons;
 - (b) A hospital, institution, or health care facility of the government of the United States equipped to provide residential care and treatment for mentally ill or mentally retarded persons;
- (7) "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;
- (8) "Least restrictive alternative mode of treatment" means that treatment which will give a mentally ill individual a realistic opportunity to improve the individual's level of functioning, consistent with accepted professional practice in the least confining setting available;
- (9) "Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior or emotional symptoms can be related to physiological, psychological, or social factors;
- (10) "Patient" means a person under observation, care, or treatment in a hospital pursuant to the provisions of this chapter;
- (11) "Petitioner" means a person who institutes a proceeding under this chapter;
- (12) "Qualified mental health professional" means:
 - (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A psychologist licensed at the doctoral level or a psychologist or psychological associate certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under this chapter;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or

company engaged in the provision of mental health services or a regional community mental health and mental retardation program; or

- (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community mental health and mental retardation program;
- (13) "Residence" means legal residence as determined by applicable principles governing conflicts of law;
- (14) "Respondent" means a person alleged in a hearing under this chapter to be a mentally ill or mentally retarded person;
- (15) "Secretary" means the secretary of the Cabinet for *Health Services*~~{Human Resources}~~.

Section 178. KRS 202A.201 is amended to read as follows:

- (1) When an inmate of any penal and correctional institution is reported by the staff of that institution to the Department of Corrections as being so mentally ill that he cannot be properly treated with the facilities at the disposal of the staff, the Department of Corrections shall have an examination conducted on the inmate by a mental health professional.
- (2) If this examination reveals that the inmate is mentally ill and appropriate treatment cannot be properly carried out in the institution in which he is incarcerated or within the facilities at the disposal of the Department of Corrections, the commissioner of the Department of Corrections may then request of the secretary of the Cabinet for *Health Services*~~{Human Resources}~~ the inmate's transfer to a hospital or forensic psychiatric facility. If the secretary of the Cabinet for *Health Services*~~{Human Resources}~~ agrees that a transfer is necessary, the person shall be transferred to a Cabinet for *Health Services*~~{Human Resources}~~ facility designated by the secretary of the Cabinet for *Health Services*~~{Human Resources}~~, where the person shall remain until the staff of the facility which received him advises the commissioner of the Department of Corrections that the person's condition is such that he may be returned to the institution from which he came. No transfer shall be made to a correctional facility located on the grounds of a state mental hospital. The commissioner of the Department of Corrections shall then authorize his return. If the prisoner's sentence expires during his stay in the facility and he is still in need of involuntary hospitalization, the staff of the facility shall petition the applicable District Court for further involuntary hospitalization of the patient under provisions of this chapter.
- (3) Prior to the issuance of an order of transfer and unless the prisoner voluntarily agrees to the transfer, the commissioner shall:
 - (a) Send written notice to the prisoner that a transfer to a hospital or forensic psychiatric facility is being considered in sufficient time to permit the prisoner to prepare for the hearing;
 - (b) Hold a hearing at which time the prisoner is made aware of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;
 - (c) Provide an opportunity at the hearing to the prisoner to present testimony of witnesses and to confront and cross-examine witnesses called by the Department of Corrections, except upon a finding, not arbitrarily made, of good cause for not permitting the presentation;
 - (d) Provide an independent decision maker who has not participated in the request for transfer to a hospital or forensic psychiatric facility;
 - (e) Issue a written statement by the factfinder as to the evidence relied on and the reasons for transferring the prisoner; and
 - (f) Provide effective and timely notice of all the foregoing rights.
- (4) During the time of the prisoner's stay in a facility, his legal status as a prisoner shall remain unchanged until the termination of his sentence. The facility staff shall have no authority to parole, grant permission to visit relatives or friends outside the facility, or discharge the individual unless otherwise agreed to by the

Department of Corrections. The time the prisoner spends in the facility shall be counted as a part of the prisoner's sentence.

Section 179. KRS 202A.241 is amended to read as follows:

All individuals transporting or holding persons under KRS Chapter 202A, 202B, or 645, shall use the least restrictive level of restraint consistent with the person's needs. The Cabinet for **Health Services**~~{Human Resources}~~ shall promulgate administrative regulations subject to the provisions of KRS Chapter 13A which shall include guidelines addressing the person's need for privacy, particularly when being restrained, and the person's ability to communicate by phone at the earliest opportunity available.

Section 180. KRS 202B.010 is amended to read as follows:

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

- (1) "Authorized staff physician" means a person who is employed as a physician of an ICF/MR;
- (2) "Interdisciplinary team" means the group of persons responsible for the diagnosis, evaluation, and individualized program planning and service implementation for the resident. The team is composed of a physician, a psychologist, a registered nurse, a social worker, and other professionals, at least one (1) of whom is a qualified mental retardation professional, and may include the resident, the resident's family, or the guardian;
- (3) "Cabinet" means the Kentucky Cabinet for **Health Services**~~{Human Resources}~~;
- (4) "Danger" or "threat of danger to self, family, or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food, or clothing;
- (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill or mentally retarded persons who have been charged with or convicted of a felony;
- (6) "Hospital" means:
 - (a) A state mental hospital or institution or other licensed public or private hospital, institution, health care facility, or part thereof, approved by the Kentucky Cabinet for **Health Services**~~{Human Resources}~~ as equipped to provide full-time residential care and treatment for mentally ill or mentally retarded persons;
 - (b) A hospital, institution, or health care facility of the government of the United States equipped to provide residential care and treatment for mentally ill or mentally retarded persons;
- (7) "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;
- (8) "Least restrictive alternative mode of treatment" means that treatment given in the least confining setting which will provide a mentally retarded person appropriate treatment or care consistent with accepted professional practice. For purposes of this section, least restrictive alternative mode of treatment may include an institutional placement;
- (9) "Mentally retarded person" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;
- (10) "ICF/MR" means an intermediate care facility approved by the cabinet for the evaluation, care, and treatment of mentally retarded persons;
- (11) "Petitioner" means a person who institutes a proceeding under this chapter;
- (12) "Qualified mental retardation professional" means:
 - (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

- (b) A psychologist licensed at the doctoral level or a psychologist or psychological associate certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under this chapter;
 - (c) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience of which one (1) year is with mentally retarded persons; or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who has three (3) years of inpatient or outpatient clinical experience of which one (1) year is in the field of mental retardation and is currently employed by an ICF/MR licensed by the cabinet, a hospital, a regional community mental health and mental retardation program, or a private agency or company engaged in the provision of mental retardation services; and
 - (d) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with two (2) years of inpatient or outpatient clinical experience in social work of which one (1) year shall be in the field of mental retardation and is currently employed by an ICF/MR licensed by the cabinet, a hospital, a regional community mental health and mental retardation program, or a private agency or company engaged in the provision of mental retardation services;
- (13) "Residence" means legal residence as determined by applicable principles governing conflicts of law;
 - (14) "Resident" means a person under care or treatment in an ICF/MR pursuant to the provisions of this chapter;
 - (15) "Respondent" means a person alleged in a hearing under this chapter to be a mentally retarded person; and
 - (16) "Secretary" shall mean the secretary of the Cabinet for **Health Services**~~[Human Resources]~~.

Section 181. KRS 205.010 is amended to read as follows:

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

- (1) "Cabinet" means the Cabinet for **Families and Children**. **For the purposes of KRS 205.510 to 205.645 and KRS 205.8451 to 205.8483, "cabinet" means the Cabinet for Health Services**~~[Human Resources]~~;
- (2) "Secretary" means the secretary for **Families and Children**~~[human resources]~~ or his authorized representative. **For the purpose of KRS 205.510 to 205.645 and KRS 205.8451 to 205.8483, "secretary" means the secretary of the Cabinet for Health Services or his authorized representative;**
- (3) "Public assistance" means money grants, assistance in kind or services to or for the benefit of needy aged, needy blind, needy permanently and totally disabled persons, needy children, or persons with whom a needy child lives or a family containing a combination of these categories, except that the term shall not be construed to permit the granting of financial aid where the purpose of such aid is to obtain an abortion. For purposes of this section and KRS 205.560, "abortion" means an act, procedure, device, or prescription administered or prescribed for a pregnant woman by any person, including the pregnant woman herself producing premature expulsion of the fetus. Abortion does not include an induced premature birth intended to produce a live viable child;
- (4) "Needy child" means a child who has been deprived of parental support by reasons prescribed by regulations within the scope of Title IV of the Social Security Act, its amendments, and federal regulations and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (5) "Parent", in addition to biological or adoptive parent, shall include stepparent;
- (6) "Needy aged" means a person who has attained the age of sixty-five (65) and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (7) "Needy blind" means a person who has no vision or whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;
- (8) "Person with whom a needy child lives" means the individual prescribed by regulation, with whom such child is living in a place of residence maintained by such individual by himself or together with one (1) or more other persons;
- (9) "Needy permanently and totally disabled" means a person eighteen (18) years of age or older and who has a permanent physical or mental impairment, disease, or loss that substantially precludes him from engaging in

useful occupations within his competence and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;

- (10) "Private institution" means any establishment or place other than a public institution operated or maintained by any individual, association, corporation, or other organization which provides a group living arrangement for four (4) or more individuals, who are cared for and maintained in residence for compensation or otherwise;
- (11) "Public institution" means any establishment or place which is the responsibility of and administered by the state or any political subdivision thereof providing a group living arrangement in which one (1) or more individuals are cared for and maintained in residence;
- (12) "Public medical institution" means any public institution the primary purpose of which is to furnish hospital care and medical treatment;
- (13) "Person determined to be potentially responsible" means any person who:
 - (a) Is not aged, blind, disabled, incapacitated, or needed in the home:
 - 1. Because of the illness or incapacity of a member of the family; or
 - 2. Because of children in the home under the age of six; or
 - (b) Volunteers for such determination;
- (14) As used in KRS 205.650 to 205.700, unless the context otherwise requires:
 - (a) "Community work experience program" shall mean a program to provide work experience and training for recipients of public assistance who are not otherwise able to obtain employment or who are not actively participating in training or education programs;
 - (b) "Designated geographic area" shall mean one (1) county or a portion of one (1) county selected by the secretary as the site of a community work experience program; and
 - (c) "Recipient" shall mean a person who currently receives benefits from public assistance;
- (15) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
- (16) "Adult day-care center" means any adult care facility which provides part-time care, day or night, but less than twenty-four (24) hours, to at least four (4) adults not related to the operator of the adult care facility by blood, marriage, or adoption.

Section 182. KRS 205.177 is amended to read as follows:

- (1) Notwithstanding any existing state statute or regulation to the contrary, any pertinent information concerning individual clients, patients, or applicants in the possession of the Justice Cabinet, Cabinet for **Health Services, Cabinet for Families and Children**~~(Human Resources)~~, Department of Education, or any other state or local governmental agency may be shared with any authorized representative of any other state or local governmental agency of similar function if ~~the [such]~~ agency has a direct, tangible, legitimate interest in the individual concerned or his immediate family.
- (2) Any state agency designated in subsection (1) of this section may share pertinent information concerning a client, patient, or applicant with any private or quasi-private agency when such agency has an agreement with that state agency assuring the confidentiality of all such information, and provided that the private or quasi-private agency has a direct, tangible, legitimate interest in the individual concerned or his immediate family.

Section 183. KRS 205.179 is amended to read as follows:

The Cabinet for **Families and Children**~~(Human Resources)~~ shall conduct an annual review of all addresses or locations at which four (4) or more persons reside who receive state supplementation of federal supplemental security income benefits to determine if the address or location is a boarding home that has not registered pursuant to KRS 216B.305. The results of the review shall be reported to the **Office**~~Division~~ of Aging Services and action shall be taken to ensure the registration of all unregistered boarding homes that are identified.

Section 184. KRS 205.180 is amended to read as follows:

The secretary for *families and children*~~[human resources]~~ may authorize the destruction of such original reports and records as have been properly recorded or summarized in the permanent records of the cabinet or are no longer considered necessary to the proper administration of the cabinet. Such destruction or disposition shall be made only by order of the secretary. Any money received from the disposition of such records shall be deposited to the credit of trust and agency accounts.

Section 185. KRS 205.2002 is amended to read as follows:

- (1) The Cabinet for *Families and Children*~~[Human Resources]~~ shall take all necessary actions to ensure that at least five percent (5%) of all adults receiving aid to families with dependent children benefits as of July 15, 1988, shall, by July 1, 1989, be enrolled and participating in college, or a vocational training program, or a GED program, or employed and working not less than twenty-three (23) hours per week. For each year after July 1, 1989, the cabinet shall move an additional one percent (1%) of aid to families with dependent children recipients into education or training programs or employment until the total number of adult recipients employed or in training or education programs reaches twenty percent (20%) of total recipients. In meeting this goal, the cabinet shall not count any adult recipient leaving the Aid to Families with Dependent Children Program for reasons other than entering an education or training program or receiving a job.
- (2) The cabinet shall file an annual report with the Legislative Research Commission and the Interim Joint Committee on Health and Welfare documenting the results of the cabinet's efforts to move aid to families with dependent children recipients into training or education programs and employment, and meeting the goals set forth in subsection (1) of this section. The report shall also include a plan reflecting what actions are being taken to meet these goals. The cabinet shall take into account the following factors to determine compliance with the goals set forth in subsection (1) of this section:
 - (a) Adults aged sixty (60) shall not be included;
 - (b) Adults receiving aid to families with dependent children due to disability shall not be included;
 - (c) For purposes of meeting the criteria related to employed or working not less than twenty-three (23) hours per week, adults shall be considered if the aid to families with dependent children was discontinued during the reporting period for earned income and such case has remained closed for not less than ninety (90) days.
- (3) If the cabinet fails to meet the goal of moving six percent (6%) of current aid to families with dependent children recipients into education or training programs or employment by July 1, 1990, the general fund share of the cabinet's cost of administering the Aid to Families with Dependent Children Program shall be reduced by a percentage or portion thereof equal to the percentage by which the cabinet fails to meet the goals set forth in subsection (1) of this section. The reduction in general fund share shall continue in the same manner if the cabinet fails to move an additional one percent (1%) of aid to families with dependent children recipients into education or training programs or employment.

Section 186. KRS 205.201 is amended to read as follows:

The duties of the Cabinet for *Families and Children*~~[Human Resources]~~ shall be to:

- (1) Promote and aid in the establishment of local programs and services for the aging;
- (2) Conduct programs to educate the public as to problems of the aging;
- (3) Review existing state programs and services for the aging and to make recommendations to the Governor, to the appropriate department and agencies of the state, and to the Legislature for improvements in and additions to such programs and services;
- (4) Assist and encourage governmental and private agencies to coordinate their efforts on behalf of the aging;
- (5) Conduct and encourage other organizations to conduct studies concerning the aging;
- (6) Establish, in selected areas and communities of the state, programs of services for the aging to demonstrate the value of such programs, and to encourage local agencies to continue the programs and to create new services where needed. Emphasis shall be given to services designed to foster continued participation of older people in family and community life and to lessen the need for institutional care;
- (7) Provide services designed to meet the needs of the minority elderly in programs administered by the cabinet. The cabinet shall annually prepare a report identifying the special needs of the minority elderly population in the Commonwealth as compared to the elderly population at large. The report shall be completed no later than

October 1 of each year and transmitted to the Legislative Research Commission. The report shall, at a minimum:

- (a) Contain an overview of the health status of minority elderly Kentuckians;
 - (b) Identify specific diseases and health conditions for which the minority elderly are at greater risk than the general population;
 - (c) Identify problems experienced by the minority elderly in obtaining services from governmental agencies; and
 - (d) Identify programs at the state and local level designed to specifically meet the needs of the minority elderly;
- (8) In preparing the report required by subsection (7) of this section, the cabinet shall solicit and consider the input of individuals and organizations representing the concerns of the minority elderly population as relates to:
- (a) Programs and services needed by the minority elderly;
 - (b) The extent to which existing programs do not meet the needs of the minority elderly;
 - (c) The accessibility of existing programs to the minority elderly;
 - (d) The availability and adequacy of information regarding existing services;
 - (e) Health problems the minority elderly experience at a higher rate than the nonminority elderly population; and
 - (f) Financial, social, and other barriers experienced by the minority elderly in obtaining services;
- (9) Conduct an outreach program that provides information to minority elderly Kentuckians about health and social problems experienced by minority elderly persons and available programs to address those problems, as identified in the report prepared pursuant to subsection (7) of this section; and
- (10) Cooperate with the federal government and with the governments of other states in programs relating to the aging.

Section 187. KRS 205.202 is amended to read as follows:

The secretary of the Cabinet for *Families and Children*~~[Human Resources]~~ shall be empowered to accept and expend gifts and grants from any source. Such moneys shall go into a trust and agency fund to be administered by the cabinet in furtherance of the purposes of the provisions of KRS 205.201 to 205.204.

Section 188. KRS 205.203 is amended to read as follows:

- (1) The secretary of the Cabinet for *Families and Children*~~[Human Resources]~~ may provide, within budgetary limitations, for in-home services to the aging to include, but not necessarily limited to: homemaker services; home-help therapy services; day-care services; home-delivered meal services; transportation services; foster care services; and health services.
- (2) The cabinet is authorized to collect fees for services rendered pursuant to this section in accordance with a fee schedule adopted by the secretary for *families and children*~~[human resources]~~. The fee schedule shall take into consideration the ability of the patient or client to pay for such services. Fees shall not be collected from any person who is "needy aged" as defined by KRS 205.010.
- (3) The secretary may utilize and promote available or potential community resources for the delivery of services to the aging and shall, when he deems appropriate, contract for services with local, community, private agencies, and individuals, including relatives of patients and clients, when such services would not otherwise be available without cost.
- (4) The services to the aging authorized under this section are in addition and supplementary to any services to which the aging may be entitled under any other federal, state, or local governmental law, regulation, or program.
- (5) The services to the aging authorized under this section shall be designed to meet the needs of the minority elderly as identified by the Cabinet for *Families and Children*~~[Human Resources]~~ pursuant to KRS 205.201.

Section 189. KRS 205.204 is amended to read as follows:

- (1) The Cabinet for *Families and Children*~~[Human Resources]~~, unless otherwise directed by an executive order of the Governor, is designated the agency of this state for the purpose of administering the Older Americans Act of 1965, Public Law 89-73, including all amendments thereto. In administering programs and allocating funds under the Older Americans Act, the cabinet shall design programs and allocate funds to meet the needs of the minority elderly as identified by the cabinet pursuant to KRS 205.201.
- (2) The secretary for *families and children*~~[human resources]~~ may promulgate such administrative regulations as are necessary to comply with any requirement imposed or required by federal law.

Section 190. KRS 205.217 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Case manager" means an employee of the area development district or an agency under contract with the area development district who shall assist any functionally impaired person in identifying and accessing the long term care services most appropriate to the individual's social and medical needs.
 - (b) "Functionally impaired person" means any person who is unable to perform without assistance any of the activities of daily living including, but not limited to dressing, bathing, toileting, transferring, or feeding, or any of the instrumental activities of daily living including but not limited to meal preparation, laundry, housecleaning, budgeting, and shopping.
- (2) There shall be established within the Cabinet for *Families and Children*~~[Human Resources]~~ a Long-term Care Case Management Demonstration Program to consolidate and coordinate all services provided or funded by the cabinet with respect to long-term care, conducted in at least three (3) area development districts. This demonstration program shall serve as the focal point for the provision of all services provided to functionally impaired persons to assure that services are consistent with the following goals:
 - (a) That functionally impaired persons be allowed to live independently at home or with others as long as the citizen desires without requiring inappropriate or premature institutionalization;
 - (b) That services provided or funded by the cabinet promote independent living by functionally impaired persons and prevent or minimize illness or social isolation;
 - (c) That institutional services be used only as a last resort when in-home or community based support services are not available or are not adequate to meet the needs of functionally impaired persons;
 - (d) That a single entry point for all services for functionally impaired persons be available to all persons in need of information about or access to the services; and
 - (e) That the use of informal providers of care, such as friends and relatives of functionally impaired persons, be used as long as possible before paid services are utilized.
- (3) The following programs and services shall be included in the Long-term Care Case Management Demonstration Program:
 - (a) Hospital-based long term care services including dual licensed beds, swing beds and physical rehabilitation services, skilled nursing facility services, intermediate care facility services, nursing facility services, home health services, and home and community based waiver services funded by the Kentucky Medical Assistance Program;
 - (b) In-home and community based services for elderly persons funded under the Older Americans Act (42 U.S.C. Section 3001 et seq.) and Title XX of the Social Security Act (42 U.S.C. Sections 1397-1397f);
 - (c) Services provided under the home care program pursuant to KRS 205.460; and
 - (d) Personal care home services or domiciliary care funded by supplemental payments to persons receiving supplemental security income benefits pursuant to KRS 205.245.
- (4) The Long-term Care Case Management Demonstration Program shall employ a system of case management to assure that appropriate services are provided to all persons using or applying for the services set forth in subsection (3) of this section, and that the services are consistent with the goals set forth in subsection (2) of this section. All persons applying for these services shall be assigned a case manager. The duties of the case manager shall include preparation of a general plan of care, based on the person's need for services, arranging placements or other needed services or equipment, coordination and management of the applicant through the

eligibility process for these services, and reviewing each case on a periodic basis to assure the plan of care is being followed. Case management shall not include the determination of eligibility for Medicaid covered services, long-term care facility preadmission reviews, level of care determinations for purposes of Medicaid reimbursement, or peer review activities. The general plan of care shall not replace a daily care plan prescribed by a physician for treatment of a person in a hospital or long-term care facility or receiving home health services. The general plan of care shall identify the categories of services or type of placement required and the providers of the services. Case managers shall serve as advocates for applicants for the services set forth in subsection (3) of this section, and shall interact with the existing administrative structure within the Cabinet for ***Families and Children***~~Human Resources~~ to meet the goals stated in subsection (2) of this section. Patients discharged from a hospital to a long-term care facility shall receive case management services in the hospital on a timely basis or immediately after admission to a long-term care facility. The goal of each case plan shall be the provision of services in the least restrictive setting designed to best meet the individual needs of the functionally impaired person. When persons are determined to need services to maintain independent living, but do not meet the financial or eligibility criteria for services, case managers shall attempt to ensure that services are provided from community resources, family member, or volunteers.

- (5) The cabinet, through the Long-term Care Demonstration Program, shall provide access to information, counseling and screening as appropriate, for persons potentially in need of long-term care services without regard to the person's income, in order to assist functionally impaired persons in accessing available services. In administering the Long-Term Care Demonstration Program, the cabinet shall provide services to meet the needs of the minority elderly as identified by the cabinet pursuant to KRS 205.201. The cabinet may charge a fee for providing information, counseling, and screening services based on the client's ability to pay.
- (6) The secretary for ***families and children***~~human resources~~ may promulgate administrative regulations necessary to implement the Long-term Care Demonstration Program.

Section 191. KRS 205.245 is amended to read as follows:

Money payments made by the Cabinet for ***Families and Children***~~Human Resources~~ to the needy aged, needy blind, and the needy permanently and totally disabled shall be:

- (1) Mandatory state supplementation of the supplemental security income program as established by federal law and regulations and administered in the manner agreed to by the secretary of the United States Department of Health, Education, and Welfare and the secretary of the Cabinet for ***Families and Children***~~Human Resources~~, or their authorized representatives; and
- (2) Supplemental payments to persons requiring special living arrangements as they become eligible for the supplemental security income program, to insure the same level of care as those persons covered under the provisions of subsection (1) of this section.

Section 192. KRS 205.400 is amended to read as follows:

- (1) There is established within the Cabinet for ***Families and Children***~~Human Resources~~ an Energy Cost Assistance Program for making money payments to or on behalf of citizens of the Commonwealth for the purpose of purchasing or supplementing the cost of energy for household use.
- (2) Citizens of the Commonwealth who incur expenses for providing energy by purchase from suppliers, by their own labors, or through the payment of rent, whether or not included in a charge for other goods and services, which includes the cost of energy supplied to premises occupied as their principal residence shall be eligible to receive the benefit of the payments to themselves or to providers of energy to such household if:
 - (a) The citizen is sixty-two (62) years of age or older and has or is a member of a family having a gross income equal to or less than one hundred twenty-five percent (125%) of the poverty level of income for an individual or family of that size designated by the Community Services Administration of the United States government; or
 - (b) The citizen is blind or permanently and totally disabled and receiving supplemental security income benefits under the Social Security Act or is blind or permanently and totally disabled and is currently eligible for Medicaid benefits under the Medical Assistance Program.
- (3) The cabinet shall establish by regulation a schedule of payments and benefit levels under this program to be based on income, resources and family size. In no event shall payments be made to or on behalf of any person or family whose gross income from all sources exceeds one hundred twenty-five percent (125%) of the poverty

level of income as provided for such individuals or family by the Community Services Administration of the United States government.

- (4) Payments made under this section shall be for a period of four (4) months during each twelve (12) month period for which funds are available. At its discretion and to insure the proper application of the funds appropriated for this purpose, the cabinet may elect to make payments to vendors or suppliers or jointly to vendors and eligible recipients.

Section 193. KRS 205.455 is amended to read as follows:

As used in KRS 205.460 and 205.465:

- (1) "Chore services" means the performance of heavy housecleaning, minor household repairs, yard tasks, and other activities needed to assist in the maintenance of a functionally impaired elderly person in his own home.
- (2) "Core services" means those services, including but not limited to client assessment and case management services, designed to identify a functionally impaired elderly person's needs, develop a plan of care, arrange for services, monitor the provision of services, and reassess the person's needs on a regular basis.
- (3) "Cabinet" means the Cabinet for *Families and Children*~~[Human Resources]~~.
- (4) "District" means an area development district designated~~[as such]~~ pursuant to KRS 147A.050.
- (5) "Escort services" means the accompaniment of a person who requires such assistance for reasons of safety or protection to or from his physician, dentist, or other necessary services.
- (6) "Essential services" means those services which are most needed to prevent unnecessary institutionalization of functionally impaired elderly persons. Essential services shall include chore services, home delivered meals, home health aide services, homemaker services, respite services, escort services, and home repair services.
- (7) "Functionally impaired elderly person" means any person, sixty (60) years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently, thus rendering such person at risk of entering an institution. Functional impairment shall be determined through a functional assessment developed by the cabinet and delivered to each applicant for essential services.
- (8) "Home delivered meals" means the provision of a nutritionally sound meal, that meets at least one-third (1/3) of the current daily recommended dietary allowance, to a functionally impaired elderly person who is homebound by reason of illness, incapacity or disability.
- (9) "Home health aide services" means the performance of simple procedures, including but not limited to personal care, ambulation, exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.
- (10) "Homemaker services" means general household activities, including but not limited to nonmedical personal care, shopping, meal preparation and routine household care, provided by a trained homemaker when the person regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or others in the home.
- (11) "Home repair services" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility including, where appropriate, emergency summons systems.
- (12) "Respite services" means care provided by an approved caregiver or agency for a designated time period because of absence or need for relief of a primary caregiver.

Section 194. KRS 205.510 is amended to read as follows:

As used in this chapter as it pertains to medical assistance unless the context clearly requires a different meaning:

- (1) "Council" means the Advisory Council for Medical Assistance;
- (2) "Dentist" means a person authorized to practice dentistry under laws of the Commonwealth;
- (3) "Medical care" as used in this chapter means essential medical, surgical, dental, optometric, podiatric, and nursing services, in the home, office, clinic, or other suitable places, which are provided or prescribed by physicians, optometrists, podiatrists or dentists licensed to render such services, including drugs and medical

supplies, appliances, laboratory, diagnostic and therapeutic services, nursing home and convalescent care, hospital care as defined in KRS 205.560(1)(a), and such other essential medical services and supplies as may be prescribed by such persons; but not including abortions, or induced miscarriages or premature births, unless in the opinion of a physician such procedures are necessary for the preservation of the life of the woman seeking such treatment or except in induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child. However, this section does not authorize optometrists to perform any services other than those authorized by KRS Chapter 320;

- (4) "Nurse" means a person authorized to practice professional nursing under the laws of the Commonwealth;
- (5) "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provide nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care, and which is licensed pursuant to the provisions of KRS 216B.015;
- (6) "Optometrist" means a person authorized to practice optometry under the laws of the Commonwealth;
- (7) "Pharmacist" means a person authorized to practice pharmacy under the laws of the Commonwealth;
- (8) "Physician" means a person authorized to practice medicine or osteopathy under the laws of the Commonwealth;
- (9) "Podiatrist" means a person authorized to practice podiatry under the laws of the Commonwealth;
- (10) "Primary care center" means a facility which provides comprehensive medical care with emphasis on the prevention of disease and the maintenance of the patients' health as opposed to the treatment of disease;
- (11) "Public assistance recipient" means a person who has been certified by the Department for Social Insurance of the Cabinet for *Families and Children*~~{Human Resources}~~ as being eligible for, and a recipient of, public assistance under the provisions of this chapter;
- (12) "Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by regulation of the secretary for *health services*~~{human resources}~~ or his designee;
- (13) "Vendor payment" means a payment for medical care which is paid by the Cabinet for *Health Services*~~{Human Resources}~~ directly to the authorized person or institution which rendered medical care to an eligible recipient;
- (14) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including but not limited to a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparation Act, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act.

Section 195. KRS 205.520 is amended to read as follows:

- (1) KRS 205.510 to 205.630 shall be known as the "Medical Assistance Act."
- (2) The General Assembly of the Commonwealth of Kentucky recognizes and declares that it is an essential function, duty and responsibility of the state government to provide medical care to its indigent citizenry; and it is the purpose of KRS 205.510 to 205.630 to provide such care.
- (3) Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for *health services*~~{human resources}~~ may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect.
- (4) It is the intention of the General Assembly to comply with the provisions of Title XIX of the Social Security Act which require that the Kentucky Medical Assistance Program recover from third parties which have a legal liability to pay for care and services paid by the Kentucky Medical Assistance Program.
- (5) The Kentucky Medical Assistance Program shall be the payor of last resort and its right to recover under KRS 205.622 to 205.630 shall be superior to any right of reimbursement, subrogation, or indemnity of any liable third party.

Section 196. KRS 205.540 is amended to read as follows:

- (1) An Advisory Council for Medical Assistance shall be established in the state government. The council shall consist of eighteen (18) members. The secretary for **health services**~~Human Resources~~ shall be an ex officio member. The other seventeen (17) members of the council shall be appointed by the Governor and shall hold office for a term of four (4) years and until their successors are appointed and qualify, except that the members appointed to fill the first vacancy occurring for a term beginning on July 1, 1960, shall be as follows: Two (2) members shall be appointed for one (1) year, two (2) for two (2) years, two (2) for three (3) years, and three (3) for four (4) years, and the respective terms of the first members shall be designated by the Governor at the time of their appointments. Upon the expiration of the respective terms of the members first appointed, the term of each successor shall be for four (4) years and until his successor is appointed and qualified. Ten (10) of the appointments shall be made one (1) from each list of three (3) nominees submitted by the following organizations: the Kentucky State Medical Association; the Kentucky Dental Association; the Kentucky Hospital Association; the Kentucky Pharmacists Association; the Kentucky Association of Health Care Facilities; the Kentucky Nurses' Association; the State Board of Podiatry; the Kentucky Home Health Association; the Kentucky Optometric Association; and the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc. The other seven (7) appointive members shall be health care advocates knowledgeable about health care and the health care industry, and shall include three (3) medical assistance recipients, one (1) representative of a recognized consumer advocacy group representing the elderly; and three (3) representatives of recognized consumer advocacy groups whose membership includes low income persons, children and youth, women, minorities, and disabled persons.
- (2) Each appointive member of the council shall serve without compensation but each council member not otherwise compensated for his time or expenses shall be entitled to reimbursement for his actual and necessary expenses in carrying out his duties with reimbursement for expenses being made in accordance with state regulations relating to travel reimbursement.
- (3) Vacancies shall be filled for the unexpired term in the same manner as original appointments, maintaining representations as set out in subsection (1) of this section.
- (4) The council shall elect a chairman, vice chairman, and secretary from among its members at its first regular meeting in each fiscal year and shall adopt rules governing its proceedings. The council shall hold a meeting at least once every three (3) months and such other special or regular meetings as may be desired.
- (5) No consumer member of the council shall have a fiduciary relationship or interest in any health care facility or service.

Section 197. KRS 205.550 is amended to read as follows:

- (1) The council shall advise the Cabinet for **Health Services**~~Human Resources~~ about health and medical care services.
- (2) The council shall have the opportunity for participation in policy development and program administration and shall advise the Cabinet for **Health Services**~~Human Resources~~ on such matters.
- (3) The council shall give advice regarding how to further the participation of recipient members in the policy development and program administration of the Medical Assistance Program.

Section 198. KRS 205.558 is amended to read as follows:

- (1) To prevent inappropriate placement and to contain costs related thereto, the secretary for **health services**~~Human Resources~~ shall implement a statewide prescreening and admissions review system, including the imposition of a resource means test, for all long-term care facilities and beds, as defined under KRS Chapter 216, and any acute care hospital based skilled nursing or intermediate care beds participating under Title XIX of the Social Security Act, regardless of the payment status of the resident upon admission. Any person having resources sufficient to cover the cost of care for at least three hundred sixty-five (365) days following admission may be admitted to a long-term care bed or facility if such person so desires; provided, however, that if a person:
 - (a) Is admitted to a long-term care facility or acute care hospital based skilled nursing or intermediate care bed without participating in the prescreening and admissions review system; or
 - (b) Participates in the prescreening and admissions review system and is not authorized for placement in a long-term care facility or acute care hospital based skilled nursing or intermediate care bed;

such person is not eligible for medical assistance payment for skilled nursing or intermediate care for one (1) year after the date of the person's admission to a skilled nursing or intermediate care facility or acute care hospital based skilled nursing or intermediate care bed unless the person subsequently participates in the prescreening and admissions review system and is authorized for admission to an intermediate care or skilled nursing facility or acute care hospital based skilled nursing or intermediate care bed.

- (2) To implement the provisions of this section the cabinet shall establish preadmission screening teams composed of a nurse, social worker and physician.
- (3) Before preauthorization of any person for admission to an intermediate care facility or skilled care facility or acute care hospital based skilled nursing or intermediate care bed, the cabinet shall first make the following determinations:
 - (a) The health status and care needs of the person requires immediate institutionalization in an intermediate care facility or skilled nursing facility or acute care hospital based skilled nursing or intermediate care bed;
 - (b) The person and his family have been fully advised of alternatives to institutional care and possible sources of reimbursement for such care;
 - (c) Alternatives to institutional care are not feasible; and
 - (d) Other such determinations as specified by administrative regulations promulgated by the cabinet under KRS Chapter 13A.
- (4) Admission of a person to an intermediate care facility, or a skilled nursing facility without first obtaining prior authorization from the Cabinet for *Health Services*~~(Human Resources)~~ shall constitute a Class B violation.
- (5) The secretary for the cabinet shall promulgate such administrative regulations, subject to KRS Chapter 13A, as necessary to implement this section.

Section 199. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for *Health Services*~~(Human Resources)~~ undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for *Health Services*~~(Human Resources)~~ after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:
 - (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
 - (b) Nursing home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
 - (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist;
 - (d) Physician, podiatric, and dental services;
 - (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);

- (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
 - (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified *in this paragraph*~~herein~~;
 - (h) Services provided by health care delivery networks as defined in KRS 216.900; and
 - (i) Services provided by midlevel health care practitioners as defined in KRS 216.900.
- (2) Payments for hospital care, nursing home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for **Health Services**~~Human Resources~~ with respect to the bases for payment. In determining the rates of reimbursement for long-term care facilities participating in the Medical Assistance Program, the Cabinet for **Health Services**~~Human Resources~~ shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:
- (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
 - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the U. S. Department of Labor. Medically equipped motor vehicles, vans or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for **Health Services**~~Human Resources~~ if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
 - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;
 - (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for **Health Services**~~Human Resources~~. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for **Health Services**~~Human Resources~~. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
 - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for **Health Services**~~Human Resources~~; and
 - (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.
- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.

- (4) The rules and regulations of the Cabinet for **Health Services**~~(Human Resources)~~ shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
- (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
- (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
- (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advance registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.
- (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.
- (9) No long-term care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.
- (10) Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for **Health Services**~~(Human Resources)~~ may make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.

Section 200. KRS 205.565 is amended to read as follows:

- (1) For the purposes of this section, a "pediatric teaching hospital" is defined as an acute care hospital as licensed under KRS Chapter 216B and which has designated and operates no less than one hundred fifty (150) beds for pediatric services and which is either operated by one (1) of the Commonwealth's schools of medicine and which has a pediatric teaching program or which has an affiliation agreement for pediatric services, teaching, and research with a school of medicine for the Commonwealth.
- (2) For purposes of inpatient hospital reimbursement under the Kentucky Medical Assistance Program, the Cabinet for **Health Services**~~(Human Resources)~~ shall recognize the unique costs of any pediatric teaching hospital.

Section 201. KRS 205.594 is amended to read as follows:

As used in KRS 205.593 to 205.598, the term "insurer" includes a group health plan, as defined in Section 607(1) of the Employment Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a health service benefit plan.

- (1) Health insurers shall be prohibited from denying enrollment of a child under the health coverage of the child's parent on the grounds that:
 - (a) The child was born out of wedlock;
 - (b) The child is not claimed as a dependent on the parent's federal income tax return; or
 - (c) The child does not reside with the parent or in the health insurer's area.
- (2) If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, the insurer shall be required:
 - (a) To permit the parent to enroll under the family coverage any child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;
 - (b) If a parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application by the child's other parent, custodial parent, or by the Cabinet for ***Families and Children***~~[Human Resources]~~; and
 - (c) Not to disenroll, or eliminate coverage of, a child unless the insurer is provided satisfactory written evidence that:
 1. A court or administrative order requiring coverage of the child is no longer in effect; or
 2. The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of the disenrollment.

Section 202. KRS 205.595 is amended to read as follows:

If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the Commonwealth, the employer is required:

- (1) To permit the parent to enroll under family coverage any child who is otherwise eligible for the coverage, without regard to any enrollment season restrictions;
- (2) If a parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application by the child's other parent, custodial parent, or by the Cabinet for ***Families and Children***~~[Human Resources]~~;
- (3) Not to disenroll or eliminate coverage of a child unless:
 - (a) The employer is provided satisfactory written evidence that a court or administrative order requiring coverage of the child is no longer in effect, or that the child is or will be enrolled in comparable health coverage which will take effect no later than the effective date of the disenrollment; or
 - (b) The employer has eliminated family health coverage for all of its employees; and
- (4) To withhold from the employee's compensation the employee's share, if any, of premiums for health coverage, except that the amount withheld may not exceed the maximum amount permitted to be withheld under Section 303(b) of the Federal Consumer Credit Protection Act, and to pay the share of premiums to the insurer.

Section 203. KRS 205.598 is amended to read as follows:

- (1) The Cabinet for ***Families and Children***~~[Human Resources]~~ shall withhold the wages, salary, or other employment income of, and require withholding amounts from state tax refunds to, any person who:
 - (a) Is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance;
 - (b) Has received payment from a third party for the costs of the services for the child; but
 - (c) Has not used these payments to reimburse either the other parent or guardian of the child, or the provider of the services.
- (2) Any claims for current or past-due child support income shall take priority over the claims for the costs of reimbursing the Medical Assistance Program for child medical support.

Section 204. KRS 205.623 is amended to read as follows:

- (1) All insurance companies licensed under KRS Chapter 304 shall provide upon request to the Cabinet for **Health Services**~~[Human Resources]~~, by electronic means and in the format prescribed by the cabinet, coverage information and claims paid data on Medicaid eligible policyholders and dependents. The data obtained on Medicaid eligibles shall be used by the cabinet to determine the availability of other medical benefits in order to ascertain Medicaid is the payor of last resort.
- (2) All information obtained by the cabinet pursuant to this section shall be confidential and shall not be open for public inspection.

Section 205. KRS 205.624 is amended to read as follows:

- (1) An applicant or recipient shall be deemed to have made to the cabinet an assignment of his rights to third-party payments to the extent of medical assistance paid on behalf of the recipient under Title XIX of the Social Security Act. The applicant or recipient shall be informed in writing by the cabinet of such assignment.
- (2) The cabinet shall have the right of recovery which a recipient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of funds expended by the cabinet for such care and treatment of the recipient under the provisions of Title XIX of the Social Security Act.
 - (a) If a payment for medical assistance is made, the cabinet, to enforce its right, may:
 1. Intervene or join in an action or proceeding brought by the injured, diseased, or disabled person, the person's guardian, personal representative, estate, dependents, or survivors against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court; or
 2. Institute and prosecute legal proceedings against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled person, the person's guardian, personal representative, estate, dependents, or survivors; or
 3. Institute the proceedings in its own name or in the name of the injured, diseased, or disabled person, the person's guardian, personal representative, estate, dependents, or survivors.
 - (b) The injured, diseased, or disabled person may proceed in his own name, collecting costs without the necessity of joining the cabinet or the Commonwealth as a named party, provided the injured, diseased, or disabled person shall notify the cabinet of the action or proceeding entered into upon commencement of the action or proceeding. The injured, diseased, or disabled person must notify the cabinet of any settlement or judgment of his or her claim.
 - (c) In the case of an applicant for or recipient of medical assistance whose eligibility is based on deprivation of parental care or support due to absence of a parent from the home, the cabinet may:
 1. Initiate a civil action or other legal proceedings to secure repayment of medical assistance expenditures for which the absent parent is liable; and
 2. Provide for the payment of reasonable administrative costs incurred by such other state or county agency requested by the cabinet to assist in the enforcement of securing repayment from the absent parent.
- (3) Each insurer issuing policies or contracts under Subtitle 17, 18, 32, or 38 of KRS Chapter 304 shall cooperate fully with the Cabinet for **Health Services**~~[Human Resources]~~ or an authorized designee of the cabinet in order for the cabinet to comply with the provisions of subsection (1) of this section.

Section 206. KRS 205.6310 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

- (1) Criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists;
- (2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency;
- (3) Reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;
- (4) Except for emergency room services rendered to children under the age of six (6), prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency; and
- (5) The provisions of this section shall apply to any managed care program for Medicaid recipients.

The cabinet or its designated peer review organization shall review all claims for payment of nonemergency hospital care and deny payment for any ancillary services determined as not medically appropriate.

Section 207. KRS 205.6314 is amended to read as follows:

The Cabinet for **Health Services**~~Human Resources~~ shall review the Medical Assistance Program reimbursement rates for emergency transportation providers to determine if existing rates are fair and reasonable. Notwithstanding this review, the cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A do the following:

- (1) Prescribe reimbursement rates for emergency transportation providers to ensure that emergency rates are paid only for transporting medical assistance recipients to the emergency room of a hospital in emergency situations;
- (2) Establish, in nonemergency cases, lower medical assistance reimbursement rates for emergency transportation providers for the transportation of stretcher patients from nursing homes to physician offices or hospitals; and
- (3) Establish a verification system that requires medical providers to confirm that medical assistance recipients have appointments for medical services and that medical services were medically necessary and were obtained prior to payment by the cabinet to the emergency transportation provider.

Section 208. KRS 205.6316 is amended to read as follows:

The Cabinet for **Health Services**~~Human Resources~~ shall review the procedures for medical assistance reimbursement of pharmacists to reduce fraud and abuse. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

- (1) Point-of-sale computer technology, with integration of data at the physician's office and the pharmacy, that will permit prospective drug utilization review;
- (2) Usage parameters by drug class to enable medical necessity and appropriateness reviews to be conducted prior to payment;
- (3) A dialog among the Department for Medicaid Services, the Kentucky Medical Board of Licensure, and the Kentucky Board of Pharmacy, to develop recommendations for legislation for the 1996 Regular Session of the General Assembly that will strengthen the generic substitution laws for prescription medication;
- (4) A dispensing fee for each prescription in accordance with the findings of the report submitted by the cabinet pursuant to KRS 205.561.

Section 209. KRS 205.6318 is amended to read as follows:

The Cabinet for **Health Services**~~Human Resources~~ shall review the available technology associated with the medical assistance system to determine which technology is best suited to enhance program service operation, monitoring ability, and fraud and abuse detection. This shall include the ability to provide on-line access to data files to allow cross-analysis of provider and recipient utilization patterns. The cabinet shall by promulgation of administrative regulations, pursuant to KRS Chapter 13A, establish an integrated system to enhance program integrity, using a combination of staff, computer technology, and contractual services to identify potential fraud, abuse, and misutilization of services. This system shall:

- (1) Utilize statisticians, program specialists, accountants, nurses, and other medical specialists to review the Medical Assistance Program to identify patterns of provider and recipient behavior that contributes to unnecessary or abusive use of program services;
- (2) Utilize computer capability through contractual services or the purchase of computer software to detect the unbundling of claims and other techniques used by providers to enhance reimbursement;
- (3) Impose utilization controls on the expenditures in respiratory, physical, speech, and occupational therapy and durable medical equipment provided to nursing home residents, through the use of established medical criteria or preauthorization of ancillary therapies;
- (4) Establish state audit and edit requirements that exceed the federal audit and edit requirements;
- (5) Obtain access to necessary data from the fiscal agent of each medical provider;
- (6) Review the efficiency and effectiveness of the fraud and abuse detection and investigation process to determine whether changes shall be made;
- (7) Direct that fraud and abuse detection and investigation components shall be active in initiating investigations. The fraud and abuse detection, investigation and prosecution functions shall be integrated, with access to information in files maintained by the Department for Social Insurance and the Department for Medicaid Services;
- (8) Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes; and
- (9) Provide for a proactive effort to reduce costs for institutionalized program participants. Program officials shall seek to implement innovative or experimental demonstration programs that aim to control costs.

Section 210. KRS 205.6320 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ shall seek to strengthen the managed care component of the KenPAC Program. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:
 - (a) Inclusion of noninstitutionalized blind, aged, and disabled recipients in an effort to reduce inappropriate usage as permitted by federal Medicaid regulations;
 - (b) Financial incentives for KenPAC physicians who effectively manage the care of their patients. These incentives may include an increase in the case management fee for demonstrated effective case management, or through other arrangements that encourage the effective and efficient management of patients. Clear and concise administrative regulations promulgated under KRS Chapter 13A shall be established by the cabinet to determine physician qualification for the incentives;
 - (c) A pilot project to establish an oversight and education program in the KenPAC system to assist with patient education regarding the appropriate and effective use of the system and to assist providers with more efficient management of patients;
 - (d) Criteria to avoid duplication of the provision of early and periodic screening, diagnosis, and treatment type services to children in the KenPAC Program;
 - (e) A review of the feasibility of a demonstration project to allow health maintenance organizations to bid on the provision of services to KenPAC participants;
 - (f) Extension of KenPAC to all counties within the state. The cabinet shall determine the feasibility of working with state-supported medical schools to obtain physicians in the counties where KenPAC does not operate; and
 - (g) More stringent reporting and verification requirements in contracts with KenPAC physicians regarding verification of services provided to KenPAC patients.
- (2) The secretary shall promulgate by administrative regulation standards for access and quality which any health maintenance organizations serving Medicaid recipients shall meet. The secretary shall not provide Medicaid services through a health maintenance organization which does not demonstrate the capacity to meet the standards. The standards shall address at least the following subjects:

- (a) Access to care including patient to physician ratios, availability of appropriate specialists, distance to care, travel and waiting times, and physical and language barriers;
- (b) Internal and external methods for monitoring quality of care;
- (c) Data collection and reporting, including provision of data on utilization, outcomes, enrollee satisfaction, and the number, type, and resolution of grievances and complaints, with subpopulation data for at risk populations;
- (d) Due process procedures including written notice of appeal rights, timelines for resolution of complaints, and expedited appeals processes;
- (e) Consumer representation and patient advocacy; and
- (f) Marketing practices including prohibited practices and standards for advertisements and printed marketing materials.

Section 211. KRS 205.6322 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall seek to prohibit the sheltering of assets in medical assistance long-term care cases by promulgation of administrative regulations, pursuant to KRS Chapter 13A, that establish the following:

- (1) Consideration of assets placed in Medicaid-qualifying trusts as a prohibited transfer of resources, to the extent prohibited by federal law;
- (2) Revision of Medicaid policy to provide that assets funding the purchase of an annuity shall be treated as a transfer of resources unless the annuity is actuarially sound as defined in administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A;
- (3) Revision of Medicaid policy to treat income producing property as an available resource to the extent allowed by federal law;
- (4) Review of Medicaid eligibility procedures and operation to improve eligibility verification and detection of fraud and abuse; and
- (5) Review of the feasibility of instituting a photographic identification card, possibly in conjunction with other entitlement programs, to reduce fraud and abuse through misuse of Medicaid identification cards.

Section 212. KRS 205.6324 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall by promulgation of administrative regulations enhance third-party resource collection capacity in Medicaid cases through utilization of in-house personnel and selective contracting for high-volume or high-technological services.

Section 213. KRS 205.6326 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall review all medical assistance reimbursement systems for appropriateness and cost effectiveness. The review shall include:

- (1) Review of cost-based reimbursement policies for hospitals and nursing homes to determine the effectiveness and appropriateness of alternate systems. Consideration shall be given to the use of modified diagnostic-related groups and resource utilization groups systems, using capitated payment methods; and
- (2) Review of reimbursement rates for physicians to determine whether savings or cost containment would be better achieved through using a relative based resource value scale system, a capitated payment method, or other alternative methods of reimbursement; and
- (3) For all Medicaid-covered long-term care services, implementation of a standardized patient assessment tool and consistent quality-of-care mandates.

Section 214. KRS 205.6334 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall request any waivers of federal law that are necessary to implement the provisions of KRS 205.6310 to 205.6332.

Section 215. KRS 205.6336 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, after consultation with the secretary for the Cabinet for *Health Services*~~{Human Resources}~~, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by KRS 205.6310 to 205.6332 and any other procedures adopted by the Cabinet for *Health Services*~~{Human Resources}~~ or the Kentucky Health Policy Board to control the cost of health care.
- (2) The certification shall indicate the following:
 - (a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and
 - (b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.
- (3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for *Health Services*~~{Human Resources}~~ to provide health care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.
- (4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:
 - (a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.
 - (b) To the extent that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.
- (5) Savings in the general fund appropriation to the Department *for Mental Health and Mental Retardation Services*~~{of Mental Health}~~ shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (6) Savings in the general fund appropriation to the Department for *Public Health* ~~{Services}~~ shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (7) Savings in the general fund appropriation to the Department of Social Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

Section 216. KRS 205.6338 is amended to read as follows:

- (1) Within one (1) year of obtaining necessary waivers from the Federal Health Care Financing Administration, the Secretary of the Cabinet for *Health Services*~~{Human Resources}~~ shall take all necessary steps to implement from one (1) to three (3) pilot projects to provide health care services to frail elderly Medicaid-eligible individuals through fully integrated managed care systems for the elderly similar to the Program of All-Inclusive Care for the Elderly (PACE) program currently being replicated on a national basis with the approval of Congress.
- (2) Within ninety (90) days of July 15, 1994, the Secretary of the Cabinet for Human Resources shall request the appropriate waivers from the Federal Health Care Financing Administration to implement a PACE program or a similar program in Kentucky.

Section 217. KRS 205.640 is amended to read as follows:

- (1) For purposes of this section, "hospital" includes all hospitals licensed in this state to provide acute care, psychiatric care, and rehabilitative services.

- (2) The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.
- (3) The "Medical Assistance Revolving Trust Fund (MART)" shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.359 shall be deposited in the State Treasury to the credit of the fund. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.359 shall be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (4) The "Medical Assistance Indigent Trust Fund (MAIT)" shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of Medicaid services in accordance with the provisions of subsection (2) of this section. All investment earnings of the fund shall be credited to the fund. Notwithstanding the provisions of KRS 48.500 and 48.600, the MAIT fund shall be exempt from any state budget reduction acts.
- (5) An amount, necessary to result in a total fund of eighty-one million dollars (\$81,000,000) for fiscal year 1995, and eighty-six million five hundred thousand dollars (\$86,500,000) for fiscal year 1996 including provider tax revenues and federal matching funds, to the extent possible, shall be transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding the disproportionate share program established by the commissioner of Medicaid services.
 - (a) The sum of one million dollars (\$1,000,000) in fiscal year 1995, and one and one-half million dollars (\$1,500,000) in fiscal year 1996, taken entirely from provider tax revenues, transferred to the MAIT fund, shall be used to compensate hospitals that do not qualify for the disproportionate share program for services provided by the hospitals to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty level except nonemergency care rendered through a hospital emergency room, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for **Health Services**~~[Human Resources]~~.
 - (b) The amount remaining in the MAIT fund shall be used to compensate hospitals qualifying for the disproportionate share program for service provided by the hospitals to Medicaid recipients beyond the covered days and individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty level, except nonemergency care rendered through a hospital emergency room, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for **Health Services**~~[Human Resources]~~ in accordance with this section.
 - (c) No individual hospital shall receive distributions from the MAIT fund that exceed indigent inpatient care provided by the hospital that meet the guidelines established in paragraphs (a) and (b) of this subsection and documented to the Department for Medicaid Services, as reimbursed at the hospital's Medicaid rate.
 - (d) Distributions to hospitals from the MAIT fund shall be made on a quarterly basis. One fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:
 1. Hospitals shall report care provided to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital, and except nonemergency care rendered through a hospital emergency room, level to the Cabinet for **Health Services**~~[Human Resources]~~ on a quarterly basis. The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20 and October 20 of each year thereafter.
 2. Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for **Health Services**~~[Human Resources]~~, Department for Medicaid

Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, with payment for documented qualifying services provided at the lesser of each hospital's individual per diem rate or the weighted median per diem for hospitals in each peer group, as established annually by the Department of Medicaid Services.

3. Within ninety (90) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for **Health Services**~~[Human Resources]~~, Department for Medicaid Services shall remit to each hospital the amount determined to be due pursuant to the provisions of subparagraph 2. of this paragraph. If the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be carried forward to satisfy future claims.
- (6) Except for nonemergency care rendered through a hospital emergency room, hospitals receiving reimbursement from the MAIT fund shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level.
- (7) The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall promulgate administrative regulations necessary, pursuant to KRS Chapter 13A, for the administration and implementation of this section.
- (8) All hospitals receiving reimbursement from the MAIT fund shall:
 - (a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay.";
 - (b) Accept benefits of state health insurance coverage described in KRS 18A.229 and 18A.2281;
 - (c) Provide to Medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the Medicaid program; and
 - (d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for Medicaid recipients. The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.

Section 218. KRS 205.645 is amended to read as follows:

Notwithstanding any provision of KRS 205.560, the Cabinet for **Health Services**~~[Human Resources]~~ shall recognize the reasonable and appropriate varying overhead costs associated with different areas of specialty for the purposes of establishing the standard reimbursement rate for physician services, dental services, and services provided by other independent providers under the Kentucky Medical Assistance Program.

Section 219. KRS 205.710 is amended to read as follows:

As used in KRS 205.712 to 205.800, unless the context clearly dictates otherwise:

- (1) "Cabinet" shall mean the Cabinet for **Families and Children**~~[Human Resources]~~;
- (2) "Secretary" shall mean the secretary of the Cabinet for **Families and Children**~~[Human Resources]~~;
- (3) "Court order" shall mean any judgment, decree, or order of the courts of this state or any other state. For the purposes of KRS 205.715 to 205.800, 403.215, 405.405 to 405.520, and 530.050, it shall also include an order of an authorized administrative body;
- (4) "Dependent child" or "needy dependent child" shall mean any person under the age of eighteen (18), or under the age of nineteen (19) if in high school, who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and is a recipient of or applicant for services under Part D of Title IV of the Social Security Act;
- (5) "Duty of support" shall mean any duty of support imposed or imposable by law or by court order, decree, or judgment, whether interlocutory or final, and includes the duty to pay maintenance when included in the child support order or when assigned to the cabinet and arrearages of support past due and unpaid in addition to medical support whenever health care coverage is available at a reasonable cost;

- (6) "Recipient" shall mean a relative or payee within the meaning of the Social Security Act and federal and state regulations who is receiving public assistance on behalf of a needy dependent child;
- (7) "Consumer reporting agency" means any person or organization which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;
- (8) "Obligor" means a parent who has an obligation to provide support;
- (9) "Employer" means any individual, sole proprietorship, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which hires and pays an individual for his services;
- (10) "Income" means but is not limited to any of the following:
 - (a) Commissions, earnings, salaries, wages, and other income due or to be due in the future from a person's employer and successor employers;
 - (b) Any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, proceeds derived from state lottery winnings, unemployment compensation, supplemental unemployment benefits, and workers' compensation; and
 - (c) Any amount of money which is due to the obligor under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the obligor;
- (11) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and notwithstanding any other provision of law exempting such payments from garnishment, attachment, or other process to satisfy support obligations and specifically includes periodic payments from pension and retirement programs and insurance policies of any kind. Earnings shall include all gain derived from capital, from labor, or both, including profit gained through sale or conversion of capital assets and unemployment compensation benefits, or any other form of monetary gain. The term "disposable earnings" means that part of earnings remaining after deductions of any amounts required by law to be withheld;
- (12) "Enforce" means to employ any judicial or administrative remedy under KRS 405.405 to 405.420 and KRS 405.991(2) or under any other Kentucky law;
- (13) "Need" includes, but is not limited to, the necessary cost of food, clothing, shelter, and medical care. The amount determined under the suggested minimum support obligation scale shall be rebuttably presumed to correspond to the parent's ability to pay and the need of the child. A parent shall be presumed to be unable to pay child support from any income received from aid to families with dependent children, or other continuing public assistance;
- (14) "Parent" means a biological or adoptive mother or father of a child born in wedlock or a father of a child born out of wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the laws of this or any other state, whose child is entitled to support, pursuant to court order, statute, or administrative determination; and
- (15) "Real and personal property" includes all property of all kinds, including but not limited to, all gain derived from capital, labor, or both; compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise; periodic payments from pension and retirement programs; and unemployment compensation and insurance policies.

Section 220. KRS 205.712 is amended to read as follows:

- (1) The Division of Child Support Enforcement is established in the Cabinet for *Families and Children*~~[Human Resources]~~.
- (2) The duties of the division of child support, or its designee, shall include:

- (a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 to 667;
 - (b) Serve as the information agency as provided in the Uniform Interstate Family Support Act, KRS Chapter 407;
 - (c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act;
 - (d) Establish and enforce an obligation upon receipt of a completed, notarized voluntary acknowledgment of paternity form;
 - (e) Enforce Kentucky child support laws, including collection of court-ordered or administratively ordered child support arrearages and prosecution of persons who fail to pay child support; and
 - (f) Establish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212.
- (3) The cabinet shall establish a system to receive and process all child support payments. The system shall include compatible computer systems to record the payments. After the establishment of the compatible computer child support collection system, the cabinet or its designee, shall serve as collector of all court-ordered or administratively-ordered child support payments pursuant to Part D of Title IV of the Social Security Act.
- (4) Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations. The local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met. When a cooperative agreement with a contracting official is cancelled for good cause, the cabinet may not offer that cooperative agreement to that official during the official's tenure.
- (5) Where the local county attorney, friend of the court, domestic relations agent, or other designee of the cabinet has been contracted for the purpose of administering child support enforcement pursuant to Title IV-D of the Social Security Act, the contracting official shall be deemed to be representing the cabinet and as such does not have an attorney-client relationship with the applicant who has requested services pursuant to Title IV-D of the Social Security Act nor with any dependent on behalf of whom services are sought.

Section 221. KRS 205.745 is amended to read as follows:

- (1) A child support lien in favor of the cabinet shall attach to all personal and real property of the obligor if he has failed to make child support payment in an amount equal to support payable for one (1) month and the child support has been assigned to the cabinet. The lien shall be cumulative and shall include all unpaid child support then due and thereafter accruing until the lien is paid in full.
- (2) The cabinet shall file its claim of lien within three (3) years from the time it attaches to the property of the parent. The claim of lien shall be filed with the county clerk of the county in which the property is located and shall state as follows: "The Commonwealth of Kentucky, by the Cabinet for *Families and Children*~~[Human Resources]~~, claims a lien in the amount of plus all unpaid child support hereafter accruing, including interest, until paid in full on the (describe property) of (name of obligor) for child support owed to obligor's dependent children or for such public assistance moneys as may have been paid to obligor's children by the Cabinet for *Families and Children*~~[Human Resources]~~."
- (3) The cabinet shall notify the obligor of the filing of its claim of lien.

Section 222. KRS 205.8451 is amended to read as follows:

As used in KRS 205.8451 to 205.8483, unless the context otherwise requires:

- (1) "Benefit" means the receipt of money, goods, or anything of pecuniary value from the medical assistance program.
- (2) "Fraud" means an intentional deception or misrepresentation made by a recipient or a provider with the knowledge that the deception could result in some unauthorized benefit to the recipient or provider or to some other person. It includes any act that constitutes fraud under applicable federal or state law.
- (3) "Immediate family member" means a parent, grandparent, spouse, child, step-child, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, or grandchild.
- (4) "Intentional" or "intentionally" means, with respect to a result or to conduct described by a statute defining an offense, that a person's conscious objective is to cause that result or to engage in that conduct.
- (5) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware that his conduct is of that nature or that the circumstance exists.
- (6) "Medical assistance program" means the program of medical assistance as administered by the Cabinet for **Health Services**~~[Human Resources]~~ in compliance with Title XIX of the Federal Social Security Act and any administrative regulations related thereto.
- (7) "Provider" means an individual, company, corporation, association, facility, or institution which is providing or has been approved to provide medical services, goods, or assistance to recipients under the medical assistance program.
- (8) "Provider abuse" means, with reference to a health care provider, practices that are inconsistent with sound fiscal, business, or medical practices, and that result in unnecessary cost to the medical assistance program established pursuant to this chapter, or that result in reimbursement for services that are not medically necessary or that fail to meet professionally-recognized standards for health care. It also includes practices that result in unnecessary cost to the medical assistance program.
- (9) "Recipient" means any person receiving or who has received medical assistance benefits.
- (10) "Recipient abuse" means, with reference to a medical assistance recipient, practices that result in unnecessary cost to the medical assistance program or the obtaining of goods, equipment, medicines, or services that are not medically necessary, or that are excessive, or constitute flagrant overuse or misuse of medical assistance program benefits for which the recipient is covered.
- (11) "Wantonly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts wantonly with respect thereto.

Section 223. KRS 205.8453 is amended to read as follows:

It shall be the responsibility of the Cabinet for **Health Services**~~[Human Resources]~~ and the Department for Medicaid Services to control recipient and provider fraud and abuse by:

- (1) Informing recipients and providers as to the proper utilization of medical services and methods of cost containment;
- (2) Establishing appropriate checks and audits within the Medicaid Management Information System to detect possible instances of fraud and abuse;
- (3) Sharing information and reports with other departments within the Cabinet for **Health Services**~~[Human Resources]~~, the Office of the Attorney General, and any other agencies that are responsible for recipient or provider utilization review; and
- (4) Instituting other measures necessary or useful in controlling fraud and abuse.

Section 224. KRS 205.8455 is amended to read as follows:

- (1) To implement provisions of this section, the Commissioner of the Department for Medicaid Services shall create, no later than July 30, 1994, a Recipient Utilization Review Committee with the authority to:

- (a) Review individual recipient utilization or program benefits, recipient medical records, and other additional information or data necessary to make a decision;
 - (b) Determine if a recipient has utilized the program or services in a fraudulent or abusive manner;
 - (c) Refer cases of suspected recipient fraud to the Office of the Inspector General in the Cabinet for **Health Services**~~[Human Resources]~~;
 - (d) Institute administrative actions to restrict or revoke the recipient's participation in the medical assistance program; and
 - (e) Initiate actions to recover the value of benefits received by the recipient which were determined to be related to fraudulent or abusive activities.
- (2) The Recipient Utilization Review Committee shall be composed of five (5) members as follows: one (1) licensed physician, one (1) representative from the same program benefit area that is the subject of the review, one (1) recipient or representative of medical assistance benefits, one (1) representative of the Surveillance and Utilization Review Subsystems Unit, as required under Title XIX of the Social Security Act, and the commissioner of the Department for **Public Health**~~[Services]~~, who shall serve by virtue of his or her office.
 - (3) A medical assistance recipient whose eligibility has been revoked due to defrauding the medical assistance program shall not be eligible for future medical assistance services for a period of not more than one (1) year or until full restitution has been made to the Department for Medicaid Services, whichever comes first.
 - (4) When a medical assistance recipient whose eligibility has been revoked due to defrauding of the medical assistance program reapplies for coverage, during the period of revocation, due to pregnancy, a communicable disease or other condition that creates a risk to public health, or a condition which if not treated could result in immediate grave bodily harm, the recipient utilization review committee for the Department for Medicaid Services may change the revoked status of the previously eligible recipient to restricted status if it has been determined that it would be in the best interest of the previously eligible medical assistance recipient to receive coverage for medical assistance services and the person is otherwise eligible. If this change in status is granted, the case shall be reconsidered by the recipient utilization review committee within sixty (60) days after the restricted status takes effect.
 - (5) Upon determination by the Recipient Utilization Review Committee of the Department for Medicaid Services that a medical assistance recipient has abused the benefits of the medical assistance program, the recipient shall immediately be assigned and restricted to a managed care primary physician designated by the Department for Medicaid Services. Except in the case of an emergency as defined by the recipient utilization review committee and set forth by the Cabinet for **Health Services**~~[Human Resources]~~ in an administrative regulation promulgated pursuant to KRS Chapter 13A, the restricted recipient shall be eligible to receive covered services only upon presenting to a participating provider, prior to the receipt of services, a dated written referral by the assigned managed care primary physician. Any participating provider who provides services to a medical assistance recipient in violation of the provisions of this subsection shall not be eligible for reimbursement for any services rendered.
 - (6) The Cabinet for **Health Services**~~[Human Resources]~~ shall request any waivers of federal law that are necessary to implement the provisions of this section.
 - (7) The provisions of paragraphs (d) and (e) of subsection (1) of this section and of subsections (3), (4), and (5) of this section shall have no force or effect until and unless the requested waivers are granted.
 - (8) Nothing in this section shall authorize the Cabinet for **Health Services**~~[Human Resources]~~ to waive the recipient's or provider's rights to prior notice and hearing as guaranteed by federal law.
 - (9) All complaints received by the Department for Medicaid Services, the Office of Inspector General, the Office of the Attorney General, or by personnel of the Cabinet for **Health Services**~~[Human Resources]~~ concerning possible fraud or abuse by a medical assistance recipient shall be forwarded immediately to the Recipient Utilization Review Committee for its consideration. Any cases of possible recipient fraud or abuse uncovered by personnel of the Cabinet for **Health Services**~~[Human Resources]~~ or by providers shall also be referred immediately to the Recipient Utilization Review Committee for its review. Records shall be kept of all cases, including records of disposition, considered by the Recipient Utilization Review Committee.

Section 225. KRS 205.8457 is amended to read as follows:

Any provider agreeing to participate as a managed care primary physician of the state's medical assistance program shall be responsible for prior approval of all medical-related services and goods, except transportation, of recipients assigned to the primary physician's care as set forth under administrative regulation promulgated by the Cabinet for **Health Services**~~{Human Resources}~~ pursuant to KRS Chapter 13A. No primary physician may delegate that primary physician's authority to anyone except a provider designated by the managed care primary physician to temporarily be responsible for the primary physician's managed care patients during the primary physician's absence. The temporarily designated provider shall be approved by the Department for Medicaid Services. Procedures for delegation of authority to a temporarily designated provider shall be approved by the Department for Medicaid Services in accordance with any applicable federal laws or regulations.

Section 226. KRS 205.8463 is amended to read as follows:

- (1) No person shall knowingly or wantonly devise a scheme or plan a scheme or artifice, or enter into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under this chapter by means of any fictitious, false, or fraudulent application, claim, report, or document submitted to the Cabinet for **Health Services**~~{Human Resources}~~, or intentionally engage in conduct which advances the scheme or artifice.
- (2) No person shall intentionally, knowingly, or wantonly make, present, or cause to be made or presented to an employee or officer of the Cabinet for **Health Services**~~{Human Resources}~~ any false, fictitious, or fraudulent statement, representation, or entry in any application, claim, report, or document used in determining rights to any benefit or payment.
- (3) No person shall, with intent to defraud, knowingly make, or induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, home health agency, or other provider of services to the medical assistance program.
- (4) No person shall, in any matter within the jurisdiction of the Cabinet for **Health Services**~~{Human Resources}~~ under this chapter, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.
- (5) Any person who violates subsections (1) and (2) of this section shall be guilty of a Class A misdemeanor unless the sum total of benefits or payments claimed in any application, claim, report, or document, or in any combination or aggregation thereof, is valued at three hundred dollars (\$300) or more in which case it shall be a Class D felony. Any person who violates the provisions of subsection (3) of this section shall be guilty of a Class C felony. Any person who violates the provisions of subsection (4) of this section shall be guilty of a Class D felony.

Section 227. KRS 205.8465 is amended to read as follows:

- (1) Any person who knows or has reasonable cause to believe that a violation of this chapter has been or is being committed by any person, corporation, or entity, shall report or cause to be reported to the state Medicaid Fraud Control Unit, or the Medicaid Fraud and Abuse hotline, the following information, if known:
 - (a) The name and address of the offender;
 - (b) The offender's place of employment;
 - (c) The nature and extent of the violation;
 - (d) The identity of the complainant; and
 - (e) Any other information that the receiving person reasonably believes might be helpful in investigation of the alleged fraud, abuse, or misappropriation.

The state Medicaid Fraud Control Unit shall periodically publicize the provisions of this subsection.

- (2) The identity of any person making a report under this section shall be considered confidential by the receiving party. Any person making a report under this section regarding the offenses of another shall not be liable in any civil or criminal action based on the report if it was made in good faith.
- (3) No employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by KRS 205.8451 to 205.8483, testifies, or is about to

testify, in any proceeding with regard to any report or investigation. Any individual injured by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained, together with the costs of the lawsuit, including a reasonable fee for the individual's attorney of record.

- (4) No employee of the state Medicaid Fraud Control Unit, the Office of the Attorney General, the Office of the Inspector General, or the Cabinet for **Health Services**~~{Human Resources}~~ shall notify the alleged offender of the identity of the person who in good faith makes a report required or permitted by KRS 205.8451 to 205.8483 nor shall the employee notify the alleged offender that a report has been made alleging a violation of KRS 205.8451 to 205.8483 until such time as civil or criminal proceedings have been initiated or a formal investigation has been initiated. Any information or report concerning an alleged offender shall be considered confidential in accordance with the Kentucky Open Records Law, KRS 61.870 to 61.884.

Section 228. KRS 205.8467 is amended to read as follows:

- (1) Any provider who has been found by a preponderance of the evidence in an administrative process, in conformity with any applicable federal regulations and with due process protections, to have knowingly submitted or caused claims to be submitted for payment for furnishing treatment, services, or goods under a medical assistance program provided under this chapter, which payment the provider was not entitled to receive by reason of a violation of this chapter, shall:
- (a) Be liable for restitution of any payments received in violation of this chapter, and interest at the maximum legal rate pursuant to KRS 360.010 in effect on the date any payment was made, for the period from the date payment was made to the date of repayment to the Commonwealth;
 - (b) Be liable for a civil payment in an amount up to three (3) times the amount of excess payments;
 - (c) Be liable for payment of a civil payment of five hundred dollars (\$500) for each false or fraudulent claim submitted for providing treatment, services, or goods;
 - (d) Be liable for payment of legal fees and costs of investigation and enforcement of civil payments; and
 - (e) Be removed as a participating provider in the medical assistance program for two (2) months to six (6) months for a first offense, for six (6) months to one (1) year for a second offense, and for one (1) year to five (5) years for a third offense.
- (2) Civil payments, interest, costs of investigation, and enforcement of the civil remedies recovered on behalf of the Commonwealth under this section shall be remitted to the State Treasurer for deposit in a Medicaid trust fund which is hereby created and shall not lapse. Funds deposited in the Medicaid trust fund shall not be spent until appropriated by the General Assembly for medical assistance services.
- (3) The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available under federal or state law or regulation.
- (4) The Cabinet for **Health Services**~~{Human Resources}~~, in consultation with the Office of the Attorney General, may promulgate administrative regulations, pursuant to KRS Chapter 13A, for the administration of the civil payments contained in this section.

Section 229. KRS 205.8469 is amended to read as follows:

- (1) The Attorney General, on behalf of the Commonwealth, may commence proceedings to enforce KRS 205.8451 to 205.8483, and to prosecute for all other criminal offenses that involve or are directly related to the use of any medical assistance program funds or services provided under this chapter.
- (2) In enforcing KRS 205.8451 to 205.8483, the Attorney General may subpoena witnesses or documents to the grand jury, District Court, or Circuit Court of the county or counties where venue lies, and subpoena witnesses or documents to the Office of the Attorney General to secure testimony for use in civil or criminal trials, investigations, or hearings affecting the Cabinet for **Health Services**~~{Human Resources}~~.

Section 230. KRS 205.8471 is amended to read as follows:

- (1) The Commonwealth shall have a lien against all property of any provider or recipient who is found to have defrauded the Medicaid program for an amount equal to the sum defrauded plus any interest and penalties levied under KRS 205.8451 to 205.8483. The lien shall attach to all property and rights to property owned by

the provider or recipient and all property subsequently acquired after a finding of fraud by the Cabinet for **Health Services**~~{Human Resources}~~.

- (2) The lien imposed by subsection (1) of this section shall not be defeated by gift, devise, sale, alienation, or any other means, and shall include the sum defrauded and all interest, penalties, fees, or other expenses associated with collection of the debt. The lien shall have priority over any other lien or obligation against the property, except as provided in subsection (3) of this section.
- (3) The lien imposed by subsection (1) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien which was filed prior to the date on which notice of the lien created by this section is filed by the secretary for **health services**~~{human resources}~~ or his designee with the county clerk of the county or counties in which the provider's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice of lien shall be recorded in the same manner as the notice of lis pendens.
- (4) The secretary for **health services**~~{human resources}~~ shall issue a partial release of any part of the property subject to lien upon payment by the debtor of that portion of the debt and any interest, penalty, or fees covered by the lien on that property.
- (5) The secretary for **health services**~~{human resources}~~ may enforce the lien created pursuant to this section in the manner provided for the enforcement of statutory liens under KRS 376.110 to 376.130.

Section 231. KRS 205.8473 is amended to read as follows:

In a prosecution for any violation of the provisions of KRS 205.8451 to 205.8483, it shall be a defense if the person relied on the written advice of an employee or agent of the Cabinet for **Health Services**~~{Human Resources}~~, and the advice constitutes a defense under any of the provisions of KRS 501.070.

Section 232. KRS 205.8477 is amended to read as follows:

- (1) Each health facility and health service as defined in KRS 216B.015 and each provider, participating in the medical assistance program shall, as a condition of participation in the medical assistance program, file annually with the Cabinet for **Health Services**~~{Human Resources}~~ the names and addresses of all persons having direct or indirect ownership or control interest, as defined in 42 C.F.R. 455.101, with five percent (5%) or more interest in the health facility, or health service or the business of the provider and those medical assistance program participating health facilities or health services with which the reporting provider, or health facility, or health service engages in a significant business transaction or a series of transactions that during any one (1) fiscal year, exceed the lesser of twenty-five thousand dollars (\$25,000) or five percent (5%) of the total operating expenses of the provider, or health facility, or health service. The list of names and addresses shall be made available by the cabinet for public inspection during regular business hours and shall be updated annually.
- (2) Each owner of or direct financial investor in any health facility or health service which dispenses or supplies drugs, medicines, medical devices, or durable medical equipment to a patient shall annually file with the Cabinet for **Health Services**~~{Human Resources}~~ the names and addresses of any immediate family member who is authorized under state law to prescribe drugs or medicines or medical devices or equipment.

Section 233. KRS 205.8481 is amended to read as follows:

No staff of the Office of the Attorney General shall, in private practice of law, serve as legal counsel to or represent any provider, as defined in KRS 205.8451. Designated staff of the Office of the Attorney General shall work in cooperation with the Cabinet for **Health Services**~~{Human Resources}~~ in any initiation of disciplinary proceedings against a health care provider as defined in KRS 205.8451 and as may be authorized or required under KRS 205.8451 to 205.8483 for violations of KRS 205.8451 to 205.8483.

Section 234. KRS 205.8483 is amended to read as follows:

- (1) The Office of the Inspector General in the Cabinet for **Health Services**~~{Human Resources}~~ shall establish, maintain, and publicize a twenty-four (24) hour toll-free hotline for the purpose of receiving reports of alleged fraud and abuse by medical assistance program recipients and participating providers.
- (2) The Office of the Inspector General in the Cabinet for **Health Services**~~{Human Resources}~~ shall prepare a written description of the reported information and immediately make a written referral to:

- (a) The state Medicaid Fraud Control Unit and to the Office of the Attorney General of all reports of alleged fraud and abuse by providers or recipients participating in the medical assistance program; and
 - (b) Other agencies and licensure boards of all reports relevant to their jurisdiction.
- (3) The Office of the Inspector General in the Cabinet for **Health Services**~~[Human Resources]~~, jointly with the state Medicaid Fraud Control Unit and the Office of the Attorney General, shall prepare a Medicaid fraud and abuse report, for the prior fiscal year, categorized by types of fraud and abuse and by recipient and provider group. This report shall be submitted no later than July 1 of each year to the Legislative Research Commission, the Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Health and Welfare and shall identify:
- (a) The number and type of reports received in the Office of the Inspector General in the Cabinet for **Health Services**~~[Human Resources]~~, from the Medicaid fraud and abuse hotline categorized by recipient and provider groups;
 - (b) The number and type of alleged Medicaid fraud and abuse reports which were discovered by, received by, or referred to the Office of the Attorney General, the state Medicaid Fraud Control Unit, the Office of the Inspector General and the Department for Medicaid Services; the number and type of reports which were opened for investigation by the Office of the Attorney General, the state Medicaid Fraud Control Unit, the Department for Medicaid Services, or the Office of the Inspector General and their disposition including:
 - 1. Administrative actions taken;
 - 2. Criminal penalties and civil payments received;
 - 3. The amount of state and federal funds involved in the alleged fraud and abuse;
 - 4. The cost of administering the hotline; and
 - 5. Recommendations for legislative action to prevent, detect, and prosecute medical assistance abuse and fraud in the Commonwealth.

Section 235. KRS 205.900 is amended to read as follows:

As used in KRS 205.905 to 205.920:

- (1) "Cabinet" means the Cabinet for **Families and Children**~~[Human Resources]~~.
- (2) "Evaluation team" means at least three (3) individuals employed as such by a qualified agency or organization.
- (3) "Personal care assistance services" means services which are required by an adult with a severe physical disability to achieve greater physical independence and which include, but are not limited to:
 - (a) Routine bodily functions, such as bowel or bladder care;
 - (b) Dressing;
 - (c) Housecleaning and laundry;
 - (d) Preparation and consumption of food;
 - (e) Moving in and out of bed;
 - (f) Routine bathing;
 - (g) Ambulation; and
 - (h) Any other similar activity of daily living.
- (4) "Qualified agency or organization" means an agency or organization whose purpose is to provide services to severely physically disabled adults to enable them to live as independently as possible and a majority of whose governing board are consumers of these services. If no qualified agency or organization exists, an agency or organization may become a qualified provider when consumers of personal care assistance services are a majority of its advisory council.
- (5) "Secretary" means the secretary of the Cabinet for **Families and Children**~~[Human Resources]~~.

- (6) "Severely physically disabled adult" means a person eighteen (18) years of age or older with permanent or temporary, recurring functional loss of two (2) or more limbs.

Section 236. KRS 205.935 is amended to read as follows:

As used in KRS 205.940:

- (1) "Cabinet" means the Cabinet for *Families and Children*~~[Human Resources]~~;
- (2) "Representative payee" means a person appointed by the Social Security Administration, Veterans Administration, or other nonprofit social service agency to provide financial management services to persons receiving Social Security Administration, Veterans Administration, or other government benefits, who are incapable of making or executing responsible financial decisions.

Section 237. KRS 205.940 is amended to read as follows:

- (1) A representative payee fund shall be created for the purpose of providing grants to public or private organizations who provide representative payee services. The fund shall consist of moneys appropriated by the General Assembly. These moneys may also be supplemented by funds obtained from other sources for the fund as provided in this section.
- (2) The fund shall be administered by the Cabinet for *Families and Children*~~[Human Resources]~~.
- (3) Application for moneys from the fund may be made to the cabinet, on forms prescribed by administrative regulation. The awarding of grants shall be based upon the availability of funds. Grants shall be given to nonprofit organizations or agencies providing representative payee services to more than ten (10) persons who are mentally impaired, homeless or at risk of being homeless, or substance abusers in area development districts created pursuant to KRS 147A.050. The cabinet shall endeavor to fund an applicant where an eligible applicant exists. Health care facilities or other institutions, who serve as representative payees for persons residing therein, shall not be eligible to receive funds under this section.
- (4) In determining the amount of each grant, the cabinet shall consider the number of persons receiving representative payee services from an applicant, the amount necessary to reimburse the applicant for all or a portion of the administrative costs incurred in providing representative payee services, and any fee charged by an applicant for the provision of representative payee services.
- (5) The cabinet shall require applicants receiving funds pursuant to this section to be bonded, and to file an annual report with the cabinet providing an accounting of all funds expended on behalf of persons for whom representative payee services are provided. The cabinet shall promulgate administrative regulations providing for the termination of a grant if it determines a representative payee is not serving in the best interests of a client. If a grant is terminated, the cabinet shall report the termination to the agency who appointed the representative payee and recommend the appointment of a new representative payee. If financial exploitation is indicated, the termination shall also be reported to the Department for Social Services for investigation pursuant to KRS Chapter 209.
- (6) The cabinet may provide training for persons serving as representative payees and may provide technical assistance to applicants awarded a grant.
- (7) The cabinet may apply for any grants that may be used to supplement the representative payee fund, and may accept gifts or donations to the fund.

Section 238. KRS 207.200 is amended to read as follows:

- (1) The Kentucky Department of Workplace Standards is authorized to enforce the employment provisions of KRS 207.130 to 207.240 in conjunction with the State Attorney General's office and the state and local courts.
- (2) Any individual with a disability requesting the intervention of the Kentucky Department of Workplace Standards under this section shall, within one hundred and eighty (180) days of the alleged incident, submit with his request a signed, sworn statement specifying and describing the disability or disabilities which affect him. This statement may be used by the commissioner of workplace standards or his representative to determine if the individual does, or does not, have a "physical disability" as defined in KRS 207.130(2). If the commissioner of workplace standards or his representative determines that the aggrieved individual does have a disability which falls under the definition in KRS 207.130(2), the Department of Workplace Standards shall provide a copy of the aggrieved individual's signed statement to the employer for his inspection.

- (3) In the event the employer wishes to challenge the validity of the statement, he shall so notify the commissioner of workplace standards, who shall in turn notify the aggrieved individual. If the aggrieved individual wishes the Department of Workplace Standards to continue its involvement with the case, he shall be required to submit to the commissioner of workplace standards, within thirty (30) days of such notice, a signed, sworn statement from a licensed physician of his choice, or from one of the state or federal agencies serving individuals with disabilities:
- (a) Specifying and describing the disability or disabilities affecting the individual; and
 - (b) Indicating any specific type of employment for which such disability should be considered a bona fide or necessary reason for limitation or exclusion.
- (4) (a) The state agencies which may be consulted under subsection (3) of this section may include, but are not limited to, the following:
1. Department of Education, Office of Vocational Rehabilitation Services;
 2. Cabinet for *Health Services*~~[Human Resources]~~, Department for *Public Health*~~[Services]~~;
 3. Cabinet for *Families and Children*~~[Human Resources]~~, Division of Disability Determination.
- (b) The commissioner of workplace standards, in conjunction with the agencies designated in this subsection, is authorized to adopt appropriate regulations governing the issuance and setting the standards of determinations of ability or disability;
- (c) The agencies designated in this subsection, and any other state agency which serves individuals with disabilities and which the commissioner of workplace standards deems proper, shall cooperate to the fullest with the Department of Workplace Standards in issuing a statement of disability and limitations as specified in subsection (3) of this section within twenty (20) days of the date the individual with a disability presents himself before such agency for examination.
- (5) (a) For the purposes of KRS 207.130 to 207.240, the commissioner of workplace standards, or his authorized representative, shall have the power to enter the place of employment of any employer, labor organization or employment agency to inspect and copy employment records, to compare character of work and operations on which persons employed by him are engaged, to question such persons, and to obtain such other information as is reasonably necessary to make a preliminary determination that the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied;
- (b) In the event that a preliminary determination is made that the aggrieved individual is not fully capable of carrying out the duties of the job which he or she had been denied, the aggrieved individual and the employer shall both be so advised;
- (c) The aggrieved individual, within ten (10) days of receiving such notification, may file with the Department of Workplace Standards an application for reconsideration of the determination. Upon such application, the commissioner of workplace standards or his representative shall make a new determination within ten (10) days whether the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied. If the determination is again made that the aggrieved individual is not fully capable of carrying out these duties, the aggrieved individual and the employer shall both be so advised;
- (d) In the event that a preliminary determination has been made that the aggrieved individual is fully capable of carrying out the duties of the job which he or she had been denied, the employer, labor organization, or employment agency shall be so advised and encouraged to make an immediate offer to the aggrieved individual of the position which he or she had been denied. In the event the position has already been filled, the employer, labor organization, or employment agency shall be encouraged to make an offer to the aggrieved individual of the next available position for which he or she is qualified.

Section 239. KRS 209.020 is amended to read as follows:

As used in this chapter unless the context otherwise requires:

- (1) "Secretary" means the secretary of the Cabinet for *Families and Children*~~[Human Resources]~~;

- (2) "Cabinet" means the Cabinet for *Families and Children*~~[Human Resources]~~;
- (3) "Department" means the Department for Social Services of the Cabinet for *Families and Children*~~[Human Resources]~~;
- (4) "Adult" means a person eighteen (18) years of age or older or a married person without regard to age, who because of mental or physical dysfunctioning, or who is the victim of abuse or neglect inflicted by a spouse, is unable to manage his own resources, carry out the activities of daily living, or protect himself from neglect, hazardous or abusive situations without assistance from others and may be in need of protective services;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected or exploited and to ensure that he obtains suitable care in or out of his home;
- (6) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement;
- (7) "Abuse or neglect" means the infliction of physical pain, injury, or mental injury, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which an adult, living alone, is unable to provide or obtain for himself the services which are necessary to maintain his health or welfare or a situation in which a person inflicts physical pain or injury upon a spouse or deprives a spouse of reasonable services necessary to maintain the health and welfare of his spouse;
- (8) "Exploitation" means the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person;
- (9) "Investigation" shall include, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse, or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
- (10) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
- (11) "Emergency protective services" are protective services furnished an adult in an emergency;
- (12) "Protective placement" means the transfer of an adult from his present living arrangement to another; and
- (13) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county.

Section 240. KRS 209.160 is amended to read as follows:

There is hereby created a trust and agency account in the State Treasury to be known as the spouse abuse shelter fund. Each county clerk shall remit to the fund, by the tenth of the month, ten dollars (\$10) from each twenty-four dollars (\$24) collected during the previous month from the issuance of marriage licenses. The fund shall be administered by the Revenue Cabinet. The Cabinet for *Families and Children*~~[Human Resources]~~ shall use the funds for the purpose of providing protective shelter services for spouse abuse victims.

Section 241. KRS 209.420 is amended to read as follows:

- (1) There is established within the Cabinet for *Families and Children*~~[Human Resources]~~ a statewide Senior and Physically Disabled Adult Discount Program for the purpose of making retail goods and services available at reduced rates to the Commonwealth's senior citizens.
- (2) Program participation shall be voluntary and free. No fees, dues or other charges shall be assessed by the cabinet nor required of the merchants or senior or physically disabled adult citizens who choose to participate. The cabinet shall invite retail merchants to participate in the program by extending discounts on their merchandise or services to physically disabled adults and citizens sixty (60) years of age and older. The conditions and rate of the discounts shall be determined by the participating businesses. Persons sixty (60) years of age and physically disabled adults shall be eligible to participate in the program by presenting valid proof of age or a statement from a licensed physician that the person is physically disabled to participating businesses.

- (3) The secretary of the cabinet shall make such regulations as necessary to provide program identification for participating merchants and senior citizens lacking proof of age, informational brochures, directories of participating businesses, and other printed materials essential to the implementation and promotion of the program.

Section 242. KRS 209.500 is amended to read as follows:

The Kentucky Senior Games Program is hereby created within the *Office of Aging* ~~[Department for Social]~~ Services of the Cabinet for *Families and Children* ~~[Human Resources]~~. The program shall develop a year-round recreation, fitness, and health promotion program for Kentuckians fifty-five (55) years of age or older which shall provide a network of local competition and participation that culminates in a senior games state final.

Section 243. KRS 210.005 is amended to read as follows:

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

- (1) "Mentally retarded person" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
- (2) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association.
- (3) "Chronic" means that clinically significant symptoms of mental illness have persisted in the individual for a continuous period of at least two (2) years, or that the individual has been hospitalized for mental illness more than once in the last two (2) years, and that the individual is presently significantly impaired in his ability to function socially or occupationally, or both.
- (4) "Cabinet" means the Cabinet for *Health Services* ~~[Human Resources]~~.
- (5) "Deaf or hard-of-hearing" means having a hearing impairment so that a person cannot hear and understand speech clearly through the ear alone, irrespective of the use of any hearing aid device.
- (6) "Secretary" means the secretary of the Cabinet for *Health Services* ~~[Human Resources]~~.

Section 244. KRS 210.010 is amended to read as follows:

The secretary for *health services* ~~[human resources]~~ shall have authority to prescribe rules and regulations for the administration of the cabinet and of the institutions under the control of the cabinet, including power to regulate the payment of money to patients in mental institutions for work performed.

Section 245. KRS 210.031 is amended to read as follows:

- (1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.
 - (a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:
 1. The Kentucky Association of the Deaf;
 2. The A.G. Bell Association;
 3. The Kentucky School for the Deaf Alumni Association; and
 4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hard of Hearing.

- (b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.

- (c) The head of each of the following entities shall appoint one (1) member to the advisory committee:
1. The Cabinet for ***Health Services***~~[Human Resources]~~, Department for Mental Health and Mental Retardation Services;
 2. The Workforce Development Cabinet, Department of Vocational Rehabilitation;
 3. The Cabinet for ***Families and Children, Office of***~~Human Resources, Department for Social Services, Division for~~ Aging Services;
 4. The Education, Arts, and Humanities Cabinet, Commission on the Deaf and Hard of Hearing;
 5. The Kentucky Registry of Interpreters for the Deaf; and
 6. A Kentucky School for the Deaf staff person involved in education.
- (d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services from a list composed of two (2) names submitted by each regional mental health/mental retardation board.
- (2) Of the members defined in subsections (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsections (1)(c) and (d) of this section shall serve with no fixed term of office.
- (3) The members defined under subsections (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsections (1)(c) and (d) shall serve without compensation or reimbursement of any kind.
- (4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.
- (5) The advisory committee shall meet quarterly at a location determined by the committee chair.
- (6) (a) The advisory committee shall prepare a biennial report which:
1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;
 2. Reports the number of deaf or hard-of-hearing persons served;
 3. Identifies additional service needs for the deaf and hard-of-hearing; and
 4. Identifies a plan to address unmet service needs.
- (b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

Section 246. KRS 210.040 is amended to read as follows:

The Cabinet for ***Health Services***~~[Human Resources]~~ shall:

- (1) Exercise all functions of the state in relation to the administration and operation of the state institutions for the care and treatment of persons with mental illness;
- (2) Establish or acquire, in accordance with the provisions of KRS 56.440 to 56.550, other or additional facilities for psychiatric care and treatment of persons who are or may become state charges;
- (3) Cooperate with other state agencies for the development of a statewide mental health program looking toward the prevention of mental illness and the post-institutional care of persons released from public or private mental hospitals;
- (4) Provide for the custody, maintenance, care and medical and psychiatric treatment of the patients of the institutions operated by the cabinet;
- (5) Provide psychiatric consultation for the state penal and correctional institutions, and for the state institutions operated for children or for persons with mental retardation;

- (6) Administer and supervise programs for the noninstitutional care of persons with mental illness;
- (7) Administer and supervise programs for the care of persons with chronic mental illness, including but not limited to provision of the following:
 - (a) Identification of persons with chronic mental illness residing in the area to be served;
 - (b) Assistance to persons with chronic mental illness in gaining access to essential mental health services, medical and rehabilitation services, employment, housing and other support services designed to enable persons with chronic mental illness to function outside inpatient institutions to the maximum extent of their capabilities;
 - (c) Establishment of community-based transitional living facilities with twenty-four (24) hour supervision and community-based cooperative facilities with part-time supervision; provided that, no more than either one (1) transitional facility or one (1) cooperative facility may be established in a county containing a city of the first class with any funds available to the cabinet;
 - (d) Assurance of the availability of a case manager for each person with chronic mental illness to determine what services are needed and to be responsible for their provision; and
 - (e) Coordination of the provision of mental health and related support services with the provision of other support services to persons with chronic mental illness;
- (8) Supervise private mental hospitals receiving patients committed by order of a court.

Section 247. KRS 210.042 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ may provide, to the extent funds are available under KRS 210.040 and under conditions and standards established by the cabinet, funds to any nonprofit agency recognized as operating in the field of mental health and whose objectives are to carry out the purposes of KRS 210.040.
- (2) The funds, if provided, may be matched on a fifty-fifty (50-50) basis by the nonprofit agency receiving such funds. The cabinet shall determine whether the match may be in money or in kind services or other match.

Section 248. KRS 210.045 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall:

- (1) Maintain, operate, and assume program responsibility for all state institutions and facilities for mental retardation;
- (2) Provide rehabilitation services for mentally-retarded persons through educational and training programs;
- (3) Provide medical and allied services to mentally-retarded persons and their families;
- (4) Encourage and assist communities to develop programs and facilities in the field of mental retardation;
- (5) Sponsor or carry out research, or both, in the field of mental retardation; and
- (6) Assist other governmental and private agencies in the development of programs and services for mentally-retarded persons and their families and for the prevention of mental retardation, and coordinate programs and services so developed.

Section 249. KRS 210.055 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ may:

- (1) Promulgate reasonable rules and regulations for the purposes of carrying out the provisions of KRS 210.045, including regulations establishing the minimum and maximum ages within which mentally retarded persons are eligible:
 - (a) To participate in programs operated by the cabinet;
 - (b) To become patients in institutions operated by the cabinet;

- (2) Participate in the education and training of professional and other persons in the field of mental retardation, and may encourage and assist private and public agencies and institutions to participate in similar education and training;
- (3) Do all other things reasonably necessary to carry out the provisions of KRS 210.045.

Section 250. KRS 210.057 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ shall conduct research into all aspects of controlled substances as defined in KRS 218A.010 in coordination with the Kentucky Board of Pharmacy.
- (2) The Cabinet for **Health Services**~~[Human Resources]~~ may authorize persons engaged in research on the use and effects of dangerous substances to withhold the names and other identifying characteristics of persons who are subjects of such research. Persons who obtain this authorization may not be compelled in any state civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.
- (3) The Cabinet for **Health Services**~~[Human Resources]~~ may authorize the possession and distribution of controlled dangerous substances by persons engaged in research. Persons who obtain this authorization shall be exempt from state prosecution for possession and distribution of dangerous substances to the extent authorized by the Cabinet for **Health Services**~~[Human Resources]~~.

Section 251. KRS 210.080 is amended to read as follows:

The secretary for **health services**~~[human resources]~~ may transfer any employee between the institutions operated by the cabinet, or to the headquarters of the cabinet. Necessary moving expenses involved in such transfers shall be paid by the cabinet.

Section 252. KRS 210.090 is amended to read as follows:

Neither the commissioner of the Department for Mental Health and Mental Retardation of the Cabinet for **Health Services**~~[Human Resources]~~ nor his deputy nor any superintendent or director of an institution of the Department for Mental Health and Mental Retardation shall be permitted to engage in any partisan political activity.

Section 253. KRS 210.100 is amended to read as follows:

No officer or employee of any institution operated by the Cabinet for **Health Services**~~[Human Resources]~~ shall be required to give personal attendance as a witness in any civil suit out of the county in which the institution is located, but his deposition shall be taken in lieu thereof.

Section 254. KRS 210.110 is amended to read as follows:

- (1) No officer, employee, or agent of the Cabinet for **Health Services**~~[Human Resources]~~, a regional community mental health-mental retardation board or a nonprofit corporation administering a regional community mental health-mental retardation program shall sell anything to any institution, facility, or organization under the control of the cabinet nor participate in selection, or in the award or administration of a contract supported by state or federal funds if a conflict of interest, real or apparent, would be involved.
- (2) Such a conflict of interest would arise when:
 - (a) The employee, officer, or agent;
 - (b) Any member of his immediate family;
 - (c) His or her partner; or
 - (d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Section 255. KRS 210.120 is amended to read as follows:

No physician or doctor employed by the Cabinet for **Health Services**~~[Human Resources]~~ shall receive or accept any compensation for personal services other than that paid by the state, except that the secretary, and other physicians and doctors when so authorized by the secretary, may be employed in, and receive compensation from outside activities such as teaching, research, or community service work, to an extent that will not interfere with the performance of the duties of their office or employment.

Section 256. KRS 210.130 is amended to read as follows:

Religious instruction and ministrations for patients of the institutions operated by the Cabinet for **Health Services**~~[Human Resources]~~ shall be provided.

Section 257. KRS 210.170 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ may accept money from the federal government, or any of its agencies, under any grant agreement entered into by this state or by the cabinet. Such money may be expended for capital outlay in accordance with the provisions of KRS 56.440 to 56.550. The cabinet also may accept grants, gifts, bequests or devises from public or private sources, and use the same for any purpose within the scope of the functions of the cabinet, consistent with the terms of the grant, gift, bequest or devise.

Section 258. KRS 210.180 is amended to read as follows:

There shall be established and maintained, at each of the institutions operated by the Cabinet for **Health Services**~~[Human Resources]~~, a canteen which shall be incorporated and self-supporting. The directors of each canteen shall be appointed by the secretary. All profits from each canteen shall be used exclusively for the benefit of the patients of the institution.

Section 259. KRS 210.190 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ may utilize the services of the workers of the other cabinets, when authorized by the agency heads of these cabinets. The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ may authorize payment of the actual traveling expenses of the workers so utilized.

Section 260. KRS 210.220 is amended to read as follows:

No patient of any of the institutions operated by the Cabinet for **Health Services**~~[Human Resources]~~ shall be denied the right to correspond with an attorney or with the secretary.

Section 261. KRS 210.230 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ may prescribe appropriate records to be maintained covering the operations of the cabinet and of the institutions operated by it, and covering involuntary hospitalization procedures. Any record forms applicable to involuntary hospitalization procedures shall be furnished to each court having jurisdiction to order hospitalization of mentally ill or retarded persons, and the records contemplated by such forms shall thereafter be made by the hospitalizing courts.

Section 262. KRS 210.235 is amended to read as follows:

All applications and requests for admission and release, and all certifications, records, and reports of the Cabinet for **Health Services**~~[Human Resources]~~ which directly or indirectly identify a patient or former patient or a person whose hospitalization has been sought, shall be kept confidential and shall not be disclosed by any person, except insofar as:

- (1) The person identified or his guardian, if any, shall consent; or
- (2) Disclosure may be necessary to carry out the provisions of the Kentucky Revised Statutes, and the rules and regulations of cabinets and agencies of the Commonwealth of Kentucky; or
- (3) Disclosure may be necessary to comply with the official inquiries of the departments and agencies of the United States government; or
- (4) A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and failure to make such disclosure would be contrary to the public interest. Nothing in this section shall preclude the disclosure, upon proper inquiry of the family or friends of a patient, of information as to the medical condition of the patient.

Section 263. KRS 210.240 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ is authorized to establish training schools within the cabinet or within any of the institutions operated by the cabinet, for the training of necessary personnel for the institutions, or may arrange for the training of employees or prospective employees in any public or private school or institution having available facilities for that purpose. Funds of the cabinet may be used to pay salaries to employees, or to pay tuition and subsistence for employees or prospective employees, while receiving such training. Any employee or prospective employee who is paid a salary, or for whom tuition and subsistence are furnished, while receiving such training, shall be required to enter into a contract, prior to receiving such training, that unless he

continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of such training, he will reimburse to the cabinet the sum paid to or for him by the cabinet during the period of ~~his~~ training.

Section 264. KRS 210.267 is amended to read as follows:

The residents of state mental hospitals may manufacture and produce for their own use, or for sale, such articles, furniture, clothing, tools, products, and other supplies and engage in such labor or work of construction as may be approved by the Cabinet for **Health Services**~~Human Resources~~.

Section 265. KRS 210.270 is amended to read as follows:

- (1) The secretary of the Cabinet for **Health Services**~~Human Resources~~ is authorized to designate those private homes, private nursing homes, and private institutions that he deems, after a thorough investigation of the personal and financial qualifications of the owners and tenants, the facilities and management, and the desirability of the location of the homes, suitable for the placement of patients, including individuals with mental illness or mental retardation of all ages, outside of the state mental hospitals. The secretary of the Cabinet for **Health Services**~~Human Resources~~ may promulgate, by administrative regulation, standards for the selection and operation of private homes, private nursing homes, and private institutions designated for the placement of patients. No home of an officer or employee of the Cabinet for **Health Services**~~Human Resources~~ or of a member of his immediate family shall be designated for the placement of patients.
- (2) Whenever the staff of a state mental hospital has determined that a patient who is not being held on an order arising out of a criminal offense has sufficiently improved and is not dangerous to himself or other persons, and that it would be in the patient's best interest to be placed outside of the hospital in a private home or private nursing home, the hospital shall so certify and authorize the patient to be transferred to a designated private home or private nursing home for care and custody for a length of time that the hospital deems advisable.
- (3) No patient with mental retardation lodged in a state institution may have his level of care reclassified nor may he be transferred to a private nursing home or other private institution without first providing ten (10) days' notice by certified mail, return receipt requested, to the patient's parents or guardian that a reclassification of the patient's level of care or a transfer in the place of residence is being considered.
- (4) Any parent or guardian of any patient with mental retardation lodged in a state institution may participate in any evaluation procedure which may result in a reclassification of the patient's level of care or in a transfer in the place of residence of the patient. Participation may include the submission by the parents or guardian of medical evidence or any other evidence deemed relevant by the parents or guardian to the possible reclassification or transfer of the patient.
- (5) If the decision to reclassify or transfer any patient with mental retardation is adverse to the best interests of the patient as expressed by the parents or guardian, they shall be given notice by certified mail, return receipt requested, that they are entitled to a thirty (30) day period from the receipt of such notice to file with the secretary of the Cabinet for **Health Services**~~Human Resources~~ a notice of appeal and application for a hearing. Upon receipt of an application for a hearing, a hearing shall be conducted in accordance with KRS Chapter 13B.
- (6) The appeal shall be heard by a three (3) member panel composed of a designated representative of the Cabinet for **Health Services**~~Human Resources~~, a designated representative of the state institution where the patient with mental retardation is presently lodged, and a designated neutral representative appointed by the county judge/executive wherein the institution in question is located. The secretary may appoint a hearing officer to preside over the conduct of the hearing.
- (7) Decisions made by the panel may be appealed to the Circuit Court of the county in which the state institution in question is located, to the Circuit Court of the county in which either of the parents or guardians or committee of the patient in question is domiciled at the time of the decision, or to Franklin Circuit Court in accordance with KRS Chapter 13B.
- (8) All parents or guardians or committee of a patient with mental retardation lodged in a state institution shall be fully apprised by the Cabinet for **Health Services**~~Human Resources~~ of their rights and duties under the provisions of subsections (3), (4), (5), (6), and (7) of this section.
- (9) The provisions of KRS 210.700 to 210.760 shall apply to patients transferred to designated private homes and private nursing homes as though the patients were residing in a state mental hospital.

Section 266. KRS 210.271 is amended to read as follows:

- (1) No patient in an institution for the mentally ill or the mentally retarded operated by the Cabinet for **Health Services**~~[Human Resources]~~ shall be discharged to a boarding home as defined in KRS 216B.300 unless the boarding home is registered pursuant to KRS 216B.305.
- (2) The cabinet shall conduct a quarterly follow-up visit, using cabinet personnel or through contract with the Regional Community Mental Health Centers, of all patients of state mental health or mental retardation facilities that are discharged to boarding homes. Any resident found to have needs that cannot be met by the boarding home shall be referred to the Department for Social Services for appropriate placement. Any boarding home suspected of operating as an unlicensed personal care facility or housing residents with needs that cannot be met by the boarding home shall be reported to the Division of Licensing and Regulation for investigation.

Section 267. KRS 210.285 is amended to read as follows:

In addition to the specific authority granted by other provisions of KRS Chapters 202A, 202B, and 210, the Cabinet for **Health Services**~~[Human Resources]~~ shall have authority to prescribe the form of applications, records, reports, and medical certificates provided for under KRS Chapters 202A, 202B, and 210 and the information required to be contained therein; to require reports from the head of any hospital relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit hospitals regularly to review the hospitalization procedures of all new patients admitted between visits; to investigate by personal visit complaints made by any persons on behalf of any patients or by any patients themselves; and to adopt such rules and regulations not inconsistent with the provisions of KRS Chapters 202A, 202B, and 210 as it may find to be reasonably necessary for proper and efficient hospitalization of the mentally ill.

Section 268. KRS 210.290 is amended to read as follows:

- (1) The Cabinet for **Families and Children**~~[Human Resources]~~ may be appointed and act as executor, administrator, guardian, limited guardian, conservator, or limited conservator as provided in this section. In this capacity the cabinet may transact business in the same manner as any individual and for this purpose may sue and be sued in any of the courts of the state. Bond shall not be required of the cabinet.
- (2) Whenever a resident of the state is adjudged partially disabled or disabled and no other suitable person or entity is available and willing to act as limited guardian, guardian, limited conservator, or conservator, the cabinet, acting through its designated officer, may apply to the District Court of the county in which the adjudication is made for appointment as limited guardian, guardian, limited conservator, or conservator for such partially disabled or disabled person.
- (3) Upon the death of a person for whom the cabinet has been appointed guardian or conservator, or upon the death of a person who has been committed to the cabinet leaving an estate and having no relatives at the time residing within the state, the cabinet may apply for appointment as administrator and upon appointment shall close the administration of the estate.
- (4) The cabinet may invest funds held as fiduciary in bonds or other securities guaranteed by the United States, and may sell or exchange such securities in its discretion.
- (5) The cabinet shall receive such fees for its fiduciary services as provided by law. These fees shall be placed in a trust and agency account, from which may be drawn expenses for filing fees, court costs, and other expenses incurred in the administration of estates. Claims of the cabinet against the estates shall be considered in the same manner as any other claim.
- (6) An officer designated by the secretary may act as legal counsel for any patient in a state mental hospital or institution against whom a suit of any nature has been filed, without being appointed as guardian, limited guardian, conservator, or limited conservator.
- (7) Patients hospitalized pursuant to KRS Chapters 202A and 202B who are not adjudged disabled or partially disabled may authorize the Cabinet for **Families and Children**~~[Human Resources]~~ to handle personal funds received by them at the hospital in the same manner as prescribed in subsections (4) and (5) of this section.

Section 269. KRS 210.300 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~{Human Resources}~~ shall prescribe from time to time, by regulations, for the designation of hospital districts, for the purpose of determining to which of the state institutions for the mentally ill the persons admitted from each county shall initially be sent.

Section 270. KRS 210.360 is amended to read as follows:

- (1) When a person who has been twice previously convicted of a felony is indicted by a grand jury as a persistent felony offender, the circuit clerk of the court in which he is indicted shall give notice of the indictment to the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ within seven (7) days after the indictment is returned by the grand jury. The secretary shall cause such person to be examined by a psychiatrist or licensed clinical psychologist already in the employ of the cabinet, to determine his mental condition and the existence of any mental illness or retardation which would affect his criminal responsibility. This examination shall be made without expense other than the amount to cover necessary travel, as provided by law for any other employee of the state traveling on official business.
- (2) The psychiatrist or licensed clinical psychologist making the examination shall submit a written report of his findings to the judge of the court having jurisdiction, who shall make the report available to the prosecuting attorney and the attorney for the defendant.
- (3) The secretary may decline to cause such examination to be made if the number of psychiatrists or licensed clinical psychologists on duty in the cabinet is insufficient to spare one from his regular official duties, in which event the secretary shall notify the clerk of the Circuit Court to that effect within three (3) days.

Section 271. KRS 210.370 is amended to read as follows:

Any combination of cities or counties of over 50,000 population, and upon the consent of the secretary of the Cabinet for **Health Services**~~{Human Resources}~~, any combination of cities or counties with less than 50,000 population, may establish a regional community mental health and mental retardation services program and staff same with persons specially trained in psychiatry and related fields. Such programs and clinics may be administered by a community mental health-mental retardation board established pursuant to KRS 210.370 to 210.460, or by a nonprofit corporation.

Section 272. KRS 210.400 is amended to read as follows:

Subject to the provisions of this section and the policies and regulations of the secretary of the Cabinet for **Health Services**~~{Human Resources}~~, each community mental health-mental retardation board shall:

- (1) Review and evaluate mental health and mental retardation services provided pursuant to KRS 210.370 to 210.460, and report thereon to the secretary of the Cabinet for **Health Services**~~{Human Resources}~~, the administrator of the program, and, when indicated, the public, together with recommendations for additional services and facilities;
- (2) Recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies and other lawful sources, and promote public support for municipal and county appropriations;
- (3) Promote, arrange and implement working agreements with other social service agencies, both public and private, and with other educational and judicial agencies;
- (4) Adopt and implement policies to stimulate effective community relations;
- (5) Be responsible for the development and approval of an annual plan and budget;
- (6) Act as the administrative authority of the community mental health and mental retardation program; and
- (7) Oversee and be responsible for the management of the community mental health and mental retardation program in accordance with the plan and budget adopted by the board and the policies and regulations issued under KRS 210.370 to 210.480 by the secretary of the Cabinet for **Health Services**~~{Human Resources}~~.

Section 273. KRS 210.405 is amended to read as follows:

- (1) Any regional community mental health-mental retardation board established pursuant to KRS 210.380 and recognized by the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ may be appointed and act as executor, administrator, guardian, limited guardian, conservator, or limited conservator, as provided in this section. In this capacity, the board may transact business in the same manner as any individual and for this purpose may sue and be sued in any of the courts of the state. Bond shall not be required of the board.

- (2) Whenever a person who has been adjudged mentally disabled and requires mental health services has no guardian or conservator, the board, acting through its designated officer, may apply to the District Court of the county in which the adjudication was made for its appointment as guardian or conservator for such mentally-disabled person. The board may also apply to be substituted as guardian or conservator for a mentally-disabled person whose guardian or conservator is the Cabinet for *Families and Children*~~[Human Resources]~~ and who has been discharged or whose discharge is imminent from a Cabinet for *Health Services*~~[Human Resources]~~ facility.
- (3) Upon the death of a person for whom the board has been appointed guardian or conservator leaving an estate and having no relatives at the time residing within the state, the board may apply for appointment as administrator and upon appointment shall close the administration of the estate.
- (4) The board may invest funds held as fiduciary in bonds or other securities guaranteed by the United States, and may sell or exchange such securities in its discretion.
- (5) The board shall receive such fees for its fiduciary services as provided by law. These fees shall be placed in a trust and agency account, from which may be drawn expenses for filing fees, court costs and other expenses incurred in the administration of estates. Claims of the board against the estates shall be considered in the same manner as any other claim.

Section 274. KRS 210.410 is amended to read as follows:

- (1) The secretary of the Cabinet for *Health Services*~~[Human Resources]~~ is hereby authorized to make state grants and other fund allocations from the Cabinet for *Health Services*~~[Human Resources]~~ to assist any combination of cities and counties, or nonprofit corporations in the establishment and operation of regional community mental health and mental retardation programs which shall provide at least the following services:
 - (a) Inpatient services;
 - (b) Outpatient services;
 - (c) Partial hospitalization or psycho-social rehabilitation services;
 - (d) Emergency services;
 - (e) Consultation and education services; and
 - (f) Mental retardation services.
- (2) The services required in subsection (1)(a), (b), (c), (d), and (e) of this section shall be available to the mentally ill, drug abusers and alcohol abusers, and all age groups including children and the elderly. The services required in subsection (1)(a), (b), (c), (d), (e), and (f) shall be available to the mentally retarded. The services required in subsection (1)(b) of this section shall be available to any child age sixteen (16) or older upon request of such child without the consent of a parent or legal guardian, if the matter for which the services are sought involves alleged physical or sexual abuse by a parent or guardian whose consent would otherwise be required.

Section 275. KRS 210.420 is amended to read as follows:

- (1) Except as hereinafter provided, grants from state general funds for any program shall not exceed fifty percent (50%) of the total expenditures for:
 - (a) Salaries;
 - (b) Contract facilities and services;
 - (c) Operation, maintenance, and service costs;
 - (d) Per diem and travel expenses for members of the community mental health-mental retardation boards;~~[-]~~ and
 - (e) Other expenditures specifically approved by the secretary for *health services*~~[human resources]~~.

No grants from state general funds shall be made for capital expenditures. Grants from state general funds may be made for expenditures for mental health and mental retardation services whether provided by operation of a local facility or through contract with other public or private agencies.

- (2) The secretary of the Cabinet for **Health Services**~~{Human Resources}~~ shall distribute to community mental health-mental retardation boards those general funds appropriated to the cabinet for the operation of regional community mental health-mental retardation programs. This distribution shall be by a formula which includes provisions for:
- (a) Per capita allocations;
 - (b) Incentive allocations which require local matching funds based on the per capita wealth of the area served; and
 - (c) Discretionary allocations to be available to the secretary to maintain essential services pursuant to KRS 210.410.

The formula for allocation of community mental health-mental retardation program general funds shall be prescribed by administrative regulations.

Section 276. KRS 210.430 is amended to read as follows:

Any community mental health-mental retardation board or nonprofit corporation administering a mental health and mental retardation services program may apply for the assistance provided by KRS 210.370 to 210.460 by submitting annually to the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ its plan, budget, and membership of the board for the next fiscal year. No program shall be eligible for a state grant and other fund allocations from the Cabinet for **Health Services**~~{Human Resources}~~ hereunder unless its plan and budget have been approved by the secretary of the Cabinet for **Health Services**~~{Human Resources}~~, and no program shall be eligible for a state grant and other fund allocations from the Cabinet for **Health Services**~~{Human Resources}~~ hereunder unless the board composition is reasonably representative of those groups enumerated in KRS 210.380.

Section 277. KRS 210.440 is amended to read as follows:

- (1) At the beginning of each fiscal year, the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ shall allocate available funds to the mental health-mental retardation boards or nonprofit organizations for disbursement during the fiscal year in accordance with approved plans and budgets. The secretary shall, from time to time during the fiscal year, review the operations, budgets, and expenditures of the various programs; and if funds are not needed for a program to which they were allocated, he may, after reasonable notice and opportunity for hearing, withdraw any funds that are unencumbered and reallocate them to other programs. He may withdraw funds from any program, or component part thereof, which is not being operated and administered in accordance with its approved plan and budget, and the policies and administrative regulations of the cabinet promulgated pursuant to KRS 210.370 to 210.480.
- (2) If the secretary finds at any time that a mental health-mental retardation board or nonprofit organization to which funds have been allocated for the operation of a regional community mental health and mental retardation program is not operating and administering its program in compliance and accordance with the approved plan and budget and the policies and administrative regulations of the cabinet, he may withdraw his recognition of that board or organization as the local authority for the receipt of funds and the operation and administration of regional community mental health and mental retardation programs.
- (3) If the secretary finds at any time that an emergency situation exists with regard to the financial stability of any regional mental health-mental retardation board or nonprofit organization, which jeopardizes the continuation of programs and provision of services in the area served by that board or nonprofit organization, he may, other statutes to the contrary notwithstanding:
 - (a) Appoint a caretaker administrator who shall be authorized to direct the operation and administration of the board or nonprofit organization's community mental health and mental retardation programs including, but not limited to, their financial record keeping, their personnel management operations, and their financial and program reporting; and
 - (b) Make personnel changes deemed necessary to insure the continued operation of the board or nonprofit organization in compliance with its plan and budget and the policies and regulations of the cabinet.
- (4) Any community mental health-mental retardation board to be affected by the provisions of subsections (2) and (3) of this section shall be notified by the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ thirty (30) days prior to the anticipated action by the secretary. The notification shall be by means of a letter from the secretary to the chairman of the mental health-mental retardation board in question and shall state the reasons for the anticipated action. Following the notification, the mental health-mental retardation board may:

- (a) Comply with the secretary's action without contesting it; or
- (b) Request an administrative hearing before a hearing officer appointed by the secretary to show cause why the action should not stand. The application shall be made within seven (7) days of the receipt of the letter from the secretary, and the hearing shall be conducted in accordance with KRS Chapter 13B.

Section 278. KRS 210.450 is amended to read as follows:

In addition to the powers and duties already conferred upon him by the law, the secretary of the Cabinet for **Health Services**~~Human Resources~~ shall:

- (1) Promulgate policies and regulations governing eligibility of community mental health and mental retardation programs to receive state grants and other fund allocations from the Cabinet for **Health Services**~~Human Resources~~, prescribing standards for qualification of personnel and quality of professional service and for in-service training and educational leave programs for personnel, governing eligibility for service so that no person will be denied service on the basis of race, color or creed, or inability to pay, providing for establishment of fee schedules which shall be based upon ability to pay, regulating fees for diagnostic services, which services may be provided for anyone without regard to his financial status, when referred by the courts, schools, or health and welfare agencies whether public or private, governing financial record keeping, prescribing standards for personnel management operations, providing for financial and program reporting requirements, and such other policies and regulations as he deems necessary to carry out the purposes of KRS 210.370 to 210.460;
- (2) Review and evaluate local programs and the performance of administrative and psychiatric personnel and make recommendations thereon to community mental health-mental retardation boards and program administrators;
- (3) Provide consultative service, by mental health and mental retardation professionals qualified by education and training, to communities to assist in ascertaining local needs and in planning and establishing community mental health and mental retardation programs;
- (4) Employ necessary and qualified personnel to implement KRS 210.370 to 210.460; and
- (5) Review annually the community mental health-mental retardation boards' personnel policies, procedures and personnel compensation plans and disapprove if not consistent with accepted standards of personnel and salary administration prescribed by the cabinet.

Section 279. KRS 210.470 is amended to read as follows:

- (1) It is the intent of this section to create a mental health and mental retardation taxing district by operation of law in each county coming under the provisions of KRS 210.370 to 210.460, in order to implement KRS 210.460.
- (2) In all counties which have participated in the establishment of a regional community mental health and mental retardation services program under KRS 210.380, a mental health and mental retardation taxing district is hereby declared to be created.
- (3) The members of the community mental health-mental retardation board recognized by the secretary for **health services**~~human resources~~ pursuant to KRS 210.380 shall, by virtue of their office, constitute and be the governing board of the mental health and mental retardation taxing district and shall perform the duties attendant thereto in addition to their duties as members of the community mental health-mental retardation board. Officers of the community mental health-mental retardation board shall be the officers of the mental health and mental retardation taxing district.

Section 280. KRS 210.480 is amended to read as follows:

- (1) If, after the establishment of the mental health and mental retardation taxing district as provided for in this section, KRS 210.460, and KRS 210.470, the tax levying authorities in member areas of the district, in the opinion of the community mental health-mental retardation board, do not appropriate an amount sufficient to meet the needs of the mental health and mental retardation services program and clinic, as established pursuant to KRS 210.370, the community mental health-mental retardation board, acting as the governing body of the taxing district shall, with the approval of the Cabinet for **Health Services**~~Human Resources~~, request the fiscal courts in each of the member areas which have not contributed a sufficient proportionate share of the cost of the program, to impose a special ad valorem mental health and mental retardation tax in such amount that it deems sufficient, but not in excess of four cents (\$.04) per one hundred dollars (\$100) of full assessed

valuation. The fiscal court may, upon receipt of a duly certified copy of said request, include in the next ad valorem tax levy said special mental health and mental retardation tax imposed by the mental health-mental retardation board which shall be in addition to all other county ad valorem taxes. If levied by the fiscal court, said special mental health and mental retardation tax shall be collected in the same manner as are other county ad valorem taxes and turned over to the community mental health-mental retardation board to be used for the maintenance and operation of the mental health and mental retardation services program and clinic as provided in KRS 210.460. No appropriation for a mental health and mental retardation services program and clinic established under KRS 210.370 shall be reduced or eliminated on the grounds that a special tax has been levied where the community mental health-mental retardation board requested the amount levied as a necessary supplement to that appropriation. Taxing districts organized pursuant to KRS 210.470 shall not be subject to the provisions of the compensating tax rate as defined by KRS 132.010 nor to Acts 1965 (1st Ex. Sess.), ch. 2.

- (2) Nothing contained *in this section*~~herein~~ shall be construed as precluding any city or county from appropriating or allocating funds in any other manner for the support of the regional mental health and mental retardation services program and clinic, pursuant to KRS 210.460, or any other statutory provision.

Section 281. KRS 210.710 is amended to read as follows:

- (1) "Cabinet" means the Cabinet for *Health Services*~~Human Resources~~.
- (2) "Facility" means a hospital or other institution operated or utilized by the cabinet for the mentally ill, mentally retarded or respiratory disease patients.
- (3) "Homestead" means a place where a family makes its home including the land, house and furnishings, outbuildings, vehicles and tools of the trade formerly occupied by the patient which is exempted by KRS 210.710 to 210.760 from liability to meet patient charges for services rendered in a facility.
- (4) "Means test" means a uniform method adopted by the secretary for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet.
- (5) "Person responsible for the patient" includes parents, spouses, guardians and committees within the scope of their fiduciary duties.
- (6) "Secretary" means the secretary of the Cabinet for *Health Services*~~Human Resources~~.

Section 282. KRS 211.015 is amended to read as follows:

- (1) As used in KRS 211.005 to 211.380, unless the context requires otherwise:
 - (a) "Cabinet" means the Cabinet for *Health Services*~~Human Resources~~;
 - (b) "Farmstead" means a farm dwelling, together with other farm buildings and structures incident to the operation and maintenance of the farm, situated on ten (10) contiguous acres or more of land outside the corporate limits of a municipality:
 1. Used for the production of livestock, livestock products, poultry, poultry products, dairy, dairy products, or horticulture products or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, and wheat; or
 2. Where devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government;
 - (c) "Secretary" means the secretary of the Cabinet for *Health Services*~~Human Resources~~; and
 - (d) "Private water supply" means a residential water supply located on private property under the control of a person holding a possessory interest in the property, the use of which is limited to family members.
- (2) As used in KRS 200.560 and 200.550, unless the context otherwise requires:
 - (a) "Department" means Department for *Public Health*~~Services~~;
 - (b) "Commissioner" means the commissioner of the Department for *Public Health* ~~Services~~;
 - (c) "Committee" means the Hemophilia Advisory Committee; and
 - (d) "Hemophilia" means a bleeding disorder resulting from a genetically determined deficiency factor in the blood, or hereditarily resulting in an abnormal or deficient plasma procoagulant.

Section 283. KRS 211.027 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall promulgate reasonable rules and regulations to effectuate the purposes of KRS 213.101 and 213.106 and KRS 311.710 to 311.810, which shall be submitted to the Legislative Research Commission in a manner prescribed in KRS Chapter 13A; the Legislative Research Commission shall refer said rules and regulations to the Interim Committee on Health and Welfare for the purpose of approval or disapproval.

Section 284. KRS 211.130 is amended to read as follows:

As used in KRS 211.130 to 211.160, unless the context requires otherwise:

- (1) "Cabinet" shall mean the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) "Secretary" shall mean the secretary for **health services**~~[human resources]~~;
- (3) "An individual with a severe physical disability" shall mean a person who has a severe physical disability as a result of cerebral palsy, poliomyelitis, muscular dystrophy, or spina bifida;
- (4) "Educable person" shall mean an individual with a severe physical disability, as defined above, who is determined by the cabinet to be capable of receiving and benefiting from the services and facilities provided by KRS 211.130 to 211.160;
- (5) "Funds" shall mean all moneys received by the cabinet from all persons, corporations, associations, organizations, and state or federal government agencies, specifically designated to be used for furnishing facilities and services for educable persons; provided, however, that no moneys appropriated to the cabinet by the General Assembly of this Commonwealth shall be considered to have been appropriated for establishing, providing or maintaining services or facilities for educable persons, unless the act appropriating such moneys expressly so provides.

Section 285. KRS 211.160 is amended to read as follows:

- (1) The secretary for **health services**~~[human resources]~~ may, from the funds available, employ, by contract or otherwise such medical, clinical, technical, and other personnel that he deems necessary to effectuate the purposes of KRS 211.130 to 211.160, and fix and pay their compensation and necessary traveling expenses.
- (2) The secretary for **health services**~~[human resources]~~ may, from the funds available, procure, by purchase or lease or otherwise, such property, equipment, services, facilities, and supplies that he deems necessary to effectuate the purposes of KRS 211.130 to 211.160.
- (3) The secretary for **health services**~~[human resources]~~ is authorized to accept, on behalf of the Commonwealth of Kentucky, all gifts, donations, contributions, grants, devises, bequests, and conveyances of real and personal property for establishing, providing, and maintaining the services and facilities described in KRS 211.150, subject only to the condition that same shall be devoted to and used for said purposes. All funds received by the secretary for **health services**~~[human resources]~~ shall be deposited in the State Treasury and credited to a trust and agency fund account and expended only for purposes authorized by KRS 211.130 to 211.160.
- (4) The secretary for **health services**~~[human resources]~~ may make and issue all necessary rules and regulations to carry out KRS 211.130 to 211.160; provided, however, that no educable person shall be eligible for any benefits hereunder unless he is, and has been continuously for at least twelve (12) months immediately preceding the date of his application therefor, an actual resident of this state.
- (5) The secretary for **health services**~~[human resources]~~ may delegate to any division of the cabinet, or to any director thereof, any and all of his authority and duties hereunder.
- (6) Upon request of the secretary for **health services**~~[human resources]~~, approved in writing by the Governor, any cabinet, agency, or commission of the Commonwealth shall furnish without cost to the cabinet such services, facilities, and assistance as are available and, in the judgment of the secretary for **health services**~~[human resources]~~ and the Governor, required, to effectuate the purposes of KRS 211.130 to 211.160 or its administration which is hereby vested in the cabinet.

Section 286. KRS 211.165 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall establish a loan repayment program to repay educational loans for primary health care professionals who agree to serve in federally-designated health professional shortage areas. The program shall:

- (1) Apply for federal funds for the program under the Public Health Service Act (42 U.S.C. sec. 254g-1);
- (2) Make payments of qualifying educational loans of health professionals agreeing to provide primary health services in federally-designated health professional shortage areas;
- (3) Assign health professionals only to public and private nonprofit entities;
- (4) Enter into contracts with participants with remedies for breach of contract by the health professional; and
- (5) Make available nonfederal contributions towards contracts with individual health professionals in an amount not less than one dollar (\$1) for each one dollar (\$1) of federal funds provided. In meeting this matching fund requirement, the state shall provide fifty percent (50%) of the state's share from state funds, and the remaining fifty percent (50%) shall be provided from local governments or other community-based resources from the area in which the health professional will be serving.

Section 287. KRS 211.1751 is amended to read as follows:

As used in KRS 211.1751 to 211.1755:

- (1) "Agency" means a local health department established pursuant to the provisions of KRS Chapter 212, excluding a health department in a county containing a city of the first-class, an urban-county health department, or an independent district health department.
- (2) "Classification plan" means the system of classes and job descriptions, and the process for the installation and maintenance of the classification plan.
- (3) "Compensation plan" means a series of salary ranges to which classes of positions are assigned so that classifications evaluated as approximately equal may be assigned to the same salary range.
- (4) "Council" means the Local Health Department Employment Personnel Council created in KRS 211.1752.
- (5) "Department" means the Department for **Public Health**~~—Services~~ within the Cabinet for **Health Services**~~{Human Resources}~~.

Section 288. KRS 211.1752 is amended to read as follows:

- (1) The Local Health Department Employment Personnel Council is hereby created. The council shall be composed of five (5) members appointed by the secretary for **health services**~~{human resources}~~.
- (2) Members of the council shall serve for a term of three (3) years or until successors are appointed, except that for members of the initially appointed council, two (2) members shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, and one (1) member shall be appointed for three (3) years. A member appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the remainder of the term.
- (3) The council shall elect a chairperson from its membership. Regular meetings of the council shall be held at least semiannually. Special meetings of the council may be held upon call of the chairperson or the department.
- (4) The council shall be attached to the department for administrative purposes.
- (5) The council shall:
 - (a) Advise the cabinet on administration of the local health department personnel program pursuant to KRS Chapter 212;
 - (b) Hear appeals from:
 1. Applicants for positions for which examinations are being or have been conducted;
 2. Eligible applicants on examination registers; and
 3. Classified employees who have been dismissed, demoted, or suspended for cause;
 - (c) Hear appeals regarding discrimination in a personnel action involving an agency employee or an applicant for employment;
 - (d) Make an annual report to the department and agency; **and**
 - (e) Consider and act upon matters that may be referred to the council by the department.

Section 289. KRS 211.180 is amended to read as follows:

- (1) The cabinet shall enforce the administrative regulations promulgated by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including but not limited to the following matters:
- (a) Detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled;
 - (b) The adoption of regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease. In adopting the regulations the cabinet shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. The cabinet shall require reporting of physician-diagnosed cases of acquired immunodeficiency syndrome based upon diagnostic criteria from the Centers for Disease Control of the United States Public Health Service. The cabinet shall require reporting of cases of human immunodeficiency virus infection by July 1, 1990, but shall be prohibited from requiring the reporting of or collection of names and addresses. However, a code may be used, so long as in and of itself, it would not identify the patient. Nothing in this section shall be construed to prohibit the cabinet from identifying infected patients when and if an effective cure for human immunodeficiency virus infection or any immunosuppression caused by human immunodeficiency virus is found or a treatment which would render a person noninfectious is found, for the purposes of offering or making the cure or treatment known to the patient.
 - (c) The control of insects, rodents, and other vectors of disease; the safe handling of food and food products; the safety of cosmetics; the control of narcotics, barbiturates, and other drugs as provided by law; the sanitation of schools, industrial establishments, and other public and semipublic buildings; the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations; the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments; the licensure of hospitals; and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe and sanitary environment;
 - (d) The construction, installation, and alteration of any on-site sewage disposal system, except for a system with a surface discharge;
 - (e) Protection and improvement of the health of expectant mothers, infants, preschool, and school-age children;
 - (f) The practice of midwifery, including the issuance of permits to and supervision of women who practice midwifery; **and**
 - (g) Protection and improvement of the health of the people through better nutrition.
- (2) The secretary shall have authority to establish by regulation a schedule of reasonable fees, not to exceed twenty dollars (\$20) per inspector hour plus travel costs pursuant to state regulations for travel reimbursement, to cover the costs of inspections of manufacturers, retailers, and distributors of consumer products as defined in the Federal Consumer Product Safety Act, 15 U.S.C. sec. 2051 et seq.; 86 Stat. 1207 et seq. or amendments thereto, and of youth camps for the purpose of determining compliance with the provisions of this section and the regulations adopted by the secretary pursuant thereto. Fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of the account shall lapse to the general fund at the end of each biennium.
- (3) Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

Section 290. KRS 211.184 is amended to read as follows:

- (1) It shall be the duty of the cabinet to enforce the provisions of KRS 211.182, and for that purpose the investigators, inspectors, representatives, and agents of the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ and the cabinet shall have the full power and authority of peace officers in this

state, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, and to require the production of books, papers, documents, or other evidence.

- (2) The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ may institute, in his own name, proceedings to enjoin and restrain violations of KRS 211.182, regardless of whether the defendant has been convicted of violation of the penal provisions thereof, and shall not be required to pay any costs or filing fees or furnish any bond in connection therewith. Violation of injunctions and restraining orders shall be punished as a contempt without the intervention of a jury.

Section 291. KRS 211.190 is amended to read as follows:

The cabinet shall provide public health services including:

- (1) Administrative, consultative, technical, professional, and other services needed to assist local health departments in the effective maintenance and operation of their departments;
- (2) Administrative, investigative, and clerical services required by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~, and may upon request provide these services to any other agency of this Commonwealth authorized to control the practice of any other healing art;
- (3) Administration of grants, gifts, or contributions from the federal government, or from other sources, for the purpose of carrying out the provisions of Public Law No. 725 (79th Congress, 2nd Session, chapter 958), or any other acts for the same or similar purposes;
- (4) Central registrations of births, deaths, and other vital records and the furnishing of copies thereof to the general public in the manner prescribed by law;
- (5) Statistical services, including the compilation, analysis, and maintenance of statistics on matters related to public health, and may provide these services to organizations and persons interested in public health;
- (6) Education of the public concerning all matters relating to health, including the publication and dissemination of health information, and the stimulation of citizen support for the promotion and maintenance of high standards of public health throughout the Commonwealth;
- (7) Survey and study of the needs of medical and hospital facilities in the interest of the health of the general public;
- (8) Establishment, maintenance, and operation of public health laboratories and such branches thereof as may be needed;
- (9) Establishment, maintenance, and operation of training facilities and schools for employees of the cabinet and of local health departments;
- (10) Tabulating, duplicating, and other ancillary services as are necessary to the operation of the cabinet, including the keeping of adequate financial, personnel and other records; and
- (11) Establishment, maintenance, monitoring, and enforcement of water fluoridation programs for the protection of dental health.

Section 292. KRS 211.200 is amended to read as follows:

Whenever, in the opinion of the secretary for **health services**~~[human resources]~~, a public health emergency exists in any county, or whenever any county fails to establish, maintain, and operate a local health department therein meeting the standards prescribed by the cabinet, the cabinet may assign to said county such of its own personnel as may be designated by the secretary for human resources. Such personnel so assigned shall have the full power and authority of local health department employees in addition to their power and authority as representatives of the cabinet. Whenever such assignment results by reason of the lack of a local health department or of a local health department meeting the standards prescribed by the cabinet, any funds appropriated or allocated to the local health department by either the Commonwealth or the federal government may be used to reimburse the cabinet.

Section 293. KRS 211.215 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ shall operate a program for the decontamination of bird roosts.

- (2) Prior to the decontamination of a bird roost, the cabinet shall, at a minimum, make the following determinations:
 - (a) The bird roost has tested positive to the presence of histoplasma capsulatum;
 - (b) The bird roost presents a potential health hazard;
 - (c) The landowner has requested in writing to the cabinet that the cabinet have the land area associated with the bird roost decontaminated; and
 - (d) That there are sufficient state funds to pay for the decontamination of the area, including any assistance which may be given by local governmental units, volunteer fire departments, or other organizations.
- (3) If one (1) or more of the determinations made by the cabinet in subsection (2) of this section is made in the negative, the bird roost shall not be decontaminated by the cabinet.
- (4) The cabinet shall ensure that the decontamination of a bird roost is conducted in a safe manner.
- (5) The cabinet may secure the services of local governmental units, volunteer fire departments, or other organizations as long as they are qualified to conduct the decontamination in a safe manner.
- (6) The cabinet may issue administrative regulations to implement this section.

Section 294. KRS 211.220 is amended to read as follows:

For the purposes of enforcing the public health laws of the Commonwealth, investigators, inspectors, officers, representatives, and agents of the cabinet may enter upon any premises when necessary for the purpose of making inspections and investigations, and may view evidence and interrogate persons, to the extent required in the performance of their duties and responsibilities. The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ may issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet, and such process shall extend to all parts of the Commonwealth. Service of process may be made by certified mail, return receipt requested or in the manner prescribed by the Rules of Civil Procedure. Nothing in this section shall be construed to authorize the cabinet to regulate the practice of any healing art where the licensure regulation and control of same has been conferred by statute upon some other agency of the state.

Section 295. KRS 211.230 is amended to read as follows:

In case of a failure on the part of any person, firm, or corporation to comply with any lawful order of the Cabinet for **Health Services**~~[Human Resources]~~, or with process or in case of the refusal of any witness to testify concerning any matter on which he may be lawfully interrogated, the Circuit Court, or a judge thereof, having jurisdiction may, on application of the Cabinet for **Health Services**~~[Human Resources]~~ or the secretary of the Cabinet for **Health Services**~~[Human Resources]~~, compel obedience by proceedings as in contempt cases.

Section 296. KRS 211.345 is amended to read as follows:

The Department for **Public Health**~~[Services]~~ in the Cabinet for **Health Services**~~[Human Resources]~~ shall establish a program for testing, upon request of the owner or user of the water supply, private water supplies for bacterial and chemical contamination, and for educating the public about proper siting and drilling of wells and treatment of wells and other private water supplies. The program shall consist of the following elements:

- (1) The development of policies, in conjunction with the Natural Resources and Environmental Protection Cabinet, for testing private water supplies and using relevant information in a groundwater database;
- (2) The development of a data collection system, in conjunction with the Natural Resources and Environmental Protection Cabinet, which shall contain the results of water sample tests and information on well location sufficient to locate the wells on an official map;
- (3) The development of a private water supply user's manual to be made available to the public; and
- (4) The development of a technical assistance program for private water supply users.

Section 297. KRS 211.355 is amended to read as follows:

- (1) Any local board of health authorized to serve as agent of the Cabinet for **Health Services**~~[Human Resources]~~ for the issuance of permits for on-site sewage disposal systems may set a schedule of fees reasonably related to the cost of administering programs including:

- (a) Inspections incidental to construction, installation, and alteration of on-site sewage disposal systems; and
 - (b) Inspections incidental to maintenance and operation of on-site sewage disposal systems.
- (2) Such fees shall be designed to fully cover the cost of the services but shall not exceed the cost of the services performed. Fees payable to the board shall be used by the board only for the administration of said program.
 - (3) Nothing in this section shall authorize or allow the cabinet to inspect any on-site sewage disposal system constructed prior to July 15, 1986, unless such inspection is deemed necessary due to receipt of a complaint by the cabinet or the local health department. In such an instance, the cabinet shall document or shall require the local health department to document the source and nature of such complaint.

Section 298. KRS 211.357 is amended to read as follows:

- (1) The cabinet shall establish a program to certify persons as installers of on-site sewage disposal systems. A master plumber licensed pursuant to KRS Chapter 318 or a person who provides written verification from the local health department in the county in which the work was completed that he installed five (5) lateral fields and septic tank systems prior to July 13, 1984, and that these installations had been inspected by a certified inspector and passed inspection, shall be certified automatically.
- (2) The cabinet shall establish as a part of the certification program referenced in subsection (1) of this section a means of issuing a probationary certification for installers of on-site sewage disposal systems. This probationary certification shall automatically be converted to a full certification at the time that the holder of the probationary certificate has installed five (5) lateral fields and septic tank systems and has provided written verification from the local health department in the county in which the work was completed that these installations have been inspected by a certified inspector and passed the inspection. The cabinet shall issue a full certificate to the holder of the probationary certificate no later than sixty (60) days after receipt of verification. In order to be issued a probationary certification, eligible persons shall certify in writing that they will make installations in accordance with requirements set forth by the Cabinet for **Health Services**~~[Human Resources]~~.
- (3) Persons certified as installers, except master plumbers licensed pursuant to KRS Chapter 318, shall pay a reasonable fee of not more than twenty-five dollars (\$25) for certification.
- (4) The cabinet may revoke or suspend any certification issued pursuant to this section upon proof that the certified person has:
 - (a) Knowingly violated the provisions of this chapter or the regulations of the cabinet;
 - (b) Practiced fraud or deception in applying for or obtaining a certificate;
 - (c) Is incompetent to install on-site sewage disposal systems;
 - (d) Permitted the certification to be used directly or indirectly by another to install on-site sewage disposal systems; or
 - (e) Is guilty of other unprofessional or dishonorable conduct of a character likely to deceive or defraud the public.
- (5) Upon appeal of any decision to revoke or suspend a certification, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (6) Nothing in this section shall be construed to condone the installation of on-site sewage disposal systems contrary to specifications for these systems established by the cabinet.

Section 299. KRS 211.365 is amended to read as follows:

In order to provide for the issuance of plumbing installation permits pursuant to KRS Chapter 318 and on-site sewage disposal permits pursuant to this chapter in a manner convenient to the public, the Cabinet for **Health Services**~~[Human Resources]~~ shall provide office space in the local departments of health for the district plumbing inspector without fee or charge to the Department of Housing, Buildings and Construction.

Section 300. KRS 211.370 is amended to read as follows:

The commissioner of the Department for **Public Health**~~[Services]~~ shall, upon written request from a local board of health, authorize the local board of health to serve as its agent to issue permits for on-site sewage disposal systems

within that area of local board jurisdiction. As agent, the authorized local board of health shall act for the cabinet in issuing permits and granting variances for on-site sewage disposal systems. Actions by the local board of health shall comply with the regulations established by the cabinet relating to on-site sewage disposal systems. The local board of health shall include in the written request a procedure for administering this section. The local board of health may adopt regulations relating to the proper operation and maintenance of on-site sewage disposal systems. In counties containing a city of the first class and in urban counties, the local board of health may adopt regulations relating to the proper construction, installation and alteration of on-site sewage disposal systems which are more stringent than the regulations adopted by the cabinet.

Section 301. KRS 211.420 is amended to read as follows:

- (1) There is hereby established within the Cabinet for **Health Services**~~{Human Resources}~~, a rural Kentucky dental scholarship fund.
- (2) There shall be available each fiscal year to applicants selected by the board with the approval of the Dental Health Program of the Cabinet for **Health Services**~~{Human Resources}~~, no less than ten (10) scholarships for the study of dentistry leading to the attainment of the degree of Doctor of Dental Surgery, or some equivalent degree.
- (3) The amount of each scholarship shall be a reasonable sum determined by the board, but shall not be less than one thousand five hundred dollars (\$1,500) per annum.
- (4) In granting scholarships the board shall make a careful and full investigation of the ability, character and qualifications of each applicant, and may personally examine each applicant. The board shall, whenever possible, grant financial assistance to the applicants with the greatest financial need, provided such persons are found to possess such qualities as give reasonable assurance of their successfully completing the course of study made possible by the scholarship.

Section 302. KRS 211.430 is amended to read as follows:

- (1) To be eligible for a scholarship made available under KRS 211.405 to 211.460, an applicant must:
 - (a) Have been a resident of this Commonwealth for not less than five (5) years immediately preceding the date of application;
 - (b) Be acceptable for enrollment in a dental school accredited by the Council on Dental Education of the American Dental Association, and approved by the board; and
 - (c) Furnish satisfactory evidence to the board that he does not have sufficient financial resources to enable him to study dentistry without assistance.
- (2) Before a scholarship is granted, the applicant shall contract in writing with the board, that he will, within six (6) months from the date he completes his term of study, engage in the practice of dentistry in a locality or localities within this Commonwealth to be designated by the Dental Health Program of the Cabinet for **Health Services**~~{Human Resources}~~, at the rate of one (1) year for each annual scholarship received, or proportional time for partial scholarships.

Section 303. KRS 211.461 is amended to read as follows:

As used in KRS 211.461 to 211.466, unless the context otherwise requires:

- (1) "Cabinet" means the Cabinet for **Health Services**~~{Human Resources}~~;
- (2) "Private review agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any person providing or administering health benefits to citizens of this Commonwealth;
- (3) "Registration" means an authorization issued by the cabinet to a private review agent to conduct utilization review;
- (4) "Secretary" means the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ or his designee;
- (5) "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a patient or group of patients for purposes of determining the availability of payment; and

- (6) "Utilization review plan" means a description of the procedures governing utilization review activities performed by a private review agent.

Section 304. KRS 211.464 is amended to read as follows:

- (1) Within ninety (90) days of July 13, 1990, the cabinet shall promulgate administrative regulations to implement the provisions of this chapter including the following:
- (a) The establishment of fees for applications and renewals in an amount sufficient to pay for the administrative costs of the program and any other costs associated with carrying out the provisions of KRS 211.461 to 211.466 not to exceed five hundred dollars (\$500).
 - (b) Specification of information required of applicants for registrations and renewals, which shall include, at a minimum:
 - 1. A utilization review plan that includes:
 - a. Utilization review policies and procedures to be used in evaluating proposed or delivered hospital care;
 - b. Those instances, if any, under which utilization review may be delegated to a hospital utilization review program;
 - c. The procedures by which patients, physicians, or hospitals may seek timely reconsideration or appeal of adverse decisions by the private review agent;
 - d. The manner in which the private review agent shall notify the patient, hospital, and physician when payment for hospital or medical care is denied including the reasons for the denial;
 - 2. The type and qualifications of the personnel either employed or under contract to perform utilization review;
 - 3. Assurances that a toll-free line will be provided for patients, hospitals, and physicians to contact the private review agent and policies and procedures to insure that a representative of the private review agent shall be reasonably accessible to patients and providers at least forty (40) hours per week during normal business hours;
 - 4. The policies and procedures to insure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;
 - 5. A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan;
 - 6. A list of the third-party payors for which the private review agent is performing utilization review in this state; and
 - 7. Evidence of compliance or ability to comply with the requirements of KRS 211.461 to 211.466 and the regulations;
 - (c) A process for the review of applications for registrations and renewals, including application procedures, procedures for supplementing the application on the request of the secretary, reasonable timetables for review and decision, and notice procedures;
 - (d) A process for the revocation of registration, which shall include notice provisions, and reasonable timetables for decision on a revocation;
 - (e) A process for the appeal of a denial of a registration or renewal or of a revocation of a registration, which shall include the right to an administrative hearing conducted in accordance with KRS Chapter 13B;
 - (f) A process for reviewing any written complaints that a private review agent has failed to perform review in accordance with the utilization review plan submitted pursuant to KRS 211.461 to 211.466 or to comply with any requirements of KRS 211.461 to 211.466 or regulations promulgated thereunder which shall require the secretary to:
 - 1. Within ten (10) days of the receipt, send a copy of the complaint to the private review agent and require that any written reply be sent to the secretary within ten (10) days;

2. Upon review of a complaint, make a recommendation to the insurer or private review agent and the insured; and
 3. Consider complaints before issuing or renewing any registration to a private review agent; and
- (g) The establishment of an appeal process to resolve disputes between private review agents and health care providers and patients.
- (2) The cabinet may establish reporting requirements to:
 - (a) Evaluate the effectiveness of private review agents; and
 - (b) Determine if the utilization review programs are in compliance with the provisions of KRS 211.461 to 211.466 and applicable regulations.
 - (3) On request of any health facility, physician, or patient whose care is subject to review, the cabinet shall provide copies of policies or procedures of any private review agent which has been issued a registration to conduct review in this state.
 - (4) The cabinet shall, on a bimonthly basis, compile a list of registered private review agents along with the renewal dates of their registrations and the date upon which any private review agents submitted changes to their policies or procedures. This information shall be made available upon request.
 - (5) The Cabinet for *Health Services* ~~{Human Resources}~~ shall report to the General Assembly by July 1, 1991, and each year thereafter on the number of private review agents conducting utilization review, the type of criteria used to perform utilization review, and the feasibility of adopting uniform standards for one (1) or more aspects of utilization review including standardized forms for data collection and the medical procedures for which preauthorization and second surgical opinion would be required.

Section 305. KRS 211.500 is amended to read as follows:

- (1) The Kentucky Spinal Cord and Head Injury Research Board is hereby created for the purpose of administering the spinal cord and head injury research trust fund created pursuant to KRS 211.504. The board shall be composed of seven (7) members appointed by the Governor as follows:
 - (a) Two (2) members representing the University of Kentucky College of Medicine;
 - (b) Two (2) members representing the University of Louisville School of Medicine;
 - (c) One (1) member who has a spinal cord or head injury or who has a family member with a spinal cord or head injury;
 - (d) One (1) member representing the Kentucky Medical Association; and
 - (e) One (1) at-large member.
- (2) Board members shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to the provisions of KRS 211.500 to 211.504.
- (3) The terms of board members shall be four (4) years, except that the terms of initial members shall be staggered to end as follows:
 - (a) Two (2) on June 30, 1995;
 - (b) Two (2) on June 30, 1996;
 - (c) Two (2) on June 30, 1997; and
 - (d) One (1) on June 30, 1998.
- (4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.
- (5) A majority of the full authorized membership of the board shall constitute a quorum.

- (6) The board shall elect, by a majority vote, a chairman who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected for each calendar year. The board shall have such other organization as deemed necessary and approved by the board.
- (7) Meetings of the board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to call by the chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to spinal cord and head injury research projects and programs, research progress reports, authorization of projects and financial plans, and other matters necessary to carry out the intent of KRS 211.500 to 211.504.
- (8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- (9) The board shall be attached to the Cabinet for **Health Services**~~[Human Resources]~~ for administrative purposes.
Section 306. KRS 211.640 is amended to read as follows:

The duties of the Cabinet for **Health Services**~~[Human Resources]~~ shall be to:

- (1) Promote and develop effective programs of education, health, recreation, welfare, public safety and correctional services for children and youth;
- (2) Conduct continuing programs of public information to educate the public as to problems of children and youth;
- (3) Assist and encourage governmental and private agencies to coordinate their efforts on behalf of children and youth;
- (4) Cooperate with the federal government and with the governments of other states and cities in programs relating to children and youth;
- (5) Conduct programs of research as to the needs of children and youth in order to facilitate more comprehensive and better related social planning and action.

Section 307. KRS 211.645 is amended to read as follows:

As used in KRS 211.647 and 213.046, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) "Certificate" means the certificate of birth required by KRS 213.046;
- (3) "Commission" means the Commission for Children with Special Health Care Needs;
- (4) "Hard of hearing infant" means a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels;
- (5) "Hearing risk certificate" means the certificate that includes questions which identify newborn babies with a higher risk than normal for hearing loss;
- (6) "High risk infant" means a child at birth who is at a higher risk than normal of being hard of hearing due to one (1) or more of the following factors present at birth:
 - (a) Family history of a congenital hearing loss;
 - (b) Rubella or virus during pregnancy;
 - (c) Congenital ear, nose, or throat anomalies;
 - (d) Below normal birth weight;
 - (e) Abnormal level of jaundice;
 - (f) Anoxia or apnea; and
 - (g) A low APGAR score derived from the evaluation of the infant's color, muscle tone, reflexes, pulse rate, and respiration.

Section 308. KRS 211.647 is amended to read as follows:

- (1) The commission on receipt of the hearing risk certificates from the cabinet, shall conduct activities necessary to identify high risk infants. It shall establish a program to provide medical and educational information to the families, assist the families in securing screening, diagnostic, and medical services at a minimal cost at a center or at a location as close to the child's residence as possible and refer the parents to agencies or organizations which provide educational programs for the child and the family.
- (2) The commission's process for identifying high risk infants shall include a timely review of all hearing risk certificates to identify the presence of factors determined to occur frequently with hearing loss in newborn infants. The commission shall secure information missing from certificates which is relevant to identifying high risk infants.
- (3) The commission shall involve agencies and organizations which provide services to deaf and hard of hearing children, including, but not limited to, the Department of Education, the Cabinet for **Health Services**~~[Human Resources]~~, and the Commission on the Deaf and Hard of Hearing, in planning for and implementation of this section. Cumulative demographic data of identified high risk infants shall be made available to agencies and organizations requesting the information for planning purposes.

Section 309. KRS 211.651 is amended to read as follows:

As used in KRS 211.651 to 211.670, unless the context otherwise requires:

- (1) "Cabinet" ~~means~~~~[shall mean]~~ the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) "Secretary" ~~means~~~~[shall mean]~~ the secretary of the Cabinet for **Health Services**~~[Human Resources]~~;
- (3) "Department" ~~means~~~~[shall mean]~~ the Department for **Public Health**~~[Services]~~; **and**
- (4) "Designee" ~~means~~~~[shall mean]~~ a local health department, mental health/mental retardation board, or other governmental or private agency designated by the Department for **Public Health**~~[Services]~~.

Section 310. KRS 211.660 is amended to read as follows:

- (1) The Department for **Public Health**~~[Services]~~ shall establish and maintain a Kentucky birth surveillance registry that will provide a system for the collection of information concerning birth defects, stillbirths, and high risk conditions. The system may cover all or part of the Commonwealth.
- (2) In establishing the system, the department may review vital statistics records, and shall also consider expanding the current list of congenital anomalies and high risk conditions as reported on birth certificates.
- (3) The department may require general acute care hospitals licensed under the provisions of KRS Chapter 216B to maintain a list of the following information: All inpatients up to the age of five (5) years with a primary diagnosis of a congenital anomaly or high risk condition as defined by the department upon the recommendation of the appointed advisory committee.
- (4) With the written consent of one (1) parent or guardian, the department may have access to the medical records of any patient meeting the criteria in subsection (3) of this section that are maintained by general acute care hospitals and freestanding birthing centers licensed under the provisions of KRS Chapter 216B.
- (5) The Department for **Public Health**~~[Services]~~ may implement the provisions of KRS 211.651 to 211.670 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

Section 311. KRS 211.684 is amended to read as follows:

- (1) For the purposes of KRS Chapter 211:
 - (a) "Child fatality" means the death of a person under the age of eighteen (18) years; and
 - (b) "Local child fatality response team" and "local team" means a community team composed of representatives of agencies, offices, and institutions that investigate child deaths, including but not limited to, coroners, family service workers, medical professionals, law enforcement officials, and Commonwealth's and county attorneys.
- (2) The Department for **Public Health**~~[Services]~~ may establish a state child fatality review team. The state team may include representatives of public health, social services, law enforcement, prosecution, coroners, health care providers, and other agencies or professions deemed appropriate by the commissioner of the department.

- (3) If a state team is created, the duties of the state team may include the following:
- (a) Develop and distribute a model protocol for local child fatality response teams for the investigation of child fatalities;
 - (b) Facilitate the development of local child fatality response teams which may include, but is not limited to, providing joint training opportunities and, upon request, providing technical assistance;
 - (c) Review and approve local protocols prepared and submitted by local teams;
 - (d) Receive data and information on child fatalities and analyze the information to identify trends, patterns, and risk factors;
 - (e) Evaluate the effectiveness of prevention and intervention strategies adopted; and
 - (f) Recommend changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate strategies for prevention and reduce the number of child fatalities.
- (4) The department shall prepare an annual report to be submitted no later than November 1 of each year to the Governor, the Legislative Research Commission, the Chief Justice of the Kentucky Supreme Court, and to be made available to the citizens of the Commonwealth. The report shall include a statistical analysis of the incidence and causes of child fatalities in the Commonwealth during the past fiscal year and recommendations for action. The report shall not include any information which would identify specific child fatality cases.

Section 312. KRS 211.760 is amended to read as follows:

- (1) No person shall engage in, offer to engage in, or carry on any business of tattooing of humans by nonmedical personnel for remuneration within the Commonwealth of Kentucky without first registering with the local health department in the district or county in which the person is to perform tattooing. Registrations shall be valid for one (1) year. Applicants for registration shall pay a fee of twenty dollars (\$20) to the local or district health department.
- (2) The Cabinet for *Health Services* ~~{Human Resources}~~ shall promulgate administrative regulations relating to:
 - (a) Health and cleanliness of places of business in which tattooing is conducted;
 - (b) Sterilization of tattooing apparatus;
 - (c) Procedures to prevent the spread of disease or infection during or relating to tattooing procedures;
 - (d) Procedures to prevent the tattooing of minors without the consent of one (1) parent or guardian; *and*
 - (e) Such other administrative regulations as may be necessary to protect public health or properly administer the program requirements of this section.
- (3) Representatives of the cabinet or local or district health departments may visit tattooing facilities at any time during business hours to ensure compliance with the requirements of this section. Representatives of local or district health departments shall visit each registered tattooing facility in their county or district not less than twice each year.
- (4) The provisions of this section shall not apply to a person who engages in the application of permanent make-up.
- (5) Any administrative hearing conducted under this section shall be conducted in accordance with KRS Chapter 13B.

Section 313. KRS 211.820 is amended to read as follows:

- (1) The Cabinet for *Health Services* ~~{Human Resources}~~ shall have the following functions, powers, and duties:
 - (a) To conduct a survey of all of the existing facilities within the state having to do with the diagnosis, evaluation and treatment of patients with kidney disease and to prepare and submit its findings and a specific program of action; ~~{-}~~
 - (b) To evaluate the need for the creation of local or regional facilities and for the establishing of a major kidney research center; ~~{-}~~

- (c) To develop and administer scientific investigations into the cause, prevention, methods of treatment and cure of renal disease, including research into transplantation of kidneys; ~~and~~
- (d) To develop techniques for an effective method of mass testing for the detection of kidney diseases and urinary tract infections; ~~and~~
- (e) To develop more efficient methods of medical care for kidney disease and to develop more effective and economical kidney dialysis equipment; ~~and~~
- (f) To survey and evaluate the need for a program of professional education and training for medical students, physicians and nurses in the care and treatment of kidney diseases; ~~and~~
- (g) To report to the Governor and to a committee of the Legislature annually on or before February 1 its findings, a progress report, its activities and the state's total needs in this area; ~~and~~
- (h) To enter into such contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities and other units of government as may be deemed necessary and advisable to carry out the general intent and purposes of this section. Such contracts may provide for payment by the state, within the limit of funds available, for materials, equipment or services.

(2) The secretary may adopt rules and regulations necessary to effect the purposes of this section.

Section 314. KRS 211.842 is amended to read as follows:

- (1) The Cabinet for **Health Services** ~~Human Resources~~ is the radiation control agency of the State of Kentucky.
- (2) The Cabinet for **Health Services** ~~Human Resources~~ shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.
- (3) The Cabinet for **Health Services** ~~Human Resources~~ shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation.
- (4) The cabinet or its duly authorized representative may enter at a reasonable time upon the property of a licensee, registrant, or other person where sources of ionizing, non-ionizing, or electronic product radiation are reasonably believed to be located for the purpose of determining whether or not such licensee, registrant, or other person is in compliance with or in violation of the provisions of KRS 211.842 to 211.852 and administrative regulations promulgated hereunder, and the owner, occupant, or person in charge of the property shall permit entry and inspection; provided, that entry into areas under the jurisdiction of an agency of the federal government or its duly designated representative shall be only upon permission of the agency or its representative.

Section 315. KRS 211.843 is amended to read as follows:

The secretary for **health services** ~~human resources~~ may, by administrative regulation, require licensees of radioactive materials to provide an adequate surety or other financial arrangement, in such amount as the secretary deems reasonably appropriate to cover potential clean-up costs in the event of abandonment, insolvency, or other inability of the licensee to meet the requirements of the secretary regarding a radioactive material accident or other public health hazard created by the presence of radioactive material at a site occupied by the licensee or formerly under its possession, ownership, or control. Acceptable sureties include bonds issued by fidelity or surety companies authorized or eligible to do business in Kentucky, cash deposits, certificates of deposit, deposits of government securities, irrevocable letters or lines of credit, trust funds, escrow accounts or such other types of arrangements, but shall not include any arrangement which essentially constitutes self insurance. The secretary shall be the obligee of the surety and the proceeds of the surety shall be used by the secretary for defraying the cost of cleaning up and decontaminating the area of property involved. Failure to comply with any regulation promulgated to carry out this section by any licensee shall result in automatic revocation of such license by operation by law.

Section 316. KRS 211.844 is amended to read as follows:

- (1) The Cabinet for **Health Services** ~~Human Resources~~ shall provide by administrative regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The cabinet may prescribe specific conditions or means for the disposal and volume and source reduction of radioactive materials including radioactive waste. These administrative regulations shall include but need not be limited to specification of the form of applications for

registration and licenses, the qualifications therefor, grounds for revocation, appeal pursuant to KRS Chapter 13B, and other matters necessary to carry out the intent of KRS 211.842 to 211.852 and to protect the public from unnecessary radiation exposure.

- (2) All administrative regulations adopted prior to June 17, 1978, by the Cabinet for Human Resources and on file with the Legislative Research Commission shall continue in full force and effect unless subsequently amended or repealed pursuant to the provisions of KRS 211.842 to 211.852.

Section 317. KRS 211.846 is amended to read as follows:

The Cabinet for **Health Services**~~{Human Resources}~~ shall monitor radioactive waste material sites in Kentucky for the protection of the public health, safety and welfare. The Finance and Administration Cabinet and the Cabinet for **Health Services**~~{Human Resources}~~ shall cooperate and coordinate their activities in the leasing, regulation, monitoring and control of radioactive waste material burial sites.

Section 318. KRS 211.848 is amended to read as follows:

- (1) The secretary of the Cabinet for **Health Services**~~{Human Resources}~~ shall fix a reasonable schedule of fees and charges, by regulation, to be paid by applicants for registration of radiation producing machines and radioactive material licenses and for renewal of the certificates and licenses. The secretary shall also prescribe, by regulation, a reasonable schedule of fees to be paid by registrants and licensees for inspections and environmental surveillance activities conducted by the cabinet.
- (2) All fees and charges collected by the Cabinet for **Health Services**~~{Human Resources}~~ under the provisions of KRS 211.842 to 211.852 or the administrative regulations adopted pursuant to KRS 211.844 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the Cabinet for **Health Services**~~{Human Resources}~~ in carrying out the provisions of KRS 211.842 to 211.852.

Section 319. KRS 211.850 is amended to read as follows:

Whenever, in the opinion of the Attorney General or the secretary of the Cabinet for **Health Services**~~{Human Resources}~~, the person is violating or is about to violate any of the provisions of KRS 211.842 to 211.852, or any regulation lawfully promulgated pursuant thereto, the Attorney General or the secretary may apply to the appropriate court for an order enjoining the person from engaging or continuing to engage in the violative act, and upon a showing that such person has engaged or is about to engage in such activity, a restraining order or permanent or temporary injunction, or any other appropriate order shall be granted.

Section 320. KRS 211.852 is amended to read as follows:

- (1) The location of a nuclear waste disposal facility in the Commonwealth of Kentucky shall require prior approval by a majority of the members of the Kentucky House of Representatives, a majority of the members of the Kentucky Senate and the approval of the Governor of Kentucky.
- (2) Before an application to locate a nuclear waste disposal facility in Kentucky can be submitted for approval to the Kentucky General Assembly, it must first receive the approval of the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ and the secretary of the Natural Resources and Environmental Protection Cabinet. It shall be the responsibility of the Cabinet for **Health Services**~~{Human Resources}~~ and the Natural Resources and Environmental Protection Cabinet to ensure that a comprehensive environmental impact statement is submitted and that public hearings are held in the county in which it is proposed to locate a nuclear waste disposal facility.
- (3) This section shall not apply to nuclear waste disposal facilities in existence prior to June 17, 1978.

Section 321. KRS 211.854 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~{Human Resources}~~ may monitor the radiation in discharges into rivers along the Kentucky border from all nuclear power plants located on either side of such rivers for the protection of the health, safety, and welfare of the citizens of the Commonwealth. Monitoring may be conducted on a continuous basis.
- (2) If there is evidence that the effluent standards applicable to any nuclear power facility are not being properly and expeditiously enforced, the Attorney General shall report such violations to the United States attorney for appropriate action or bring an action of mandamus against the appropriate enforcement agency.

Section 322. KRS 211.855 is amended to read as follows:

- (1) The Cabinet for *Health Services*~~[Human Resources]~~ shall be the regulatory agency for the control of radon in the Commonwealth of Kentucky.
- (2) The Cabinet for *Health Services*~~[Human Resources]~~ shall develop and conduct programs for evaluation and control of activities related to radon including laboratory analyses, mitigation, and measurements.

Section 323. KRS 211.856 is amended to read as follows:

- (1) No person shall engage in radon analysis, mitigation, or testing activities without obtaining certification from the Cabinet for *Health Services*~~[Human Resources]~~. The Cabinet for *Health Services*~~[Human Resources]~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A, which shall include, but not be limited to, specifications of the form of applications for certification, the qualifications for certification, grounds for revocation of certification, and other matters as may be necessary to protect the public from unnecessary radiation exposure from radon.
- (2) The secretary of *health services*~~[human resources]~~ shall fix a reasonable schedule of fees, by administrative regulation promulgated pursuant to KRS Chapter 13A, to be paid by applicants for certification and renewal of radon mitigators, testors, and laboratories. The secretary shall also prescribe, by administrative regulation promulgated pursuant to KRS Chapter 13A, a reasonable schedule of fees to be paid by certified radon mitigators, testors, and laboratories for inspections and environmental surveillance activities conducted by the Cabinet for *Health Services*~~[Human Resources]~~.
- (3) All fees and fines collected by the Cabinet for *Health Services*~~[Human Resources]~~ under the provisions of KRS 211.855 to 211.858 or the administrative regulations promulgated pursuant to KRS 211.855 to 211.858 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the Cabinet for *Health Services*~~[Human Resources]~~ in carrying out the provisions of KRS 211.855 to 211.858.
- (4) State and local governmental agencies shall be exempt from the payment of fees but shall otherwise comply with KRS 211.855 to 211.858.

Section 324. KRS 211.857 is amended to read as follows:

The Cabinet for *Health Services*~~[Human Resources]~~ may institute proceedings in Circuit Court for an order enjoining a person from engaging or attempting to engage in activities which violate the provisions of KRS 211.855 to 211.858 or administrative regulations promulgated pursuant to KRS 211.855 to 211.858. Upon a showing that a person has engaged in or is about to engage in this activity, a restraining order, permanent injunction, temporary injunction, or other appropriate order shall be granted.

Section 325. KRS 211.858 is amended to read as follows:

Any person who violates KRS 211.855 to 211.858 or any administrative regulation promulgated pursuant to KRS 211.855 to 211.858 or who fails to comply with an order of the Cabinet for *Health Services*~~[Human Resources]~~ issued pursuant to KRS 211.855 to 211.858 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each day the violation or noncompliance continues.

Section 326. KRS 211.870 is amended to read as follows:

The Cabinet for *Health Services*~~[Human Resources]~~ may promulgate administrative regulations relating to operators of sources of radiation other than licensed practitioners of the healing arts. The administrative regulations may include, but need not be limited to, the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate radiation sources; issuance, renewal, and revocation of certificates; appeal of certificate denials or revocations pursuant to KRS Chapter 13B; and other standards or regulations appropriate for protection of health and safety.

Section 327. KRS 211.890 is amended to read as follows:

The secretary of the Cabinet for *Health Services*~~[Human Resources]~~ is authorized to fix a reasonable schedule of fees and charges, by regulation, to be paid by applicants for examinations, certificates, and renewal certificates. All such fees and charges and other moneys collected by the Cabinet for *Health Services*~~[Human Resources]~~ under the provisions of KRS 211.870 and 211.890 or the rules and regulations adopted under KRS 211.870 and 211.890 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the Cabinet for *Health Services*~~[Human Resources]~~ in carrying out the provisions of KRS 211.870 and 211.890.

Section 328. KRS 211.894 is amended to read as follows:

- (1) The Governor, the secretary of the Cabinet for **Health Services**~~Human Resources~~, the secretary of the Natural Resources and Environmental Protection Cabinet or any other state agency shall not enter into a contract or an agreement of any kind with the federal government relinquishing ownership of a low level nuclear waste disposal site located in the Commonwealth without prior approval of a majority of the members of the Kentucky House of Representatives and a majority of the members of the Kentucky Senate.
- (2) It shall be the policy of the Commonwealth to retain final authority for approving or disapproving the locating, opening, closing, or reopening of a nuclear waste disposal site or facility within its borders.
- (3) The Governor or appropriate state agencies may enter into contracts and agreements with the federal government relating to nuclear waste disposal sites located in the Commonwealth on July 15, 1980, that do not violate the provisions of subsections (1) and (2) of this section.

Section 329. KRS 211.896 is amended to read as follows:

- (1) Any nuclear waste disposal facility, licensed and regulated by the Kentucky Cabinet for **Health Services**~~Human Resources~~, which is closed either because there is doubt as to the public safety of the site, the integrity of the site, the economic feasibility of financing perpetual care and maintenance and decommissioning of the site, or compliance with cabinet regulations, shall not reopen without:
 - (a) A finding of fact by the secretary of the Cabinet for **Health Services**~~Human Resources~~ and the secretary of the Natural Resources and Environmental Protection Cabinet that all reasons for site closure have been addressed and resolved such that there is no longer any doubt as to the public safety or integrity of the site or the ability to adequately finance the perpetual care and maintenance and decommissioning of the site or the compliance of the site with cabinet regulations; and
 - (b) A public hearing and the taking of public comment on such findings of fact; and
 - (c) Approval of a majority of the members of the House of Representatives and a majority of the members of the Senate; and
 - (d) Approval of the Governor.
- (2) The Cabinet for **Health Services**~~Human Resources~~ shall be responsible for organizing the public hearings, which shall be held in the county in which the nuclear waste disposal facility is located and shall be at a time and place convenient for public participation. Adequate notification shall be given to the public of the intention to reopen a nuclear waste disposal site and the cabinet shall make available to the public the data and information upon which its decision to recommend approval of reopening of the site is based.

Section 330. KRS 211.900 is amended to read as follows:

As used in KRS 211.900 to 211.905 and KRS 211.994, unless the context otherwise requires:

- (1) "Cabinet" shall mean the Cabinet for **Health Services**~~Human Resources~~;
- (2) "Secretary" shall mean the secretary for **health services**~~human resources~~ or his authorized representative;
- (3) "Lead based substance" shall mean any substance containing more than 0.06% lead by weight of nonvolatile content as provided in KRS 217.801;
- (4) "Dwelling" shall mean any structure, all or a part of which is designed for human habitation;
- (5) "Dwelling unit" shall mean any room or group of rooms or other interior areas of a dwelling designed or used for human habitation;
- (6) "Owner" shall mean any person who, alone, jointly, or severally with others, has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, agent of the owner, or as executor, administrator, trustee, conservator, or guardian of the estate of the owner;
- (7) "At risk persons" shall mean those persons who reside in dwellings or dwelling units which were constructed and originally painted prior to 1945 or other dwellings in geographic areas in which a high content of lead in paint was used and a high incidence of lead poisoning may be reasonably expected or has been reported; and
- (8) "Outreach programs" shall mean those efforts to locate, screen, and diagnose for elevated lead blood levels, those at risk persons who are not utilizing existing screening and diagnostic programs or those programs which may be established after June 21, 1974.

Section 331. KRS 211.9061 is amended to read as follows:

For the purposes of KRS 211.9061 to 211.9079 and KRS 211.990:

- (1) "Child-occupied facility" means a building, or portion of a building constructed prior to 1978 other than target housing in which a child, six (6) years of age or under, spends at least three (3) hours a day, two (2) days a week, including but not limited to, child day-care facilities, family child-care homes, pre-schools, and kindergarten classrooms;
- (2) "Department" means the Department for *Public Health*~~[Services]~~;
- (3) "Lead-hazard detection" means an inspection or risk assessment conducted to determine the existence, nature, severity, and location of lead hazards;
- (4) (a) "Lead-hazard abatement" means a set of measures designed and intended to permanently eliminate lead hazards in a manner which will protect children and adults from the risk of lead poisoning, including the following:
 1. Removal, encapsulation, or enclosure of lead hazards;
 2. Replacement of lead-contaminated surfaces or fixtures;
 3. Removal or covering of lead-contaminated soil; and
 4. Site preparation and cleanup, preparation of debris for disposal, and other post-abatement activities which are conducted at the site and are associated with the abatement.
- (b) "Lead-hazard abatement" does not include the following:
 1. Renovation, remodeling, or landscaping activities which are not designed to permanently eliminate lead hazards, but are designed to repair, restore, or remodel a structure or a dwelling, even though these activities may incidentally result in a reduction or elimination of lead hazards; or
 2. Interim controls, operations and maintenance activities, or other measures or activities designed to temporarily, but not permanently, reduce lead hazards; ~~and~~
- (5) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities in which no child less than six (6) years of age resides or is expected to reside.

Section 332. KRS 211.9063 is amended to read as follows:

- (1) Beginning July 1, 1997, all persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities shall be certified pursuant to this section.
- (2) The Department for *Public Health*~~[Services]~~ shall create and administer a certification program for persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services.
- (3) No later than October 1, 1996, the department shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish the training and testing requirements for certification. The training and testing requirements and procedures established by the department shall be sufficient to reflect the ability of the person applying for certification to provide services in accordance with local, state, and federal laws and regulations that are applicable to the duties for which the person is requesting certification.
- (4) No later than October 1, 1996, the department shall promulgate administrative regulations pursuant to KRS Chapter 13A to provide for the enforcement of the certification program. The department may revoke, suspend, or restrict the certificate of any certificate holder and may refuse to issue or renew a certificate to a person who fails to comply with certification requirements. The department may also impose sanctions for any of the following reasons:
 - (a) Fraud or deceit in obtaining certification;
 - (b) Transfer of the authority granted by the certificate to another person; or
 - (c) Negligence or incompetence in compliance with applicable state and federal laws, regulations, and established standards of practice.
- (5) No person certified pursuant to this section shall perform lead-hazard abatement services in target housing or child-occupied facilities, as defined in KRS 211.9061, without having obtained a permit to perform the

services. An application for the permit shall be made to the department upon forms provided by the department, and shall be accompanied by the required fee established pursuant to KRS 211.9067. The permit fee shall be sufficient to fully cover the cost of the quality assurance inspection conducted to determine compliance with the certification requirements of this section, and the performance standards established pursuant to KRS 211.9075.

- (6) The department shall consider and render a decision in response to a permit application submitted pursuant to subsection (5) of this section no later than seven (7) calendar days after the application and the applicable fee are received by the department. The quality assurance inspection of a lead-hazard abatement site shall occur no later than seven (7) working days after the department receives notification from the permit holder that the lead-abatement at the site has been completed. If the department does not meet the seven (7) day deadline, the department shall allow the permit holder to begin construction or other renovation activities upon completion of the abatement service. This approval shall not serve as a substitute for the final inspection required to determine compliance pursuant to subsection (5) of this section.

Section 333. KRS 211.9065 is amended to read as follows:

- (1) Beginning January 1, 1997, all training programs providing or offering to provide an educational program designed to prepare persons for certification in lead-hazard detection or lead-hazard abatement services, pursuant to KRS 211.9063, shall be accredited pursuant to this section.
- (2) The Department for **Public Health**~~Services~~ shall create and administer an accreditation program for training programs providing or offering to provide an educational program designed to prepare persons for certification in lead-hazard detection or lead-hazard abatement services.
- (3) No later than October 1, 1996, the department shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish:
- (a) The requirements for accreditation of training providers;
 - (b) The minimum requirements for curriculum content;
 - (c) The number of training hours to be completed by the trainee;
 - (d) The minimum amount of the training which requires the trainee to practice or otherwise apply lead-hazard detection or abatement skills or techniques in a hands-on manner; and
 - (e) The competency and proficiency to be demonstrated by the trainee in order to successfully complete the training.
- (4) No later than October 1, 1996, the department shall promulgate administrative regulations pursuant to KRS Chapter 13A to provide for enforcement of the quality control standards for accredited training programs. The department may revoke, suspend, or restrict the certificate of accreditation for training providers and may refuse to issue or renew a certificate of accreditation to a training provider which fails to comply with accreditation requirements.

Section 334. KRS 211.920 is amended to read as follows:

As used in KRS 211.925 to 211.945, unless the context otherwise requires:

- (1) "Cabinet" shall mean the Cabinet for **Health Services**~~Human Resources~~.
- (2) "State confinement facility" shall mean a penal or correctional facility or juvenile detention or treatment facility operated by or under the supervision of the Commonwealth of Kentucky.
- (3) "Public health and health" shall mean and include, but shall not be limited to, all environmental, dental, mental, medical, and nutritional aspects of the health of persons confined in a state confinement facility.

Section 335. KRS 211.950 is amended to read as follows:

As used in KRS 211.952 to 211.958, unless the context otherwise requires:

- (1) "Ambulance" means a vehicle which has been inspected and approved by the cabinet, including a helicopter or fixed wing aircraft, except vehicles or aircraft operated by the United States government, that are specially designed, constructed, or have been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated who may require immediate

stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being;{+}

- (2) "Ambulance provider" means any individual or private or public organization, except the United States government, who is licensed by the Cabinet for **Health Services**{~~Human Resources~~} to provide medical transportation services as either basic life support or advanced life support and who may have a vehicle or vehicles, including ground vehicles, helicopters or fixed wing aircraft. An ambulance provider may be licensed as an air ambulance provider; as a Class I ground ambulance provider; as a Class II ground ambulance provider; or as a Class III ground ambulance provider;{+}
- (3) "Emergency medical services" means the services utilized in responding to the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury;{+}
- (4) "Emergency medical services system" means a coordinated system of health care delivery that responds to the needs of the acutely sick and injured, and includes community education and prevention programs, centralized access and emergency medical dispatch, communications networks, trained personnel, medical first response, ground and air ambulance services, emergency medical facilities and specialty care hospitals, trauma care systems, mass casualty management, medical direction, and quality control and system evaluation procedures;{+}
- (5) "Regional emergency medical services system" means a system approved by the Cabinet for **Health Services**{~~Human Resources~~} which provides for the arrangement of personnel, facilities, equipment, or any of the above, for the effective and coordinated delivery of health care services in an appropriate geographical area;{+}
- (6) "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability; **and**{+}
- (7) "Trauma care system" means a subsystem within the emergency medical services system consisting of an organized arrangement of personnel, equipment, and facilities designed to manage the treatment of the trauma patient.

Section 336. KRS 211.952 is amended to read as follows:

- (1) The Cabinet for **Health Services**{~~Human Resources~~} shall maintain a program for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state.
- (2) The Cabinet for **Health Services**{~~Human Resources~~} shall establish and designate a single lead agency under the supervision and direction of the Commissioner of Health which will carry out all administrative functions related to the planning, development, improvement, and expansion of emergency medical services systems throughout the state. This will include:
 - (a) The training and certification of prehospital personnel;
 - (b) The promulgation of standards and regulations for emergency medical services personnel;
 - (c) The promulgation of administrative regulations for the licensing, inspection, and regulation of ambulance and medical first response providers. The administrative regulations shall address specific requirements for:
 1. Air ambulance providers which provide basic or advanced life support services;
 2. Class I ground ambulance providers, which provide basic life support or advanced life support services to all patients for both emergencies and scheduled ambulance transportation which is medically necessary;
 3. Class II ground ambulance providers, which provide only basic life support services but do not provide initial response to the general population with medical emergencies and which are limited to providing scheduled ambulance transportation which is medically necessary;
 4. Class III ground ambulance providers, which provide mobile intensive care services at or above the level of advanced life support to patients with critical illnesses or injuries who must be

- transported between hospitals in vehicles with specialized equipment as an extension of hospital-level care; and
5. Medical first response providers who provide prehospital basic life support services, or advanced life support services, but do not transport patients;
- (d) Planning and development of emergency medical services and trauma care systems;
 - (e) Promulgation of voluntary standards for trauma centers and other specialized emergency medical facilities;
 - (f) Provision of funding and technical assistance as shall become available; and
 - (g) Establishing minimum data reporting requirements for ambulance providers and trauma centers and other specialized emergency medical facilities and collection and analysis of data related to the provision of emergency medical services and trauma care.
- (3) Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.
 - (4) The cabinet shall transfer or otherwise make available to the lead emergency medical services agency necessary staff and funds required to carry out the purposes of this section, including regional emergency medical services advisors for any regional emergency medical services systems which shall be established by the cabinet, and shall promulgate administrative regulations and perform the necessary functions to carry out the purpose of this section including:
 - (a) Delineation, by administrative order of the secretary, of the geographic boundaries of regional emergency medical services systems.
 - (b) Promulgation of administrative regulations providing for:
 1. Composition of regional emergency medical services advisory boards to serve in an advisory capacity to the Kentucky Emergency Medical Services Council;
 2. Terms of office of regional emergency medical services advisory board members;
 3. Appointment of regional emergency medical services advisory board members; and
 4. Such other matters relating to regional emergency medical services systems as may be necessary.
 - (c) Provision of technical assistance to regional emergency medical services advisory boards, units of local government, and others in planning for the development, coordination, and monitoring of emergency medical services.
 - (d) Development of a statewide plan for the implementation of emergency medical services systems and trauma care systems within the Commonwealth of Kentucky which specifically addresses the unique needs of rural areas.
 - (e) Issuance of a format for the development of regional emergency medical services plans consistent with goals and standards included in the statewide emergency medical services plan.
 - (f) Application for, receipt of, and disposition of federal, state, or private funds by grant, appropriation, donation, or otherwise for emergency medical services programs, personnel and equipment.
 - (g) Awarding of funds to regional emergency medical services systems to implement specific objectives delineated in regional emergency medical services plans, including assistance to local governments for their provision of ambulance service.
 - (h) Development, monitoring, and encouragement of such other projects and programs which may be of benefit to emergency medical services in the Commonwealth.
 - (i) Conducting verification inspections to ensure compliance with voluntary standards established by the cabinet for trauma centers, emergency departments, and specialized hospital based services for which standards have been established by the cabinet for emergency medical services and trauma care systems.
 - (5) The cabinet shall establish a Kentucky Emergency Medical Services Council which shall advise the cabinet on issues relating to the development, implementation, regulation, maintenance, and reimbursement of emergency medical services systems and providers. This council shall be broadly representative of individuals, providers,

and public officials having expertise in emergency medical services. The council shall consult with the Kentucky Board of Medical Licensure to establish medically appropriate standards and protocols which will be utilized by emergency medical services personnel and to assist the Kentucky Board of Medical Licensure in meeting the requirements of KRS 311.654. The council shall consult with the Kentucky Board of Nursing to establish appropriate standards and protocols to meet the requirements of KRS 314.131 for nurses who practice in emergency medical service settings.

- (6) Data and records generated and kept by the single emergency medical services administrative agency or its contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth shall be held confidential, shall not be admissible in court for any purpose, and shall not be subject to discovery; provided, however, that nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment which otherwise would be admissible or discoverable.
- (7) Nothing in this section shall limit, preclude, or otherwise restrict the practices of licensed personnel in carrying out their duties under the terms of their licenses.

Section 337. KRS 211.954 is amended to read as follows:

A matching fund program is hereby created for the purpose of assisting local ambulance providers in the purchases of ambulances and equipment. The fund shall consist of such moneys as may be appropriated by the General Assembly or may be obtained from other sources for the fund as provided in this section and KRS 211.956:

- (1) Application and justification of need for moneys from the fund shall be based upon the state emergency medical services plan's priorities;
- (2) Application for moneys from the fund may be made to the Cabinet for *Health Services*~~[Human Resources]~~ by any city, county, or regional emergency medical services system based upon guidelines established by the Cabinet for *Health Services*~~[Human Resources]~~;
- (3) Moneys from the fund will provide for up to a maximum of fifty percent (50%) of the actual cost of any ambulance or other item of equipment desired to be procured. No county, including all grants to entities within the county, shall receive more than twenty-five thousand five hundred dollars (\$25,500) from the fund per year;
- (4) No funds awarded pursuant to this section shall be used for any other purpose than the purpose for which they were awarded. Funds remaining unexpended one (1) year from the date of the award shall lapse and shall be returned to the fund by the recipient city, county, or regional emergency medical services system;
- (5) Funding periods shall coincide with the fiscal year as established by the Cabinet for *Health Services*~~[Human Resources]~~; and
- (6) Each ambulance or item of equipment purchased shall meet or exceed, if a standard has been set for the particular item of equipment, the standards set by the Cabinet for *Health Services*~~[Human Resources]~~.

Section 338. KRS 211.956 is amended to read as follows:

A matching fund program is hereby created for the purpose of assisting city and county governments in providing for an adequate number of trained emergency medical service personnel to respond to medical emergencies:

- (1) Moneys from the fund may be provided to a city or county government for the following purposes:
 - (a) Purchase of emergency medical services training equipment and emergency medical services training aids;
 - (b) Provision of continuing education to certified emergency medical technicians, paramedics, first responders, and related emergency medical services personnel who respond to medical emergencies which is required to maintain state certification or licensure;
 - (c) Salary and fringe benefit enhancements for emergency medical technicians and paramedics who serve as attendants of ambulance services which are owned and operated by the applicant city or county or by an ambulance service district established pursuant to KRS Chapter 108; and
 - (d) Programs to train the general public in cardiopulmonary resuscitation or first aid in order to increase the likelihood of a citizen to render assistance in medical emergencies.

- (2) Application for money from the fund may be made to the Cabinet for **Health Services**~~[Human Resources]~~ by any city or county on an application form established by the cabinet. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A which set out further requirements and priorities for funds made available under this section.
- (3) No county, including all grants to cities within the county, shall receive more than ten thousand dollars (\$10,000) from the fund per year. Applicant cities and counties shall submit an acceptable plan to the cabinet to document the need for funds authorized under this section and to justify the funds requested and if approved shall submit a final report of activities conducted and report of expenditures based on the approved plan in a format established by the cabinet.
- (4) Based on the availability of funds appropriated by the General Assembly, the cabinet shall annually prepare a preliminary estimate of funds available for each county prorated on the basis of each county's total population.
- (5) Moneys awarded from the fund shall not exceed fifty percent (50%) of the approved total cost of any eligible application up to the total allocation available to each county.
- (6) No funds awarded pursuant to this section shall be used for any other purpose than the purpose for which they were awarded. Funds remaining unexpended one (1) year from the date of the award shall lapse and shall be returned to the fund by the city or county.

Section 339. KRS 211.962 is amended to read as follows:

No person shall:

- (1) Hold himself out as certified pursuant to KRS 211.962 to 211.968 nor use the initials "EMT" when he does not hold a current valid certification issued pursuant to KRS 211.962 to 211.968; or
- (2) If certified, violate any provision of KRS 211.962 to 211.968 or any rule or regulation, adopted by the Cabinet for **Health Services**~~[Human Resources]~~ relating to KRS 211.964.

Section 340. KRS 211.964 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ shall promulgate administrative regulations relating to emergency medical technicians. The regulations may include the classification and certification of emergency medical technicians, instructors, instructor-trainers, and students and trainees; examinations; standards of training and experience; curricula standards; issuance, renewal, suspension, denial, revocation, probation, and restriction of certificates; hearing of appeals; and other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services. Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. No additional testing or examinations shall be required for recertification, except for proficiency testing of new skills or knowledge, or areas in which there is documented evidence of deterioration of skills.
- (2) Recertification programs shall be organized to include continuing education and in-service training approved by the cabinet. The continuing education program shall be subject to the requirements of KRS 214.610(1).
- (3) In lieu of the continuing education and in-service training requirement specified by the cabinet for recertification, an emergency medical technician, certified as of July 15, 1996, or within one (1) year of July 15, 1996, may elect to recertify utilizing the continuing education and in-service training required by the National Registry of Emergency Medical Technicians or its successor organization. Upon successful completion of the National Registry recertification requirements, the emergency medical technician shall be recertified for the period of time specified by law.
- (4) Emergency medical technicians certifying later than one (1) year after July 15, 1996, shall, in lieu of the certification requirements specified by the cabinet under subsection (1) of this section, successfully complete the National Registry of Emergency Medical Technicians final examination for certification and shall maintain National Registry of Emergency Medical Technicians credentials in order to be recertified.
- (5) A person who has chosen to recertify as an emergency medical technician utilizing the National Registry of Emergency Medical Technicians or its successor organization's requirements shall not be permitted to recertify utilizing the cabinet's requirements, unless the National Registry of Emergency Medical Technicians and its successor organization ceases business or there is no successor organization.
- (6) Other than the requirements of KRS 214.610(1), the cabinet shall not require any additional course work, in-service training, testing, or examinations of a person who chooses the National Registry of Emergency Medical

Technicians or its successor organization for certification or recertification as an emergency medical technician.

- (7) Other than the requirements of KRS 214.610(1), any person certified by the State Board of Medical Licensure as a paramedic shall be certified as an emergency medical technician by the cabinet. The certification shall be issued without fee, without additional training, in-service training, testing, or examination. The emergency medical technician certification shall be issued and expire at the same time that paramedic certification is issued or expires, and if a paramedic voluntarily gives up his certification prior to the expiration of his paramedic certification, his emergency medical technician certification shall be unaffected thereby. If a paramedic chooses not to recertify as a paramedic but chooses to retain his emergency medical technician certification, the paramedic shall, prior to the expiration of his paramedic certification, recertify as an emergency medical technician utilizing one (1) of the methods provided for in this section.
- (8) A paramedic whose certification as a paramedic is suspended, revoked, or denied by the State Board of Medical Licensure shall have the same action taken automatically by the cabinet with regard to his emergency medical technician certification.

Section 341. KRS 211.966 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~{Human Resources}~~ may, by regulation, prescribe a reasonable schedule of fees and charges for examinations, for the issuance of certificates, and for the renewal of certificates issued pursuant to KRS 211.962 to 211.968. All such fees, charges or other moneys collected by the cabinet under KRS 211.962 to 211.968 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the Cabinet for **Health Services**~~{Human Resources}~~ for carrying out the provisions of KRS 211.962 to 211.968.

Section 342. KRS 211.970 is amended to read as follows:

As used in KRS 211.972 to 211.982, unless the context requires otherwise:

- (1) "Approved" means that which has been considered acceptable to the cabinet;
- (2) "Cabinet" means the Cabinet for **Health Services**~~{Human Resources}~~ and includes its authorized agents;
- (3) "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, or food particles;
- (4) "Grease trap" means a component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment;
- (5) "Holding tank" means a tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer. It also includes portable toilets and similar temporary use units which contain holding tanks;
- (6) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental unit;
- (7) "Secretary" means the secretary of the Cabinet for **Health Services**~~{Human Resources}~~;
- (8) "Sewage" means domestic blackwater and greywater wastes, but does not include waste from industrial or commercial processes;
- (9) "Sewage pretreatment unit" means a watertight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow clarified effluent to discharge to a subsurface soil absorption system. Pretreatment units fall into three (3) basic categories:
 - (a) Septic tanks, which rely predominantly on anaerobic bacterial action for treatment;
 - (b) Aerobic units, which introduce atmospheric air into the sewage to promote treatment by aerobic bacteria; and
 - (c) Combination units, which provide treatment through both anaerobic and aerobic bacterial action and mechanical filtering, ozonation, or ultraviolet irradiation;

- (10) "Sewage sludge" means the solid or semisolid residues which are retained within a sewage pretreatment unit or grease trap, as a result of mechanical, hydraulic, biologic, or chemical actions. It also includes raw sewage accepted and stored within a holding tank;
- (11) "Site" means a facility or parcel of land under the ownership of any person which is intended for use as the ultimate disposal or treatment location for sewage sludge; and
- (12) "Tank" means any container placed on a vehicle to carry in transport sewage sludge removed from a sewage pretreatment unit, grease trap, or holding tank.

Section 343. KRS 211.990 is amended to read as follows:

- (1) Any owner or occupant who fails to comply with an order made under the provisions of KRS 211.210 shall be guilty of a violation, and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.
- (2) Except as otherwise provided by law, anyone who fails to comply with the provisions of the rules and regulations adopted pursuant to this chapter or who fails to comply with an order of the cabinet issued pursuant thereto shall be guilty of a violation. Each day of such violation or noncompliance shall constitute a separate offense.
- (3) Any person who violates any provision of KRS 211.182 shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of KRS 211.182 shall constitute a Class D felony.
- (4) Any person who violates any provision of KRS 211.842 to 211.852 or any regulation adopted hereunder or any order issued by the Cabinet for **Health Services**~~{Human Resources}~~ to comply with any provision of KRS 211.842 to 211.852 or the regulations adopted thereunder shall be guilty of a Class A misdemeanor. Each day of violation or noncompliance shall constitute a separate offense.
- (5) Any person who violates KRS 211.962 or any rule or regulation of the Cabinet for **Health Services**~~{Human Resources}~~ adopted pursuant to KRS 211.962 to 211.968 shall be guilty of a Class A misdemeanor.
- (6) A private review agent which performs utilization review without proper registration pursuant to KRS 211.461 to 211.466 shall be guilty of a Class A misdemeanor.
- (7) Any properly registered private review agent which willfully violates any provision of KRS 211.461 to 211.466 or of the regulations shall be guilty of a Class D felony.
- (8) A person who performs or offers to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities who is not certified as required by KRS 211.9063 or 211.9069 shall be guilty of a Class A misdemeanor.
- (9) Any person who performs lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities, who willfully violates the standards for performing lead-hazard detection or lead-hazard abatement procedures included in the administrative regulations promulgated pursuant to KRS 211.9075 shall be guilty of a Class D felony.
- (10) The penalties provided in subsections (6), (7), (8), and (9) of this section are cumulative and are in addition to any other penalties, claims, damages, or remedies available at law or in equity.
- (11) Any person who violates any provisions of KRS 211.760 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Each day of violation or noncompliance shall constitute a separate offense.

Section 344. KRS 211.991 is amended to read as follows:

- (1) Any person who intentionally violates any of the provisions of KRS 211.670 shall be guilty of a Class A misdemeanor.
- (2) The penalty provided for in subsection (1) of this section shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of the Department for **Public Health**~~{Services}~~.

Section 345. KRS 211.993 is amended to read as follows:

Anyone who fails to comply with any provisions of KRS 211.870, 211.890 or with any rules or regulations adopted pursuant to KRS 211.870, 211.890 or fails to comply with any order of the Cabinet for **Health Services**~~{Human Resources}~~ issued pursuant thereto shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Each day of such violation or noncompliance shall constitute a separate offense.

Section 346. KRS 212.020 is amended to read as follows:

- (1) The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall appoint, from a list of nominees, three (3) qualified, licensed, and practicing physicians; one (1) qualified, licensed, and practicing dentist; one (1) qualified, licensed, and practicing registered nurse; one (1) licensed engineer engaged in the practice of civil or sanitary engineering; one (1) qualified, licensed, and practicing optometrist; one (1) qualified licensed and practicing veterinarian; and one (1) lay person knowledgeable in consumer affairs residing in each county who, together with the county judge/executive and one (1) person appointed by the fiscal court in each county, shall constitute a local board of health for the respective counties in which they reside. The list of nominees submitted to the secretary shall be accepted from any source and shall be solicited and obtained from the county judge/executive, fiscal court, and county health department staff; and nominations of physicians, dentists, nurses, engineers, optometrists, and veterinarians shall be solicited and obtained from the county's medical society, dental society, nursing association, engineering association, optometric association, and veterinarian association, respectively. If a county does not have three (3) qualified, licensed, and practicing physicians or one (1) qualified, licensed, and practicing dentist or one (1) qualified, licensed, and practicing registered nurse or one (1) qualified, licensed, and practicing civil or sanitary engineer or one (1) qualified, licensed, and practicing optometrist or one (1) qualified, licensed, and practicing veterinarian residing therein, the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ may appoint a resident lay person knowledgeable in consumer affairs in lieu thereof for each such vacancy. The members of the local board shall hold office for a term of two (2) years with physicians, dentists, and fiscal court appointees appointed in even-numbered years and nurses, engineers, optometrists, veterinarians, and lay appointees appointed in odd-numbered years, for terms from the date of their appointment, beginning on or after January 1, 1993, and until their successors are appointed, except the terms of the first appointment of all physician and fiscal court appointee terms beginning on January 1, 1993, shall expire on December 31, 1993; dentist terms beginning on August 1, 1992, shall expire on December 31, 1993; nurse, engineer, and optometrist appointments beginning on August 1, 1992, shall expire on December 31, 1994; and veterinarian and lay appointments beginning on October 1, 1992, shall expire on December 31, 1994. The members of the board shall receive no compensation for their services.
- (2) The secretary shall remove any member, other than the county judge/executive or fiscal court appointee, who fails to attend three (3) consecutive scheduled meetings, and may remove any board member, except the county judge/executive or fiscal court appointee, as provided by KRS 65.007. The fiscal court may remove its appointee in like fashion.

Section 347. KRS 212.025 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ and any local health department, with the approval of the Cabinet for **Health Services**~~[Human Resources]~~, is hereby authorized to provide home nursing care services and other health services and may charge fees therefor. The secretary of the Cabinet for Human Resources shall adopt a fee schedule covering all charges for such services.
- (2) All fees and charges collected by the Cabinet for **Health Services**~~[Human Resources]~~ or the local health department concerned shall be credited to a trust and agency fund to be used only for carrying out the provisions of this section.

Section 348. KRS 212.120 is amended to read as follows:

- (1) Upon the creation of a county health department, the fiscal court of the county shall at once notify the Cabinet for **Health Services**~~[Human Resources]~~ of the action of the county to create, establish and maintain a county health department. When the duly qualified officials of a county certify to the Cabinet for **Health Services**~~[Human Resources]~~ a true copy of the order or vote establishing a health department, and providing for its maintenance, and state the amount of the annual appropriation provided by the county the Cabinet for **Health Services**~~[Human Resources]~~ shall make an investigation as to the necessity of the development of the department, and the adequacy of the appropriation provided by the county therefor, and shall report its findings to the Governor.
- (2) If the Cabinet for **Health Services**~~[Human Resources]~~ finds that such county health department has been established in accordance with the provisions of this chapter and is being maintained, conducted and operated in accordance with the standards prescribed by the Cabinet for **Health Services**~~[Human Resources]~~, the Cabinet for **Health Services**~~[Human Resources]~~ shall, on or before July 1 in each year, allot to each such

county health department such amount that the Cabinet for **Health Services**~~[Human Resources]~~ deems to constitute a just and equitable share of all funds available therefor by appropriation by the General Assembly of this Commonwealth, by grants and gifts received by this Commonwealth from the government of the United States of America or any of its agencies or instrumentalities, and from other sources. Provided, however, that no allotment to any such county health department shall be less than two thousand five hundred dollars (\$2,500).

- (3) In determining the allotments referred to in subsection (2) of this section, the Cabinet for **Health Services**~~[Human Resources]~~ shall endeavor to provide for a distribution of the funds in a manner that is reasonably calculated to equalize, so far as practicable, local health services to the people of all counties served by the county health departments. The Cabinet for **Health Services**~~[Human Resources]~~ may take into consideration variations existing between counties by reasons of difference in population, resources, industrialization, tax assessments and tax rates, and other local factors and conditions; the legislative intent being hereby declared to be that counties shall provide, from local sources of revenue that are available or that may be made available to them, financial support of county health departments to the extent of their representative abilities.
- (4) The Cabinet for **Health Services**~~[Human Resources]~~ may, in its discretion alter or modify allotments from time to time and shall cancel any allotment whenever it finds that there is no further need or necessity for a particular county health department for whose benefit the allotment was made or whenever a particular county health department for whose benefit an allotment was made is not maintained, operated and conducted in accordance with the standards prescribed by the Cabinet for **Health Services**~~[Human Resources]~~. Nothing in this section shall be construed as requiring the Cabinet for **Health Services**~~[Human Resources]~~ to allot all funds available for local health purposes, or as prohibiting the department from allotting such portion thereof, as the department may determine, to a reserve account which may be suballotted by the department in such a manner that it considers proper in the event of emergencies, disaster, or unforeseen events, without regard to the provisions of subsection (3) of this section.
- (5) Notwithstanding the provisions of KRS 45.229 and any other provision of the Kentucky Revised Statutes, any unexpended or unencumbered balance of any appropriations made available for allotment and expenditure, as provided above, for the first fiscal year of each biennium, remaining at the end of such fiscal year, shall be carried forward and be available for expenditure at any time during the ensuing fiscal year within the biennium and no portion thereof shall lapse to the general fund.

Section 349. KRS 212.130 is amended to read as follows:

Immediately after receiving notice of the creation of a county or district department of health, the Cabinet for **Health Services**~~[Human Resources]~~ shall notify the secretary of the county board or boards of health to call a meeting of the county board or boards of health for the purpose of organizing the county or district department of health.

Section 350. KRS 212.170 is amended to read as follows:

- (1) The county board of health of each county having a county department of health shall, subject to the approval of the Cabinet for **Health Services**~~[Human Resources]~~, appoint a health officer who shall, subject to merit system provisions, hold office at the pleasure of both the county board and the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) A health officer may:
 - (a) With the approval of the Cabinet for **Health Services**~~[Human Resources]~~ and the local boards of health concerned, serve in such capacity for more than one county; and
 - (b) At the discretion of the local board, act as chief administrative officer of the board.
- (3) A health officer may appoint an administrative assistant for each county served by him subject to the approval of the Cabinet for **Health Services**~~[Human Resources]~~. An administrative assistant shall exercise such duties as may be delegated to him by the health officer.
- (4) A health officer may employ and fix the compensation of, by contract or otherwise, subject to the approval of the Cabinet for **Health Services**~~[Human Resources]~~, all medical, technical, clerical, professional, and other employees necessary for the maintenance and operation of the local health department in accordance with standards and merit system provisions prescribed by the Cabinet for **Health Services**~~[Human Resources]~~.

- (5) In the absence of a local health officer, the secretary for *health services*~~[human resources]~~ or his duly appointed representative shall serve as health officer for the county concerned.
- (6) Appeals under the local health department merit system shall be conducted in accordance with KRS Chapter 13B.

Section 351. KRS 212.180 is amended to read as follows:

Every health officer provided for by this chapter shall be a duly licensed physician, and shall possess such other qualifications that are prescribed by the cabinet for *Health Services*~~[human resources]~~.

Section 352. KRS 212.190 is amended to read as follows:

- (1) The health officer of counties that do not have a county department of health shall receive a reasonable compensation, the amount of which shall be fixed by the fiscal court at the time of, or immediately after, his election, and to be paid as other county officers are paid. In no case shall such health officer claim or receive from the county any compensation other than the salary fixed by the fiscal court.
- (2) The health officer of counties having a county department of health shall receive a salary to be fixed by the county board of health subject to the approval of the Cabinet for *Health Services*~~[Human Resources]~~. He shall receive necessary traveling expenses.

Section 353. KRS 212.210 is amended to read as follows:

- (1) The Cabinet for *Health Services*~~[Human Resources]~~ and the local boards of health may examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants in any county in this state, or in any vessel within any harbor or port in any county in this state. Whenever any such nuisance, source of filth, or cause of sickness is found to exist on any private property, or in any vessel within any port or harbor in any county in this state, or upon any watercourse in this state, the Cabinet for *Health Services*~~[Human Resources]~~ or the local board of health may order, in writing, the owner or occupant thereof, at his own expense, to remove the same within twenty-four (24) hours, or within such reasonable time thereafter as the board may order.
- (2) If drinking water used by school children is found to be dangerous to their health, the local board of health or Cabinet for *Health Services*~~[Human Resources]~~ may order that a supply of pure water be furnished at the expense of the county or city board of education.
- (3) If in the opinion of the local board of health or Cabinet for *Health Services*~~[Human Resources]~~ a school building is constructed in violation of law and is found to be unsanitary or unsafe for the housing of children, the local board of health or Cabinet for *Health Services*~~[Human Resources]~~ may institute an action in the Circuit Court of the county where the building is situated, and the court, after due hearing and verifying the facts, may order a safe and sanitary school building to be erected within a reasonable time by the county or city board of education in accordance with the laws of the state governing the erection of schoolhouses and the control of disease, and the rules and regulations of the Cabinet for *Health Services*~~[Human Resources]~~.
- (4) Any local board of health shall, for the purpose of controlling and eradicating rats and other unsanitary nuisances, require the owner or possessor of any building designed for human habitation and containing two (2) or more apartment units, to provide, where a specific area has been designated for the depositing of refuse on the premises, waste receptacles approved by the board. The board may further require that the design, construction, and maintenance of the area in which the waste receptacles are kept meet reasonable standards set by the board.

Section 354. KRS 212.230 is amended to read as follows:

- (1) County, city-county, and district boards of health shall:
 - (a) Appoint a health officer and fix his salary subject to the approval of the Cabinet for *Health Services*~~[Human Resources]~~;
 - (b) Hold a regular meeting at least once every three (3) months, except that county or city-county boards whose counties are members of a district health department shall hold a regular meeting at least once every twelve (12) months, and other special or regular meetings as desired and keep full minutes of all the proceedings in a book provided for this purpose;

- (c) Adopt, except as otherwise provided by law, administrative regulations not in conflict with the administrative regulations of the Cabinet for **Health Services**~~{Human Resources}~~ necessary to protect the health of the people or to effectuate the purposes of this chapter or any other law relating to public health;
 - (d) Act in a general advisory capacity to the health officer on all matters relating to the local department of health;
 - (e) Hear and decide appeals from rulings, decisions, and actions of the local health department or health officer, in accordance with KRS Chapter 13B, if the aggrieved party makes written request therefor to the board within thirty (30) days after the ruling, decision, or action complained of; **and**
 - (f) Perform all other functions necessary to carry out the provisions of law and the regulations adopted pursuant thereto, relating to local boards of health; **and**
- (2) Except as otherwise provided in subsection (1), all powers and authority of the local board of health under existing statutes are transferred to the county department of health.

Section 355. KRS 212.240 is amended to read as follows:

County departments of health shall:

- (1) Administer and enforce in the county and in all cities and towns situated therein, except as otherwise provided by law, all applicable public health laws of the Commonwealth and all of the rules and regulations of the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ and county board of health issued thereunder;
- (2) Under the general supervision of the county board of health and the Cabinet for **Health Services**~~{Human Resources}~~, formulate, promote, establish, and execute policies, plans, and programs to safeguard the health of the people of the county and establish, maintain, implement, promote, and conduct facilities and services for the purpose of protecting the public health; **and**
- (3) Make such statistical or other reports relating to the activities of the department as they may deem expedient or as may be required by the county board of health or the Cabinet for **Health Services**~~{Human Resources}~~.

Section 356. KRS 212.245 is amended to read as follows:

County, city-county, and district health departments may:

- (1) Utilize available services, facilities, equipment and personnel of the Cabinet for **Health Services**~~{Human Resources}~~ or of the United States Public Health Service upon such terms of payment or reimbursement as are agreed on by the department and the Cabinet for **Health Services**~~{Human Resources}~~ or the United States Public Health Service;
- (2) Contract for services not otherwise available;
- (3) Provide for the public health training and instruction of employees and compensate and defray the reasonable expenses of said employees while they are pursuing public health training courses approved by the Cabinet for **Health Services**~~{Human Resources}~~;
- (4) Establish or contribute to a retirement system or fund for employees of the department, including any retirement system for state employees;
- (5) Issue and require the heads of families and other persons to execute such orders as it considers expedient to prevent the outbreak and spread of communicable diseases, and to this end bring the infected population under prompt and proper treatment;
- (6) Issue written orders directed to the owner or occupant of any property, or to any person, firm or corporation whatever, commanding, within the time and manner specified in the order, compliance with applicable public health laws of this state and all regulations of the Cabinet for **Health Services**~~{Human Resources}~~ or the county board of health. Notwithstanding the provisions of this section and KRS 212.210, any health officer may institute and maintain mandatory or prohibitory injunction proceedings in the appropriate Circuit Courts of this state to abate nuisances that are or may be a menace to the health of the people of the state or community, and to compel compliance with the public health laws of this state and the rules and regulations of the Cabinet for **Health Services**~~{Human Resources}~~ and the county board of health and the orders described in this section or in KRS 212.210;

- (7) Through its health officers, representatives and agents, enter upon any premises when necessary for the purpose of making inspections and investigations and view evidence and interrogate persons to the extent required in the performance of their duties and responsibilities. The department or the health officer thereof may issue subpoenas, subpoena duces tecum and all necessary process in proceedings brought before or initiated by the department or board, and such process shall extend to all parts of the Commonwealth. Service of process may be made by certified mail, return receipt requested or in the manner prescribed by the Rules of Civil Procedure;
- (8) Provide administrative, investigative and clerical services required by the local board of health;
- (9) Cooperate with other health departments, agencies and organizations in matters relating to public health;
- (10) Elect coverage under the state's workers' compensation laws with the approval of the Cabinet for **Health Services**~~{Human Resources}~~; *or*
- (11) Except as otherwise provided by law, do all other things reasonably necessary to protect and improve the health of the people.

Section 357. KRS 212.260 is amended to read as follows:

- (1) The health officer of a county that does not have a county department of health shall enforce the rules and regulations of the Cabinet for **Health Services**~~{Human Resources}~~ and county boards of health.
- (2) The health officer of a county that has formed a county department of health shall:
 - (a) Devote his entire time to the duties of his office, and shall not engage in the private practice of medicine;
 - (b) Be secretary of the county board of health and keep full minutes of the proceedings of the county board of health in a book provided for that purpose;
 - (c) Be the chief administrative officer of the county health department.

Section 358. KRS 212.270 is amended to read as follows:

The county and Commonwealth's attorneys and the Attorney General, within their respective jurisdictions, shall represent the Cabinet for **Health Services**~~{Human Resources}~~ and local boards of health in all matters relating to the enforcement of the health and medical laws and the performance of the duties of those boards, but when the secretary for **health services**~~{human resources}~~ deems it necessary, it may employ at its discretion special attorneys and inspectors to assist the county and Commonwealth's attorneys or the Attorney General and may pay reasonable compensation for the same from any unexpended funds at its disposal.

Section 359. KRS 212.370 is amended to read as follows:

When the board has been organized and the properties transferred, as~~{herein}~~ provided *in KRS 212.350 to 212.620*, the board, throughout said county, including all municipalities therein, shall, except as otherwise provided by law, have exclusive control and operation, under the acts of the General Assembly of Kentucky, the ordinances, if any, of the legislative bodies of the municipalities in said county, the orders and resolutions, if any, of the fiscal court of said county, the regulations of the Cabinet for **Health Services**~~{Human Resources}~~, and the rules and regulations of the board, of all matters relating to institutions safeguarding the public health, including city or county hospitals, tuberculosis hospitals, eruptive hospitals, chronic hospitals, medical care of the indigent, and all other matters affecting public health, including education of the public regarding such conditions, and the adoption of remedial measures, and the enforcement of all laws and regulations affecting public health, including existing ordinances of such city and, if any, of other municipalities in said county, and any ordinances which may be hereafter enacted by the legislative bodies of such municipalities, including laws and ordinances regulating sanitation, milk inspection, meat inspection, livestock inspection, wells, drinking water and fountains, vaults, vaccination and immunization, quarantine, and the maintenance of laboratories and clinics necessary for the promotion of public health. The board may expend funds for the purpose of conducting research work, including laboratory and biometrical work, and establishing, erecting and maintaining laboratories and other buildings and all appurtenances thereto for research work as to the prevalence, causes, cure, and prevention of disease, and to that end the board is authorized to expend funds in the employment of such persons or organizations, scientists, or research experts as the board may deem proper. The board shall be charged with the responsibility for the collection from official and other sources and for the publication of such statistics and information as may be useful and necessary for the performance of its duties, and

upon such other matters as such municipalities by ordinance and said county, by resolution of the fiscal court, respectively, or the Cabinet for **Health Services**~~{Human Resources}~~ of Kentucky, by regulation, place under the control of said board. The board may charge reasonable fees to sewage treatment plant operators for the regulation and inspection of sewage treatment plants to be paid within twelve (12) months from the time of regulation and inspection.

Section 360. KRS 212.420 is amended to read as follows:

The director of health shall be a physician, qualified as a public health administrator as provided by standards set up by the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ of Kentucky and duly qualified and licensed or eligible for license as a medical practitioner in the Commonwealth of Kentucky. He shall receive an annual salary of five thousand dollars (\$5,000), payable as other salaries are paid, and shall serve at the pleasure of the board. If said director of health is removed by the board he shall be notified thereof in writing, and before such removal shall become effective said director shall have ten (10) days within which to make a written request for a public hearing in regard thereto. The board shall not be required to hold a hearing unless so requested by said director. If no such request is made said removal shall become effective upon the expiration of said ten (10) day period. If such request is made said public hearing shall be held at the office of the board within ten (10) days after such request is received by the board, and said director shall not be removed until after such hearing has been held, and a decision rendered by the board. The board's decision shall be final.

Section 361. KRS 212.430 is amended to read as follows:

- (1) The board shall fix the compensation of all agents and employees of the board, and such compensation shall be as nearly comparable as practicable with the compensations paid and received by corresponding or comparable civil employees of such city or county.
- (2) The agents and employees of the board shall be employed and governed, as provided *in this subsection*~~herein~~, in accordance with the merit system. For the purpose of governing the employment, appointment, suspension, layoff, and dismissal of employees by the board, and personnel matters relating thereto, any law or laws, or amendments thereof, and any rules and regulations issued pursuant thereto, authorizing, creating and governing any city board or commission empowered to administer and enforce civil service laws, rules and regulations in and for such city are hereby made applicable to the personnel and personnel matters of the board to the extent of and with respect to corresponding and comparable offices, positions and places of employment of and under the board. Such city board or commission is hereby authorized and directed to perform, without compensation from the board, all things necessary to be done to accomplish the aforesaid purpose, including the creation and putting into effect of, and maintaining, a "classified service," in accordance with which the board will be governed in the employment of agents and employees and in the performance of its duties under this section. The director of health of the board shall function as appointing authority in and with respect to said personnel matters of the board. Provided, however, regulations of such city board or commission as may administer the civil service laws, rules and regulations in such city, as applied to employees of the board, shall be not less stringent than those of the merit system of the Cabinet for **Health Services**~~{human resources}~~ of Kentucky.

Section 362. KRS 212.550 is amended to read as follows:

The board shall install and maintain a modern and efficient system of accounting and keep financial records. The board, however, may select and use the finance department of such city to do its financial accounting and make its disbursements in such manner as may be agreed upon by and between the board and the director of finance of said city, which work shall be done by said finance department without compensation from the board. The Auditor of Public Accounts of the Commonwealth of Kentucky, the comptroller and inspector of such city, and the county auditor of such county, respectively, shall have access to the books and the records of the board, and upon the request of the Cabinet for **Health Services**~~{Human Resources}~~ of Kentucky said Auditor of Public Accounts, or upon the direction of the legislative body of such city the said comptroller and inspector, or upon the direction of the fiscal court of such county the said county auditor, shall make an audit of the board's accounts and report back thereon.

Section 363. KRS 212.570 is amended to read as follows:

The board shall make an annual report of its fiscal and other operations to the Cabinet for **Health Services**~~{Human Resources}~~ of Kentucky, the fiscal court of such county and to the legislative body of such city. Such report shall be filed within sixty (60) days after the close of the board's fiscal year and shall be accompanied by such information, tables and data as may be necessary to present a reasonably detailed report of the board's condition and activities during the preceding fiscal year.

Section 364. KRS 212.600 is amended to read as follows:

All municipalities in any county of this Commonwealth in which county there is located a city of the first class are hereby made subject to the provisions of KRS 212.350 to 212.620, and it shall be the duty of the board created *in KRS 212.350*~~herein~~ to make and enforce all reasonable regulations controlling or affecting the health of citizens and residents of said county, including all municipalities therein, in conformity with the provisions of KRS 212.350 to 212.620 and the laws of the Commonwealth of Kentucky, the rules and regulations of the Cabinet for *Health Services*~~Human Resources~~ of Kentucky, and the ordinances of said municipalities now or hereafter in effect and not in conflict with the provisions of KRS 212.350 to 212.620. Such regulations shall, as nearly as may be practicable, be uniform throughout the county, both within and without the said municipalities; provided, however, that nothing~~herein~~ contained *in this section* shall be construed to prevent the board from making specific health regulations applying only to such section or sections of said county as may be deemed to require special treatment. The board shall have power and authority to examine into all nuisances, sources of filth, and causes or probable causes of sickness, which may in its opinion be injurious to the health of the residents of such county or of any section or sections thereof.

Section 365. KRS 212.626 is amended to read as follows:

As used in KRS 212.627 to 212.639, unless the context otherwise requires:

- (1) "Board" means the urban-county board of health;~~;~~
- (2) "City-county board of health" means the city, county, or city-county board of health existing in the county on July 1, 1977;~~;~~
- (3) "City-county department of health" means the city, county, or city-county department of health existing in the county on July 1, 1977;~~;~~
- (4) "Commissioner" means the commissioner of health for the urban-county health department;~~;~~
- (5) "County" means any county of the Commonwealth containing any city with a population of over 100,000 at the time of merger creating an urban-county form of government;~~;~~
- (6) "Department" means the urban-county department of health as created *in KRS 212.627*~~herein~~ and its designated agents;~~;~~
- (7) "Cabinet for *Health Services*~~Human Resources~~" means the Cabinet for *Health Services*~~Human Resources~~;
- (8) "Mayor" means the chief executive officer of any county containing any city with a population of over 100,000 at the time of merger creating an urban-county form of government; *and*~~;~~
- (9) "Person" means any person, or domestic or foreign individual corporation, government, or governmental subdivision or agency, business, estate, trust, partnership, unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

Section 366. KRS 212.628 is amended to read as follows:

- (1) All real, personal, and mixed property belonging to the city-county board of health or city-county department of health is hereby transferred to the board and the city-county board of health or city-county department of health shall take all the necessary and proper steps to effect the legal transfer of title and possession of all such property to the board.
- (2) When the board has been organized and all property transferred as provided under subsection (1) of this section, the board may control, operate, or monitor all matters within the county affecting public health including institutions established to safeguard the public health which may encompass city or county medical facilities, nursing homes, medical care of the indigent, and laboratories and clinics necessary for the promotion of public health and environmental protection and which are required or permitted under the provisions of any act of the General Assembly, under any ordinances, orders, and resolutions of the legislative body of the county, or under any rules or regulations promulgated by the Cabinet for *Health Services*~~Human Resources~~, or by the board.

Section 367. KRS 212.636 is amended to read as follows:

- (1) The board shall establish the compensation plan for all employees of the department, and such compensation shall be as nearly comparable as practicable with the compensation paid to and received by employees in comparable agencies.
- (2) The employees of the department shall be employed and governed in accordance with a merit system. The board shall provide for the recruitment, examination, appointment, promotion, transfer, layoff, removal, discipline, compensation, and welfare of the department's employees by establishing a system of personnel administration based on merit principles and scientific methods whereby the rules and regulations of such system shall not be less stringent than those of the merit system of the Cabinet for **Health Services**~~(Human Resources)~~. Such system shall include a personnel board of five (5) members appointed by the board for two (2) year terms. The board shall select as members of the personnel board public-spirited citizens of recognized experience in the improvement of public administration and in the impartial selection of efficient public personnel. The personnel board shall be responsible for establishing rules and regulations for the purpose of governing the administration of the personnel system. The commissioner shall function as appointing authority in and with respect to the personnel matters of the board. The board shall have one (1) year from July 1, 1977, to implement such a system.
- (3) Notwithstanding the provisions of KRS 61.510 to 61.692 and KRS 78.510 to 78.852, on July 1, 1977, all regular full-time present and future public health employees of the department shall be included within the provisions of the state retirement system.
- (4) When the board is qualified and organized as ~~herein~~ provided **in KRS 212.626 to 212.639**, all city-county department of health employees at that time shall be transferred to and continued in the service of the department created under KRS 212.626 to 212.639. Provided, however, that any and all of such employees who at that time are in the classified service of the city-county department of health shall be continued in the classified service of the department with the same status they have had in the classified service of the city-county department of health.

Section 368. KRS 212.639 is amended to read as follows:

- (1) In order to provide sufficient funds for carrying out the provisions of KRS 212.626 to 212.639, the department shall be entitled to the same state aid as is provided for county and district health departments under KRS 212.120, upon notice of the establishment of the department being given to the Cabinet for **Health Services**~~(Human Resources)~~ as provided in KRS 212.120, the legislative intent being hereby declared to be that funding from the Cabinet for **Health Services**~~(Human Resources)~~ be continued at least at the same level and proportion after July 1, 1977, as before its implementation and that modification or alteration of the annual allotment not be made unless for causes enumerated under the provisions of KRS 212.120.
- (2) In the event the sums derived from the appropriations, together with funds otherwise available from any other source to the board during any fiscal year, for its necessary expenditures in the maintenance and operation of the board, exceed its need for such expenditures during such fiscal year, any such unexpended funds at the end of the fiscal year shall be carried forward by the board to be used in paying for its operating costs and expenses for its ensuing year.
- (3) The fiscal year of the board shall begin on July 1 of each year and shall end on June 30 of the following year.
- (4) In a timely fashion governed by the requirements of the various funding sources such as the Cabinet for **Health Services**~~(Human Resources)~~, urban-county government, and any and all other sources, the commissioner shall prepare for board approval a budget setting forth the total amounts of funds available from all sources for expenditures during the board's fiscal year, and setting forth the estimated expenditures of the board for the fiscal year.
- (5) The board shall install and maintain a system of accounting and shall file an annual report of its fiscal and other operations to the Cabinet for **Health Services**~~(Human Resources)~~ and to the legislative body of the urban-county government after the close of the board's fiscal year. The annual report shall be accompanied by such information, tables, and data as may be necessary to present a reasonably detailed report of the board's condition and activities during the preceding year.

Section 369. KRS 212.660 is amended to read as follows:

- (1) After the establishment of a city-county health department as provided in KRS 212.640, the city-county board of health shall appoint a health officer, subject to the approval of the Cabinet for **Health Services**~~(Human Resources)~~

~~Resources~~. Other persons necessary for the work of the city-county health department shall be appointed in the same manner and subject to the same conditions as are other county health department employees.

- (2) Any city health department employee who is covered by a pension fund for civil service employees, as authorized by KRS 90.400 or any other section of the Kentucky Revised Statutes, prior to the consolidation of the city-county health department, may elect to continue such coverage thereafter in lieu of electing coverage under the Kentucky Employees Retirement System, KRS 61.510 to 61.705; provided, however, that all new employees of such consolidated city-county health department shall thereafter be covered by the Kentucky Employees Retirement System.

Section 370. KRS 212.710 is amended to read as follows:

Any city-county department of health established under KRS 212.350 or 212.640 shall be entitled to the same state aid as is provided for county and district health departments under KRS 212.120, upon notice of the establishment of the department being given to the Cabinet for **Health Services**~~{Human Resources}~~ as provided in KRS 212.120.

Section 371. KRS 212.725 is amended to read as follows:

If, after the establishment of the public health taxing district, as provided in KRS 212.720, the tax levying authorities of the district, in the opinion of the county or city-county board of health, do not appropriate an amount sufficient to meet the public health needs of the county or the city-county health department or do not appropriate an amount sufficient to meet the standards prescribed by the Cabinet for **Health Services**~~{Human Resources}~~ for health departments, the county or city-county board of health, acting as the governing body of the taxing district, shall with the approval of the Cabinet for **Health Services**~~{Human Resources}~~, impose by resolution a special ad valorem public health tax in such amount that it deems sufficient, but not in excess of the maximum amount approved by the electorate as provided for in KRS 212.720. The fiscal court shall upon receipt of a duly certified copy of said resolution, include in the next county ad valorem tax levy said special public health tax imposed by the county or city-county board of health which shall be in addition to all other county ad valorem taxes. Said special public health tax shall be collected in the same manner as are other county ad valorem taxes and turned over to the county or city-county board of health to be used solely for the maintenance and operation of the county or city-county health department.

Section 372. KRS 212.755 is amended to read as follows:

- (1) If, after the establishment of the public health taxing district as provided for in this section and KRS 212.750, the tax levying authorities of the district, in the opinion of the county or city-county board of health, do not appropriate an amount sufficient to meet the public health needs of the county or the city-county health department or do not appropriate an amount sufficient to meet the standards prescribed by the Cabinet for **Health Services**~~{Human Resources}~~ for local health departments, the county or city-county board of health, acting as the governing body of the taxing district shall, with the approval of the Cabinet for **Health Services**~~{Human Resources}~~, request the fiscal court to impose by resolution a special ad valorem public health tax in such amount that it deems sufficient, but not in excess of four cents (\$0.04) per one hundred dollars (\$100) of full value assessed valuation. The fiscal court may upon receipt of a duly certified copy of said resolution, include in the next county ad valorem tax levy said special public health tax imposed by the county or city-county board of health which shall be in addition to all other county ad valorem taxes. If levied by the fiscal court, said special public health tax shall be collected in the same manner as are other county ad valorem taxes and turned over to the county or city-county board of health to be used solely for the maintenance and operation of the county, city-county, or district health department and as provided in KRS 212.740.
- (2) Public health taxing districts heretofore organized pursuant to the provisions of KRS 212.720 to 212.740 or organized pursuant to this section and KRS 212.750 shall not be subject to the provisions of the compensating tax rate as defined by KRS 132.010 nor to Chapter 2, 1965 First Extraordinary Session of the General Assembly; provided, however, that no public health taxing district shall impose a rate higher than four cents (\$0.04) per one hundred dollars (\$100) of full value assessed valuation.

Section 373. KRS 212.780 is amended to read as follows:

As used in KRS 212.780 to 212.794 the following definitions shall apply:

- (1) "Board" means independent district board of health as created in KRS 212.780 to 212.794;~~{-}~~
- (2) "Cabinet" means Cabinet for **Health Services**~~{Human Resources}~~.

- (3) "County board of health" means a local board of health as defined by KRS 212.640 or 212.020; ~~and~~
- (4) "Department" means independent district department of health created in KRS 212.780 to 212.794; ~~and~~
- (5) "Director" means the district director of health; ~~and~~
- (6) "District board of health" means the district board of health as established pursuant to KRS 212.810 to 212.930; ~~and~~
- (7) "District department of health" means the district department of health as established pursuant to KRS 212.810 to 212.930; ~~and~~
- (8) "Independent district board of health" means the independent district board of health as created in KRS 212.780 to 212.794; ~~and~~
- (9) "Judge/executive" means the county judge/executive of any county fiscal court as defined in KRS 67.700 to 67.710; ~~and~~
- (10) "Metropolitan statistical area" (MSA) means metropolitan statistical area as defined by the United States Bureau of the Census, United States Department of Commerce.

Section 374. KRS 212.830 is amended to read as follows:

As used in 212.810 to 212.930, unless the content requires otherwise:

- (1) "Cabinet" means the Cabinet for **Health Services** ~~Human Resources~~; ~~and~~
- (2) "Health officer" means the chief administrative officer of the district health department.

Section 375. KRS 212.855 is amended to read as follows:

- (1) Except for district health departments which serve a county containing a city of the first class, an urban-county government, or which are part of an interstate metropolitan statistical area where the Kentucky population of the metropolitan statistical area exceeded two hundred fifty thousand (250,000) people on July 1, 1989, a district board of health shall consist of the following members:
 - (a) The county judge/executive or his designee from each county in the district as an ex officio voting member; and
 - (b) One (1) additional resident member per county per fifteen thousand (15,000) population or fraction thereof, which shall include the mayor, city manager, or the designee of the city manager of each city of the second class as an ex officio voting member, except that the total number of members from any county in a district shall not exceed seven (7) members.
- (2) All members except for the county judges/executive and the mayors of second class cities shall be appointed by the county or city-county boards of health from the membership of each county or city-county board of health.
 - (a) The secretary of the Cabinet for **Health Services** ~~Human Resources~~ shall notify the chairman of each county or city-county board of health in the district of the name of each member from that county whose term is expiring.
 - (b) Upon receipt of the notification, under subsection (a) of this section, each county or city-county board of health shall appoint one (1) of its members to fill each vacant position from that county. At least twenty-five percent (25%) or the nearest whole number to twenty-five percent (25%) of the appointed members of the district board shall be doctors of medicine or osteopathy qualified, licensed, and practicing in the Commonwealth, and there shall be at least one (1) qualified, licensed, and practicing registered nurse, one (1) qualified, licensed, and practicing dentist, one (1) qualified licensed engineer engaged in the practice of civil or sanitary engineering, one (1) qualified, licensed, and practicing optometrist, and one (1) qualified, licensed, and practicing veterinarian, when available, among the membership of the board. The remaining members of the district board shall be concerned community leaders residing within the county from which they are to be representatives.
 - (c) The chairman of the county or city-county board of health shall inform the secretary with forty-five (45) days of receipt of this notification of the names of the county or city-county board of health members appointed to serve on the district board. Appointed members of district boards of health shall not begin to serve on a district board of health until the time the secretary has certified their eligibility to serve on the board.

- (3) If a vacancy exists upon the district board, the vacancy shall be filled in a manner consistent with subsection (2) of this section, with the appointed member to fill the vacant seat coming from the county in which the vacancy occurs and the appointed member resides. If the term of a member on the county board of health expires or the member cannot complete the term on the county board, the seat on the district board of health shall be declared vacant and the county or city-county board of health shall appoint another of its members to fill any unexpired portion of the term on the district board.
- (4) The appointed members of the district board of health shall hold office for a term of two (2) years ending on December 31 or until their successors are appointed. The terms of the first appointments shall be staggered so that members whose terms expire on June 30, 1992, shall be replaced with appointed members whose terms expire on December 31, 1994. Members whose terms expire on June 30, 1993, shall be replaced with appointed members whose terms expire on December 31, 1995.
- (5) The secretary shall remove any appointed member who fails to attend three (3) consecutive scheduled meetings.

Section 376. KRS 212.870 is amended to read as follows:

- (1) A district health officer may employ and fix the compensation of, by contract or otherwise, subject to the approval of the cabinet all medical, administrative, technical, clerical, professional and other employees necessary for the maintenance and operation of the district health department in accordance with standards and merit system provisions prescribed by the cabinet.
- (2) In the absence of a district health officer the secretary of the Cabinet for **Health Services**~~(Human Resources)~~ or his duly appointed representative shall serve as health officer for the district health department.
- (3) All employees of county health departments which join a district health department shall become employees of the district health department.

Section 377. KRS 212.880 is amended to read as follows:

District health departments shall:

- (1) Administer and enforce in the district, except as otherwise provided by law, all applicable public health laws of the Commonwealth and all rules and regulations of the Cabinet for **Health Services**~~(Human Resources)~~ and the rules and regulations of the district board of health;
- (2) With the advice of the district board of health and the cabinet, formulate, promote, establish and execute policies, plans and programs to safeguard the health of the people; **and**
- (3) Make such statistical or other studies and reports relating to the activities of the cabinet as may be deemed expedient or as may be required by the district board of health or the cabinet.

Section 378. KRS 213.011 is amended to read as follows:

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

- (1) "Cabinet" means the Cabinet for **Health Services**~~(Human Resources)~~;
- (2) "Dead body" means a human body or parts of the human body from the condition of which it reasonably may be concluded that death recently occurred;
- (3) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. This definition shall exclude induced termination of pregnancy;
- (4) "File" means the presentation of a vital record provided for in this chapter for registration by the Office of Vital Statistics;
- (5) "Final disposition" means the burial, interment, cremation, removal from the Commonwealth, or other authorized disposition of a dead body or fetus;

- (6) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth. This definition shall exclude management of prolonged retention of product of conception following fetal death;
- (7) "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law;
- (8) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy which, after the expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached;
- (9) "Provisional death certificate" means an interim certificate identifying the deceased and authorizing a funeral director, or person acting as such, to take custody of the body and, except for cremation, to make final disposition;
- (10) "Registration" means the acceptance by the Office of Vital Statistics and the incorporation of vital records provided for in this chapter into its official records;
- (11) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records and the collection of other reports required by this chapter;
- (12) "Secretary" means the secretary for *health services*~~[human resources]~~;
- (13) "Sudden infant death syndrome" means the death of an ostensibly healthy child who is two (2) weeks of age or older but less than three (3) years of age, which occurs suddenly and unexpectedly, with no known or apparent cause, and which remains unexplained after the performance of an autopsy;
- (14) "Vital records" means certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, or annulment, and data related thereto;
- (15) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, dissolution of marriage, and related reports;
- (16) "Certificate" means the certificate of birth, death, fetal death, marriage, dissolution of marriage, or annulment as required by this chapter;
- (17) "Commission" means the Commission for Children with Special Health Care Needs;
- (18) "Hard of hearing infant" means a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels; *and*
- (19) "Hearing risk certificate" means the certificate that includes questions which identify newborn babies with a higher risk than normal for hearing loss.

Section 379. KRS 213.016 is amended to read as follows:

There shall be established in the Department for *Public Health*~~[Services]~~, Cabinet for *Health Services*~~[Human Resources]~~, a vital statistics program which shall maintain and operate the only official system of vital statistics in the Commonwealth.

Section 380. KRS 213.021 is amended to read as follows:

The Cabinet for *Health Services*~~[Human Resources]~~ shall adopt administrative regulations pursuant to KRS Chapter 13A for the purpose of carrying out the provisions of this chapter.

Section 381. KRS 213.026 is amended to read as follows:

The secretary for *health services*~~[human resources]~~ shall designate the state registrar of vital statistics, hereinafter referred to as "state registrar," in accordance with merit system laws and administrative regulations.

Section 382. KRS 213.036 is amended to read as follows:

- (1) Each county in the Commonwealth shall constitute a registration district for the purposes of carrying out the provisions of this chapter.

- (2) The secretary shall, upon the recommendation of the state registrar, designate a local registrar in each registration district to aid in the efficient administration of the system of vital statistics. The local registrar shall be an employee of the local health department. The designation may be revoked by the secretary.
- (3) The local registrar may designate one (1) or more employees of the local health department as deputy registrar. The local registrar may also appoint persons as deputy registrars who are not employees of the local health department if, in the opinion of the cabinet, the appointments are necessary. All appointments shall be subject to the approval of the state registrar.
- (4) The local registrar shall supply blank forms of certificates to persons who require them. The local registrar shall carefully examine each certificate of birth or fetal death when presented for filing, to ensure the record has been properly completed. If the certificates are properly completed the local registrar shall sign as local registrar and attest to the date of filing. The local registrar shall also make a complete and accurate copy of each certificate to be filed and permanently preserved in the local registrar's office as the local record, in the manner directed by the Cabinet for *Health Services*~~{Human Resources}~~. The local registrar shall transmit original certificates and affidavits of paternity to the Office of Vital Statistics as directed by the state registrar. When a birth or fetal death certificate filed with a local registrar indicates the residence of the mother or the deceased to be in another county, the registrar shall mail a copy of the certificate to the local registrar of the county of residence.

Section 383. KRS 213.046 is amended to read as follows:

- (1) A certificate of birth for each live birth which occurs in the Commonwealth shall be filed with the local registrar within ten (10) days after such birth and shall be registered if it has been completed and filed in accordance with this section. A hearing risk certificate provided by the Commission for Children with Special Health Care Needs, with questions pertaining to hearing loss in newborn infants, shall accompany the certificate of birth for use pursuant to KRS 211.645 and 211.647. All certificates shall be typewritten. No certificate shall be held to be complete and correct that does not supply all items of information called for *in this section and in KRS 213.051*~~{herein}~~, or satisfactorily account for their omission except as provided in KRS 199.570(3). If a certificate of birth or the hearing risk certificate is incomplete, the local registrar shall immediately notify the responsible person and require that person to supply the missing items, if that information can be obtained.
- (2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or that person's designated representative, shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (1) of this section or as otherwise directed by the state registrar within the required ten (10) days. The physician or other person in attendance shall provide the medical information required for the certificate and certify to the fact of birth within ten (10) days after the birth. If the physician or other person in attendance does not certify to the fact of birth within the ten (10) day period, the person in charge of the institution shall complete and sign the certificate.
- (3) When a birth occurs in a hospital or en route thereto to a woman who is unmarried, the person in charge of the hospital or that person's designated representative shall immediately before or after the birth of a child, except when the mother or the alleged father is a minor:
 - (a) Meet with the mother prior to the release from the hospital;
 - (b) Attempt to ascertain whether the father of the child is available in the hospital, and, if so, to meet with him, if possible;
 - (c) Provide written materials about paternity;
 - (d) Provide forms necessary to voluntarily establish paternity;
 - (e) Provide a written description of the rights and responsibilities of acknowledging paternity;
 - (f) Provide written materials and information concerning genetic paternity testing;
 - (g) Provide an opportunity to speak by telephone or in person with staff who are trained to clarify information and answer questions about paternity establishment;
 - (h) Require the voluntary acknowledgment of paternity obtained through the hospital based program be signed by both parents and be authenticated by a notary public;

- (i) Provide the unmarried mother, and, if possible, the father, with the affidavit of paternity form;
- (j) Upon both the mother's and father's request, help the mother and father in completing the affidavit of paternity form;
- (k) Upon both the mother's and father's request, transmit the affidavit of paternity to the local registrar in the county in which the birth occurred; and
- (l) In the event that the mother or the alleged father is a minor, information set forth in this section shall be provided in accordance with Civil Rule 17.03 of the Kentucky Rules of Civil Procedure.

If the mother or the alleged father is a minor, the paternity determination shall be conducted pursuant to KRS Chapter 406.

- (4) The voluntary acknowledgment of paternity form shall be the only document having the same weight and authority as a judgment of paternity.
- (5) The Cabinet for *Health Services*~~{Human Resources}~~ shall:
 - (a) Provide to all public and private birthing hospitals in the state written materials concerning paternity establishment forms necessary to voluntarily acknowledge paternity;
 - (b) Provide copies of a written description of the rights and responsibilities of acknowledging paternity; and
 - (c) Provide staff training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital based program.
- (6) When a birth occurs outside an institution, the certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:
 - (a) The physician in attendance at or immediately after the birth; or, in the absence of such a person,
 - (b) Any other person in attendance at or immediately after the birth; or, in the absence of such a person,
 - (c) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred or of the institution to which the child was admitted following the birth.
- (7) No physician, midwife, or other attendant shall refuse to sign or delay the filing of a birth certificate.
- (8) If a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, and the place where the child is first removed shall be considered the place of birth. If a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, but the certificate shall show the actual place of birth insofar as can be determined.
- (9) The following provisions shall apply if the mother was married at the time of either conception or birth or anytime between conception and birth:
 - (a) If there is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; however, if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has legal custody following birth.
 - (b) If the mother claims that the father of the child is not her husband and the husband agrees to such a claim and the putative father agrees to the statement, a three (3) way affidavit of paternity may be signed by the respective parties and duly notarized. The state registrar of vital statistics shall enter the name of a nonhusband on the birth certificate as the father and the surname of the child shall be any name chosen by the mother.
 - (c) If a question of paternity determination arises which is not resolved under paragraph (b) of this subsection, it shall be settled by the District Court.
- (10) The following provisions shall apply if the mother was not married at the time of either conception or birth or between conception and birth or the marital relationship between the mother and her husband has been interrupted for more than ten (10) months prior to the birth of the child:

- (a) The name of the father shall not be entered on the certificate of birth. The state registrar shall upon acknowledgment of paternity by the father and with consent of the mother pursuant to KRS 213.121, enter the father's name on the certificate. The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.
 - (b) If an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, any further modification of the birth certificate regarding the paternity of the child shall require an order from the District Court.
 - (c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.
 - (d) In all other cases, the surname of the child shall be any name chosen by the mother.
- (11) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. In all cases, the maiden name of the gestational mother shall be entered on the certificate.
 - (12) Any child whose surname was restricted prior to July 13, 1990, shall be entitled to apply to the state registrar for an amendment of a birth certificate showing as the surname of the child, any surname chosen by the mother or parents as provided under this section.
 - (13) The birth certificate of a child born as a result of artificial insemination shall be completed in accordance with the provisions of this section.
 - (14) Each birth certificate filed under this section shall include all Social Security numbers that have been issued to the parents of the child.
 - (15) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten (10) days prescribed in subsection (1) of this section.

Section 384. KRS 213.047 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall pay the sum of ten dollars (\$10) to an institution for each completed affidavit of paternity form returned to the local registrar by the institution, pursuant to KRS 213.046, limited to the appropriated funds for the purpose of KRS 213.046.

Section 385. KRS 213.051 is amended to read as follows:

- (1) The person who assumes the custody of a live-born infant of unknown parentage shall report on a form and in a manner prescribed by the state registrar within ten (10) days to the Cabinet for **Health Services**~~[Human Resources]~~ the following information:
 - (a) The date and place of finding;
 - (b) Sex, color or race, and approximate birth date of child;
 - (c) Name and address of the person or institution with which the child has been placed for care;
 - (d) Name given to the child by the custodian of the child; and
 - (e) Other data as required by the state registrar to complete a birth certificate.
- (2) The place where the child was found shall be entered as the place of birth.
- (3) A report registered under this section shall constitute the certificate of birth for the child.
- (4) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and shall not be subject to inspection except upon order of a Circuit Court.

Section 386. KRS 213.066 is amended to read as follows:

- (1) For each adoption decreed by a Circuit Court in the Commonwealth, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include the facts

necessary to establish a new certificate of birth of the person adopted ~~and~~ identify the order of adoption, and be certified by the clerk of the court.

- (2) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The Department for Social Services or any other agency or person having knowledge of the facts shall supply the court with the additional information necessary to complete the report. The provision of the information shall be prerequisite to the issuance of a final decree in the matter by the court.
- (3) If an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof which shall include the facts necessary to identify the original adoption report and the facts amended in the adoption decree necessary to properly amend the birth record.
- (4) Not later than the fifteenth day of each calendar month or more frequently, the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulments of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.
- (5) If the state registrar receives a report of adoption, annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the state registrar shall forward the report to the state registrar in the state of birth. If the birth occurred in a foreign country and the child was not a citizen of the United States at the time of birth, the state registrar shall prepare a record of foreign birth as provided by KRS 213.056(2). If the child was born in Canada, the state registrar shall also send a copy of the report of adoption, annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in that country.

Section 387. KRS 213.076 is amended to read as follows:

- (1) A certificate of death or a provisional certificate of death for each death which occurs in the Commonwealth shall be filed with the cabinet or as otherwise directed by the state registrar prior to final disposition, and it shall be registered if it has been completed and filed in accordance with this section. The funeral director, or person acting as such, who first takes custody of a dead body shall be responsible for filing the certificate of death. The funeral director, or person acting as such shall obtain the required personal and statistical particulars from the person best qualified to supply them over the signature and address of the informant. The funeral director, or person acting as such, shall within five (5) days of the death, present the certificate to the attending physician, if any, or to the health officer or coroner as directed by the state registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record as required by this chapter.
 - (a) It shall be unlawful for an institution to release a dead human body until the funeral director, or person acting as such, has completed and filed with the local registrar or person in charge of the institution, a provisional certificate of death. If death occurs outside an institution, the provisional certificate shall be filed with the local registrar by the funeral director, or person acting as such, prior to final disposition of the dead body. A copy of the provisional certificate of death signed by the person with whom it was filed, shall constitute authority for the possession, transportation, and, except for cremation, final disposition of the body.
 - (b) All persons having in their possession a completed provisional certificate of death shall file the certificate at not more than weekly intervals with the local registrar.
 - (c) If the place of death is unknown but the dead body is found in the Commonwealth, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation subject to amendment upon completion of any postmortem examination required to be performed.
 - (d) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in Kentucky, and the place where it is first removed shall be considered the place of death. If a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in Kentucky, but the certificate shall show the actual place of death insofar as can be determined.
- (2) If any certificate of death is incomplete or unsatisfactory, the state registrar shall call attention to the defects in the certificate and require the person responsible for the entry to complete or correct it. The state registrar may

also require additional information about the circumstances and medical conditions surrounding a death in order to properly code and classify the underlying cause.

- (3) The medical certification shall be completed, signed, and returned to the funeral director within five (5) working days after presentation to the physician, dentist, or chiropractor in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by KRS 72.400 to 72.475. In such cases, the coroner shall complete and sign the certificate within five (5) days after receiving results of the inquiry as required by KRS 72.400 to 72.475. In the absence of the physician, dentist, or chiropractor, or with such person's approval, the certificate may be completed and signed by his associate physician, dentist, or chiropractor, or the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, or a physician employed by the local health department, if the individual has access to the medical history of the case and death is due to natural causes.
- (4) If death occurs more than thirty-six (36) hours after the decedent was last treated or attended by a physician, dentist, or chiropractor, the case shall be referred to the coroner for investigation to determine and certify the cause of death. In the event that a coroner is not available to sign the certificate and there is no duly appointed deputy, the county judge/executive shall appoint a competent person to investigate the death and certify to its cause.
- (5) The physician, dentist, chiropractor, or coroner who certifies to the cause of death shall return the certificate to the funeral director, or person acting as such, who, in turn, shall file the certificate directly with the Office of Vital Statistics. Any certified copies of the record requested at the time of filing shall be issued in not more than two (2) working days.
- (6) The Office of Vital Statistics shall provide self-addressed, color-coded envelopes for the funeral homes in the Commonwealth of Kentucky.
- (7) Three (3) free verification of death statements shall be provided to the funeral director by the Office of Vital Statistics for every death in the Commonwealth of Kentucky.
- (8) The body of any person whose death occurs in Kentucky shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, until a provisional certificate of death has been filed with the local registrar of the registration district in which the death occurs. If the death occurred from a disease declared by the Cabinet for **Health Services**~~[Human Resources]~~ to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under conditions prescribed by the Cabinet for **Health Services**~~[Human Resources]~~ and the local health department. The Cabinet for **Health Services**~~[Human Resources]~~ shall identify by regulation those communicable diseases which require blood and body fluid precautions. If a person who has been diagnosed as being infected with a communicable disease for which blood and body fluid precautions are required, dies within a health facility as defined in KRS 216B.015, the facility shall notify any embalmer or funeral director to whom the body will be transported of the need for such precautions. The notice shall be provided by including the statement "Blood and Body Fluid Precautions" on the provisional report of death form as prescribed by the Cabinet for **Health Services**~~[Human Resources]~~. Lack of this notice shall not relieve any embalmer or funeral director from taking universal blood and body fluid precautions as are recommended by the United States Department of Health and Human Services, Centers for Disease Control for Morticians' Services. No embalmer or funeral director shall charge more for embalming the remains of a person with a communicable disease which requires blood and body fluid precautions than the price for embalming services listed on the price list funeral providers are required to maintain and provide to consumers pursuant to 16 C.F.R. Sec. 453.2 (1988).
- (9) A burial-transit permit for the final disposition issued under the law of another state which accompanies a dead body or fetus brought into the Commonwealth shall be the authority for final disposition of the body or fetus in the Commonwealth and may be accepted in lieu of a certificate of death. There shall be noted on the face of the record made for return to the local registrar that the body was shipped to Kentucky for interment and the actual place of death.
- (10) Nothing in this section shall be construed to delay, beyond a reasonable time, the interment or other disposition of a body unless the services of the coroner or the health officer are required or the Department for **Public Health**~~[Services]~~ deems it necessary for the protection of the public health. If compliance with this section would result in unreasonable delay in the disposition of the body the funeral director, or person acting as such, shall file with the local registrar or deputy registrar prior to interment a provisional certificate of death which

shall contain the name, date and place of death of the deceased, the name of the medical certifier, and an agreement to furnish within ten (10) days a complete and satisfactory certificate of death.

- (11) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by a copy of the provisional certificate of death. The sexton, or if there is no sexton, the funeral director, or person acting as such, shall enter on the provisional certificate over his signature, the date, place, and manner of final disposition and file the certificate within five (5) days with the local registrar.
- (12) Authorization for disinterment, transportation, and reinterment or other disposition shall be required prior to disinterment of any human remains. The authorization shall be issued by the state registrar upon proper application. The provisions of this subsection shall apply to all manners of disposition except cremation and without regard for the time and place of death. The provisions of KRS 381.765 shall not apply to remains removed for scientific study and the advancement of knowledge.
- (13) After a death certificate has been on file for five (5) years, it may not be changed in any manner except upon order of a court. Prior to that time, requests for corrections, amendments, or additions shall be accompanied by prima facie evidence which supports the requested change.

Section 388. KRS 213.111 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 311.300 to 311.350, any hospital or institution of higher learning may make application to any medical school incorporated within the Commonwealth for the loan of unclaimed whole dead bodies or parts thereof for educational or scientific purposes if the approval of the Cabinet for **Health Services**~~{Human Resources}~~ has first been obtained. Approval shall be granted or denied by the Cabinet for **Health Services**~~{Human Resources}~~ on the basis of proposed use, need, qualification of personnel, and adequacy of equipment and facilities.
- (2) A special transit permit shall be obtained for the transportation of the dead bodies or parts thereof from the state registrar. Transportation and the ultimate burial of all the bodies or parts thereof shall be in accordance with the provisions of this chapter and KRS 311.340.
- (3) All approved recipients shall keep a record of all bodies received by them and comply with all other regulations of the Cabinet for **Health Services**~~{Human Resources}~~.

Section 389. KRS 213.116 is amended to read as follows:

- (1) The cabinet shall perform the collection, indexing, tabulation, and registration of data relating to marriages, divorces, and annulments. The secretary shall adopt administrative regulations to carry out the provisions of this section.
- (2) Each county clerk shall on or before the tenth day of each month furnish to the state registrar, from the marriage licenses issued and the marriage certificates returned to the clerk during the previous month, the information required by the Cabinet for **Health Services**~~{Human Resources}~~ upon forms prescribed and furnished by the cabinet. The county clerk shall collect from the applicants for a marriage license at the time the license is issued one dollar (\$1), which shall constitute the clerk's fee for forwarding the required information to the state registrar.
- (3) A marriage record not filed within the time prescribed by this section may be registered in accordance with administrative regulations adopted by the cabinet.
- (4) In all actions for dissolution of marriage, the petitioner, or the petitioner's attorney or legal representative, shall file, concurrently with the petition, the information requested on forms prescribed and furnished by the Cabinet for **Health Services**~~{Human Resources}~~. The provisions of the information shall be prerequisite to the issuance of a final decree in the matter by the court.
- (5) Each Circuit Court clerk shall, within forty-five (45) days after entry of a final judgment of divorce, absolute or limited, or annulment of marriage, complete the form prescribed and furnished by the Cabinet for **Health Services**~~{Human Resources}~~ and forward it to the state registrar.

Section 390. KRS 213.131 is amended to read as follows:

- (1) To protect the integrity of vital records, to insure their proper use, and to insure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records or to copy or issue a copy of all or part of any record except as

authorized by this chapter, by regulation, or by order of a court of competent jurisdiction. Administrative regulations adopted by the cabinet shall provide for adequate standards of security and confidentiality of vital records and shall conform to subsection (4) of this section.

- (2) The state registrar shall prepare annually an alphabetical list of all persons registered as born in the preceding year. The list shall show the person's name, the mother's maiden name, and the date and county of birth. This list shall be an open record subject to inspection by the public upon request.
- (3) The state registrar shall prepare annually an alphabetical list of all persons registered who die in the Commonwealth. This list shall show the name of the deceased and the date and county of death and shall be an open record subject to inspection by the public upon request.
- (4) The Cabinet for **Health Services**~~[Human Resources]~~ may authorize by regulation the disclosure of information contained in vital records for research and official administrative purposes, if:
 - (a) All information identifying persons named on the certificate is withheld or removed;
 - (b) The information is requested by a federal, state, county, or municipal agency of government which needs the data or information in the conduct of official duties; or
 - (c) The cabinet has prepared, in writing, a statement of the conditions under which the data or records will be used and received an agreement signed by a responsible agent of the research organization agreeing to meet with and conform to the conditions.
- (5) If one hundred (100) years have elapsed after the date of birth, or fifty (50) years have elapsed after the date of death, the records of these events in the custody of the state registrar shall become public records and information shall be made available in accordance with regulations which shall provide for continued safekeeping of the records.

Section 391. KRS 213.141 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, the cabinet shall prescribe by regulation a fee not to exceed five dollars (\$5), to be paid for certified copies of certificates or records, or for a search of the files or records when no copy is made, or for copies or information provided for research, statistical, or administrative purposes.
- (2) The cabinet shall prescribe by administrative regulation pursuant to KRS Chapter 13A a fee not to exceed nine dollars (\$9) to be paid for a certified copy of a record of a birth, three dollars (\$3) of which shall be used by the Cabinet for **Health Services or the Cabinet for Families and Children**~~[Human Resources]~~ for the sole purpose of contracting for the operation of private, not-for-profit, self-help, education, and support groups for parents who want to prevent or cease physical, sexual, or mental abuse of children.
- (3) Fees collected under this section by the state registrar shall be used to help defray the cost of administering the system of vital statistics.
- (4) No fee or compensation shall be allowed or paid for furnishing certificates of birth or death required in support of any claim against the government for compensation, insurance, back pay, or other allowances or benefits for any person who has at any time served as a member of the Army, Navy, Marine Corps, or Air Force of the United States.
- (5) The cabinet shall notify the State Board of Elections monthly of the name, address, birthdate, sex, race, and Social Security number of residents of the Commonwealth who died during the previous month. This data shall include only those persons who were over the age of eighteen (18) years at the date of death. No fee or compensation shall be allowed for furnishing these lists.

Section 392. KRS 213.161 is amended to read as follows:

- (1) In order to obtain information which may be useful to research organizations studying the causes and incidence of the sudden infant death syndrome, a program is hereby established in the Cabinet for **Health Services**~~[Human Resources]~~. The purpose of this program shall be to obtain factual information concerning the characteristics, incidence, and distribution of the sudden infant death syndrome throughout the Commonwealth and to provide a means of public education concerning any research findings which may lead to the possible means of prevention, early identification, and treatment of children susceptible to the sudden infant death syndrome.

- (2) In instances where an ostensibly healthy child dies suddenly and unexpectedly with no known or apparent cause as determined by a physician or a coroner, an autopsy with the written approval of the parents or legal guardian of the child shall be performed within forty-eight (48) hours and the results reported to the cabinet and to the parents or legal guardian of the child.
- (3) In order to implement the provisions of this section, the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall:
 - (a) Promulgate administrative regulations as may be necessary in order to obtain in proper form all information relating to the occurrence of sudden infant deaths which is relevant and appropriate for the establishment of a reliable statistical index of the incidence, distribution, and characteristics of cases of the sudden infant death syndrome;~~and~~
 - (b) Collect such factual information from physicians, coroners, medical examiners, hospitals, and public health officials who have examined any child known or believed to have the sudden infant death syndrome;~~and~~
 - (c) Make such factual information available to physicians, coroners, medical examiners, hospitals, public health officials, and educational and institutional organizations conducting research as to the causes and incidence of the sudden infant death syndrome;~~and~~
 - (d) Cause appropriate counseling services to be established and maintained for families affected by the occurrence of the sudden infant death syndrome; and
 - (e) Conduct educational programs to inform the general public of any research findings of educational and institutional organizations which may lead to the possible means of prevention, early identification and treatment of the sudden infant death syndrome.

Section 393. KRS 214.010 is amended to read as follows:

Every physician shall report all diseases designated by regulation of the Cabinet for **Health Services**~~[Human Resources]~~ as reportable which are under his special treatment to the local board of health of his county, and every head of a family shall report any of said diseases, when known by him to exist in his family, to the local board or to some member thereof in accordance with the regulations of the Cabinet for **Health Services**~~[Human Resources]~~.

Section 394. KRS 214.020 is amended to read as follows:

When the Cabinet for **Health Services**~~[human resources]~~ believes that there is a probability that any infectious or contagious disease will invade this state, it shall take such action and adopt and enforce such rules and regulations as it deems efficient in preventing the introduction or spread of such infectious or contagious disease or diseases within this state, and to accomplish these objects shall establish and strictly maintain quarantine and isolation at such places as it deems proper.

Section 395. KRS 214.034 is amended to read as follows:

Except as otherwise provided in KRS 214.036:

- (1) All parents, guardians, and other persons having care, custody, or control of any child shall have the child tested for tuberculosis and immunized against diphtheria, tetanus, poliomyelitis, pertussis, measles, rubella, mumps, hepatitis B, and haemophilis influenzae disease in accordance with testing and immunization schedules established by regulations of the Cabinet for **Health Services**~~[Human Resources]~~. Additional immunizations may be required by the Cabinet for **Health Services**~~[Human Resources]~~ through the promulgation of an administrative regulation pursuant to KRS Chapter 13A if recommended by the United States Public Health Service or the American Academy of Pediatrics. All parents, guardians, and other persons having care, custody, or control of any child shall also have any child found to be infected with tuberculosis tested, examined, and treated according to administrative regulations of the Cabinet for **Health Services**~~[Human Resources]~~ promulgated under KRS Chapter 13A. The persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) Each child entering the public schools shall have proof of having been tested for tuberculosis prior to enrollment. Following the first year of school, upon an epidemiological determination made by the state or regional health officer in accordance with administrative regulations promulgated by the Cabinet for **Health Services**~~[Human Resources]~~, all parents, guardians, and other persons having care, custody, or control of any child shall have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis

tested, examined and treated according to administrative regulations of the Cabinet for **Health Services**~~[Human Resources]~~.

- (3) All public or private primary or secondary schools, and preschool programs shall require a current immunization certificate for any child enrolled as a regular attendee, as provided by administrative regulation of the Cabinet for **Health Services**~~[Human Resources]~~, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.
- (4) For each child cared for in a day care center, certified family child care home, or any other licensed facility which cares for children, a current immunization certificate, as provided by administrative regulation of the Cabinet for **Health Services**~~[Human Resources]~~, promulgated under KRS Chapter 13A, shall be on file in the center, home, or facility within thirty (30) days of entrance into the program or admission to the facility.
- (5) Any forms relating to exemption from immunization requirements shall be available at public or private primary or secondary schools, preschool programs, day care centers, certified family child care homes, or other licensed facilities which care for children.

Section 396. KRS 214.036 is amended to read as follows:

Nothing contained in KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 shall be construed to require the testing for tuberculosis or the immunization of any child at a time when, in the written opinion of his attending physician, such testing or immunization would be injurious to the child's health. Nor shall KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 be construed to require the immunization of any child whose parents are opposed to medical immunization against disease, and who object by a written sworn statement to the immunization of such child on religious grounds. Provided, however, that in the event of an epidemic in a given area, the Cabinet for **Health Services**~~[Human Resources]~~ may, by emergency regulation, require the immunization of all persons within the area of epidemic, against the disease responsible for such epidemic.

Section 397. KRS 214.155 is amended to read as follows:

- (1) The administrative officer or other person in charge of each institution caring for infants twenty-eight (28) days or less of age and the person required in pursuance of the provisions of KRS 213.046 shall register the birth of a child, and cause to have administered to every such infant or child in its or his care tests for inborn errors of metabolism, including but not limited to phenylketonuria (PKU), in accordance with rules or regulations prescribed by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~. Testing, recording, and reporting of the results of such tests shall be performed at such times and in such manner as may be prescribed by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ or his designee. The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall by regulation establish and collect fees to cover the cost of analyzing the testing samples for inborn errors of metabolism.
- (2) Nothing in this section shall be construed to require the testing of any child whose parents are members of a nationally recognized and established church or religious denomination, the teachings of which are opposed to medical tests, and who object in writing to the testing of such child on that ground.

Section 398. KRS 214.160 is amended to read as follows:

- (1) Every physician and every other person legally permitted to engage in attendance upon a pregnant woman in this state shall take or cause to be taken from the woman a specimen of blood for serological test for syphilis as soon as he is engaged to attend the woman and has reasonable grounds for suspecting that pregnancy exists. If the woman is in labor at the time the diagnosis of pregnancy is made, which may make it inadvisable to obtain a blood specimen at that time, the specimen shall be obtained within ten (10) days after delivery. The specimen of blood shall be submitted to the laboratory of the Cabinet for **Health Services**~~[Human Resources]~~ or a laboratory approved by the cabinet, for the purpose of having made a serological test for syphilis. The test shall be of a type approved by the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) The Cabinet for **Health Services**~~[Human Resources]~~ shall, as often as necessary, publish a list of the five (5) most frequently abused substances, including alcohol, by pregnant women in the Commonwealth. Any physician and any other person legally permitted to engage in attendance upon a pregnant woman in this state may perform a screening for alcohol or substance dependency or abuse, including a comprehensive history of such behavior. Any physician may administer a toxicology test to a pregnant woman under the physician's care within eight (8) hours after delivery to determine whether there is evidence that she has ingested alcohol, a controlled substance, or a substance identified on the list provided by the cabinet, or if the woman has

obstetrical complications that are a medical indication of possible use of any such substance for a nonmedical purpose.

- (3) Any physician or person legally permitted to engage in attendance upon a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the Cabinet for **Health Services**~~{Human Resources}~~, if the attending person has reason to believe based on a medical assessment of the mother or the infant, that the mother used any such substance for a nonmedical purpose during the pregnancy.
- (4) The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under KRS 600.020(1), has occurred and whether investigation by the Cabinet for **Health Services**~~{Human Resources}~~ is necessary.
- (5) No prenatal screening for alcohol or other substance abuse or positive toxicology finding shall be used as prosecutorial evidence.
- (6) No person shall conduct or cause to be conducted any toxicological test pursuant to this section on any pregnant woman without first informing the pregnant woman of the purpose of the test.

Section 399. KRS 214.170 is amended to read as follows:

Every physician or other person who takes or causes to be taken from a woman in pregnancy, or suspected pregnancy, a blood specimen for serological tests for syphilis, shall identify the specimen as being from a pregnant woman submitting it for tests. The laboratory shall report the result of the test if reactive on forms prepared and furnished by the Cabinet for **Health Services**~~{Human Resources}~~ to the Cabinet for **Health Services**~~{Human Resources}~~ not later than one (1) week after the examination is made.

Section 400. KRS 214.175 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~{Human Resources}~~ may conduct periodic anonymous surveys to determine the prevalence within the Commonwealth of drug and alcohol use during pregnancy. These periodic surveys may include, but are not limited to, toxicology tests to determine the presence of alcohol, controlled substances, or other drugs which have not been prescribed due to medical necessity.
- (2) All hospitals and any other health facilities licensed pursuant to KRS Chapter 216B which provide for obstetrical services, including delivery of newborn infants, shall, as a condition of licensure, participate in any periodic surveys conducted by the Cabinet for **Health Services**~~{Human Resources}~~ for the purposes of determining the prevalence of alcohol or other substance abuse among pregnant women and newborn infants.
- (3) Any surveys conducted pursuant to this section shall be conducted according to guidelines established by the Cabinet for **Health Services**~~{Human Resources}~~. The toxicology test may be performed without a physician's order and without patient or parental consent. For the purpose of this section any toxicology test performed shall be considered medically necessary.
- (4) The results of any individual toxicology tests performed pursuant to this section shall remain confidential and shall only be released to the Cabinet for **Health Services**~~{Human Resources}~~. Any results shall be collected and compiled in aggregate form without the name of the hospital, patient, or other means of identifying the individual subject of the test.
- (5) No test result obtained pursuant to this section shall be admissible in any court or other hearing as evidence in any proceeding, criminal or civil, against the individual subject of the test.
- (6) No hospital shall incur any liability, except for negligence, for performing any test required or authorized under KRS 214.160 and 214.175 or for reporting the result of the test pursuant to any administrative regulation promulgated by the Cabinet for **Health Services**~~{Human Resources}~~ under KRS Chapter 13A in accordance with this section.
- (7) The cabinet may use any state appropriation and any gifts, grants, or federal funds that become available for the purposes of implementing the provisions of this section.

Section 401. KRS 214.181 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired

immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

- (2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health care services, there is no requirement that a health care provider obtain a previous informed consent.
- (4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:
 - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
 - (b) Referring the patient to another appropriate professional or health care facility for the information and counseling.
- (5)
 - (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
 - (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
 - (c) No person, who has obtained or has knowledge of a test result pursuant to this section, shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
 1. The subject of the test or the subject's legally authorized representative;
 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
 3. A physician, nurse, or other health care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
 4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment;
 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
 6. A health facility or health care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
9. A person allowed access by a court order which is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;
 - b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
 - c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;
 - d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
 - e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for **Health Services**~~(Human Resources)~~ shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;
- (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;
- (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. The cabinet shall continue to provide for anonymous testing and counseling;
- (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability

for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

- (7) No public health department and no other private or public facility established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
 - (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
 - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
 - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
 - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
 - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
 - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
 - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
 - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
 - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;
 - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312 or 313 to register with the cabinet if he does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
- (9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
- (10) The cabinet shall develop a program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 402. KRS 214.185 is amended to read as follows:

- (1) Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for venereal disease, pregnancy, alcohol or other drug abuse or addiction and may advise, prescribe for and treat such minor regarding venereal disease, alcohol and other drug abuse or addiction, contraception, pregnancy or childbirth, all without the consent of or notification to the parent, parents, or guardian of such minor patient, or to any other person having custody of such minor patient.

Treatment under this section does not include inducing of an abortion or performance of a sterilization operation. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions.

- (2) Any physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child.
- (3) Notwithstanding any other provision of the law, and without limiting cases in which consent may be otherwise obtained or is not required, any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental or surgical care to his or her child or himself or herself and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such married or emancipated minor shall not be necessary in order to authorize such care. For the purpose of this section only, a subsequent judgment of annulment of marriage or judgment of divorce shall not deprive the minor of his adult status once obtained. The provider of care may look only to the minor or spouse for payment for services under this section unless other persons specifically agree to assume the cost.
- (4) Medical, dental, and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.
- (5) The consent of a minor who represents that he may give effective consent for the purpose of receiving medical, dental, or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.
- (6) The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient.
- (7) Except as otherwise provided in this section, parents, the Cabinet for **Health Services**~~[Human Resources]~~, or any other custodian or guardian of a minor shall not be financially responsible for services rendered under this section unless they are essential for the preservation of the health of the minor.

Section 403. KRS 214.310 is amended to read as follows:

- (1) Any police officer or member of any municipal board of health, or other city official, who has reason to believe that the provisions of KRS 214.280 to 214.300 have been or are being violated, shall give notice to the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) Any individual who has reason to believe that the provisions of KRS 214.280 to 214.300 have been or are being violated may present the relevant facts to the board of health or any of its deputies. It shall then be the duty of the board of health to make an investigation of the facts, and if the board is of the opinion that there is or has been a violation it shall prosecute the person guilty thereof.
- (3) Any individual may institute proceedings to enforce KRS 214.280 to 214.300 and to punish violations of their provisions.

Section 404. KRS 214.410 is amended to read as follows:

- (1) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~; and
- (2) "Sexually transmitted disease" means syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, nongonococcal urethritis, mucopurulent cervicitis, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, chlamydia trachomatis infections and any other sexually transmitted disease designated by the cabinet under the provisions of KRS Chapter 13A.

Section 405. KRS 214.420 is amended to read as follows:

- (1) The General Assembly hereby declares that confidentiality is essential for the proper administration and operation of sexually transmitted disease control activities in this state and that the principle of confidentiality must remain inviolate.

- (2) All information, records and reports in the possession of local health departments or the Cabinet for **Health Services**~~[Human Resources]~~ and which concern persons infected with or suspected of being infected with or tested for or identified in an epidemiologic investigation for sexually transmitted disease are hereby declared to be strictly confidential and only personnel of local health departments and the Cabinet for **Health Services**~~[Human Resources]~~ who are assigned to sexually transmitted disease control activities shall have access to such information, records and reports.
- (3) Nothing in this section shall be construed as preventing:
 - (a) The release of medical information to the physician retained by the person infected with or suspected of being infected with a sexually transmitted disease;
 - (b) The release of medical or epidemiological data or information for statistical purposes in a manner so that no individual person can be identified;
 - (c) The release of medical information with the written consent of all persons identified in the information to be released;
 - (d) The release of medical or epidemiological information necessary to enforce the provision of the rules and regulations of the Cabinet for **Health Services**~~[Human Resources]~~, issued pursuant to KRS Chapter 13A, relating to the control and treatment of sexually transmitted disease; and
 - (e) The release of medical information made to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party.

Section 406. KRS 214.452 is amended to read as follows:

The following policies shall apply to blood establishments and to donors of blood:

- (1) All blood establishments within the Commonwealth shall be licensed by the United States Food and Drug Administration and remain in compliance with all applicable federal regulations. The Cabinet for **Health Services**~~[Human Resources]~~ shall, under administrative regulations promulgated pursuant to KRS Chapter 13A, establish fees necessary to cover the cost of and adhere to a schedule for regular inspection, by the Office of the Inspector General of the Cabinet for **Health Services**~~[Human Resources]~~, of all blood establishments within the Commonwealth to ascertain whether each blood establishment is licensed and in compliance with KRS 214.450 to 214.464 and KRS 214.468. The Office of the Inspector General shall commence its inspection program of blood establishments no later than September 1, 1994. The Office of the Inspector General of the Cabinet for **Health Services**~~[Human Resources]~~ shall annually, by no later than September 1, submit a written report to the Interim Joint Committee on Health and Welfare on the compliance of blood establishments with KRS 214.450 to 214.464 and KRS 214.468.
- (2) All blood establishments shall test blood for the human immunodeficiency virus and for any known causative agent for any blood-borne communicable disease, using tests approved and required, for purposes of blood donation, by the United States Food and Drug Administration.
- (3) It shall be the duty of the administrator of any blood establishment which collects blood for the purpose of distributing to another health service, health facility, or health care provider the blood for transfusion to:
 - (a) Secure donor consent and a signed written risk factor history and donor consent form for each potential paid or volunteer donor for the purpose of determining if the potential donor is at high risk for infection with the human immunodeficiency virus, or has tested confirmatory positive for infection with the human immunodeficiency virus; or has acquired immune deficiency syndrome; or has tested confirmatory positive for infection with any causative agent for acquired immune deficiency syndrome recognized by the United States Centers for Disease Control; or has a blood-borne communicable disease;
 - (b) Provide a means for a potential donor to self-elect not to donate blood;
 - (c) Refuse donation or sale of blood by persons at high risk for infection with the human immunodeficiency virus, or who have been medically diagnosed as having acquired immune deficiency syndrome, or who have tested confirmatory positive for infection with the human immunodeficiency virus, or who have a blood-borne communicable disease;

- (d) Post a sign in the blood establishment which is visible to all potential donors and which states: "Persons with acquired immune deficiency syndrome (AIDS), or who have tested confirmatory positive for infection with the human immunodeficiency virus (HIV), or who have a blood-borne communicable disease or who have one (1) or more risk factors for the human immunodeficiency virus as determined by the United States Centers for Disease Control, are prohibited by law from donating or selling blood. Persons violating the law are guilty of a Class D felony. ASK STAFF OF THIS BLOOD ESTABLISHMENT."
- (4) The provisions of this section shall not be construed to impose requirements which are in conflict with donor eligibility requirements set out in United States Food and Drug Administration or American Association of Blood Banks standards.

Section 407. KRS 214.464 is amended to read as follows:

- (1) (a) Untested blood may be transfused only in an emergency situation in which the attending physician determines a patient is in imminent danger of death or serious physical injury and no tested and labeled blood as set forth under KRS 214.458 is readily available to alleviate the emergency situation; provided, however, that the attending physician shall, obtain specific prior consent for the transfusion from the patient in the emergency situation or if the patient's condition renders the patient incapable of giving consent, seek from the next of kin of the patient, if available, prior informed consent to transfuse any untested blood. For purposes of this section, the patient's "next of kin" means, in the following order:
1. The spouse of the patient;
 2. If there is none, then the mother or father of the patient;
 3. If there is none, then any adult son or daughter of the patient; or
 4. If there is none, then any brother or sister of the patient.
- (b) Physical evidence of consent shall become a part of the patient's permanent medical record.
- (2) Blood establishments may release untested blood, collected under standards set forth in KRS 214.452, at the request of a physician, or health facility, or health service in an emergency as provided under this section. If blood has not been tested, the test shall be performed as soon after the transfusion as possible. If the blood subsequently tests positive for any blood-borne communicable disease, the patient's attending physician shall be immediately notified. The attending physician shall, in turn, notify the patient of the test results. The patient or next of kin shall indicate notification of receipt of the test results and any offer of treatment or referral to another health care provider on a form provided by the health facility or health service and approved by the Cabinet for **Health Services**~~[Human Resources]~~.

Section 408. KRS 214.550 is amended to read as follows:

As used in KRS 214.552 to 214.556:

- (1) "Department" means the Department for **Public Health**~~[Services]~~ of the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) "Fund" means the breast cancer screening fund.
- (3) "Screening" means the conduct of screening mammography for the purpose of ascertaining the existence of any physiological abnormality which might be indicative of the presence of disease.

Section 409. KRS 214.554 is amended to read as follows:

- (1) There is ~~hereby~~ established within the department a Breast Cancer Screening Program for the purposes of:
- (a) Reducing morbidity and mortality from breast cancer in women through early detection and treatment; and
 - (b) Making breast cancer screening services of high quality and reasonable cost available to women of all income levels throughout the Commonwealth and to women whose economic circumstances or geographic location limits access to breast cancer screening facilities.
- (2) Services provided under the Breast Cancer Screening Program may be undertaken by private contract for services or operated by the department and may include the purchase, maintenance, and staffing of a truck, a van, or any other vehicle suitably equipped to perform breast cancer screening. The program may also provide

referral services for the benefit of women for whom further examination or treatment is indicated by the breast cancer screening.

- (3) The department may adopt a schedule of income-based fees to be charged for the breast cancer screening. The schedule shall be determined to make screening available to the largest possible number of women throughout the Commonwealth. The department shall, where practical, collect any available insurance proceeds or other reimbursement payable on behalf of any recipient of a breast cancer screening under KRS 214.552 to 214.556 and may adjust the schedule of fees to reflect insurance contributions. All fees collected shall be credited to the fund.
- (4) The department may accept any grant or award of funds from the federal government or private sources for carrying out the provisions of KRS 214.552 to 214.556.
- (5) For the purpose of developing and monitoring the implementation of guidelines for access to and the quality of the services of the Breast Cancer Screening Program, there is hereby created a Breast Cancer Advisory Committee to the commissioner of the Department for **Public Health**~~Services~~ which shall include the directors of the James Graham Brown Cancer Center and the Lucille Parker Markey Cancer Center, the director of the Kentucky Cancer Registry, one (1) representative of the Kentucky Office of Rural Health appointed by the Governor, one (1) representative of the Kentucky Commission on Women appointed by the Governor, and at least three (3) women who have had breast cancer and who shall be appointed by the Governor.
- (6) The commissioner of the Department for **Public Health**~~Services~~, in consultation with the Breast Cancer Advisory Committee, shall annually, but no later than July 1 of each year, make a report to the Governor, the Legislative Research Commission, and the Interim Joint Committees on Appropriations and Revenue and on Health and Welfare on the:
 - (a) Implementation and outcome from the Breast Cancer Screening Program including, by geographic region, numbers of persons screened, numbers of cancers detected, referrals for treatment, and reductions in breast cancer morbidity and mortality;
 - (b) Development of quality assurance guidelines, including timetables, for breast cancer screening under this section, and monitoring of the manner and effect of implementation of those guidelines; and
 - (c) Funds appropriated, received, and spent for breast cancer control by fiscal year.

Section 410. KRS 214.556 is amended to read as follows:

- (1) There is hereby established within the Kentucky cancer program the Kentucky Cancer Registry and the cancer patient data management system for the purpose of providing accurate and up-to-date information about cancer in Kentucky and facilitating the evaluation and improvement of cancer prevention, screening, diagnosis, therapy, rehabilitation, and community care activities for citizens of the Commonwealth. The cancer patient data management system shall be administered by the Lucille Parker Markey Cancer Center.
- (2) Each licensed health facility which provides diagnostic services, or diagnostic services and treatment, or treatment to cancer patients shall report to the Kentucky Cancer Registry, through the cancer patient data management system and in a format prescribed by the Kentucky Cancer Registry, each case of cancer seen at that health facility. Failure to comply may be cause for assessment of an administrative fine for the health facility, the same as for violation of KRS 216B.250.
- (3) Each health facility shall grant to the cancer registry access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or status of any identified cancer patient. Hospitals actively participating and enrolled in the cancer patient data management system of the Kentucky Cancer Program as of July 13, 1990, shall be considered to be in compliance with this section. The Lucille Parker Markey Cancer Center shall provide staff assistance in compiling and reporting required information to hospitals which treat a low volume of patients.
- (4) No liability of any kind or character for damages or other relief shall arise or be enforced against any licensed health facility by reason of having provided the information or material to the Kentucky Cancer Registry pursuant to the requirements of this section.
- (5) The identity of any person whose condition or treatment has been reported to the Kentucky Cancer Registry shall be confidential, except that:

- (a) The Kentucky Cancer Registry may exchange patient-specific data with any other cancer control agency or clinical facility for the purpose of obtaining information necessary to complete a case record, but the agency or clinical facility shall not further disclose such personal data; and
 - (b) The Kentucky Cancer Registry may contact individual patients if necessary to obtain follow-up information which is not available from the health facility.
- (6) All information, interviews, reports, statements, memoranda, or other data furnished by reason of this section and any findings or conclusions resulting from those studies shall be privileged.
- (7) The Kentucky Cancer Registry shall make periodic reports of its data and any related findings and recommendations to the Legislative Research Commission, the Interim Joint Committees on Appropriations and Revenue and on Health and Welfare, the Governor, the Cabinet for **Health Services**~~(Human Resources)~~, the reporting health facility and other appropriate governmental and nongovernmental cancer control agencies whose intent it is to reduce the incidence, morbidity, and mortality of cancer. The Kentucky Cancer Registry may conduct analyses and studies as are indicated to advance cancer control in the Commonwealth.

Section 411. KRS 214.605 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~(Human Resources)~~ shall establish a program to educate the public about the threat of acquired immunodeficiency syndrome.
- (2) The Acquired Immunodeficiency Syndrome Education Program shall:
 - (a) Be designed to reach all segments of the Commonwealth's population;
 - (b) Contain special components designed to reach minority groups within the state;
 - (c) Impart knowledge to the public about methods of transmission of acquired immunodeficiency syndrome and methods of prevention;
 - (d) Educate the public about transmission risks in social, employment, and educational situations;
 - (e) Educate health care workers and health facilities' employees about methods of transmission and prevention in their unique workplace environments;
 - (f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high risk for acquiring acquired immunodeficiency syndrome;
 - (g) Provide information and consultation to state agencies to educate all state employees;
 - (h) Provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates;
 - (i) Provide information and consultation to local governments to educate local government employees;
 - (j) Make information available to private employers and encourage them to distribute this information to their employees; and
 - (k) Contain special components which emphasize appropriate behavior and attitude change.
- (3) The program designed by the Cabinet for **Health Services**~~(Human Resources)~~ shall utilize all appropriate forms of the media and shall identify sources of educational materials that can be used by businesses, schools, and health care providers in the regular course of their business.
- (4) The department may contract with other persons in the design, development, and distribution of the components of the education program.

Section 412. KRS 214.610 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~(Human Resources)~~ shall approve appropriate educational courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change to be completed as specified in the respective chapters by each person licensed or certified under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, 335 and emergency medical technicians licensed pursuant to KRS Chapter 211.
- (2) Each licensee or certificate holder shall submit confirmation on a form provided by the cabinet of having completed the course by July 1, 1991, except persons licensed under KRS Chapters 314 and 327 for whom the completion date shall be July 1, 1992.

Section 413. KRS 214.620 is amended to read as follows:

- (1) The boards of the professions in KRS 311.450, 311.571, 311.601, 312.085, 312.175, 313.040, 313.080, 313.290, 313.305, 314.041, 314.042, 314.051, 314.073, 315.050, 315.065, 320.250, 320.280, 327.050, 333.100, 333.190, 335.080, 335.090, 335.100, and 335.150, and the Cabinet for **Health Services**~~Human Resources~~ shall begin planning for the implementation of those sections listed above which require, as a part of initial licensure, applicants for certain specified professions to complete an educational course on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immunodeficiency syndrome. The planning shall include collecting information from the facilities and programs which educate and train the licensed professionals affected by the licensure requirements of those sections listed above and shall also include developing administrative regulations for the implementation of the licensure requirements.
- (2) The Cabinet for **Health Services**~~Human Resources~~ shall develop instructional material on the human immunodeficiency virus, including information related to methods of transmission, education, and infection control. The materials developed under this section shall be provided to persons licensed under KRS Chapters 317 and 317A. Costs of production and distribution of the instructional materials shall be wholly assumed from the fees assessed by the licensing boards which regulate the professionals who are provided with educational materials under this section. To expeditiously and economically develop, produce, and distribute the instructional material required under this section, the Cabinet for **Health Services**~~Human Resources~~ shall consult with the professional associations of professions to determine whether suitable instructional materials already exist that may be lawfully reproduced or reprinted.
- (3) The Cabinet for Human Resources shall require that, by July 1, 1992, all employees of health facilities defined in KRS 216B.015 shall have completed an educational course on the transmission, control, treatment and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change except for those employees who shall have completed such a course as required for their professional licensure or upon evidence that the employee received such a course from another health facility where the employee was previously employed.
- (4) Information on the human immunodeficiency virus infection shall be presented to any person who receives treatment at any hospital, however named, skilled nursing facilities, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, and emergency care centers licensed pursuant to KRS Chapter 216B. The information shall include, but not be limited to, methods of transmission and prevention and appropriate behavior and attitude change.

Section 414. KRS 214.625 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests, is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health care services, there is no requirement that a health care provider obtain a previous informed consent.
- (4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:
 - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
 - (b) Referring the patient to another appropriate professional or health care facility for the information and counseling.
- (5)
 - (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
 - (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
 - (c) No person, who has obtained or has knowledge of a test result pursuant to this section, shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
 1. The subject of the test or the subject's legally authorized representative;
 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
 3. A physician, nurse, or other health care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
 4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment;
 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
 6. A health facility or health care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to July 13, 1990, for the purpose of artificial insemination;
 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
 8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
 9. A parent, foster parent, or legal guardian of a minor; a crime victim; or a person specified in KRS 438.250;
 10. A person allowed access by a court order which is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future

human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

- b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
- c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;
- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for **Health Services**~~[Human Resources]~~ shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;
 - (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;
 - (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. The cabinet shall continue to provide for anonymous testing and counseling;
 - (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
- (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
 - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
 - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;

- (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
 - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
 - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
 - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
 - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
 - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;
 - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312 or 313 to register with the cabinet if he does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
- (9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
- (10) The cabinet shall develop a program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 415. KRS 214.990 is amended to read as follows:

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

Section 416. KRS 215.520 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall discharge all duties relating to all matters of tuberculosis control, including, but not limited to, the following:

- (1) The facilitation of appropriate clinical services for either recalcitrant or drug resistant persons with active tuberculosis for which failure to provide services will lead to further spread of disease in the Commonwealth;
- (2) The promulgation of administrative regulations pursuant to KRS Chapter 13A for the purpose of carrying out the directives of this section, KRS 215.540, 215.550, 215.560, 215.570, 215.580, 215.590, and 215.600;
- (3) The maintenance of a central register of all known cases of tuberculosis in the Commonwealth, and local registers as desirable, and the collection, collation, analysis, and publication of statistics and other information;
- (4) The facilitation of tuberculosis programs in cooperation with the Department of Corrections, Department of Education, and other state agencies within their respective jurisdictions;
- (5) The establishment within the Cabinet for **Health Services**~~[Human Resources]~~ of appropriate social service and financial responsibility appraisal methods to insure that tuberculosis patients or suspects receive all possible support from third-party payors, or from the Medical Assistance Program. The Cabinet for **Health Services**~~[Human Resources]~~ may contract for services for persons with tuberculosis, either directly or through local health departments, and may pay the rates it deems necessary as a charge against the tuberculosis control funds of the Commonwealth;
- (6) The dissemination of educational materials to the citizens of the Commonwealth regarding tuberculosis and its control;
- (7) The initiation of special programs and demonstrations in cooperation with agencies of the federal government, universities, voluntary agencies, and other individuals or corporations;
- (8) The provision of direct assistance to local health departments, to other agencies of state government, and to other organizations to assist them in carrying out education, prevention, and treatment programs of tuberculosis control; and
- (9) Except as otherwise provided by law, to do all other things reasonably necessary to carry out the intent of this section and KRS 215.540 to 215.600.

Section 417. KRS 215.590 is amended to read as follows:

- (1) A health service or health facility required to be licensed pursuant to KRS Chapter 216B or KRS Chapter 333, a health provider required to be licensed pursuant to KRS Chapters 311, 312, 313, 314, 315, or 320, or any other person who has knowledge of a person who has active tuberculosis, shall report the case to the local health department in accordance with the administrative regulations of the Cabinet for **Health Services**~~[Human Resources]~~ promulgated pursuant to KRS Chapter 13A.
- (2) Physicians, hospitals, laboratories, or other institutions which perform related drug susceptibility tests on tubercle bacilli shall report the results of the testing to the local health department in accordance with the administrative regulations of the Cabinet for **Health Services**~~[Human Resources]~~ promulgated pursuant to KRS Chapter 13A. All reports of drug-resistant tubercle bacilli shall be made regardless of previous reports.
- (3) No legal action shall lie against any physician, hospital employee, laboratory employee, or other person who, in good faith, reports a case of tuberculosis or the isolation of the tubercle bacillus as provided in this section, KRS 215.511, 215.520, 215.531, 215.540, 215.550, 215.560, 215.570, 215.580, and 215.600.

Section 418. KRS 216.2920 is amended to read as follows:

As used in KRS 216.2920 to 216.2929, unless the context requires otherwise:

- (1) "Ambulatory facility" means a facility, including an ambulatory surgical facility, ambulatory care clinic, alternative birth center, mobile health service, or a specialized medical technology service, which is not part of a hospital, and which is licensed pursuant to KRS Chapter 216B, and which provides one (1) or more major ambulatory procedures to patients not requiring hospitalization;~~[-]~~
- (2) "Charge" means all amounts billed by a hospital or ambulatory facility, including charges for all ancillary and support services or procedures, prior to any adjustment for bad debts, charity contractual allowances, administrative or courtesy discounts, or similar deductions from revenue. However, if necessary to achieve

comparability of information between providers, charges for the professional services of hospital-based or ambulatory facility-based physicians shall be excluded from the calculation of charge;{+}

- (3) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility;{+}
- (4) "Procedures" means those surgical, medical, radiological, diagnostic, or therapeutic, procedures performed by a provider, as periodically determined by the cabinet in administrative regulations promulgated pursuant to KRS Chapter 13A as those for which reports to the cabinet shall be required. "Procedures" also includes procedures that are provided in hospitals or other licensed ambulatory facilities, or those which require the use of special equipment, including fluoroscopic equipment, computer tomographic scanners, magnetic resonance imagers, mammography, ultrasound equipment, or any other new technology as periodically determined by the cabinet;{+}
- (5) "Quality" means the extent to which a provider renders care which obtains for patients optimal health outcomes; *and*{+}
- (6) "Secretary" means the secretary of the Cabinet for *Health Services*{~~Human Resources~~}.

Section 419. KRS 216.2921 is amended to read as follows:

- (1) The Cabinet for *Health Services*{~~Human Resources~~} shall collect, pursuant to KRS 216.2925, analyze, and disseminate information on the cost, quality, and outcomes of health services provided by health facilities and health care providers in the Commonwealth.
- (2) The secretary of the Cabinet for *Health Services*{~~Human Resources~~} shall serve as chief administrative officer for the health data collection functions of KRS 216.2920 to 216.2929.
- (3) Neither the secretary nor any employee of the cabinet shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of under KRS 216.2920 to 216.2929.

Section 420. KRS 216.2925 is amended to read as follows:

- (1) The Cabinet for *Health Services*{~~Human Resources~~} shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than January 1, 1995, those data elements required to be submitted to the cabinet by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms. Thereafter, every hospital and ambulatory facility shall be required to report, on a periodic basis, which may include quarterly reporting, information regarding the charge for and quality of the procedures and health care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The cabinet shall accept data which, at the option of the provider is submitted through a third party, including, but not limited to, organizations involved in the processing of claims for payment, so long as the data elements conform to the requirements established by the cabinet. The cabinet may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers. The cabinet shall rely on data from readily-available reports and statistics whenever possible.
- (2) The cabinet shall require for submission to the cabinet by any group of providers, except for physicians providing services or dispensaries, first aid stations, or clinics located within business or industrial establishments maintained solely for the use of their employees, including those categories within the definition of provider contained in KRS 216.2920 and any further categories determined by the cabinet, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the cabinet for that year, and as provided by cabinet promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:
 - (a) A list of medical conditions, health services, and procedures for which charge and quality data shall be collected and published at specified time intervals and in a specified manner;
 - (b) A timetable for filing data, which may include quarterly reporting of the information provided for under paragraph (a) of this subsection;
 - (c) A list of data elements that are necessary to enable the cabinet to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;
 - (d) An acceptable format for data submission which shall include use of the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the cabinet,

and which may be in the form of magnetic computer tape, computer diskettes, or other electronic media, or through an electronic network, or in the form of hard copy;

- (e) Procedures to allow health care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the cabinet to reflect valid corrections by the provider before the information is released to the public; and
 - (f) Procedures pertaining to the confidentiality of data collected.
- (3) The cabinet shall coordinate its data-gathering activities with other data-collection activities conducted by the Department of Insurance, as well as other state agencies which collect health-related service, utilization, financial, and health care personnel data, and shall review all administrative regulations promulgated pursuant to KRS 216.2920 to 216.2929 to prevent duplicate filing requirements. The cabinet shall periodically review the use of all data collected under KRS 216.2920 to 216.2929 to assure its use is consistent with legislative intent.
 - (4) The cabinet shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health care charges and quality.
 - (5) The cabinet may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the cabinet and shall, to the extent practicable, be coordinated with other audits performed by state agencies.
 - (6) The cabinet may initiate activities set forth in subsection (1) or (2) of this section at any time after July 15, 1996.
 - (7) The Cabinet for *Health Services*~~Human Resources~~ shall collect all data elements under this section using only the uniform health insurance claim form pursuant to KRS 304.14-135.

Section 421. KRS 216.2929 is amended to read as follows:

- (1) The Cabinet for *Health Services*~~Human Resources~~ shall at least annually, on or before July 1, prepare and publish, in understandable language with sufficient explanation to allow consumers to draw meaningful comparisons, a report or reports on health care charges, quality, and outcomes which includes diagnosis-specific or procedure-specific comparisons for each hospital and ambulatory facility, differentiated by payor if relevant, and for other provider groups as relevant data becomes available.
- (2) The cabinet shall at least annually, on or before October 1, submit to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor a report on the operations and activities of the cabinet under KRS 216.2920 to 216.2929 during the preceding fiscal year, including a copy of each study or report required or authorized under KRS 216.2920 to 216.2929 and any recommendations relating thereto.
- (3) The cabinet shall report at least biennially, no later than October 1 of each odd-numbered year, to the Interim Joint Committees on Appropriations and Revenue and on Health and Welfare and to the Governor on matters pertaining to comparative health care charges, quality, and outcomes, the effectiveness of its activities relating to educating consumers and containing health care costs, and any recommendations regarding its data collection and dissemination activities.
- (4) The cabinet shall report at least biennially, no later than October 1 of each odd-numbered year, on the special health needs of the minority population in the Commonwealth as compared to the population in the Commonwealth as compared to the population at large. The report shall be transmitted to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor and shall contain an overview of the health status of minority Kentuckians, shall identify the diseases and conditions experienced at disproportionate mortality and morbidity rates within the minority population, and shall make recommendations to meet the identified health needs of the minority population.

Section 422. KRS 216.313 is amended to read as follows:

As used in KRS 216.310 to 216.360:

- (1) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care, for more than twenty-four (24) hours, of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or a place including nursing and convalescent homes and all

institutions for the care of the sick, devoted primarily to providing, for more than twenty-four (24) hours, obstetrical or other medical or nursing care for two (2) or more nonrelated individuals;

- (2) "District" means hospital district;
- (3) "Board" means the governing body of a hospital district;
- (4) "Secretary" means the secretary of the Cabinet for **Health Services**~~[human resources]~~ or his designee; and
- (5) "Medical service area" means the geographic territory from which patients come or are expected to come to existing or proposed health facilities as defined by the Cabinet for **Health Services**~~[human resources]~~.

Section 423. KRS 216.315 is amended to read as follows:

The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall, in addition to his other duties, act as secretary of hospital districts, and is vested with jurisdiction, power, and authority, when the conditions set forth in KRS 216.317 exist, to establish a hospital district within a medical service area as established by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~.

Section 424. KRS 216.347 is amended to read as follows:

Within sixty (60) days after the close of each fiscal year the board shall make a written report to the secretary. A copy of this report shall be filed with the county clerk of each county within the district. The report shall contain:

- (1) An itemized statement of the various sums of money received for the district;
- (2) An itemized statement of expenditures from the fund;
- (3) A statement of the property acquired by devise, bequests, purchase, gift, or otherwise during the fiscal year;
- (4) A statement of the character of hospital services furnished to the district during the fiscal year; and
- (5) Any other statistics or information requested by the Cabinet for **Health Services**~~[Human Resources]~~.

Section 425. KRS 216.380 is amended to read as follows:

- (1) The licensure category of rural primary-care hospital is hereby created for existing licensed acute-care hospitals which qualify under this section for that status.
- (2) It shall be unlawful to operate or maintain a rural primary-care hospital without first obtaining a license from the Cabinet for **Health Services**~~[Human Resources]~~. An acute-care hospital converting to a rural primary-care hospital shall not require a certificate of need. New construction of a rural primary-care hospital shall require a certificate of need. A certificate of need shall not be required for services provided on a contractual basis in a rural primary-care hospital. No new rural primary-care hospital facilities shall be constructed before July 15, 1994.
- (3) Only a hospital licensed as a general acute-care hospital may be relicensed as a rural primary-care hospital if all of the following criteria are met:
 - (a) The facility is located at least twenty (20) miles, via road that is paved year-round, from the nearest licensed acute-care hospital providing twenty-four (24) hour emergency care;
 - (b) The facility has sixty (60) or fewer beds; and
 - (c) The facility is not in a county which is part of a standard metropolitan statistical area.
- (4) A rural primary-care hospital shall provide the following services:
 - (a) Twenty-four (24) hour emergency-room care with at least one (1) individual present who has completed certification and maintained competency in advanced cardiac and trauma life support, and a physician or physician extender on call.
 - (b) At least six (6) acute-care beds which shall be used for observation and treatment of acute-care conditions designated by the Cabinet for **Health Services**~~[Human Resources]~~. In no case shall patients remain in a rural primary-care hospital for more than ninety-six (96) hours; and
 - (c) Basic laboratory, radiologic, pharmacy, and dietary services. These services may be provided on an off-site contractual basis but shall be available twenty-four (24) hours per day.
- (5) A rural primary-care hospital may provide the following services:

- (a) Swing beds or a distinct nursing facility, but only if there is not a bed available in any nursing facility, intermediate care facility, or skilled nursing facility within the county of residence of the patient or of the hospital, or the patient has been refused admission to the nursing facility, intermediate care facility, or skilled nursing facility;
 - (b) Surgery with the limits of the ninety-six (96) hour length of stay and designated conditions;
 - (c) Normal obstetrics within the limits of the ninety-six (96) hour length of stay;
 - (d) Primary care;
 - (e) Adult day health care;
 - (f) Respite care; and
 - (g) Rehabilitative and therapeutic services including, but not limited to, physical therapy, respiratory therapy, occupational therapy, speech pathology, and audiology, which may be provided on an off-site contractual basis.
- (6) The following staffing plan shall apply to a rural primary-care hospital:
- (a) The medical staff shall have at least one (1) physician who shall serve as a medical director; and
 - (b) Physician extenders may treat patients within the limits of their statutory scope of practice. Physician extenders shall be supervised by a physician who is not required to be on site at all times. When the facility is occupied by a patient, a physician shall be on call within one-half (1/2) hour.
- (7) A rural primary-care hospital shall have a written quality-assurance program. Quality assurance may be provided through a contractual arrangement.
- (8) A rural primary-care hospital shall have written contracts assuring the following linkages:
- (a) Secondary and tertiary hospital referral services which shall provide for the transfer of a patient to the appropriate level of care and the transfer of patients to the rural primary-care hospital for recuperative care;
 - (b) Ambulance services;
 - (c) Home health services; and
 - (d) Nursing facility services if not provided on site.
- (9) An application for licensure as a rural primary-care hospital together with the hospital's strategic plan shall be provided by the applicant to the Kentucky Board of Family Health Care Providers for review and recommendation to the Division for Licensure and Regulation within the Cabinet for **Health Services**~~[Human Resources]~~. The board shall review the application and plan with regard to feasibility and the appropriateness of these services which are proposed in the context of other services available or the lack thereof in the service area of the applicant.
- (10) The Cabinet for **Health Services**~~[Human Resources]~~ shall seek a federal Medicaid waiver to permit cost-based reimbursement of services provided to Medicaid recipients in a rural primary-care hospital.
- (11) The Cabinet for **Health Services**~~[Human Resources]~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section.

Section 426. KRS 216.510 is amended to read as follows:

As used in KRS 216.515 to 216.530:

- (1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for **Health Services**~~[Human Resources]~~ to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.
- (2) "Resident" means any person who is admitted to a long-term care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance.
- (3) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~.

Section 427. KRS 216.515 is amended to read as follows:

Every resident in a long-term care facility shall have at least the following rights:

- (1) Before admission to a long-term care facility, the resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member or his guardian, of all services available at the long-term care facility. Every long-term care facility shall keep the original document of each written acknowledgment in the resident's personal file.
- (2) Before admission to a long-term care facility, the resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member or his guardian, of all resident's responsibilities and rights as defined in this section and KRS 216.520 to 216.530. Every long-term care facility shall keep the original document of each written acknowledgment in the resident's personal file.
- (3) The resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member, or his guardian, prior to or at the time of admission and quarterly during the resident's stay at the facility, of all service charges for which the resident or his responsible family member or his guardian is responsible for paying. The resident and the responsible party or his responsible family member or his guardian shall have the right to file complaints concerning charges which they deem unjustified to appropriate local and state consumer protection agencies. Every long-term care facility shall keep the original document of each written acknowledgment in the resident's personal file.
- (4) The resident shall be transferred or discharged only for medical reasons, or his own welfare, or that of the other residents, or for nonpayment, except where prohibited by law or administrative regulation. Reasonable notice of such action shall be given to the resident and the responsible party or his responsible family member or his guardian.
- (5) All residents shall be encouraged and assisted throughout their periods of stay in long-term care facilities to exercise their rights as a resident and a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of their choice, free from restraint, interference, coercion, discrimination or reprisal.
- (6) All residents shall be free from mental and physical abuse, and free from chemical and physical restraints except in emergencies or except as thoroughly justified in writing by a physician for a specified and limited period of time and documented in the resident's medical record.
- (7) All residents shall have confidential treatment of their medical and personal records. Each resident or his responsible family member or his guardian shall approve or refuse the release of such records to any individuals outside the facility, except as otherwise specified by statute or administrative regulation.
- (8) Each resident may manage the use of his personal funds. If the facility accepts the responsibility for managing the resident's personal funds as evidenced by the facility's written acknowledgment, proper accounting and monitoring of such funds shall be made. This shall include each facility giving quarterly itemized statements to the resident and the responsible party or his responsible family member or his guardian which detail the status of the resident's personal funds and any transactions in which such funds have been received or disbursed. The facility shall return to the resident his valuables, personal possessions and any unused balance of moneys from his account at the time of his transfer or discharge from the facility. In case of death or for valid reasons when he is transferred or discharged the resident's valuables, personal possessions and funds that the facility is not liable for shall be promptly returned to the resident's responsible party or family member, or his guardian, or his executor.
- (9) If a resident is married, privacy shall be assured for the spouse's visits and if they are both residents in the facility, they may share the same room unless they are in different levels of care or unless medically contraindicated and documented by a physician in the resident's medical record.
- (10) Residents shall not be required to perform services for the facility that are not included for therapeutic purposes in their plan of care.
- (11) Residents may associate and communicate privately with persons of their choice and send and receive personal mail unopened.

- (12) Residents may retain the use of their personal clothing unless it would infringe upon the rights of others.
- (13) No responsible resident shall be detained against his will. Residents shall be permitted and encouraged to go outdoors and leave the premises as they wish unless a legitimate reason can be shown and documented for refusing such activity.
- (14) Residents shall be permitted to participate in activities of social, religious, and community groups at their discretion.
- (15) Residents shall be assured of at least visual privacy in multibed rooms and in tub, shower, and toilet rooms.
- (16) The resident and the responsible party or his responsible family member or his guardian shall be permitted the choice of a physician.
- (17) If the resident is adjudicated mentally disabled in accordance with state law, the resident's guardian shall act on the resident's behalf in order that his rights be implemented.
- (18) Each resident shall be treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs.
- (19) Every resident and the responsible party or his responsible family member or his guardian has the right to be fully informed of the resident's medical condition unless medically contraindicated and documented by a physician in the resident's medical record.
- (20) Residents have the right to be suitably dressed at all times and given assistance when needed in maintaining body hygiene and good grooming.
- (21) Residents shall have access to a telephone at a convenient location within the facility for making and receiving telephone calls.
- (22) The resident's responsible party or family member or his guardian shall be notified immediately of any accident, sudden illness, disease, unexplained absence, or anything unusual involving the resident.
- (23) Residents have the right to have private meetings with the appropriate long-term care facility inspectors from the Cabinet for *Health Services* [~~Human Resources~~].
- (24) Each resident and the responsible party or his responsible family member or his guardian has the right to have access to all inspection reports on the facility.
- (25) The above-stated rights shall apply in all cases unless medically contraindicated and documented by a physician in writing in the resident's medical record.
- (26) Any resident whose rights as specified in this section are deprived or infringed upon shall have a cause of action against any facility responsible for the violation. The action may be brought by the resident or his guardian. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any deprivation or infringement on the rights of a resident. Any plaintiff who prevails in such action against the facility may be entitled to recover reasonable attorney's fees, costs of the action and damages, unless the court finds the plaintiff has acted in bad faith, with malicious purpose, or that there was a complete absence of justifiable issue of either law or fact. Prevailing defendants may be entitled to recover reasonable attorney's fees. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a resident and to the cabinet.

Section 428. KRS 216.520 is amended to read as follows:

For the purpose of supplementing the rights of residents in long-term care facilities, such facilities shall take the following actions:

- (1) Every long-term care facility shall conspicuously post throughout the facility a listing of the resident's rights and responsibilities as defined in KRS 216.515 to 216.525.
- (2) Every long-term care facility shall develop and implement a mechanism which will allow each resident and the responsible party or his responsible family member or his guardian to participate in the planning of the resident's care. Each resident shall be encouraged and provided assistance in the planning of his care.
- (3) All long-term care facilities shall establish written procedures for the submission and resolution of complaints and recommendations by the resident and the responsible party or his responsible family member or his

guardian. Such policies shall be conspicuously displayed throughout the facility pending approval of their adequacy by the cabinet.

- (4) Every long-term care facility shall prepare a written plan and provide appropriate staff training to implement each of the resident's rights as defined in KRS 216.515 to 216.525.
- (5) All long-term care facilities shall maintain in their facilities one (1) copy of the most recent inspection report as prepared by the Cabinet for **Health Services**~~[Human Resources]~~. The cabinet shall provide all long-term care facilities with one (1) copy of the most recent inspection report.

Section 429. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

- (1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for **Health Services**~~[Human Resources]~~ to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.
- (2) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~.
- (3) "Resident" means any person admitted to a long-term care facility as defined by this section.
- (4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.
- (5) "Secretary" means the secretary of the Cabinet for **Health Services**~~[Human Resources]~~.
- (6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.
- (7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

Section 430. KRS 216.541 is amended to read as follows:

- (1) Willful interference, as defined in KRS 216.535, with representatives of the Office of the Long-Term Care Ombudsman in the lawful performance of official duties, as set forth in the Older American's Act, 42 U.S.C. Section 3001 et seq., shall be unlawful.
- (2) Retaliation and reprisals by a long-term care facility or other entity against any employee or resident for having filed a complaint or having provided information to the long-term care ombudsman shall be unlawful.
- (3) A violation of subsection (1) or (2) of this section shall result in a fine of one hundred dollars (\$100) to five hundred dollars (\$500) for each violation. Each day the violation continues shall constitute a separate violation. The manner in which appeals are presented for violations of this section shall be in accordance with administrative regulations prescribed by the secretary for determining the rights of the parties. All fines collected pursuant to this section shall be used for programs administered by the **Office**~~[Division]~~ of Aging Services.
- (4) The Cabinet for **Families and Children**~~[Human Resources]~~ shall authorize the acquisition of liability insurance for the protection of representatives of the Long-Term Care Ombudsman Program who are not employed by the state, to ensure compliance with the federal mandate that no representative of the office shall be liable under state law for the good faith performance of official duties.

Section 431. KRS 216.583 is amended to read as follows:

The Long-Term Care Coordinating Council shall be composed of the following members from within the cabinet: the commissioner of the Department for **Public Health**~~[Services]~~; the commissioner of the Department for Social Services; the commissioner of the Department for Social Insurance; the inspector general; the director of the Division for Licensing and Regulation; the *executive* director of the **Office of**~~[Division for]~~ Aging Services; the commissioner of the Department for Medicaid Services; the general counsel; and the long-term care ombudsman.

Section 432. KRS 216.593 is amended to read as follows:

The provisions of KRS 12.028 and *subsection (1) of Section 5 of this Act*~~[194.040(1)]~~ shall not apply to KRS 216.537 to 216.590.

Section 433. KRS 216.750 is amended to read as follows:

As used in KRS 216.750 to 216.780:

- (1) "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provides nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care;
- (2) "Personal care home" means a place devoted primarily to the maintenance and operation of facilities for the care of aged or invalid persons who do not require intensive care normally provided in a hospital or nursing home but who do require care in excess of room, board and laundry;
- (3) "Fund" means the Nursing Home and Personal Care Home Loan Fund; *and*
- (4) "Secretary" means the secretary of the Cabinet for **Health Services**~~[Human Resources]~~.

Section 434. KRS 216.760 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall be responsible for promotion of interest in the development of additional facilities for the housing and care of the elderly, and for providing consultative and technical assistance to public and private groups engaged in the development of such facilities. The cabinet's functions shall include but not be limited to:

- (1) Promotion of local and community interest in the problem of housing and care for the elderly.
- (2) Assisting local housing commissions in the development of low-rent housing projects for the elderly.
- (3) Provision of information as to need for facilities in particular areas or locations.
- (4) Provision of advice and assistance in the planning of facilities as to area to be served, size, type, staffing, operation and maintenance.
- (5) Provision of information as to the availability of federal financial assistance and the procedures which should be followed in applying for such assistance.
- (6) Provision of information as to the availability of state financial assistance and the procedures which should be followed in applying for such assistance.
- (7) Provision of information as to the availability of private financial assistance.
- (8) Provision of information as to licensing requirements of the state or its political subdivisions.

Section 435. KRS 216.787 is amended to read as follows:

- (1) No agency providing services to senior citizens which are funded by the Department for Social Services *or the Office of Aging Services* of the Cabinet for **Families and Children**~~[Human Resources]~~ shall employ persons in a position which involves providing direct services to a senior citizen if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime.
- (2) Operators of service provider agencies may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor.
- (3) Each service provider agency providing direct services to senior citizens as specified under KRS 216.785 to 216.793 shall request all conviction information from the Justice Cabinet for any applicant for employment prior to employing the applicant.

Section 436. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer to the applicant for initial employment in a nursing facility or in a position funded by the Department for Social Services *or the Office of Aging Services* of the Cabinet for **Families and Children**~~[Human Resources]~~ and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Section 437. KRS 216.800 is amended to read as follows:

As used in KRS 216.800 to 216.853 unless the context requires otherwise:

- (1) "Agreement" means a written contract between the authority and any city, county, or other political subdivision of the Commonwealth or any combination thereof, providing for the construction and financing and operation of one or more projects of the authority;
- (2) "Authority" means the Kentucky Health and Geriatric Authority, a body corporate and politic created by KRS 216.800 to 216.853;
- (3) "Bonds" means revenue bonds, notes or other obligations either in original or refunded form issued under the provisions of KRS 216.800 to 216.853;
- (4) "Cost" means the expenditures for construction, acquisition of land, rights-of-way, property, rights, easements and interest acquired for such construction, demolishing or removing any buildings or structures on land so acquired, all machinery and equipment, financing charges, interest prior to and during construction, engineering and legal expenses, plans, specifications, surveys, cost and revenue estimates, other expenses necessary or incident to determining the feasibility or practicability of constructing any project, administrative expenses, and such other expenses necessary or incident to the construction of a project, the financing of such construction and the placing of the project into operation. Any expense heretofore incurred by the cabinet on projects of the authority may be reimbursed to it from the proceeds of revenue bonds of the authority;
- (5) "Cabinet" means the Cabinet for *Health Services*~~[Human Resources]~~;
- (6) "Lease" means a written lease made by the authority as lessor and the cabinet, federal government, city, county, or other political subdivision of the Commonwealth or any combination thereof;
- (7) "Owner" means all individuals, partnerships, associations, or corporations having any title or interest in any property, rights, easements or interest authorized by KRS 216.800 to 216.853 to be acquired; *and*
- (8) "Project" means any building, facility, equipment or structure which the authority may deem necessary for the promotion of the health of the residents of the Commonwealth including, but not limited to, hospitals, geriatric centers, appropriately designed housing for the elderly, medical clinics, rehabilitation centers, diagnostic centers, extended care centers and such other facilities as are related to the care, research and treatment of disease, and all property, rights, easements and interest which may be acquired by the authority for the construction and operation of the project.

Section 438. KRS 216.803 is amended to read as follows:

- (1) The Kentucky Health and Geriatric Authority shall be composed of five (5) members who shall be the Governor, secretary for *health services*~~[human resources]~~ or his designee, commissioner of *public health services*~~[health services]~~, Attorney General, and the secretary of revenue. These five (5) persons and their successors in office are a body corporate and politic constituting a public corporation and governmental agency and instrumentality of the Commonwealth by the name of the "Kentucky Health and Geriatric Authority," with perpetual succession and with power in that name to contract and be contracted with, to convey property, to sue and be sued, to have and use a corporate seal, and to exercise, in addition to the powers and functions conferred by KRS 216.800 to 216.853, all of the usual powers of corporations not inconsistent with specifically enumerated powers.
- (2) The members of the authority shall receive no compensation for their services, but are entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as members.
- (3) Three (3) members of the authority shall constitute a quorum for the transaction of business. The Governor shall be the chairman of the authority and the secretary for *health services*~~[human resources]~~ or his designee shall be the vice chairman. The authority shall elect a secretary and a treasurer who shall serve at the pleasure of the authority and receive such compensation as may be determined by the authority. The treasurer shall give bond to the authority for a faithful accounting for all funds coming into his custody, in such amount as the authority may prescribe, drawn upon a surety company qualified to do business in the Commonwealth,

premium therefor to be paid by the authority. The authority shall establish and maintain an office and the secretary of the authority shall maintain therein complete records of the authority's actions and proceedings, as public records open to inspection.

Section 439. KRS 216.860 is amended to read as follows:

As used in KRS 216.865:

- (1) "Division" means the Division of Licensing and Regulation within the Cabinet for *Health Services*~~[Human Resources]~~~~;~~~~[-]~~
- (2) "Cabinet" means the Cabinet for *Health Services*~~[Human Resources]~~~~;~~~~[-]~~
- (3) "Secretary" means the secretary for *health services; and*~~[human resources.]~~
- (4) "Nursing pools" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies. For purposes of KRS 216.865, nursing registries shall be considered to be nursing pools. Excluded from this definition are any health-facility-based or in-house pools established to provide services within the confines of such facility or business, any person who only engages in providing his or her own services on a temporary basis to health care facilities, and home health agencies licensed pursuant to KRS Chapter 216 which provide or procure temporary employment in health care facilities for medical personnel.

Section 440. KRS 216.875 is amended to read as follows:

As used in KRS 216.880 to 216.890 the following definitions shall apply:

- (1) "Prescribed pediatric extended care center" hereinafter referred to as a "PPEC center," means any building or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a part of the day, basic services to three (3) or more medically dependent or technologically dependent children who are not related to the owner or operator by blood, marriage, or adoption and who require such services;~~[-]~~
- (2) "Basic services" include, but are not limited to, development, implementation, and monitoring of a comprehensive protocol of care, developed in conjunction with the parent or guardian, which specifies the medical, nursing, psychosocial, and developmental therapies required by the medically dependent or technologically dependent child served as well as the caregiver training needs of the child's legal guardian;~~[-]~~
- (3) "Cabinet" means the Cabinet for *Health Services*~~[Human Resources]~~~~;~~
- (4) "Owner or operator" means any individual who has general administrative charge of a PPEC center;~~[-]~~
- (5) "Medical records" mean medical records maintained in accordance with accepted professional standards and practices as specified in the administrative regulations;~~[-]~~
- (6) "Medically dependent or technologically dependent child" means a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse; *and*~~[-]~~
- (7) "Supportive services or contracted services" include, but are not limited to, speech therapy, occupational therapy, physical therapy, social work, developmental, child life, and psychological services.

Section 441. KRS 216.885 is amended to read as follows:

- (1) It is unlawful to operate or maintain a PPEC center without first obtaining a certificate of need from the Kentucky Health Policy Board and a license for the PPEC center from the cabinet. The cabinet is responsible for licensing PPEC centers in accordance with the provisions of KRS Chapter 216B.
- (2) Separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.
- (3) The Cabinet for *Health Services*~~[Human Resources]~~ may deny, revoke, modify, or suspend a license in accordance with KRS 216B.105.

Section 442. KRS 216.890 is amended to read as follows:

- (1) On or before July 1, 1989, the Cabinet for **Health Services**~~Human Resources~~ shall promulgate administrative regulations to implement the provisions of KRS 216.875 to 216.890, which shall include reasonable and fair standards. Such standards shall relate to:
 - (a) The assurance that PPEC services are family centered and provide individualized medical, developmental, and family training services;
 - (b) The maintenance of PPEC centers based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation, and other building conditions, including adequate space, which will ensure the health, safety, comfort, and protection from fire of the children served;
 - (c) The appropriate provisions of the "Life Safety Code" (NFPA-101, 1985 edition);
 - (d) The number and qualifications of all personnel who have responsibility for the care of the children served;
 - (e) All sanitary conditions within the PPEC center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served;
 - (f) Programs and basic services promoting and maintaining the health and development of the children served and meeting the training needs of the children's legal guardians;
 - (g) Supportive, contracted, other operational, and transportation services; and,
 - (h) Maintenance of appropriate medical records, data, and information relative to the children and programs to be maintained in the facility for inspection by the cabinet.
- (2) Enforcement of standards pursuant to the adoption of administrative regulations under KRS 216.875 to 216.890 shall not take effect until six (6) months after the adoption of such administrative regulations.

Section 443. KRS 216.905 is amended to read as follows:

It shall be unlawful to operate or maintain a network without first obtaining a license from the Cabinet for **Health Services**~~Human Resources~~. A network shall not require a certificate of need.

Section 444. KRS 216.910 is amended to read as follows:

- (1) Any licensed network shall be permitted to establish one (1) extension site per full-time physician on the staff of the network. Extension sites shall not be required to have a separate license but shall conform to administrative regulations promulgated by the Cabinet for **Health Services**~~Human Resources~~ and shall be inspected on a regular basis.
- (2) Each network shall establish protocols for the treatment of the twenty (20) most common patient problems. At a minimum, the protocols shall identify for each problem a working definition, patient symptoms, diagnostic techniques, acceptable values for laboratory findings, conditions under which a physician shall be consulted, and treatment methods. These protocols shall be approved by the board. The protocols shall be listed in a handbook provided to each midlevel health care practitioner and shall be available to patients upon request.
- (3) Each network shall have a system of patient and family medical records which employs the problem-oriented medical record format.
- (4) A network shall employ a primary care physician who has admitting privileges at a local hospital. The network shall hire ancillary personnel as necessary to provide the basic services of the network. The network may hire midlevel health care practitioners to assist the physician but there shall be one (1) physician on staff for each midlevel health care practitioner.
- (5) A physician shall see each patient for whom services are provided by a midlevel health care practitioner not less than twice a year. A medical chart auditor shall review the medical record entries for each patient encounter on the day of the encounter and will refer to the physician immediately any deviation from protocol.
- (6) Each network shall develop a quality assurance program which shall be approved by the board. At a minimum, the quality assurance program shall address:
 - (a) Program goals and objectives;

- (b) Program organization, including identification of responsible parties, the nature of their responsibilities, and the persons to whom they report; and
 - (c) Identification of the patient care process.
- (7) Each network shall establish a process by which it regularly evaluates the health care needs of its community and the services it provides in response to those needs.
 - (8) Each network shall provide the following educational opportunities:
 - (a) Ninety (90) minutes each week of continuing education to its health care providers on topics relating to patient care needs; and
 - (b) One and one-half (1.5) days leave and fifty percent (50%) of expenses up to three hundred dollars (\$300) per year to its midlevel health care practitioners for approved continuing education outside of the network.
 - (9) Each network shall either provide directly for twenty-four (24) hour, seven (7) day per week access to care for its patients or have formal written agreements with local providers to insure twenty-four (24) hour, seven (7) day per week access to care for its patients.
 - (10) No network may charge or collect more money for the services of any midlevel health care practitioner than is allowable under Medicaid for other nonphysician practitioners.

Section 445. KRS 216.915 is amended to read as follows:

The Cabinet for **Health Services**~~(Human Resources)~~ shall promulgate administrative regulations necessary to implement KRS 216.900 to 216.910.

Section 446. KRS 216.920 is amended to read as follows:

There is hereby created the Kentucky Board of Family Health Care Providers.

- (1) The board shall be composed of one (1) representative from each of the following organizations: the Kentucky Medical Association, the Kentucky Nursing Association, a physician from the Kentucky Public Health Association, the Kentucky Dental Association, the Kentucky Hospital Association, the Kentucky Primary Care Association, the Kentucky Board of Medical Licensure, the Kentucky Board of Nursing, the Kentucky Board of Pharmacy, the Kentucky Academy of Family Practitioners, a physician from either family practice or community medicine representing each of the colleges of medicine in the Commonwealth, and a consumer.
- (2) The board shall:
 - (a) Certify new midlevel health care practitioners, recertify midlevel health care practitioners annually, and revoke certification as necessary;
 - (b) Develop and administer qualifying examinations for midlevel health care practitioners to test knowledge of the most frequently occurring protocols;
 - (c) Identify continuing education requirements for midlevel health care practitioners and qualify the continuing education courses provided to them;
 - (d) Approve or prescribe the treatment protocols utilized by each network;
 - (e) Approve the quality assurance programs of each network;
 - (f) Approve the drug formulary used by each network; and
 - (g) Issue administrative regulations necessary to implement this section and KRS 216.925.
- (3) The board shall meet at least quarterly. The Cabinet for **Health Services**~~(Human Resources)~~ shall provide necessary staff assistance to the board and shall reimburse board members at the rate of reimbursement for the advisory councils and committees.
- (4) Applicants for certification and recertification shall pay a fee of fifty dollars (\$50). These fees shall be placed in a trust and agency fund and shall be used to cover the cost of board operations and the administration of examinations.

- (5) Upon appeal of a board decision, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 447. KRS 216A.040 is amended to read as follows:

There shall be a Kentucky Board of Licensure for Nursing Home Administrators located within the Finance and Administration Cabinet for administrative and budgetary purposes. The board shall be composed of ten (10) members. The secretary of the Cabinet for **Health Services**~~{Human Resources}~~ shall be an ex officio member of the board. The other members of the board shall be appointed by the Governor. One (1) member shall be a practicing hospital administrator, to be appointed from a list of two (2) names submitted by the Kentucky Hospital Association. One (1) member shall be a practicing medical physician, to be appointed from a list of two (2) names submitted by the Kentucky State Medical Association. One (1) member shall be an educator in the field of allied health services. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. One (1) member shall be a practicing nursing home administrator appointed from a list of two (2) names submitted by the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc. The other four (4) members shall be practicing nursing home administrators appointed from a list of two (2) names for each vacancy submitted by the Kentucky Association of Health Care Facilities and duly licensed under this chapter, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required in this chapter.

Section 448. KRS 216B.010 is amended to read as follows:

The General Assembly finds that the licensure of health facilities and health services is a means to insure that the citizens of this Commonwealth will have safe, adequate, and efficient medical care; that the proliferation of unnecessary health care facilities, health services, and major medical equipment results in costly duplication and underuse of such facilities, services, and equipment; and that such proliferation increases the cost of quality health care within the Commonwealth. Therefore, it is the purpose of this chapter to fully authorize and empower the Cabinet for **Health Services**~~{Human Resources}~~ to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health care facilities, services, and providers, and to create a cost-efficient health care delivery system for the citizens of the Commonwealth.

Section 449. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;~~{-}~~
- (2) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;~~{-}~~
- (3) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;~~{-}~~
- (4) "Cabinet" means the Cabinet for **Health Services**~~{Human Resources}~~;~~{-}~~
- (5) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
 - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
 - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;~~{-}~~
- (6) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health

facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;{+}

- (7) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;{+}
- (8) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;{+}
- (9) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;{+}
- (10) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;{+}
- (11) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;{+}
- (12) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;{+}
- (13) "Nonclinically-related expenditures" means expenditures for:
 - (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
 - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
 1. Parking facilities;
 2. Telecommunications or telephone systems;
 3. Management information systems;
 4. Ventilation systems;
 5. Heating or air conditioning, or both;
 6. Energy conservation; or
 7. Administrative offices;{+}
- (14) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;{+}

- (15) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;~~[-]~~
- (16) "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;
 - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
 - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
 - (d) Any staff reports or recommendations prepared by or for the cabinet;
 - (e) Any recommendation or decision of the cabinet;
 - (f) Any testimony or documentary evidence adduced at a hearing;
 - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
 - (h) Any other items required by administrative regulations promulgated by the cabinet;~~[-]~~
- (17) "Secretary" means the secretary of the Cabinet for *Health Services*; ~~Human Resources~~;
- (18) "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;~~[-]~~
- (19) "Substantial change in a health service" means:
- (a) The addition of a health service for which there are review criteria and standards in the state health plan;
 - (b) The addition of a health service subject to licensure under this chapter; or
 - (c) The reduction or termination of a health service which had previously been provided in the health facility;~~[-]~~
- (20) "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;~~[-]~~
- (21) "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
 - (b) A substantial change in bed capacity, except for reductions;
 - (c) A change of location; or
 - (d) An increase in costs greater than the allowable amount as prescribed by regulation;~~[-]~~
- (22) "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;~~[-]~~
- (23) "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;~~[-]~~
- (24) "To establish" means to construct, develop, or initiate a health facility;~~[-]~~
- (25) "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; *and*~~[-]~~
- (26) "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 450. KRS 216B.135 is amended to read as follows:

There is hereby created a Task Force on Health Care Cost and Quality for the purpose of studying the implementation of KRS 216B.015, 216B.020, 216B.040, 216B.042, 216B.061, 216B.065, 216B.085, 216B.086, 216B.090, 216B.095, 216B.115, and 216B.120. The task force members shall be appointed by the Governor on July 13, 1990. The task force shall include a reasonable number of members and shall include, but not be limited to, chief executive officers of nonprofit health insurance organizations and for-profit and not-for-profit health care institutions and prominent citizens with an interest in health care cost containment. The task force shall be co-chaired by the mayor of the largest city within and county judge/executive of any county containing more than 3,000 acute care hospital beds. The task force shall hold its first meeting no later than July 30, 1990, and shall meet at least bimonthly. The task force shall forward a report of its findings and recommendations to the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ and to the Legislative Research Commission no later than December 31, 1991.

Section 451. KRS 216B.300 is amended to read as follows:

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

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

Section 452. KRS 216B.303 is amended to read as follows:

Every resident in a boarding home, as defined in KRS 216B.300, shall have at least the following rights:

- (1) Before entering a boarding home, the resident or the resident's guardian, if any, shall be fully informed in writing, as evidenced by the resident's written acknowledgment or that of the resident's guardian, of all services provided by the boarding home and all applicable charges.
- (2) Before entering a boarding home, the resident or the resident's guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment or that of the resident's guardian, of all the resident's rights as defined in this section, and a list of any rules established by the boarding home.
- (3) All residents shall be allowed to exercise their rights as a resident and a citizen, and may voice grievances and recommend changes in policies and services to the boarding home operator and to outside representatives of their choice, free from restraint, interference, coercion, discrimination, or reprisal.
- (4) All residents shall be free from mental and physical abuse.
- (5) Each resident may manage the use of his personal funds. The boarding home operator shall not require a resident to designate the operator as payee for any benefits received by the resident. However, if the operator accepts the responsibility for managing the resident's personal funds as evidenced by the operator's written acknowledgment, proper accounting and monitoring of such funds shall be made. This shall include the operator giving quarterly itemized statements to the resident or the resident's guardian which detail the status of the resident's personal funds and any transactions in which such funds have been received or disbursed. The operator shall return to the resident his valuables, personal possessions, and any unused balance of moneys from his account at the time the resident leaves the boarding home.
- (6) Residents shall not be required to perform services for the boarding home.
- (7) Residents may associate and communicate privately with persons of their choice, within reasonable hours established by the boarding home, and send and receive personal mail unopened.

- (8) No resident shall be detained against the resident's will. Residents shall be permitted and encouraged to go outdoors and leave the premises as they wish.
- (9) Residents shall be permitted to participate in activities of social, religious, and community groups at their discretion.
- (10) Residents shall be assured of at least visual privacy in multibed rooms and in bathrooms.
- (11) If the resident has been adjudicated wholly mentally disabled in both financial and personal affairs in accordance with KRS 387.590, the resident's guardian shall not place the ward in a boarding home.
- (12) Each resident shall be treated with consideration, respect, and full recognition of his dignity and individuality.
- (13) Residents shall have access to a telephone at a convenient location within the boarding home for making and receiving telephone calls subject to reasonable rules established by the boarding home.
- (14) Residents have the right to have private meetings with inspectors representing the Cabinet for *Health Services* ~~Human Resources~~.
- (15) Each resident and his guardian has the right to have access to all inspection reports on the boarding home.

Section 453. KRS 216B.305 is amended to read as follows:

- (1) No person shall operate a boarding home without registering, on an annual basis, in a manner and form prescribed by the secretary. The secretary shall impose a fee, not to exceed one hundred dollars (\$100), for this registration.
- (2) The secretary shall adopt standards, by administrative regulation pursuant to KRS Chapter 13A, for the operation of boarding homes. The administrative regulations shall include minimum requirements in the following areas:
 - (a) Minimum room sizes for rooms occupied for sleeping purposes. Rooms occupied by one (1) boarding home resident shall contain at least sixty (60) square feet of floor space. Rooms occupied by more than one (1) occupant shall contain at least forty (40) square feet of floor space for each occupant;
 - (b) Bedding, linens, and laundry services provided to residents;
 - (c) Sanitary and plumbing fixtures, water supply, sewage disposal, and sanitation of the premises;
 - (d) Heating, lighting, and fire prevention, including the installation and maintenance of smoke detectors;
 - (e) Maintenance of the building;
 - (f) Food handling, preparation, and storage, and kitchen sanitation;
 - (g) Handling and storage of resident's prescription drugs; and
 - (h) Complaint procedures whereby residents may lodge complaints with the cabinet concerning the operation of the boarding home.
- (3) Prior to the initial or annual registration of a boarding home, the cabinet shall cause an unannounced inspection to be made of the boarding home, either by cabinet personnel or through the local health department acting on behalf of the cabinet, to determine if the boarding home is in compliance with:
 - (a) Administrative regulations relating to the operation of boarding homes promulgated pursuant to subsection (2) of this section; and
 - (b) All applicable local health, fire, building and safety codes and zoning ordinances.
- (4) Any boarding home found to be out of compliance with administrative regulations relating to boarding homes promulgated pursuant to subsection (2) of this section, after being provided with written notice of noncompliance and a reasonable period of time for correction, shall not be registered. A boarding home operator may appeal the cabinet's denial of registration, and an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If a boarding home continues to operate in violation of administrative regulations promulgated pursuant to subsection (2) of this section, the cabinet shall institute injunctive proceedings in Circuit Court to terminate the operation of the boarding home.

- (5) Employees or designated agents of the cabinet shall have the authority to enter at any time a boarding home or any premises suspected of operating as an unregistered boarding home for the purpose of conducting an inspection or investigating a complaint.
- (6) Nothing in this section or KRS 216B.303 shall be construed to prohibit local governments from imposing requirements on boarding homes that are stricter than those imposed by administrative regulations of the Cabinet for **Health Services**~~[Human Resources]~~.

Section 454. KRS 216B.410 is amended to read as follows:

All conforming ambulance services, but no nonconforming ambulance services, shall be required to keep adequate reports and records to be maintained at the ambulance base headquarters, and to be available for periodic review as deemed necessary by the board. Required records and reports are as follows:

- (1) Two (2) copies of the Kentucky emergency medical service ambulance run report form, one (1) copy to be kept in the files of the ambulance services and one (1) copy to be submitted to the hospital to which the patient is transported and maintained in the hospital's files, or ambulance run report information compiled and disseminated by electronic means approved by the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) Employee records, including a resume of each employee's training and experience and evidence of current certification; and
- (3) Health records of all drivers and attendants including records of all illnesses or accidents occurring while on duty.

Section 455. KRS 216B.450 is amended to read as follows:

As used in this section and KRS 216B.455:~~[-]~~

- (1) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) "Community-based" means a facility that is located in an existing residential neighborhood or community;~~[-]~~
- (3) "Home-like" means a residence with living space designed to accommodate the daily living needs and tasks of a family unit, with opportunity for adult-child communication, shared tasks, adult-child learning, congregate meals, and family-type routines appropriate to the ages and levels of functioning of the residents; **and**~~[-]~~
- (4) "Psychiatric residential treatment facility" means a licensed, community-based, and home-like facility with a maximum of eight (8) beds which provides inpatient psychiatric residential treatment to residents who have an emotional disability or severe emotional disability as defined in KRS 200.503, age six (6) years to twenty-one (21) years with an age range of no greater than five (5) years in a living unit.

Section 456. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) ~~[The term]~~ "Secretary" means the secretary of the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) ~~[The term]~~ "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~ or its designee;
- (3) ~~[The term]~~ "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (4) ~~[The term]~~ "Food" means:
 - (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (5) ~~[The term]~~ "Drug" means:
 - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

- (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (6) ~~The term~~ "Device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments, apparatus and contrivances, including their components, parts and accessories, intended:
- (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;
- (7) ~~The term~~ "Cosmetic" means:
- (a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of any such articles, except that such term shall not include soap;
- (8) ~~The term~~ "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (9) ~~The term~~ "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (10) ~~The term~~ "Immediate container" shall not include package liners;
- (11) ~~The term~~ "Labeling" means all labels and other written, printed or graphic matter:
- (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (12) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (13) ~~The term~~ "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (14) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;
- (15) ~~The term~~ "New drug" means:
- (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;

- (16) ~~["The term"]~~"Contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;
- (17) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;
- (18) ~~["The term"]~~"Federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);
- (19) ~~["The term"]~~"Flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (20) ~~["The term"]~~"Enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;
- (21) ~~["The terms"]~~"Bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;
- (22) ~~["The term"]~~"Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;
- (23) ~~["The term"]~~"Practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;
- (24) ~~["The term"]~~"Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropractic, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (25) ~~["The term"]~~"Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);
- (26) ~~["The term"]~~"Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85-172; 71 Stat. 441, including any amendments thereto;
- (27) ~~["The term"]~~"Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;
- (28) ~~["The term"]~~"Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide,

- Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;
- (29) ~~The term~~ "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (30) ~~The term~~ "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
- (a) A pesticide chemical in or on a raw agricultural commodity; or
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;
- (31) (a) ~~The term~~ "Color additive" means a material which:
- 1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or
 - 2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;
- (b) ~~The term~~ "Color" shall include, but not be limited to black, white, and intermediate grays;
- (c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.
- (32) ~~The term~~ "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;
- (33) ~~The term~~ "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (34) ~~The term~~ "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;
- (35) ~~The term~~ "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (36) ~~The term~~ "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of

purchase, are offered for sale to the consumer, and intended for off-premises consumption, but shall not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;

- (37) ~~["The term "]~~"Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (38) ~~["The term "]~~"Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (39) ~~["The term "]~~"Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and
- (40) ~~["The term "]~~"Food storage warehouse" means any establishment in which food is stored for subsequent distribution.

Section 457. KRS 217.125 is amended to read as follows:

- (1) The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is hereby vested in the secretary. The secretary may make the regulations promulgated under KRS 217.005 to 217.215 consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits. The authority to promulgate regulations pursuant to KRS 217.005 to 217.205 is restricted to the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) No person shall operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant without having obtained an annual permit to operate from the cabinet. An application for the permit to operate shall be made to the cabinet upon forms provided by it and shall be accompanied by the required fee as shall be provided by regulation. The secretary shall establish a fee schedule according to authorization in the state budget document. Fees collected by the cabinet shall be deposited in the State Treasury and credited to a revolving fund account for use by the cabinet in carrying out the provisions of KRS 217.025 to 217.390 and the regulations adopted by the secretary pursuant thereto. The balance of the account shall lapse to the general fund at the end of each biennium.
- (3) No person shall operate a retail food establishment without having obtained a permit to operate from the cabinet. An application for a permit to operate any retail food establishment shall be made to the cabinet upon forms provided by it and shall contain the information the cabinet may reasonably require.
- (4) Except as otherwise provided in subsection (6) of this section, each application for a temporary food service establishment or for an annual permit to operate a retail food establishment shall be accompanied by the required fee. The secretary shall establish a fee schedule according to authorization in the state budget document.
- (5) Upon receipt of an application for a permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment accompanied by the required fee, the cabinet shall issue a permit if the establishment meets the requirements of KRS 217.005 to 217.215 and regulations adopted by the cabinet. Retail food establishments holding a valid and effective permit on January 1, 1973, even though not fully meeting the construction requirements of KRS 217.005 to 217.215 and the regulations adopted pursuant thereto, may continue to be eligible for permit renewal if in good repair and capable of being maintained in a safe and sanitary manner.
- (6) Private, parochial, and public school cafeterias or lunchroom facilities through the twelfth grade and all facilities operated by the Cabinet for **Health Services, the Cabinet for Families and Children**,~~[Human Resources]~~ or Department of Corrections shall be exempt from the payment of fees, but shall comply with all other provisions of KRS 217.005 to 217.215 and the state retail food establishment code.

- (7) Each annual permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment, unless previously suspended or revoked, shall expire on December 31 following its date of issuance, and be renewable annually upon application accompanied by the required fee, except as otherwise provided in subsection (6) of this section, and if the establishment is in compliance with KRS 217.005 to 217.215 and regulations of the cabinet.
- (8) Each permit to operate a food processing establishment, food storage warehouse, salvage distributor, salvage processing plant, or a retail food establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

Section 458. KRS 217.177 is amended to read as follows:

- (1) No person engaged in sales at retail shall display hypodermic syringes or needles in any portion of the place of business which is open or accessible to the public.
- (2) Every person engaged in sales of hypodermic syringes or needles at retail shall maintain a bound record in which shall be kept:
 - (a) The name of the purchaser; and
 - (b) The address of the purchaser; and
 - (c) The quantity of syringes or needles purchased; and
 - (d) The date of the sale; and
 - (e) Planned use of such syringes or needles.
- (3) Said record shall be maintained for a period of two (2) years from the date of the sale and shall be available for inspection during business hours by any law enforcement officer, agent or employee of the Cabinet for **Health Services**~~Human Resources~~ or Board of Pharmacy engaged in the enforcement of KRS Chapter 218A.
- (4) No person shall present false identification or give a false or fictitious name or address in obtaining or attempting to obtain any hypodermic syringe or needle.
- (5) No person engaged in the retail sale of hypodermic syringes or needles shall:
 - (a) Fail to keep the records required by this section; or
 - (b) Fraudulently alter any record required to be kept by this section; or
 - (c) Destroy, before the time period required by this section has elapsed, any record required to be kept by this section; or
 - (d) Sell, or otherwise dispose of, any hypodermic syringe to any person who does not present the identification required by this section; or
 - (e) Disclose the names in said book except to those required by this section.
- (6) Any physician, other licensed medical person, hospital, or clinic disposing of hypodermic syringes or needles shall crush the barrel of same or otherwise render the instrument incapable of further use.

Section 459. KRS 217.285 is amended to read as follows:

- (1) Each food service establishment, having an on-premises seating capacity of twenty-five (25) persons or more, shall post inside the establishment, in a location conspicuous to employees, a choke-saving techniques poster meeting the following requirements.
- (2) The choke-saving techniques poster shall meet the following specifications:
 - (a) The poster shall depict through illustration and description procedures for the removal of food which is lodged in a person's throat; and
 - (b) The techniques illustrated and described shall include, but need not be limited to, the procedures whereby the choking person is grasped around the lower chest and upper abdomen and given a quick jerk, thus putting increased interabdominal pressure on the lungs and expelling the foreign matter.

- (3) The Cabinet for **Health Services**~~[Human Resources]~~ shall produce or requisition the production of the choke-saving techniques poster as provided in this section and shall supply the posters to the local health departments for distribution without cost to food establishments.

Section 460. KRS 217.380 is amended to read as follows:

- (1) The officials in charge of the enforcement of the pure food laws of this state, the secretary for **health services**~~[human resources]~~, the local health officers, and the duly appointed agents of all such, shall enforce the provisions of KRS 217.280 to 217.390. For this purpose such officers shall have full power at all times to enter every building, room, inclosure or premises occupied or used or suspected of being occupied or used for the preparation or manufacture for sale, or the storage, sale, distribution or transportation, of such food, and to inspect the premises and all utensils, fixtures, furniture and machinery used therein.
- (2) If upon inspection there is found any violation of any of the provisions of KRS 217.280 to 217.390, or if the preparation, manufacture, packing, storage, sale, distribution or transportation of such food is being conducted in a manner detrimental to the health of the employees or to the character or quality of the food, the officer or inspector making the inspection shall report the conditions and violations to the chief pure food official, or to the secretary for **health services**~~[human resources]~~, or to the chief local health officer, as the case may be.
- (3) The officer to whom the report is made shall thereupon issue a written order to the person responsible for the violation or condition to abate the condition or violation or to make the changes or improvements necessary to abate them, within a reasonable time as fixed in the order. Notice of the order may be served by delivering a copy to the person, or by sending a copy by certified mail, return receipt requested in which case the post office receipt shall be prima facie evidence that the notice was received. The person shall have the right to appear in person or by attorney before the officer issuing the notice or the person appointed by him for that purpose, within the time limited in the order, and shall be given an opportunity to be heard and to show why the order or instructions should not be obeyed. The hearing shall be under rules and regulations prescribed by the secretary for **health services**~~[human resources]~~. If after the hearing it appears that the provisions of KRS 217.280 to 217.390 have not been violated, the order shall be rescinded. If it appears that the provisions of KRS 217.280 to 217.390 are being violated, and that the person notified is responsible therefor, the previous order shall be confirmed or amended, as the facts warrant, and shall thereupon be final, but such additional time as is necessary may be granted within which to comply with the final order. If the person is not present or represented when the final order is made, notice thereof shall be given as above provided. If the person fails to comply with the first order within the time prescribed, when no hearing is demanded, or fails to comply with the final order within the time specified, the facts shall be certified to the Commonwealth's, county or city attorney in whose jurisdiction the violation occurred, and such attorney shall proceed against the person for the applicable fines and penalties, and for abatement of the nuisance. The proceedings prescribed in this section for abatement of the nuisance shall not relieve the violator from prosecution in the first instance for every violation, nor from the penalties prescribed for such violation.

Section 461. KRS 217.544 is amended to read as follows:

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

- (1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control or mitigate pests, or which will act as a plant regulator, defoliant or desiccant, or as a functioning agent in a spray adjuvant;
- (2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted;
- (3) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish;
- (4) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment;
- (5) "Board" means the Pesticide Advisory Board;
- (6) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;
- (7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

- (8) "Device" means any instrument or contrivance other than a firearm which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life other than man and other bacteria, virus, or other micro-organisms on or in living man or other living animals; but not including equipment used for the application of pesticides when sold separately therefrom;
- (9) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having received, deliver or offer to deliver pesticides in this state;
- (10) "Environment" includes water, air, land and all plants and man and other animals living therein and the interrelationships which exist among these;
- (11) "EPA" means the United States Environmental Protection Agency;
- (12) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended;
- (13) "Fungi" means all non-chlorophyll bearing thallophytes; that is, all non-chlorophyll bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;
- (14) "Highly toxic pesticide" means any pesticide determined to be highly toxic under the authority of Sec. 25(c)(2) of FIFRA or by the department under this chapter;
- (15) "Imminent hazard" means a situation which exists when the continued use of a pesticide would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the secretary of the United States Department of Interior under Public Law 91-135 of the United States Congress;
- (16) "Inert ingredient" means an ingredient which is not an active ingredient;
- (17) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide and, when the pesticide contains arsenic in any form, a statement of the percentage of total and water soluble arsenic, each stated as elemental arsenic;
- (18) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other invertebrates which are destructive, constitute a liability, and may be classed as pests;
- (19) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or to any of its containers or wrappers;
- (20) "Labeling" means the label and other written, printed or graphic matter:
 - (a) On the pesticide or device, or any of its containers or wrappers;
 - (b) Accompanying the pesticide or device at any time or referring to it in any other media used to disseminate information to the public; and
 - (c) To which reference is made on the label or in the literature accompanying the pesticide or device, except when accurate nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, the Departments of Agriculture and Interior, the Department of Health, Education and Welfare, and other similar federal institutions, the College of Agriculture, University of Kentucky, Kentucky Agricultural Experiment Station, Cabinet for ~~Human Resources~~ **Health Services**, Natural Resources and Environmental Protection Cabinet, or other agencies of this state or other states when such agencies are authorized by law to conduct research in the field of pesticides;
- (21) "Land" means all land and water areas, including air space and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto, or situated thereon, fixed or mobile, including any used for transportation;
- (22) "Misbranded" means a pesticide is misbranded if:
 - (a) Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

- (b) It is an imitation of or is distributed under the name of another pesticide;
 - (c) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under section 3(d) of FIFRA are adequate to protect health and the environment;
 - (d) The labeling does not contain a statement of the use classification under which the product is registered by EPA;
 - (e) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of FIFRA, is adequate to protect health and the environment;
 - (f) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of the purchase; provided, that the ingredient statement may appear prominently on another part of the container pursuant to section 2(q) 2(A) (i) (ii) of FIFRA if the size and form of the container makes it impractical to place it on that part of the retail package which is presented or displayed under customary conditions of purchase;
 - (g) Any word, statement, or other information required by KRS 217.542 to 217.630 or FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared to other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (h) The label does not bear the name, brand or trademark under which the pesticide is distributed;
 - (i) The label does not bear the net weight or measure of the content;
 - (j) The label does not bear the name and address of the manufacturer, registrant or person for whom manufactured; and
 - (k) The label does not bear the EPA registration number assigned to each establishment in which the product is produced and the EPA number assigned to the pesticide, if required by regulation under FIFRA;
- (23) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms;
- (24) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;
- (25) "Pest" means any insect, snail, slug, rodent, nematode, fungus, weed, and any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department may declare to be a pest;
- (26) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and any substance or mixture of substances intended to be used as a spray adjuvant;
- (27) "Plant regulator" means any substance or mixture of substances, intended through physiological actions, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (28) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment;
- (29) "Registrant" means a person who has registered any pesticide pursuant to the provisions of KRS 217.542 to 217.630;

- (30) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA, or by regulation of the department;
- (31) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the other pesticide with which it is to be used;
- (32) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;
- (33) "Weed" means any plant which grows where not wanted; and
- (34) "Wildlife" means all living things that are neither human, domesticated, nor as defined in KRS 217.542 to 217.630, pests, including but not limited to mammals, birds and aquatic life.

Section 462. KRS 217.660 is amended to read as follows:

As used in KRS 217.650 to 217.710 unless the context indicates otherwise:

- (1) "Secretary" means the secretary for *health services*~~[human resources]~~;
- (2) "Cabinet" means the Cabinet for *Health Services*~~[Human Resources]~~;
- (3) "Person" includes any individual, partnership, corporation, firm or association;
- (4) "Hazardous substance" means any substance or mixture of substances which is:
 - (a) "Toxic" and has the inherent capacity to produce bodily injury to man through ingestion, inhalation, or absorption through any body surface, including toxic substances which are poisonous;
 - (b) "Corrosive" on contact with living tissue causing substantial destruction of tissue by chemical action, but does not refer to action on inanimate surfaces;
 - (c) "Irritant" and not corrosive within the meaning of paragraph (b), which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction;
 - (d) "Strong sensitizer" and will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the secretary;
 - (e) "Flammable" with a flashpoint of eighty (80) degrees Fahrenheit or below;
 - (f) "Radioactive" as a result of disintegration of unstable atomic nuclei and emits energy;
 - (g) Capable of generating pressure through decomposition, heat, or other means;
 - (h) Capable of causing substantial personal injury or illness during any customary or reasonably anticipated handling or use; *and*
- (5) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or that is easily legible through the outside container or wrapper.

Section 463. KRS 217.801 is amended to read as follows:

- (1) Paint manufactured after July 1, 1972, containing more than .5% lead by weight of the nonvolatile content shall not be sold, or used on any toys, children's furniture, interior surface of any dwelling, or any other surface easily accessible to children under the age of 7 years. Such paints shall not be manufactured, sold, or used for any other purpose which would ultimately result in exposure to children under the age of 7 years unless proper application and documentation is made to the Cabinet for *Health Services*~~[Human Resources]~~ and the cabinet determines that no health hazard or danger to children exists from the intended use.
- (2) All paints manufactured in this state after July 1, 1972, which will be used in this state will be clearly labeled as to use and hazard when containing more than .5% lead by weight of the total nonvolatile content.
- (3) The above provisions of subsections (1) and (2) of this section shall apply to all paints containing more than .06% lead by weight of the total nonvolatile content after January 1, 1974.

Section 464. KRS 217.809 is amended to read as follows:

No person shall operate a vending machine company without having first obtained a permit to operate from the Cabinet for **Health Services**~~{Human Resources}~~ as provided in the regulations of the Cabinet for **Health Services**~~{Human Resources}~~. All such permits shall expire on June 30 following the date of issue. The Cabinet for **Health Services**~~{Human Resources}~~ shall adopt regulations relating to vending machines. KRS 217.808 to 217.812 do not apply to blind persons who operate vending machines as part of a program established by federal or state law.

Section 465. KRS 217.812 is amended to read as follows:

All fees collected by the Cabinet for **Health Services**~~{Human Resources}~~ under the provisions of KRS 217.808 to 217.812 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the cabinet in defraying the costs and expenses of the cabinet in the administration of KRS 217.808 to 217.812. Such funds may be expended for training of state and local sanitation personnel. The balance of this fund shall revert to the general fund of the Commonwealth at the end of each biennium.

Section 466. KRS 217.950 is amended to read as follows:

- (1) Amygdalin (laetrile) may be manufactured in this state subject to licensing and regulation by the Cabinet for **Health Services**~~{Human Resources}~~. The secretary of the cabinet shall adopt regulations which prescribe minimum standards for manufacturers in preparing, compounding, processing, and packaging the substance. The secretary shall establish standards of purity and shall make periodic tests and inspections of both the facilities for manufacture and samples of the substance to ascertain the purity, quality, and identity of the substance and to determine that the substance meets the standards so established.
- (2) The Cabinet for **Health Services**~~{Human Resources}~~ shall make no rule or regulation which would prohibit the use of amygdalin (laetrile) in any hospital, ambulatory outpatient surgical center, or health care facility licensed by it.

Section 467. KRS 217.993 is amended to read as follows:

- (1) Any person violating any provisions of KRS 217.650 to 217.710 shall be guilty of a violation. Each day of violation shall constitute a separate offense.
- (2) Any person violating any provisions of KRS 217.900(2) shall upon conviction be guilty of a Class B misdemeanor.
- (3) Any person found guilty of inhaling a volatile substance in violation of KRS 217.900(2) may be ordered to a facility designated by the secretary of the Cabinet for **Health Services**~~{Human Resources}~~, where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration shall be prescribed. The person ordered to the facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated facility within the specified time, or if, any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment or may order the person subject to the fine or imprisonment, or both, for a Class B misdemeanor. Upon discharge of the person from the facility by the clinical director or his designee prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The clinical director or his designee shall notify the sentencing court of the date of such discharge from the facility.
- (4) The secretary of the Cabinet for **Health Services**~~{Human Resources}~~ or his designee shall inform each court of the identity and location of the facility to which a person may be ordered under this section.
- (5) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for **Health Services**~~{Human Resources}~~ unless the facility shall arrange otherwise.
- (7) None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) Any person violating any provision of KRS 217.900(3) shall upon conviction be guilty of a Class D felony.

Section 468. KRS 217C.030 is amended to read as follows:

As used in this chapter:

- (1) "Secretary" means the secretary of the Cabinet for **Health Services**~~[Human Resources]~~.
- (2) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~.

Section 469. KRS 217C.070 is amended to read as follows:

- (1) The secretary for **health services**~~[human resources]~~ shall appoint a grade A milk advisory committee composed of eight (8) appointive members. Three (3) members shall be processors, or representatives thereof; three (3) members shall be producers, or representatives thereof; and two (2) members shall be citizens at large, as representatives of consumers.
- (2) The secretary for **health services**~~[human resources]~~ shall appoint a milk for manufacturing advisory committee composed of eight (8) appointive members. Four (4) members shall be processors, or representatives thereof; two (2) members shall be producers, or representatives thereof; and two (2) members shall be citizens at large, as representatives of consumers.
- (3) The secretary for **health services**~~[human resources]~~ or his designated representative shall be an ex officio member and secretary of each committee. The appointments to each committee shall be made for a term of four (4) years, or until their successors are appointed and qualify, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, two (2) members shall be appointed for three (3) years and two (2) members shall be appointed for four (4) years and the respective terms of the first members shall be designated by the secretary for **health services**~~[human resources]~~ at the time of their appointment. Such members shall serve without compensation but may be reimbursed for necessary traveling expenses. Procedures for selection of advisory nominees shall be in accordance with the regulations of the secretary.

Section 470. KRS 217C.990 is amended to read as follows:

Any person who violates any provision of this chapter, or any rule or regulation adopted hereunder, or who fails to comply with an order of the Cabinet for **Health Services**~~[Human Resources]~~ issued pursuant thereto, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day of violation or noncompliance shall constitute a separate offense.

Section 471. KRS 218A.020 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ shall administer this chapter and may by regulation add substances to or delete or reschedule all substances enumerated in the schedules set forth in this chapter. In making a determination regarding a substance, the Cabinet for **Health Services**~~[Human Resources]~~ may consider the following:
 - (a) The actual or relative potential for abuse;
 - (b) The scientific evidence of its pharmacological effect, if known;
 - (c) The state of current scientific knowledge regarding the substance;
 - (d) The history and current pattern of abuse;
 - (e) The scope, duration, and significance of abuse;
 - (f) The risk to the public health;
 - (g) The potential of the substance to produce psychic or physiological dependence liability; and
 - (h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.
- (2) After considering the factors enumerated in subsection (1) the Cabinet for **Health Services**~~[Human Resources]~~ may adopt a regulation controlling the substance if it finds the substance has a potential for abuse.
- (3) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the Cabinet for **Health Services**~~[Human Resources]~~, the Cabinet for **Health Services**~~[Human Resources]~~ may similarly control the substance under this chapter by regulation.
- (4) The Cabinet for **Health Services**~~[Human Resources]~~ shall exclude any nonnarcotic substance from a schedule if the substance may be lawfully sold over the counter without prescription under the provisions of the Federal Food, Drug and Cosmetic Act, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970,

or the Kentucky Revised Statutes (for the purposes of this section the Kentucky Revised Statutes shall not include any regulations issued thereunder).

Section 472. KRS 218A.040 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall place a substance in Schedule I if it finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Section 473. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for **Health Services**~~[Human Resources]~~, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methyl-desorphine; Methyl-dihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; The bacon.
- (3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3,4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone).

Section 474. KRS 218A.060 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall place a substance in Schedule II if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence.

Section 475. KRS 218A.070 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for **Health Services**~~[Human Resources]~~, the controlled substances listed in this section are included in Schedule II:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction

from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone-Intermediate; 4-cyano-2-dimethylamino-4, 4-diphenyl butane; Moramide-Intermediate; 2-methyl-3-morpholino-1; 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - (b) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
 - (c) Phenmetrazine and its salts;
 - (d) Methylphenidate.

Section 476. KRS 218A.080 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall place a substance in Schedule III if it finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Section 477. KRS 218A.090 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for **Health Services**~~[Human Resources]~~, the controlled substances listed in this section are included in Schedule III:

- (1) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system: Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid; chlorhexadol; glutethimide; lysergic acid; lysergic acid amide; methyprylon; sulfondiethylmethane; sulfonethylmethane; sulfonmethane.
- (2) Nalorphine.
- (3) Pentazocine (parenteral or injectable form only).
- (4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - (a) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

- (b) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts;
 - (c) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - (d) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (e) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (f) Not more than 300 milligrams of ethylmorphine, or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;
 - (g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (h) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - (i) The Cabinet for *Health Services* ~~{Human Resources}~~ may except by regulation any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (1) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.
- (5) Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroid substances, or any isomer, ester, salt, or derivative thereof:
- (a) Boldenone;
 - (b) Clostebol;
 - (c) Dehydrochlormethyltestosterone;
 - (d) Drostanolone;
 - (e) Ethylestrenol;
 - (f) Fluoxymesterone;
 - (g) Formebolone;
 - (h) Mesterolone;
 - (i) Methandienone;
 - (j) Methandriol;
 - (k) Methenolone;
 - (l) Methyltestosterone;
 - (m) Mibolerone;
 - (n) Nandrolone;
 - (o) Norethandrolone;
 - (p) Oxandrolone;

- (q) Oxymesterone;
 - (r) Oxymetholone;
 - (s) Stanolone;
 - (t) Stanozolol;
 - (u) Testolactone;
 - (v) Testosterone; and
 - (w) Trenbolone.
- (6) This section shall not apply to any material, compound, mixture, or preparation containing any quantity of an anabolic steroid substance, or any isomer, ester, salt, or derivative thereof that is expressly intended for administration through implant to livestock or other nonhuman species, and that is approved by the United States Food and Drug Administration for such use.

Section 478. KRS 218A.100 is amended to read as follows:

The Cabinet for **Health Services**~~(Human Resources)~~ shall place a substance in Schedule IV if it finds that:

- (1) The substance has a low potential for abuse relative to substances in Schedule III;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

Section 479. KRS 218A.110 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for **Health Services**~~(Human Resources)~~, the controlled substances listed in this section are included in Schedule IV:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system: chloral betaine; chloral hydrate; ethchlorvynol; ethinamate; meprobamate; paraldehyde; petrichloral.
- (2) The Cabinet for **Health Services**~~(Human Resources)~~ may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subsection (1) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Section 480. KRS 218A.120 is amended to read as follows:

The Cabinet for **Health Services**~~(Human Resources)~~ shall place a substance in Schedule V if it finds that:

- (1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

Section 481. KRS 218A.130 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for **Health Services**~~(Human Resources)~~ the controlled substances listed in this section are included in Schedule V:

Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone: Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams.

Section 482. KRS 218A.150 is amended to read as follows:

- (1) No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce, or prepare controlled substances, and no person as a wholesaler shall supply the same, without having first obtained a

license so to do from the Cabinet for **Health Services**~~[Human Resources]~~. The Cabinet for **Health Services**~~[Human Resources]~~ may adopt regulations and set reasonable fees relating to the issuance and renewal of such licenses. All such licenses shall expire on June 30, following the date of issue, unless renewed. All such fees shall be deposited in a revolving fund to be used by the cabinet in carrying out the provisions of this chapter.

- (2) No person shall manufacture any controlled substance except under the direct supervision of a pharmacist.

Section 483. KRS 218A.160 is amended to read as follows:

- (1) No manufacturer's or wholesaler's license shall be issued pursuant to this chapter unless the applicant therefor has furnished satisfactory proof:
- (a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation that the managing officers are of good moral character;
 - (b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.
- (2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.
- (3) The Cabinet for **Health Services**~~[Human Resources]~~ may suspend or revoke any license for cause.
- (4) Upon appeal of any action taken under authority of this section, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 484. KRS 218A.190 is amended to read as follows:

- (1) Nonprescription medicinal preparations that contain in 100 milliliters, or as a solid or semisolid preparation, in 100 grams, not more than 200 milligrams of codeine or its salts may be sold over the counter subject to the following conditions:
- (a) That the medicinal preparation shall contain in addition to the codeine in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the codeine alone;
 - (b) That such preparation shall be dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter;
 - (c) That such preparation shall only be sold at retail without a prescription to a person at least eighteen (18) years of age and only by a pharmacist. An employee may complete the actual cash or credit transaction or delivery;
 - (d) That such preparations shall not be displayed in areas of the pharmacy open to the public; and
 - (e) That no person shall purchase and no pharmacist or practitioner shall sell to the same person within a forty-eight (48) hour period more than 120 milliliters of an exempt codeine preparation. Any person purchasing in excess of this limitation shall be deemed to be in illegal possession.
- (2) All wholesalers, manufacturers, and repackers shall keep a separate exempt codeine registry showing the following:
- (a) Date;
 - (b) Registration number of recipient;
 - (c) Name of recipient;
 - (d) Address;
 - (e) Name of preparation; and
 - (f) Quantity.
- (3) All pharmacists and practitioners shall keep a separate exempt codeine registry showing the following:
- (a) Date;

- (b) Name of recipient;
 - (c) Address;
 - (d) Name of preparation;
 - (e) Quantity; and
 - (f) Pharmacist's or practitioner's name.
- (4) Notwithstanding any other provision of this section, the Cabinet for **Health Services**~~[Human Resources]~~ may by regulation specifically prohibit any such codeine preparation from being sold over the counter due to actual or potential abuse.

Section 485. KRS 218A.200 is amended to read as follows:

- (1) Every practitioner who is authorized to administer or professionally use controlled substances, shall keep a record of such substances received by him, and a record of all such substances administered, dispensed, or professionally used by him otherwise than by prescription.
- (2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all controlled substances received and disposed of by them.
- (3) Pharmacists shall keep records of all controlled substances received and disposed of by them.
- (4) The record of controlled substances received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity. Every such record shall be kept for a period of two (2) years. The keeping of a record under the federal controlled substances laws, containing substantially the same information as is specified *in this subsection*~~[herein]~~, shall constitute compliance with this section. A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the Cabinet for **Health Services**~~[Human Resources]~~ as soon as practical.

Section 486. KRS 218A.230 is amended to read as follows:

All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

- (1) Except as otherwise provided in this section, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept.
- (2) The court by whom the forfeiture of controlled substances has been decreed may order the delivery of same to the Cabinet for **Health Services**~~[Human Resources]~~ for destruction. Practitioners, pharmacists, hospitals and nursing homes may voluntarily surrender controlled substances to the Cabinet for **Health Services**~~[Human Resources]~~ for destruction.
- (3) The Cabinet for **Health Services**~~[Human Resources]~~ shall keep a record of all substances received and of all substances disposed of, showing the exact kinds, quantities, and forms of such substances, the persons from whom received and the time, place and manner of destruction.
- (4) Prescriptions, orders, and records, required by this chapter, and stocks of controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.
- (5) No pharmacist, practitioner, manufacturer, or wholesaler or other custodian of records, prescriptions, or orders required by this chapter shall refuse to permit the inspection thereof by any federal, state, county or municipal officer whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

Section 487. KRS 218A.240 is amended to read as follows:

- (1) It is hereby made the duty of all peace officers within this state, the State Police, the Cabinet for **Health Services**~~[Human Resources]~~, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, to enforce all provisions of this chapter and

cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for **Health Services**~~[Human Resources]~~ shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for **Health Services**~~[Human Resources]~~.
- (4) Designated agents of the Cabinet for **Health Services**~~[Human Resources]~~ and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any controlled substance prescription upon tendering a receipt therefor.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
 - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
 - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
 - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.
 - (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) It shall be the duty of the Cabinet for **Health Services**~~[Human Resources]~~ to make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether or not any provision thereof has been violated.

Section 488. KRS 218A.250 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of this chapter. Administrative hearings on appeals filed pursuant to this chapter shall be conducted in accordance with KRS Chapter 13B.

Section 489. KRS 218A.275 is amended to read as follows:

- (1) Any person found guilty of possession of a controlled substance pursuant to KRS 218A.1416 or 218A.1417 may for a first offense, be ordered to a facility designated by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ where a program of treatment and rehabilitation not to exceed one (1) year in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated facility within the specified time, or if at any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than one (1) year or a fine of not more than five hundred dollars (\$500), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~, or his designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally

discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.

- (2) The secretary of the Cabinet for **Health Services**~~[Human Resources]~~, or his designee, shall inform each court of the identity and location of the facility to which such person is sentenced.
- (3) Transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary for **health services**~~[human resources]~~, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for **Health Services**~~[Human Resources]~~, unless the person and the facility shall arrange otherwise.
- (7) Prior to the imposition of sentence upon conviction of a second or subsequent offense, the court shall obtain a report of case progress and recommendations regarding further treatment from any facility at which the person was treated following his first conviction. If such material is not available, the court shall notify the secretary of the Cabinet for **Health Services**~~[Human Resources]~~, and the secretary shall cause the person to be examined by a psychiatrist employed by the cabinet to evaluate his mental condition and to make recommendations regarding treatment and rehabilitation. The psychiatrist making the examination shall submit a written report of his findings and recommendations regarding treatment and rehabilitation to the court which shall make the report available to the prosecuting attorney and the attorney for the defendant. The court shall take such reports into consideration in determining sentence. The secretary may decline to cause such examination to be made if the number of psychiatrists on duty in the cabinet is insufficient to spare one from his regular duties or if no such service may be purchased at regular cabinet rates; in such event the secretary shall notify the clerk of the court to that effect within three (3) days after receipt of notification by the court.
- (8) None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (9) In the case of any person who has been convicted for the first time of possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under the subsection and dismissal may occur only once with respect to any person.

Section 490. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 may be ordered to a facility designated by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for **Health Services**~~[Human Resources]~~, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.

- (2) The secretary of the Cabinet for **Health Services**~~[Human Resources]~~, or his designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary of the Cabinet for **Health Services**~~[Human Resources]~~, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for **Health Services**~~[Human Resources]~~, unless the person and the facility shall arrange otherwise.
- (7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana, the court may set aside and void the conviction upon satisfactory completion of treatment, probation or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

Section 491. KRS 218A.420 is amended to read as follows:

- (1) All property which is subject to forfeiture under this chapter shall be disposed of in accordance with this section.
- (2) All controlled substances which are seized and forfeited under this chapter shall be ordered destroyed by the order of the trial court unless there is a legal use for them, in which case they may be sold to a proper buyer as determined by the Cabinet for **Health Services**~~[Human Resources]~~ by promulgated regulations. Property other than controlled substances may be destroyed on order of the trial court.
- (3) When property other than controlled substances is forfeited under this chapter, the law enforcement agency may, subject to the provisions of KRS 218A.435:
 - (a) Retain it for official use;
 - (b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be paid into the fund created in KRS 218A.435. Any sale shall be a public sale advertised pursuant to KRS Chapter 424.

Section 492. KRS 218A.435 is amended to read as follows:

- (1) There is ~~hereby~~ created a trust and revolving fund in the executive branch of state government to be known as the "Asset Forfeiture Trust Fund" ~~herein~~ referred to **in this section** as the "trust fund."
- (2) The trust fund shall consist of proceeds from sale of property forfeited to the Commonwealth pursuant to KRS 218A.410, any moneys as may be appropriated by the General Assembly, and any investment interest earned on the fund. The moneys in this fund are intended to supplement any funds appropriated by the General Assembly to the agency which will receive disbursements from the trust fund as provided in this section.
- (3) The trust fund shall be managed by the state Office for Investment and Debt Management and all moneys in excess of the amount to be disbursed in a given fiscal year shall be invested to maximize returns. The principal and any interest earnings of the trust fund shall at no time lapse to the general fund.
- (4) The trust fund shall be administered and audited by the Justice Cabinet. The secretary of justice or his designee shall promulgate administrative regulations necessary to further the purposes of KRS 218A.405 to 218A.460.

- (5) The trust fund shall be disbursed in accordance with the provisions of subsection (6) of this section. All interest accumulated on the fund shall immediately be available for disbursement to the Justice Cabinet for costs associated with administration of the fund.
- (6) The Justice Cabinet shall, upon advice from the Office for Investment and Debt Management, allocate the moneys in the fund quarterly, on a percentage basis, as provided in subsection (7) of this section.
- (7) The principal of the trust fund shall be distributed as follows:
 - (a) Eighteen percent (18%) of the funds received in any fiscal year shall be allocated to the unified prosecutorial system to be disbursed by the Attorney General to those Commonwealth's attorneys or county attorneys who have participated in the forfeiture case;
 - (b) Thirty-six percent (36%) of the funds received in any fiscal year shall be allocated to the Cabinet for **Health Services**~~(Human Resources)~~ to be used solely for the purpose of drug and alcohol abuse education, prevention, and treatment;
 - (c) Thirty-six percent (36%) of the funds received in any fiscal year shall be allocated to the Department of Corrections to be used solely for programs related to drug enforcement and incarceration; and
 - (d) Ten percent (10%) of the funds received in any fiscal year shall be allocated to the Justice Cabinet to be used solely for the purpose of: training related to asset forfeiture; printing program related training materials, such as manuals or handbooks; or payments to state or local agencies for programs relative to crime prevention, drug abuse prevention, general law enforcement purposes, or other similar purposes relating to drug enforcement.
- (8) The Attorney General, the secretary of the Cabinet for **Health Services**~~(Human Resources)~~, the commissioner of the Department of Corrections, and the secretary of the Justice Cabinet or their designees shall each promulgate administrative regulations which itemize the programs on which the moneys allocated from the trust fund to their respective agencies shall be spent and the method by which those moneys shall be disbursed to local entities.
- (9) On July 13, 1990, each state and local law enforcement agency which seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to being eligible for the receipt of grants from the trust fund, adopt policies relating to the seizure, maintenance, storage, and care of property pending forfeiture which are in compliance with or which substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.
- (10) On July 13, 1990, each state or local law enforcement agency which seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to being eligible to receive grants from the trust fund, have one (1) or more officers currently employed attend asset forfeiture training as approved by the Kentucky Law Enforcement Council which shall approve a curriculum of study for asset forfeiture training.
- (11) Other provisions of this section notwithstanding, any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion. Proceeds from the sale shall remain with the agency and shall not be paid into the trust fund and shall not be considered for purposes of the limits established in subsection (12) of this section. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.
- (12) Other provisions of law notwithstanding, the first fifty thousand dollars (\$50,000) of forfeited coin or currency or of the proceeds from sale of any property forfeited pursuant to this chapter which was seized or forfeited by a single order of forfeiture, shall not be paid into the fund but ninety percent (90%) shall be paid to the law enforcement agency or agencies which seized the property to be used for direct law enforcement purposes and ten percent (10%) to the office of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding. The moneys are intended to supplement any funds appropriated to the recipient and shall not supplant other funding of any recipient. In addition, forty-five percent (45%) of all proceeds above fifty thousand dollars (\$50,000) shall not be paid into the fund but shall be retained by the law enforcement agency or agencies which seized the property to be used for direct law enforcement purposes.
- (13) When money or property is seized in a joint operation involving more than one (1) law enforcement agency, or prosecutorial office, the apportionment of funds to each pursuant to subsection (7)(a) of this section, or

pursuant to subsection (12) of this section, shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

Section 493. KRS 219.011 is amended to read as follows:

As used in KRS 219.011 to 219.081:

- (1) "Secretary" means the secretary of the Cabinet for **Health Services**; ~~Human Resources.~~
- (2) "Cabinet" means the Cabinet for **Health Services**; ~~Human Resources~~ or its designee; ~~;~~
- (3) "Hotel" means every building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public, and includes motels, tourist homes, and similar establishments, but excludes boarding houses and rooming houses; ~~and~~ ~~;~~
- (4) "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a hotel.

Section 494. KRS 219.320 is amended to read as follows:

As used in KRS 219.330 to 219.410:

- (1) "Secretary" means the secretary of the Cabinet for **Health Services**; ~~Human Resources.~~
- (2) "Cabinet" means the Cabinet for **Health Services**; ~~Human Resources.~~
- (3) "Mobile home" means a transportable dwelling unit suitable for year-round occupancy, which is manufactured on a chassis or undercarriage as an integral part thereof, containing facilities for water, sewage, bath and electrical conveniences; ~~;~~
- (4) "Mobile home lot" means a parcel of land in a mobile home park for the placement of a single mobile home; ~~;~~
- (5) "Mobile home park" means a parcel of land, under the control of any person, available to the public in which two (2) or more mobile home lots are occupied or intended for occupancy by mobile homes and includes any service building, structure, enclosure or other facility used as a part of the park; ~~;~~
- (6) "Park" means mobile home parks and recreational vehicle parks; ~~;~~
- (7) "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a park; ~~;~~
- (8) "Recreational vehicle" means any of the following:
 - (a) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation or vacation; ~~;~~
 - (b) "Pick-up coach" means a structure designed to be mounted on a truck for use as a temporary dwelling for travel, recreation or vacation; ~~;~~
 - (c) "Motor-home" means a portable, temporary dwelling to be used for travel, recreation or vacation, constructed as an integral part of a self-propelled vehicle; ~~;~~
 - (d) "Camping trailer" means a canvas or other collapsible folding structure, mounted on wheels and designed for travel, recreation or vacation use; ~~;~~
 - (e) "Dependent recreational vehicle" means a recreational vehicle which does not have toilet, lavatory, or bathing facilities; ~~or~~ ~~;~~
 - (f) "Self-contained recreational vehicle" means a recreational vehicle which can operate independent of connections to sewer, water and electric systems. It contains a water-flushed toilet, lavatory, shower or bath, kitchen sink, all of which are connected to water storage and sewage holding tanks located within the recreational vehicle.
- (9) "Recreational vehicle park" means a parcel of land available to the public in which two (2) or more recreational vehicle spaces are occupied or intended for occupancy by recreational vehicles for transient

dwelling purposes and includes any service building, structure, enclosure or other facility used as a part of the park; ~~and~~

- (10) "Recreational vehicle space" means a parcel of land in a recreational vehicle park for the placement of a single recreational vehicle; ~~and~~
- (11) "Sanitary station" means a facility used for receiving and disposing of wastes from recreational vehicle holding tanks; ~~and~~
- (12) "Service building" means a building containing water closets, urinals, lavatories and bathing facilities for use by persons using the park; **and** ~~and~~
- (13) "Watering station" means a facility for filling the water storage tanks of recreational vehicles with potable water from an approved water system.

Section 495. KRS 219.350 is amended to read as follows:

No park shall be constructed or altered without a permit as provided in KRS 219.310 to 219.410. An application for a permit to construct or alter a park shall be made to the cabinet upon forms provided by it. The application shall include plans for construction or alteration of the park and shall contain such information in regard to the proposed park as the cabinet may reasonably require, which may include affirmative evidence of ability to comply with requirements of KRS 219.310 to 219.410 and regulations adopted by the secretary. All plans for the construction, installation or alteration of buildings shall be forwarded by the cabinet to the Department of Housing, Buildings and Construction. Only the Department of Housing, Buildings and Construction shall review such plans for conformance with the uniform state building code. The Department of Housing, Buildings and Construction shall expedite the review of such plans and return them to the Cabinet for **Health Services** ~~Human Resources~~ for completion of the application process. Each application for a permit to construct or alter a park shall be accompanied by a permit fee of twenty-five dollars (\$25). Each permit to construct shall be issued only for the person and premises, including the number of spaces named in the application and shall not be transferable. Each permit to construct shall expire one (1) year from date of issuance.

Section 496. KRS 219.390 is amended to read as follows:

- (1) For the purpose of assisting in the developing and review of standards and regulations for the administration of KRS 219.310 to 219.410, there is hereby created a State Advisory Committee on Mobile Home and Recreational Vehicle Parks. The committee shall be composed of nine (9) members. The secretary for **health services** ~~human resources~~ or his designee shall be an ex officio member. The other members shall be appointed by the secretary for **health services** ~~human resources~~, three (3) of whom shall represent park owners, two (2) of whom shall represent mobile home and recreational vehicle dealers, two (2) of whom shall represent local health departments and one (1) member shall be a citizen at large.
- (2) All appointed members shall serve for a term of four (4) years except that, of the original appointees, two (2) shall serve for one (1) year, two (2) shall serve for two (2) years, two (2) shall serve for three (3) years and two (2) shall serve for four (4) years. All vacancies shall be filled in the manner of original appointment for the unexpired portion of the term only.
- (3) Members of the committee shall receive no compensation for their services, but may be reimbursed for necessary travel expenses.

Section 497. KRS 221.010 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

- (1) "Secretary" means the secretary of the Cabinet for **Health Services** ~~Human Resources~~;
- (2) "Cabinet" means the Cabinet for **Health Services** ~~Human Resources~~;
- (3) "Food" includes any article used by man for food, drink, confectionery or condiment, or which enters into the composition of the same whether simple, blended, mixed or compounded;
- (4) "Frozen food locker plant" means a location or establishment in which space in individual lockers is rented to persons for storage of frozen food and which is equipped with a chill room, sharp freezing facilities and facilities for cutting, preparing, wrapping and packaging meats and meat products, fruits and vegetables;
- (5) "Branch frozen food locker plant" means a location or establishment in which space in individual lockers is rented to persons for storage of frozen food after preparation for storage at a frozen food locker plant; **and**

- (6) "Sharp frozen" means the freezing of food in a room in which the temperature is zero (0) degrees Fahrenheit or lower.

Section 498. KRS 222.005 is amended to read as follows:

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

- (1) "Administrator" means the person or the designee of the person, in charge of the operation of an alcohol and other drug abuse prevention, intervention, or treatment program;~~[-]~~
- (2) "Agency" means a legal entity operating hospital-based or nonhospital-based alcohol and other drug abuse prevention, intervention, or treatment programs;~~[-]~~
- (3) "Cabinet" means the Cabinet for *Health Services*;~~[Human Resources.]~~
- (4) "Director" means the director of the Division of Substance Abuse of the Department for Mental Health and Mental Retardation Services;~~[-]~~
- (5) "Hospital" means an establishment with organized medical staff and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical;~~[-]~~
- (6) "Intoxication" means being under the influence of alcohol or other drugs, or both, which significantly impairs a person's ability to function;~~[-]~~
- (7) "Juvenile" means any person who is under the age of eighteen (18);~~[-]~~
- (8) "Other drugs" means controlled substances as defined in KRS Chapter 218A and volatile substances as defined in KRS 217.900;~~[-]~~
- (9) "Patient" means any person admitted to a hospital or a licensed alcohol and other drug abuse treatment program;~~[-]~~
- (10) "Program" means a set of services rendered directly to the public that is organized around a common goal of either preventing, intervening, or treating alcohol and other drug abuse problems;~~[-]~~
- (11) "Secretary" means the secretary of the Cabinet for *Health Services*;~~[Human Resources.]~~
- (12) "Alcohol and other drug abuse" means a dysfunctional use of alcohol or other drugs or both, characterized by one (1) or more of the following patterns of use:
 - (a) The continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by use of alcohol or other drugs or both;
 - (b) Use in situations which are potentially physically hazardous;
 - (c) Loss of control over the use of alcohol or other drugs or both; and
 - (d) Use of alcohol or other drugs or both is accompanied by symptoms of physiological dependence, including pronounced withdrawal syndrome and tolerance of body tissues to alcohol or other drugs or both;~~[-]~~
- (13) "Treatment" means services and programs for the care and rehabilitation of intoxicated persons and alcohol and other drug abusers; *and*~~[-]~~
- (14) "Narcotic treatment program" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic drug of that group.

Section 499. KRS 222.021 is amended to read as follows:

- (1) There is hereby created within the Cabinet for *Health Services*;~~[Human Resources.]~~ a Substance Abuse and Pregnancy Work Group. The work group shall carry out the planning and coordinating activities of the Commonwealth with regard to substance dependency and abuse during pregnancy.
- (2) The work group shall be appointed by the Secretary for *Health Services*;~~[Human Resources.]~~ and be composed of, but not restricted to, a representative of the Cabinet for *Health Services*;~~[Human Resources.]~~, Department

for **Public Health**~~Services~~, Division of Maternal and Child Health Services; Department for Social Services; Department for Mental Health and Mental Retardation Services, Division of Substance Abuse and Division of Mental Health; Department for Medicaid Services; Justice Cabinet, Department of State Police, Drug Enforcement, Special Investigations Unit; Department of Education, Division of Program Resources; Office of the Attorney General; Office for a Drug Free Kentucky; Regional Community Mental Health and Mental Retardation System; University of Louisville, School of Medicine, Department of Pediatrics; University of Kentucky Medical Center, Department of Obstetrics and Gynecology; local or district health department; Kentucky Psychological Association; Kentucky Pharmacists Association; Kentucky Hospital Association; Kentucky Nurses Association; and the Kentucky Medical Association. The Director of the Division of Substance Abuse shall serve as chairperson.

- (3) The work group shall meet at least quarterly and shall periodically assess the extent of alcohol and other substance dependency and abuse among Kentucky women who are pregnant; identify, develop, and coordinate resources available and needed within the Commonwealth for any person who is pregnant and at risk of alcohol and substance dependency or abuse; and identify, develop, and coordinate resources available and needed for infants and children exposed to alcohol or drugs during pregnancy.
- (4) The work group shall make an annual report, no later than January 1 of each year, of its activities and any recommendations to the Secretary of the Cabinet for **Health Services**~~Human Resources~~ and the Legislative Research Commission.
- (5) The provisions of subsections (1) to (4) of this section, creating a Substance Abuse and Pregnancy Work Group shall expire on July 15, 1998. As of that date, the Substance Abuse and Pregnancy Work Group shall cease to exist.

Section 500. KRS 222.037 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~Human Resources~~ may establish four (4) or more pilot projects within the Commonwealth to demonstrate the effectiveness of different methods of providing community services to prevent alcohol and substance abuse by pregnant females; improving agency coordination to better identify the pregnant substance abuser and other females who have substance abuse problems; linking with community services and treatment for the chemically dependent woman, her children, and other family members; and gaining access to early intervention services for infants in need.
- (2) The Cabinet may use any state appropriation and any gifts, grants, or federal funds that become available for the purposes of implementing the provisions of this section.

Section 501. KRS 222.421 is amended to read as follows:

- (1) Any person may request treatment from a physician or alcohol and other drug abuse program licensed or approved by the Cabinet for **Health Services**~~Human Resources~~ to provide alcohol and other drug abuse treatment services.
- (2) Every alcohol and other drug abuse program that provides intervention or treatment services to a person with an alcohol and other drug abuse problem or prevention programming to any persons in the community shall, upon request of the Cabinet for **Health Services**~~Human Resources~~, make a statistical report to the secretary, in a form and manner the secretary shall prescribe, of persons provided prevention, intervention, and treatment services during a specified period of time. The name or address of any person to whom prevention, intervention, or treatment services were provided shall not be reported. The secretary of the Cabinet for **Health Services**~~Human Resources~~ shall provide compilations of the statistical information to other appropriate agencies upon request.

Section 502. KRS 222.212 is amended to read as follows:

Notwithstanding the provisions of Chapter 13A, all administrative regulations promulgated by the Cabinet for Human Resources relating to the licensing of alcohol and drug abuse prevention, education, and treatment programs and on file with the Legislative Research Commission on July 15, 1994, shall remain in full force and effect unless subsequently amended or repealed by the Cabinet **for Health Services**.

Section 503. KRS 222.460 is amended to read as follows:

- (1) As a requirement to receive state or federal funds, including Medicaid, a treatment center or program licensed as a chemical dependency treatment service pursuant to KRS 216B.105 or this chapter shall participate in an

evaluation or client outcome effectiveness study conducted by the Cabinet for **Health Services**~~[Human Resources]~~.

- (2) Information for the evaluation shall include, but is not limited to, the following:
 - (a) The total number of alcohol and drug abuse clients admitted to treatment;
 - (b) The total number of referrals from the District and Circuit Courts and the Department of Corrections;
 - (c) The client's change in alcohol and other drug use patterns from admission to discharge from treatment;
 - (d) The client's change in employment status from admission to discharge from treatment; and
 - (e) The client's change in involvement with the criminal justice system from admission to discharge from treatment.
- (3) All information collected pursuant to this chapter shall be held confidential with respect to the identity of individual clients. Access to information that identifies individual clients may be provided to qualified persons or organizations with a valid scientific interest, as determined by the secretary of **health services**~~[human resources]~~, who are engaged in research related to patterns of drug and alcohol use, the effectiveness of treatment, or similar studies and who agree in writing to maintain confidentiality.

Section 504. KRS 222.475 is amended to read as follows:

The Cabinet for **Health Services**~~[Human Resources]~~ shall annually submit to the Governor a treatment center evaluation report. The report shall include, but not be limited to, the following information:

- (1) An inventory of all licensed chemical dependency treatment services in Kentucky;
- (2) The information submitted by each treatment center or program pursuant to KRS 222.460 and 222.465; and
- (3) The employment, educational, and criminal history of clients in each program that received state or federal funds.

Section 505. KRS 223.010 is amended to read as follows:

As used in KRS 223.020 to 223.080, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for **Health Services**~~[Human Resources]~~;
- (2) "Registered environmental health specialist or sanitarian" means a person trained in the field of environmental health who has qualified for registration in accordance with the provisions of this chapter;
- (3) "Secretary" means the secretary of the Cabinet for **Health Services**~~[Human Resources]~~; **and**
- (4) "Environmental health activity" means those program areas administered by the state and local health departments including, but not limited to, food protection, control of insect and rodents, radiation, private water supplies, on-site waste, and other environmental program areas. The term does not cover programs not administered by the cabinet.

Section 506. KRS 223.020 is amended to read as follows:

- (1) The secretary shall appoint a registered environmental health specialist or a sanitarian examining committee consisting of five (5) members. The secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall be an ex officio member. The other four (4) members shall be environmental health specialists or sanitarians who are registered under this chapter. The appointed members shall serve for terms of two (2) years and until their successors are appointed and qualify, except that when initial appointments are made under the provisions of this chapter, two (2) members' terms shall be for only one (1) year. Thereafter all appointments shall be for a period of two (2) years.
- (2) The examining committee shall conduct, or cause to be conducted, examinations of applicants pursuant to minimum standards and qualifications established by the secretary. The examining committee shall act in an advisory capacity to the secretary in establishing such minimum standards and qualifications.

Section 507. KRS 224.10-194 is amended to read as follows:

There are ~~hereby~~ transferred to and vested in the commissioner and the Department for **Public Health**~~[Services]~~ all functions, powers and duties, funds, personnel, equipment, and supplies relating to septic tank servicing under the

provisions of KRS 211.972 to 211.982, which said provisions of law have been conferred upon the Department of Environmental Protection and upon the secretary and other officers and offices of the Department of Environmental Protection.

Section 508. KRS 224.46-820 is amended to read as follows:

- (1) There is ~~hereby~~ created the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board consisting of nine (9) permanent members and three (3) temporary members. All members shall be residents of the Commonwealth of Kentucky. The secretary of the Cabinet for **Health Services** ~~Human Resources~~ or his designated representative shall be a permanent member of the board.
- (2) The other eight (8) permanent members of the board shall be appointed by the Governor. Except for initial appointments, board members shall be appointed for a term of four (4) years. Of the initial appointments, one (1) shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, two (2) for a term of three (3) years, and three (3) for a term of four (4) years. Each of the members appointed by the Governor shall hold office for the term for which he was appointed and until his successor shall have been appointed and taken office in his stead or until he shall resign or be removed in a manner provided by law.
- (3) The permanent membership of the board shall be composed of members having the following qualifications:
 - (a) Two (2) members having a demonstrated experience in hazardous waste management;
 - (b) Two (2) members from the Kentucky General Assembly;
 - (c) Two (2) members chosen from the science and engineering faculties of the institutions of higher education in Kentucky;
 - (d) One (1) member having demonstrated experience in industrial development planning; *and*
 - (e) One (1) member representative of the general public.
- (4) Three (3) temporary members of the board shall be appointed each time that an application for a certificate of environmental safety and public necessity is submitted. The temporary members of the board shall be appointed by the county judge/executive of the county in which a regional integrated waste treatment and disposal demonstration facility is proposed to be located and shall be bona fide residents of the county. The temporary members of the board shall be appointed within thirty (30) days of the declaration of intent required by KRS 224.46-825 and 224.46-830; however, failure of the appropriate appointing authority to appoint temporary members of the board within thirty (30) days shall not preclude the board from acting upon applications for certificates of environmental safety and public necessity. Temporary members of the board shall have all the rights and privileges of membership on the board while acting upon those applications for certificates for which they were appointed, but shall not participate in the transaction of other business by the board.
- (5) The permanent members of the board shall choose from among their membership a chairperson of the board.
- (6) Members of the board shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.
- (7) Staff services for the board shall be provided to the extent practicable by personnel of the cabinet; however, the board may request and receive the assistance of any state or municipal educational institution, experiment station, laboratory, or other agency and arrange by contract for governmental and nongovernmental assistance as necessary in the performance of its duties, including expenses for administrative start-up costs incidental to the organization of the board. Services provided by state and municipal agencies shall be reimbursed at cost.
- (8) The cabinet shall not provide legal representation to the board. The board may enter into personal service contracts pursuant to KRS Chapter 45A to obtain legal counsel for representation on appeals to Franklin Circuit Court and in other legal matters.
- (9) The board shall meet as necessary for the performance of its duties, upon the call of the chairperson or upon the request of seven (7) members of the board by delivery of written notice of the meeting to each member of the board at least five (5) days prior to the meeting.
- (10) Seven (7) members of the board shall constitute a quorum for the transaction of business of the board and all actions by the board shall require the affirmative vote of seven (7) members of the board.

Section 509. KRS 224.50-836 is amended to read as follows:

(1) The cabinet shall enter into a memorandum of understanding with the Cabinet for **Health Services**~~[Human Resources]~~ in order that the county health departments be utilized to aid in the enforcement of KRS 224.50-820 to 224.50-846. The cabinet shall reimburse the county health departments for expenses incurred to carry out this program.

(2) Violations of KRS 224.50-820 to 224.50-846 shall be subject to the penalties in KRS 224.99-010(8).

Section 510. KRS 224.71-110 is amended to read as follows:

(1) The Agriculture Water Quality Authority is ~~hereby~~ created and administratively attached to the cabinet. The authority shall be a multidiscipline peer group that shall evaluate, develop, and improve best management practices in conservation plans, compliance plans, and forest stewardship management plans; establish statewide and regional agriculture water quality plans; and otherwise promote soil and water conservation activities that protect waters of the Commonwealth from the adverse impacts of agriculture operations within the Commonwealth. The cabinet shall provide staff to the authority.

(2) Within six (6) months of July 15, 1994, the Soil and Water Conservation Commission shall submit to the Governor for appointment to the Agriculture Water Quality Authority a list of three (3) persons recommended by each of the following state agencies and organizations:

- (a) Kentucky Association of Conservation Districts;
- (b) Kentucky Department of Agriculture;
- (c) University of Kentucky College of Agriculture Cooperative Extension Service;
- (d) Kentucky Farm Bureau Federation, Inc.;
- (e) Division of Conservation, Natural Resources and Environmental Protection Cabinet;
- (f) Division of Forestry, Natural Resources and Environmental Protection Cabinet;
- (g) Kentucky Geological Survey; and
- (h) Environmental organizations.

The membership of the Agriculture Water Quality Authority appointed by the Governor shall consist of one (1) representative from each of the groups identified in paragraphs (a) to (h) of this subsection and three (3) members-at-large from agriculture operations. The Soil and Water Conservation Commission shall solicit nominations from Kentucky agriculture operations organizations and submit those names to the Governor for selection of the three (3) members-at-large from agriculture operations. The Governor shall select four (4) members to serve two (2) year initial terms, four (4) members to serve three (3) year initial terms, and three (3) members to serve four (4) year initial terms. All succeeding terms shall be four (4) year terms. A representative from the United States Soil Conservation Service and a representative from the United States Agriculture Stabilization and Conservation Service may also be appointed by the Governor to serve on the authority. One (1) representative each from the Division of Water, Natural Resources and Environmental Protection Cabinet and the Division of Environmental Health and Community Safety, Cabinet for **Health Services**~~[Human Resources]~~ shall serve as ex officio members.

(3) It shall be the responsibility of the Agriculture Water Quality Authority to establish, at a minimum, the following four (4) committees for agriculture operations, with membership outside the Agriculture Water Quality Authority:

- (a) Livestock, including but not limited to, beef, swine, dairy, poultry, and equine;
- (b) Crops, including but not limited to, tobacco, corn, soybeans, small grains, fruits and vegetables, pasture and timber;
- (c) Pesticides, fertilizers, and other agricultural chemicals; and
- (d) Farmstead issues.

(4) The Agriculture Water Quality Authority shall have the following responsibilities:

- (a) Review water quality data as available;
- (b) Review university research on water quality and alternative best management practices research;

- (c) Evaluate the adoption and effectiveness of best management practices, and modify best management practice design standards to improve water quality protection practices;
 - (d) Develop by July 1, 1996, state-wide agriculture water quality plans to address identifiable water pollution problems from agriculture operations, and continue to evaluate and modify the agriculture water quality plans, as necessary to prevent water pollution from agriculture operations;
 - (e) Assist with the review of state-funded and other water quality monitoring data and with the establishment of agriculture water priority protection regions;
 - (f) Provide technical assistance to persons engaged in agriculture operations and to the Soil and Water Conservation Commission in its efforts to coordinate water quality protection as related to agriculture operations;
 - (g) Work with the United States Soil Conservation Service, United States Agriculture Stabilization and Conservation Service, and conservation districts to disseminate to agriculture operations the best management practices, conservation plans, compliance plans, forest stewardship management plans, and agriculture water quality plans which address the protection of groundwater and surface water;
 - (h) Provide the Governor and the Legislative Research Commission with biennial reports of the progress of the Agriculture Water Quality Authority program; and
 - (i) Establish procedures for modifications to be incorporated into state-wide or regional agriculture water quality plans.
- (5) The cabinet's Division of Water shall approve or disapprove any statewide and regional water quality plan within thirty (30) days of receiving the plan from the Agriculture Water Quality Authority. All provisions of a statewide or regional water quality plan not found deficient shall be approved. If the Division of Water finds any provision of the statewide or regional agriculture water quality plan deficient, the Division of Water shall give written notice to the authority of those provisions found to be deficient. Within the thirty (30) days following the notice of deficiency, the authority shall deliver to the Division of Water a written response setting forth proposed solutions to the deficiencies. Any deficiencies which remain unresolved shall be resolved in a manner agreed to jointly by the Division of Water and the authority within sixty (60) days unless the Division of Water and authority jointly agree to an extension or alternate dispute resolution. The Division of Water shall approve or disapprove all modifications to the statewide and regional plans as set forth at KRS 224.71-120(8).

Section 511. KRS 227.560 is amended to read as follows:

- (1) There is hereby created the Manufactured Home Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to dealers.
- (2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for **Public Health**~~Services~~, or their designees, and six (6) citizens of the Commonwealth appointed by the Governor, which shall include three (3) manufactured or mobile home dealers, and three (3) members who shall have no interest in the industry to be regulated.
- (3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for **Public Health**~~Services~~ shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even-numbered years. Each member shall hold office until his successor is appointed and has qualified.
- (4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years, and three (3) to serve for four (4) years.
- (5) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.
- (6) The chairman of the board shall be the state fire marshal. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.
- (7) Each appointed member shall be entitled to fifty dollars (\$50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the

meeting, hearing, or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.

- (8) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.
- (9) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the office and shall function under the supervision of the administrative head of the office.

Section 512. KRS 227.565 is amended to read as follows:

- (1) There is hereby created the Recreational Vehicle Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to dealers.
- (2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for **Public Health**~~Services~~, or their designees, and six (6) citizens of the Commonwealth appointed by the Governor, which shall include one (1) manufacturer of recreational vehicles and two (2) recreational vehicle dealers, and three (3) members who shall have no interest in the industry to be regulated.
- (3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for **Public Health**~~Services~~ shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even numbered years. Each member shall hold office until his successor is appointed and has qualified.
- (4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years, and three (3) to serve for four (4) years.
- (5) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.
- (6) The chairman of the board shall be the state fire marshal. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.
- (7) Each appointed member shall be entitled to fifty dollars (\$50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.
- (8) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.
- (9) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the office and shall function under the supervision of the administrative head of the office.

Section 513. KRS 243.895 is amended to read as follows:

- (1) All licensed retail vendors of alcoholic beverages shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender neutral language supplied by the Cabinet for **Health Services**~~Human Resources~~, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.
- (2) A person who violates subsection (1) of this section shall be subject to a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50).

Section 514. KRS 258.005 is amended to read as follows:

As used in KRS 258.005 to 258.085 and subsections (1) and (2) of KRS 258.990, unless the context requires otherwise:

- (1) "Dog" means any member of the canine family; ~~[-]~~
- (2) "Owner," when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every person who keeps or harbors the dog or has it in his care, or permits it to remain on or about premises owned or occupied by him; ~~[-]~~
- (3) "Veterinarian" means a licensed practitioner of veterinary medicine; ~~[-]~~
- (4) "Qualified person" means a person granted a permit by the secretary for *health services* ~~[human resources]~~ to vaccinate animals against rabies and may include owners or operators of licensed kennels; ~~and~~ ~~[-]~~
- (5) "Vaccination" means the injection by a veterinarian or other qualified person of vaccine approved by, and administered in accordance with the regulations of the secretary for *health services* ~~[human resources]~~.

Section 515. KRS 258.015 is amended to read as follows:

Every owner shall have his dog initially vaccinated by the age of four (4) months and revaccinated against rabies at the expiration of the immunization period as certified by the veterinarian. The veterinarian or qualified person who vaccinates a dog shall issue to the owner thereof a vaccination certificate on a form prescribed and supplied by the Cabinet for *Health Services* ~~[Human Resources]~~. The vaccination certificate shall be prepared and issued in triplicate, one (1) copy to be retained by the issuing veterinarian or other qualified person, one (1) copy to be given to the owner of the dog vaccinated, and one (1) copy to be forwarded by the veterinarian or qualified person to the local health department, or, if none is maintained, to the Department for *Public Health* ~~[Services]~~. Each certificate shall bear the name and address of the veterinarian or qualified person who issued it. The veterinarian or qualified person shall also furnish each owner with a metal tag bearing a serial number and after January 1, 1980, the year of expiration of the immunization period. The tag may bear the name of the veterinarian or qualified person issuing it. It shall be affixed by the owner to a collar or harness furnished by him and shall be worn by the dog for which the certificate was issued. No one except the owner or his duly authorized agent shall remove the collar with the attached tag from the dog. Prior to their initial officially-recorded vaccination against rabies, all dogs shall be confined to the premises of the owner.

Section 516. KRS 258.035 is amended to read as follows:

Any owner who has had his dog vaccinated against rabies in another state by the proper authority therein shall not be required to have such dog revaccinated when brought into this state provided the requirements of such state under which the vaccination was made were of a standard not lower than those required in this state and provided further that such dog wears a tag affixed to his collar or harness bearing the date of such vaccination. One (1) year after the date of such vaccination such dog must be revaccinated unless provided otherwise by the rules and regulations of the secretary for *health services* ~~[human resources]~~. The secretary for *health services* ~~[human resources]~~ may make rules and regulations governing the matter of reciprocity with other states.

Section 517. KRS 258.043 is amended to read as follows:

- (1) Whenever a local board of health determines or is notified by the Cabinet for *Health Services* ~~[Human Resources]~~ that the rabies immunization level among dogs is low in the county or any portion thereof, the local health department shall sponsor mass immunization clinics at strategic locations and intervals throughout the area designated. The local health department shall contract with local veterinarians to administer the vaccine. If the services of veterinarians are not available in the area, the local health department may contract with other veterinarians or qualified persons designated by the Cabinet for *Health Services* ~~[Human Resources]~~. A reasonable fee, not to exceed five dollars (\$5), designated by the local board of health may be collected from each owner to help defray the cost of the clinic program.
- (2) Vaccination and licensing procedures may be jointly conducted at the clinics.
- (3) No owner shall be required to have his dog vaccinated at a public clinic if he elects to have his dog vaccinated privately by a veterinarian of his choice.

Section 518. KRS 258.055 is amended to read as follows:

Whenever a local board of health has reason to believe or has been notified by the Cabinet for *Health Services* ~~[Human Resources]~~ that there is danger that rabies may spread within the county or any portion thereof, the board shall publish a notice requiring owners of dogs or other specified animals in the area designated to confine the

animals for such periods as may be necessary to prevent the spread of rabies. If it is deemed advisable in the interest of public health, the local board of health shall order all dogs in the area revaccinated against rabies, and if the local board fails or neglects to do so, the Cabinet for **Health Services**~~[Human Resources]~~ may order the revaccination of all dogs or other animals in the area except animals that have been previously vaccinated within the past six (6) months under the provisions of KRS 258.005 to 258.085. The Cabinet for **Health Services**~~[Human Resources]~~ may aid the local health department in the execution of such emergency vaccinations.

Section 519. KRS 258.075 is amended to read as follows:

The secretary for **health services**~~[human resources]~~ may administer the provisions of KRS 258.005 to 258.085 and subsections (1) and (2) of KRS 258.990 through the local health departments and may make such rules and regulations and employ such personnel as are necessary to effectuate the purposes of KRS 258.005 to 258.085 and subsections (1) and (2) of KRS 258.990.

Section 520. KRS 258.085 is amended to read as follows:

A health officer or his agent shall have the authority to quarantine for a period not to exceed one hundred eighty (180) days any animal bitten by another animal known or suspected to have rabies, and to quarantine for a period not to exceed ten (10) days any animal which has bitten a human being or which exhibits symptoms of rabies. An animal so quarantined may be confined by the health officer at a designated place at the owner's expense. Whenever a dog dies with rabies or is suspected of having died with rabies or is destroyed because of having been suspected of being rabid, the owner thereof, whether the dog had been previously quarantined or not, shall at his own expense send the head of such dog to a laboratory approved by the secretary for **health services**~~[human resources]~~ in the manner prescribed by the rules and regulations of the secretary for **health services**~~[human resources]~~.

Section 521. KRS 258.365 is amended to read as follows:

Nothing in this chapter shall be construed to prohibit or limit the right of any city to pass or enforce any ordinance with respect to the regulation of dogs, the provisions of which are not inconsistent with the provisions of this chapter. Nothing in this chapter shall be construed to repeal any of the provisions of the fish and game laws of the Commonwealth of Kentucky now in effect, nor any laws relating to the powers and duties of the secretary for **health services**~~[human resources]~~, or any health officer relating to mad dogs or dogs affected with any disease, or to prohibit the destroying of licensed or unlicensed dogs in accordance with the provisions of any quarantine regulations, made in accordance with the provisions of any local or state health law.

Section 522. KRS 304.12-013 is amended to read as follows:

- (1) The purpose of this section is to prohibit unfair or deceptive practices in the transaction of life and health insurance with respect to the human immunodeficiency virus infection and related matters. This section applies to all life and health insurance contracts which are delivered or issued for delivery in Kentucky on or after July 13, 1990.
- (2) This section shall not prohibit an insurer from contesting the validity of an insurance contract or whether a claim is covered under an insurance contract to the extent allowed by law.
- (3) As used in this section:
 - (a) "Human immunodeficiency virus (HIV)" means the causative agent of acquired immunodeficiency syndrome (AIDS) or any other type of immunosuppression caused by the human immunodeficiency virus.
 - (b) "Insurance contract" means a contract issued by an insurer as defined in this section; and
 - (c) "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, a health maintenance organization, or a prepaid dental plan organization.
- (4) (a) In the underwriting of an insurance contract regarding human immunodeficiency virus infection and health conditions derived from such infection, the insurer shall utilize medical tests which are reliable predictors of risk. Only a test which is recommended by the Centers for Disease Control or by the Food and Drug Administration is deemed to be reliable for the purposes of this section. If a specific Centers for Disease Control or Food and Drug Administration recommended test indicates the existence or possible existence of human immunodeficiency virus infection or a health condition related to the human immunodeficiency virus infection, before relying on a single test to deny issuance of an

insurance contract, limit coverage under an insurance contract, or to establish the premium for an insurance contract, the insurer shall follow the applicable Centers for Disease Control or Food and Drug Administration recommended test protocol and shall utilize any applicable Centers for Disease Control or Food and Drug Administration recommended follow-up tests or series of tests to confirm the indication.

- (b) Prior to testing, the insurer shall disclose in writing its intent to test the applicant for the human immunodeficiency virus infection or for a specific health condition derived therefrom and shall obtain the applicant's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses and limitations, the meaning of its results, and the right to confidential treatment of information. Use of a form prescribed by the department shall raise a conclusive presumption of informed consent.
- (c) An applicant shall be notified of a positive test result by a physician designated by the applicant, or, in the absence of such designation, by the Cabinet for *Health Services*~~{Human Resources}~~. The notification shall include:
 - 1. Face-to-face post test counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which might spread the disease to others;
 - 2. The availability in the geographic area of any appropriate health care services, including mental health care, and appropriate social and support services;
 - 3. The benefits of locating and counseling any person by whom the infected person may have been exposed to human immunodeficiency virus and any person whom the infected person may have exposed to the virus; and
 - 4. The availability, if any, of the services of public health authorities with respect to locating and counseling any person described in subparagraph 3 of this paragraph.
- (d) A medical test for human immunodeficiency virus infection or for a health condition derived from the infection shall only be required or given to an applicant for an insurance contract on the basis of the applicant's health condition or health history, on the basis of the amount of insurance applied for, or if the test is required of all applicants.
- (e) An insurer may ask whether an applicant for an insurance contract has been tested positive for human immunodeficiency virus infection or other health conditions derived from such infection. Insurers shall not inquire whether the applicant has been tested for or has received a negative result from a specific test for human immunodeficiency virus infection or for a health condition derived from such infection.
- (f) Insurers shall maintain strict confidentiality of the results of tests for human immunodeficiency virus infection or a specific health condition derived from human immunodeficiency virus infection. Information regarding specific test results shall be disclosed only as required by law or pursuant to a written request or authorization by the applicant. Insurers may disclose results pursuant to a specific written request only to the following persons:
 - 1. The applicant;
 - 2. A licensed physician or other person designated by the applicant;
 - 3. An insurance medical information exchange under procedures that are used to assure confidentiality, such as the use of general codes that also cover results of tests for other diseases or conditions not related to human immunodeficiency virus infection;
 - 4. For the preparation of statistical reports that do not disclose the identity of any particular applicant;
 - 5. Reinsurers, contractually retained medical personnel, and insurer affiliates if these entities are involved solely in the underwriting process and under procedures that are designed to assure confidentiality;
 - 6. To insurer personnel who have the responsibility to make underwriting decisions; and
 - 7. To outside legal counsel who needs the information to represent the insurer effectively in regard to matters concerning the applicant.

- (g) Insurers shall use for the processing of human immunodeficiency virus related tests only those laboratories that are certified by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, which permit testing of specimens in interstate commerce, and which subject themselves to ongoing proficiency testing by the College of American Pathologists, the American Association of Bio Analysts, or an equivalent program approved by the Centers for Disease Control.
- (5) (a) An insurance contract shall not exclude coverage for human immunodeficiency virus infection. An insurance contract shall not contain benefit provisions, terms, or conditions which apply to human immunodeficiency virus infection in a different manner than those which apply to any other health condition. Insurance contracts which violate this paragraph shall be disapproved by the commissioner pursuant to KRS 304.14-130(1)(a), 304.32-160, 304.38-050, and 304.43-030.
- (b) A health insurance contract shall not be canceled or nonrenewed solely because a person or persons covered by the contract has been diagnosed as having or has been treated for human immunodeficiency virus infection.
- (c) Sexual orientation shall not be used in the underwriting process or in the determination of which applicants shall be tested for exposure to the human immunodeficiency virus infection. Neither the marital status, the living arrangements, the occupation, the gender, the beneficiary designation, nor the zip code or other territorial classification of an applicant's sexual orientation.
- (d) This subsection does not prohibit the issuance of accident only or specified disease insurance contracts.

Section 523. KRS 304.17-412 is amended to read as follows:

- (1) Every health insurer proposing to issue or deliver in this state a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by a private review agent shall:
 - (a) Be a registered private review agent in accordance with KRS 211.462; or
 - (b) Contract with a private review agent that has been registered in accordance with KRS 211.462.
- (2) Notwithstanding any other provision of KRS 211.461 to 211.466, an insurer shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
 - (a) Notice of denial has been issued. The notice shall inform patients and health care providers of their right to appeal adverse determinations of the private review agent to the Cabinet for **Health Services**~~Human Resources~~ under the dispute resolution process established pursuant to KRS 211.464(1)(g). The notice shall also include instructions on filing an appeal to the cabinet; and
 - (b) The insurer is in compliance with subsection (1) of this section.

Section 524. KRS 304.17A-010 is amended to read as follows:

As used in KRS 304.17A-010 to 304.17A-070:

- (1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and is certified by the alliance pursuant to KRS 304.17A-070. The term includes any self-insured plan provided by the state employee benefit fund established under KRS 18A.2281;~~;~~
- (2) "Alliance" means the Kentucky Health Purchasing Alliance created by KRS 304.17A-020;~~;~~
- (3) "Alliance member" means both mandatory and voluntary alliance members;~~;~~
- (4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices;~~;~~
- (5) "Commissioner" means the commissioner of the Kentucky Department of Insurance.
- (6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees;~~;~~

- (7) "Health purchasing alliance" means an agency attached for administrative purposes to the department but which operates independently of the department and that provides member purchasing services and detailed information to its members on comparative prices, usage, outcomes, quality, and enrollee satisfaction with accountable health plans and which was previously certified by the Kentucky Health Policy Board;{+}
- (8) "Consumer" means an individual user of health care services;{+}
- (9) "Department" means the Kentucky Department of Insurance;{+}
- (10) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision;{+}
- (11) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
- (a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;
 - (b) Chiropractors licensed pursuant to KRS Chapter 312;
 - (c) Dentists licensed pursuant to KRS Chapter 313;
 - (d) Optometrists licensed pursuant to KRS Chapter 320;
 - (e) Physician assistants regulated pursuant to KRS Chapter 311;
 - (f) Nurse practitioners licensed pursuant to KRS Chapter 314; and
 - (g) Other health care practitioners as determined by the department by administrative regulations promulgated pursuant to KRS Chapter 13A;{+}
- (12) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; a provider-sponsored integrated health delivery network which complies with financial and other criteria established by the department to protect against financial insolvency and to assure capability of providing required services or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;{+}
- (13) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or standard and supplemental health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, or student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, and, upon approval by the department, individual limited guaranteed renewable hospital or medical expense policies whose provisions and terms may not be changed by the insurer, which were issued prior to January 1, 1994, and conversion policies for group health policies existing on January 1, 1994, if the department determines that the individual limited guaranteed renewable expense policies and conversion policies provide benefits that are less than the benefits provided by the basic health benefit plan as defined by the department;{+}
- (14) "Health status" means an assessment of an individual's mental and physical condition;{+}
- (15) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:
- (a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;
 - (b) Contracts with selected health care providers;

- (c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;
 - (d) Controlled access to and coordination of services by a case manager; and
 - (e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high cost patient care; ~~---~~
- (16) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans; ~~---~~
- (17) (a) "Mandatory alliance member" means:
- 1. Any person for whom the Commonwealth provides health insurance pursuant to KRS 18A.225 to 18A.229;
 - 2. Elected and salaried employees of local school districts;
 - 3. Employees of local and district health departments;
 - 4. Justices, judges, clerks, deputy clerks, and all other employees of the Judicial Department; and
 - 5. Recipients under the Kentucky Medical Assistance Program under KRS Chapter 205, to the extent the basic benefit package offered by the alliance covers those mandatory Medicaid services required to be offered by federal law if the following conditions are met:
 - a. The Cabinet for **Health Services**~~{Human Resources}~~ determines enrolling Medicaid recipients in the alliance to be practicable; and
 - b. Necessary waivers are obtained by the Cabinet for **Health Services**~~{Human Resources}~~ from the Federal Health Care Financing Administration to permit enrolling Medicaid recipients in the alliance.
- (b) With respect to subparagraphs 2. to 4. of paragraph (a) of this subsection, "mandatory alliance member" means only those positions or offices for which health care coverage is provided on July 15, 1994 or for which health care coverage is extended after July 15, 1994, and nothing in this subsection shall be construed to mandate provision of health care coverage for positions and offices within the scope of those subparagraphs if that coverage was not in effect on July 15, 1994; ~~---~~
- (c) With respect to those persons listed in subparagraphs 2. to 4. of paragraph (a) of this subsection, alliance membership shall be mandatory effective January 1, 1996, except those persons covered under a health insurance contract in effect as of April 1, 1994, and which is still in effect as of January 1, 1996, shall not be required to be a member of the alliance until the termination date of the contract; ~~---~~
- (18) "Medical outcomes" means a change in an individual's health status after the provision of health services; ~~---~~
- (19) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals; ~~---~~
- (20) "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals; ~~---~~
- (21) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees; ~~---~~
- (22) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms; **and** ~~---~~
- (23) "Voluntary alliance member" means:
- (a) An employer with fifty (50) employees or less who voluntarily chooses to participate in a health purchasing alliance except that any employer who provides health plan benefits for one employee shall provide health plan benefits for all employees, including part-time employees; or
 - (b) An individual who voluntarily chooses to participate in a health purchasing alliance; or
 - (c) An affiliated group or association consisting of fifty (50) individuals or less who voluntarily choose to participate in the health purchasing alliance as a group; or

- (d) Employees of state institutions of higher education; or
- (e) Elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts excluding school districts.

Section 525. KRS 304.17A-160 is amended to read as follows:

- (1) The department shall define five (5) standard health benefit plans, one (1) of which shall be a basic benefit plan and one (1) of which shall provide coverage exactly comparable to the coverage provided under Kentucky Kare Standard as of January 1, 1994. All standard health benefit plans defined by the Kentucky Health Policy Board prior to July 15, 1996, shall continue as standard health benefit plans until the department amends or replaces the existing standard health benefit plans. The department may approve additional standard benefit plans pursuant to KRS 304.17A-080.
- (2) Notwithstanding any other provision of this chapter to the contrary, on and after July 15, 1995:
 - (a) No insurer doing business in Kentucky shall issue or renew health benefit plans other than the standard health benefit plans established by the department and the supplemental plans approved by the department pursuant to paragraph (c) of this subsection except as provided in paragraph (f) of this subsection, and any of the standard health benefit plans and supplemental plans offered shall be offered on a guaranteed-issue basis to any applicant who has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy;
 - (b) Every insurer shall, as a condition of transacting business in this state, offer and issue the basic health benefit plan on a guaranteed-issue basis;
 - (c) Each insurer may offer supplemental policies that are approved by the department and that are advertised, marketed, and designed as a supplement to the standard health benefit plans. No benefits paid under the supplemental policies shall duplicate benefits paid under the standard health benefit plans.
 - (d) An insurer may elect to offer health benefit plans only to individuals and groups that purchase coverage through the Kentucky Health Purchasing Alliance and not offer coverage to individuals and groups that purchase coverage outside the alliance;
 - (e) No insurer shall exclude any eligible person or dependent, who would otherwise be covered under a group health benefit plan, on the basis of an actual or expected health condition of the person; and
 - (f) Any person or group covered on July 15, 1996, by a health benefit plan which is not a standard plan may, until the date twelve (12) months after July 15, 1996, elect to renew the current coverage as long as the benefits provided remain exactly the same and renewal is guaranteed.
- (3) Each of the standard and supplemental health benefit plans shall be in two (2) forms, one (1) of which shall be in the form of insurance and the second of which shall be consistent with the basic method of operation and benefit plans of health maintenance organizations, including federally-qualified health maintenance organizations or integrated health networks. Each of the standard and supplemental plans shall provide for two (2) levels of cost sharing. The department and the Health Insurance Advisory Council shall take into consideration the levels of benefits provided in health benefit plans in Kentucky and appropriate medical and economic factors. The plans shall include cost containment features, such as utilization review of health care services, including review of medical necessity of hospital and physician services; hospice care at least equal to the Medicare benefits; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions. If a standard or supplemental health benefit plan issued by an insurer covers services which the plan's beneficiaries lawfully obtain from health departments established pursuant to KRS Chapter 212 in medically-underserved areas designated by the Cabinet for **Health Services**~~[Human Resources]~~, that insurer shall pay the plan's established rate for those services to the health department.
- (4) All policies and contracts providing health care benefits issued or renewed on or after July 15, 1995, except as provided in paragraph (f) of subsection (2) of this section, shall be uniform in structure, language, designation, and format to the standard benefit plans defined by the department or shall be a supplemental plan based on a standard plan, and shall be filed with and approved by the department before being delivered or issued for delivery in Kentucky.

- (5) The department shall inform residents of Kentucky of the existence and provisions of the standard benefit plans. The department shall develop an outline and chart of coverage that describes the features of each of the standard benefit plans available in Kentucky. The department shall broadly publicize a twenty-four (24) hour toll-free telephone number for information on health care benefit plans available in Kentucky.
- (6) Any insurer that between July 15, 1994, and July 15, 1995, knowingly and willfully terminates coverage of any insured or dependent solely because the insured is eligible for coverage through a health purchasing alliance shall be prohibited from issuing or delivering any health benefit plan in the Commonwealth for a period of five (5) years from the date of exclusion.
- (7) All standard health benefit plans shall coordinate benefits with other health benefit plans in accordance with the guidelines for coordination of benefits prescribed by the commissioner as provided in KRS 304.18-085.
- (8) Every health insurer of any kind, nonprofit hospital, medical-surgical, dental and health service corporation, health maintenance organization, or provider-sponsored health delivery network that issues or delivers an insurance policy in this state that directs or gives any incentives to insureds to obtain health care services from certain health care providers shall not imply or otherwise represent that a health care provider is a participant in or an affiliate of an approved or selected provider network unless the health care provider has agreed in writing to the representation or there is a written contract between the health care provider and the insurer or an agreement by the provider to abide by the terms for participation established by the insurer. This requirement to have written contracts shall apply whenever an insurer includes a health care provider as a part of a preferred provider network or otherwise selects, lists, or approves certain health care providers for use by the insurer's insureds. The obligation set forth in this section for an insurer to have written contracts with providers selected for use by the insurer shall not apply to emergency or out-of-area services.

Section 526. KRS 304.18-045 is amended to read as follows:

- (1) Every health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by a private review agent shall:
 - (a) Be a registered private review agent in accordance with KRS 211.462; or
 - (b) Contract with a private review agent that has been registered in accordance with KRS 211.462.
- (2) Notwithstanding any other provision of KRS 211.461 to 211.466, an insurer shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
 - (a) Notice of denial has been issued. The notice shall inform patients and health care providers of their right to appeal adverse determinations of the private review agent to the Cabinet for **Health Services**~~Human Resources~~ under the dispute resolution process established pursuant to KRS 211.464(1)(g). The notice shall also include instructions on filing an appeal to the cabinet; and
 - (b) The insurer is in compliance with subsection (1) of this section.

Section 527. KRS 304.32-147 is amended to read as follows:

- (1) Every nonprofit hospital, medical-surgical, dental, and health service corporation proposing to issue or deliver in this state a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by a private review agent shall:
 - (a) Be a registered private review agent in accordance with KRS 211.462; or
 - (b) Contract with a private review agent that has been registered in accordance with KRS 211.462.
- (2) Notwithstanding any other provision of KRS 211.461 to 211.466, a nonprofit hospital, medical-surgical, dental, and health service corporation shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
 - (a) Notice of denial has been issued. The notice shall inform patients and health care providers of their right to appeal adverse determinations of the private review agent to the Cabinet for **Health Services**~~Human Resources~~ under the dispute resolution process established pursuant to KRS 211.464(1)(g). The notice shall also include instructions on filing an appeal to the cabinet; and

- (b) The nonprofit hospital, medical-surgical, dental, and health service corporation is in compliance with subsection (1) of this section.

Section 528. KRS 304.38-225 is amended to read as follows:

- (1) Every health maintenance organization in this state which provides coverage of hospital benefits and requires the utilization review of such benefits or administers a health benefit program which provides for the coverage of hospital benefits and requires the utilization review of such benefits by a private review agent shall:
- (a) Be a registered private review agent in accordance with KRS 211.462; or
- (b) Contract with a private review agent that has been registered in accordance with KRS 211.462.
- (2) Notwithstanding any other provision of KRS 211.461 to 211.466, a health maintenance organization shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
- (a) Notice of denial has been issued. The notice shall inform patients and health care providers of their right to appeal adverse determinations of the private review agent to the Cabinet for **Health Services**~~{Human Resources}~~ under the dispute resolution process established pursuant to KRS 211.464(1)(g). The notice shall also include instructions on filing an appeal to the cabinet; and
- (b) The health maintenance organization is in compliance with subsection (1) of this section.

Section 529. KRS 311.131 is amended to read as follows:

As used in KRS 311.131 to 311.139:

- (1) "Utilization review" means a set of techniques used by or on behalf of purchasers of health benefits to manage health care costs by influencing patient care decision making through case-by-case assessments of the appropriateness of care prior to its provision;
- (2) "Private review agent" means a nonhospital-affiliated person or entity that contracts to provide utilization review for:
- (a) An employer who provides health insurance benefits; or
- (b) A third party payer that provides or administers hospital and medical benefits to citizens of this state, including a health maintenance organization, a health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts, or benefits in this Commonwealth;
- (3) "Utilization review plan" means a description of the utilization review procedures of a private review agent;
- (4) "Cabinet" means the Cabinet for **Health Services**~~{Human Resources}~~; and
- (5) "Certificate" means a certificate of registration granted by the Cabinet for **Health Services**~~{Human Resources}~~ to a private review agent.

Section 530. KRS 311.132 is amended to read as follows:

- (1) A private review agent which approves or disapproves payment or the rendering of services, or both, or who recommends approval or denial of payment for hospital or medical services or whose review results in approval or denial of payment for hospital or medical services on a case-by-case basis shall not conduct utilization review in this state unless the Cabinet for **Health Services**~~{Human Resources}~~ has granted the private review agent a certificate.
- (2) (a) The cabinet may waive the requirements of KRS 311.131 to 311.139 for the activities of a private review agent in connection with a contract with the federal government for utilization review of patients eligible for hospital and medical services under the Social Security Act.
- (b) No certificate is required for those private review agents conducting general in-house utilization review for hospitals, home health agencies, preferred provider organizations, or other managed care entities, clinics, private offices or any other health facility or entity, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. The general in-house utilization review shall be exempt from the provisions of KRS 311.131 to 311.139.

- (c) No certificate shall be required for utilization review by any licensed pharmacist or pharmacy, organizations of either, while engaged in the practice of pharmacy, including, but not limited to, dispensing of drugs, participation in drug utilization reviews, and monitoring patient drug therapy.
- (d) The cabinet shall waive the requirements of KRS 311.135 except for the application fee for the activities of a private review agent, certified under the law of another state, where the certification procedures of the other state are at least as stringent as those of KRS 311.135.

- (3) A certificate issued under the provisions of KRS 311.131 to 311.139 shall not be transferable.

Section 531. KRS 311.133 is amended to read as follows:

- (1) The Cabinet for **Health Services**~~[Human Resources]~~ shall adopt regulations to implement the provisions of KRS 311.131 to 311.139.
- (2) Any information required by the cabinet with respect to customers, patients, or utilization review procedures of a private review agent shall be held in confidence and not disclosed to the public.
- (3) The cabinet may establish reporting requirements to:
 - (a) Evaluate the effectiveness of private review agents; and
 - (b) Determine if the utilization review programs are in compliance with the provisions of KRS 311.131 to 311.139 and applicable regulations.

Section 532. KRS 311.241 is amended to read as follows:

- (1) Each hospital licensed under the provisions of KRS Chapter 216B shall, as a condition of licensure, establish an organ procurement for transplant protocol, in consultation with a federally-certified organ procurement organization, which encourages organ donation and identifies potential organ donors.
- (2) When an individual has died or has been identified by a medical hospital staff member as having a terminal condition and is further identified as a potential organ donor and meets the criteria set forth in the hospital's organ procurement for transplant protocol, the hospital administrator or his official designee shall then notify the federally-certified organ procurement organization of the potential availability of the organ. The notification of the federally certified organ procurement organization as to the identity of a potential organ donor shall be documented in such patient's medical record. Any identified contraindication to organ donation shall be documented in the patient's medical record.
- (3) Any hospital licensed under the provisions of KRS Chapter 216B which performs any transplantable organ transplant shall report to the Cabinet for **Health Services**~~[Human Resources]~~, Office of the Inspector General, any information relating to the possible sale, purchase, or brokering of a transplantable organ.

Section 533. KRS 311.250 is amended to read as follows:

No itinerant medical company of two (2) or more persons shall travel as a troupe or company as vendors of any drug, nostrum, or instrument intended for the treatment of any disease or injury, or by any writing or printing profess to the public to treat disease or deformity by the use of any drug, nostrum, or instrument without first obtaining a license from the secretary for **health services**~~[human resources]~~. The fee for such license shall be one hundred dollars (\$100) per month. The secretary shall issue licenses to reputable and worthy applicants upon payment of the fee each month, but may for sufficient cause refuse to issue such license.

Section 534. KRS 311.378 is amended to read as follows:

- (1) All physicians licensed pursuant to this chapter who maintain a private office shall post in a prominent place in the patient waiting room a printed sign supplied by the Cabinet for **Health Services**~~[Human Resources]~~ that is at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high and with gender neutral language, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.
- (2) Any person who violates the provisions of subsection (1) of this section shall be subject to a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50).

Section 535. KRS 311.530 is amended to read as follows:

There is hereby created in state government an independent board to be known as the State Board of Medical Licensure which shall exercise all medical and osteopathic licensure functions heretofore exercised by the State Board of Health. The offices of the board shall be maintained at such place as is designated by the board. The board shall consist of thirteen (13) members, including the commissioner of **public health**~~services~~, the dean of the University of Kentucky College of Medicine, the dean of the University of Louisville School of Medicine and ten (10) members appointed by the Governor. One (1) member shall be a licensed osteopathic physician and shall be appointed from a list of three (3) names submitted by the Kentucky Osteopathic Association. Seven (7) members shall be licensed medical physicians and shall be appointed from a list of three (3) names submitted for each position by the Kentucky Medical Association. Two (2) members shall be citizens at large who are representatives of any recognized consumer advocacy groups with an interest in the delivery of health care and are not associated with or financially interested in the practice or business regulated.

Section 536. KRS 311.535 is amended to read as follows:

The appointed members of the State Board of Medical Licensure shall hold office for terms of four (4) years and until their successors are appointed and qualify. The commissioner of **public health**~~services~~ and the deans of the medical schools shall hold office only while holding their respective titles. All appointed members who held office as of January 1, 1986, shall continue to hold office until the expiration of their respective terms. The terms of all appointed members of the board shall expire on August 31 of the last year of their respective terms.

Section 537. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;
- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
- (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;
- (8) "Temporary permit" means a permit issued to a person who has applied for a regular or limited license, and who appears from verifiable information in the application to the secretary to be qualified and eligible therefor;
- (9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing him to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;
- (10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
- (11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by emergency medical technicians or medical emergency dispatchers certified by the Cabinet for **Health Services**~~Human Resources~~, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for **Health Services**~~Human Resources~~ by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;

- (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- (13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;
- (14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;
- (15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding; and
- (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation.

Section 538. KRS 311.623 is amended to read as follows:

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

Section 539. KRS 311.653 is amended to read as follows:

The Board of Medical Licensure shall, by regulation, require an applicant for certification as a paramedic to have completed a Cabinet for *Health Services*~~[Human Resources]~~ approved educational course on the transmission, control, treatment and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.

Section 540. KRS 311.654 is amended to read as follows:

- (1) The Board of Medical Licensure shall promulgate administrative regulations relating to paramedics. The regulations may include, but need not be limited to, the classification and certification of paramedics, instructor-trainers, instructors, and students and trainees; examinations; standards of training and experience; curricula standards; administration of drugs and controlled substances by paramedics under the direction or supervision of licensed physicians; issuance, renewal, suspension, denial, and revocation of certificates, and such other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services.
- (2) Any continuing education required by the Board of Medical Licensure shall include a Cabinet for *Health Services*~~[Human Resources]~~ approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.
- (3) The Kentucky Board of Medical Licensure shall enter into an agreement with the Cabinet for *Health Services*~~[Human Resources]~~ whereby the cabinet's lead agency for emergency medical services shall carry out the day-to-day administration of this section under administrative regulations promulgated by the Board of Medical Licensure. The Kentucky Emergency Medical Services Council will provide advice and recommendations to the Kentucky Board of Medical Licensure related to the provisions of KRS 311.650 to 311.658.

Section 541. KRS 311.720 is amended to read as follows:

As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context otherwise requires:

- (1) "Abortion" shall mean the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death;~~[-]~~
- (2) "Hospital" shall mean those institutions licensed in the Commonwealth of Kentucky pursuant to the provisions of KRS Chapter 216;~~[-]~~
- (3) "Consent" as used in KRS 311.710 to 311.820 with reference to those who must give their consent shall mean an informed consent expressed by a written agreement to submit to an abortion on a written form of consent to be promulgated by the secretary for *health services*; ~~human resources.~~
- (4) "Cabinet" shall mean the Cabinet for *Health Services* ~~Human Resources~~ of the Commonwealth of Kentucky;~~[-]~~
- (5) "Fetus" shall mean a human being from fertilization until birth;~~[-]~~
- (6) "Human being" shall mean any member of the species homo sapiens from fertilization until death;~~[-]~~
- (7) "Physician" shall mean any person licensed to practice medicine in the Commonwealth or osteopathy pursuant to the provisions of this chapter;~~[-]~~
- (8) "Viability" shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother; *and* ~~[-]~~
- (9) "Accepted medical procedures" shall mean procedures of the type performed in the manner and in a facility with equipment sufficient to meet the standards of medical care which physicians engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.

Section 542. KRS 311.732 is amended to read as follows:

- (1) For purposes of this section the following definitions shall apply:
 - (a) "Minor" means any person under the age of eighteen (18);
 - (b) "Emancipated minor" means any minor who is or has been married or has by court order or otherwise been freed from the care, custody, and control of her parents; and
 - (c) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.
- (2) No person shall perform an abortion upon a minor unless:
 - (a) The attending physician or his agent secured the informed written consent of the minor and one (1) parent or legal guardian;
 - (b) The minor is emancipated and the attending physician or his agent has received the informed written consent of the minor; or
 - (c) The minor elects to petition any Circuit or District Court of the Commonwealth pursuant to subsection (3) of this section and obtain an order pursuant to subsection (4) of this section granting consent to the abortion and the attending physician or his agent has received the informed written consent of the minor.
- (3) Every minor shall have the right to petition any Circuit or District Court of the Commonwealth for an order granting the right to self-consent to an abortion pursuant to the following procedures:
 - (a) The minor or her next friend may prepare and file a petition setting forth the request of the minor for an order of consent to an abortion;
 - (b) The court shall insure that the minor prepares or her next friend is given assistance in preparing and filing the petition and shall insure that the minor's identity is kept anonymous;
 - (c) The minor may participate in proceedings in the court on her own behalf or through her next friend and the court shall appoint a guardian ad litem for her. The court shall advise her that she has a right to court appointed counsel and shall provide her with such counsel upon her request;

- (d) All proceedings under this section shall be anonymous and shall be given preference over other matters to insure that the court may reach a decision promptly, but in no case shall the court fail to rule within seventy-two (72) hours of the time of application, provided that the seventy-two (72) hour limitation may be extended at the request of the minor; and
 - (e) The court shall hold a hearing on the merits of the petition before reaching a decision. The court shall hear evidence at the hearing relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.
- (4) The court shall enter a written order, making specific factual findings and legal conclusions supporting its decision as follows:
 - (a) Granting the petition for an abortion if the court finds that the minor is mature and well-informed enough to make the abortion decision on her own;
 - (b) Granting consent to the abortion if the court finds that the performance of the abortion would be in the minor's best interest; or
 - (c) Deny the petition, if the court finds that the minor is immature and that performance of the abortion would not be in the minor's best interest.
 - (5) Any minor shall have the right of anonymous and expedited appeal to the Court of Appeals, and that court shall give precedence over other pending matters.
 - (6) No fees shall be required of any minor who declares she has no sufficient funds to pursue the procedures provided by this section.
 - (7) The Supreme Court is respectfully requested to promulgate any rules and regulations it feels are necessary to ensure that proceedings under this section are handled in an expeditious and anonymous manner.
 - (8) The requirements of subsections (2), (3), and (4) of this section shall not apply when, in the best medical judgment of the physician based on the facts of the case before him, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion. A physician who does not comply with subsection (2), (3), or (4) of this section due to the utilization of this exception shall certify in writing the medical indications upon which his judgment was based.
 - (9) A report indicating the basis for any medical judgment that warrants failure to obtain consent pursuant to this section shall be filed with the Cabinet for **Health Services**~~[Human Resources]~~ on a form supplied by the cabinet. This report shall be confidential.
 - (10) Failure to obtain consent pursuant to the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this state shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

Section 543. KRS 311.908 is amended to read as follows:

- (1) The Board of Medical Licensure is hereby authorized to certify athletic trainers consistent with the provisions of KRS 311.902 to 311.928 and to adopt rules and regulations necessary for the performance of its duties.
- (2) The board shall prescribe application forms for certification.
- (3) The board shall establish guidelines for athletic trainers in the state and conduct a certification examination based on recommendations of the council.
- (4) The board shall require, as a part of any continuing education requirement, persons certified as athletic trainers to complete a Cabinet for **Health Services**~~[Human Resources]~~ approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.

Section 544. KRS 311.935 is amended to read as follows:

- (1) No later than one (1) year after July 13, 1984, the McDowell Cancer Network, Inc. and the James Graham Brown Cancer Center shall jointly develop and submit to the Cabinet for **Health Services**~~[Human Resources]~~ and may periodically update a standardized written summary, in layman's language and in language understood by the patient, of the advantages, disadvantages, risks and descriptions of all medically efficacious and viable alternatives for the treatment of breast cancer.
- (2) The Cabinet for **Health Services**~~[Human Resources]~~, within ninety (90) days of receipt of the summary, shall print and make available to all licensed physicians in the Commonwealth sufficient copies of the standardized written summary for distribution by such physicians to their patients.
- (3) Upon receipt of the summary, any physician licensed under the laws of the Commonwealth who treats a patient for any form of breast cancer shall provide the patient with a standardized written summary, as provided under this section, informing the patient of medically efficacious and viable alternative methods of treatment for breast cancer which may include surgical, radiological or chemotherapeutic treatment or combinations thereof.

Section 545. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for **Health Services**~~[Human Resources]~~, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
 (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.726 shall be guilty of a Class A misdemeanor.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.

- (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- (14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
- (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
- (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- (19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- (20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- (21) Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.
- (22) Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- (23) Any person who violates KRS 311.914 shall be guilty of a violation.
- (24) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- (25) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;
- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- (26) A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.
- (27) Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- (28) Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- (29) Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- (30) Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).
- (31) Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

Section 546. KRS 311.991 is amended to read as follows:

Any person who manufactures, distributes, sells, or prescribes amygdalin (laetrile) in violation of the standards established by the secretary of the Cabinet for **Health Services**~~Human Resources~~ shall be punished by a fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000), or by imprisonment in the county jail for a period not to exceed six (6) months, or both. Each day of violation shall constitute a separate offense.

Section 547. KRS 314.142 is amended to read as follows:

- (1) The Kentucky Board of Nursing shall promulgate administrative regulations pursuant to KRS Chapter 13A to create a Sexual Assault Nurse Examiner Program. These administrative regulations shall address, at a minimum:
 - (a) Educational requirements for sexual assault nurse examiners and statewide standards for provision of the education;
 - (b) The application process through which registered nurses who submit documentation of required education and clinical experience and who remit the designated application fee may apply to the board to be credentialed as a "Sexual Assault Nurse Examiner";
 - (c) Continuing education requirements for maintenance of the sexual assault nurse examiner credential; and
 - (d) Methods of monitoring overall program implementation.
- (2) For the purpose of providing recommendations to the Kentucky Board of Nursing on the development and implementation of the Sexual Assault Nurse Examiner Program, there is hereby created a fourteen (14) member Sexual Assault Nurse Examiner Advisory Council. The following members shall serve on the council by virtue of their office: the executive director of the Kentucky Board of Nursing or the executive director's designee; the executive director of the Kentucky Hospital Association or the executive director's designee; the state medical examiner or the examiner's designee; the secretary of the Cabinet for **Health Services**~~{Human Resources}~~ or the secretary's designee; the president of the Statewide Association of Rape Crisis Centers or the president's designee; the commissioner of the Department for **Public Health**~~{Services}~~ of the Cabinet for **Health Services**~~{Human Resources}~~ or the commissioner's designee; the chair of the Council on Postsecondary Education or the chair's designee; the director of the Victim's Advocacy Division of the Office of the Attorney General or the director's designee; the director of the Prosecutors Advisory Council of the Office of the Attorney General or the director's designee; and the director of the Kentucky State Police Crime Lab or the director's designee. Two (2) members shall be registered nurses with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Nurses Association. Two (2) members with a demonstrated interest and experience in victims' services shall be appointed by the Governor to serve as at-large members. Of the at-large members, one (1) shall be appointed from a list of three (3) names recommended by the Kentucky Board of Nursing and one (1) from a list of three (3) names recommended by the Cabinet for **Health Services**~~{Human Resources}~~.
- (3) Members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The chair of the advisory council shall be elected by a majority vote of council members.
- (5) Each member of the council may be reimbursed for necessary expenses incurred in attending its meetings from funds available through the collection of fees required under subsection (1) of this section.

Section 548. KRS 315.035 is amended to read as follows:

- (1) No person shall operate a pharmacy without having first obtained a permit as provided for in KRS Chapter 315. An application for a permit to operate a pharmacy shall be made to the board upon forms provided by it and shall contain such information as the board requires, which may include affirmative evidence of ability to comply with such reasonable standards and rules and regulations as may be prescribed by the board. Each application shall be accompanied by a reasonable permit fee to be set by administrative regulation promulgated by the board pursuant to KRS Chapter 13A, not to exceed two hundred fifty dollars (\$250).
- (2) Upon receipt of an application of a permit to operate a pharmacy, accompanied by the permit fee not to exceed two hundred fifty dollars (\$250), the board shall issue a permit if the pharmacy meets the standards and requirements of KRS Chapter 315 and the rules and regulations of the board. The board shall refuse to renew any permit to operate unless the pharmacy meets the standards and requirements of KRS Chapter 315 and the rules and regulations of the board. The board shall act upon an application for a permit to operate within thirty (30) days after the receipt thereof; provided, however, that the board may issue a temporary permit to operate in any instance where it considers additional time necessary for investigation and consideration before taking final action upon the application. In such event, the temporary permit shall be valid for a period of thirty (30) days, unless extended.
- (3) A separate permit to operate shall be required for each pharmacy.

- (4) Each permit to operate a pharmacy, unless sooner suspended or revoked, shall expire on June 30 following its date of issuance and be renewable annually thereafter upon proper application accompanied by such reasonable renewal fee as may be set by administrative regulation of the board, not to exceed two hundred fifty dollars (\$250) nor to increase more than twenty-five dollars (\$25) per year. An additional fee not to exceed the annual renewal fee may be assessed as a penalty for failure to renew by August 1 of each year.
- (5) Permits to operate shall be issued only for the premises and persons named in the application and shall not be transferable; provided however, that a buyer may operate the pharmacy under the permit of the seller pending a decision by the board of an application which shall be filed by the buyer with the board at least five (5) days prior to the date of sale.
- (6) The board may promulgate rules and regulations to assure that proper equipment and reference material is on hand considering the nature of the pharmaceutical practice conducted at the particular pharmacy and to assure reasonable health and sanitation standards for areas within pharmacies which are not subject to health and sanitation standards promulgated by the Kentucky Cabinet for *Health Services*~~{Human Resources}~~ or a local health department.

Section 549. KRS 315.121 is amended to read as follows:

- (1) The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, permit holder, or certificate holder for the following reasons:
 - (a) Unprofessional or unethical conduct;
 - (b) Mental or physical incapacity that prevents the licensee, permit holder, or certificate holder from engaging in the practice of pharmacy or the wholesale distribution or manufacturing of drugs with reasonable skill, competence, and safety to the public;
 - (c) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following:
 1. A felony;
 2. An act involving moral turpitude or gross immorality; or
 3. A violation of the pharmacy or drug laws, rules, or administrative regulations of this state, any other state, or the federal government;
 - (d) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician is incapable of engaging or assisting in the practice of pharmacy with reasonable skill, competence, and safety to the public and failing to report any relevant information to the board;
 - (e) Knowingly making or causing to be made any false, fraudulent, or forged statement or misrepresentation of a material fact in securing issuance or renewal of a license, permit, or certificate;
 - (f) Engaging in fraud in connection with the practice of pharmacy or the wholesale distribution or manufacturing of drugs;
 - (g) Engaging in or aiding and abetting an individual to engage in the practice of pharmacy without a license or falsely using the title of "pharmacist," "pharmacist intern," or other term which might imply that the individual is a pharmacist or pharmacist intern;
 - (h) Being found by the board to be in violation of any provision of this chapter, KRS Chapter 217, KRS Chapter 218A, or the administrative regulations promulgated pursuant to these chapters;
 - (i) Violation of any order issued by the board to comply with any applicable law or administrative regulation; or
 - (j) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician has engaged in or aided and abetted the unlawful distribution of legend medications, and failing to report any relevant information to the board.

- (2) Unprofessional or unethical conduct includes, but is not limited to, the following acts of a pharmacist or pharmacist intern:
- (a) Publication or circulation of false, misleading, or deceptive statements concerning the practice of pharmacy;
 - (b) Divulging or revealing to unauthorized persons patient information or the nature of professional services rendered without the patient's express consent or without order or direction of a court. In addition to members, inspectors, or agents of the board, the following are considered authorized persons:
 1. The patient, patient's agent, or another pharmacist acting on behalf of the patient;
 2. Certified or licensed health care personnel who are responsible for care of the patient;
 3. Designated agents of the Cabinet for **Health Services**~~[Human Resources]~~ for the purposes of enforcing the provisions of KRS Chapter 218A;
 4. Any federal, state, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person; or
 5. An agency of government charged with the responsibility of providing medical care for the patient, upon written request by an authorized representative of the agency requesting such information;
 - (c) Selling, transferring, or otherwise disposing of accessories, chemicals, drugs, or devices found in illegal traffic when the pharmacist or pharmacy intern knows or should have known of their intended use in illegal activities;
 - (d) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from accepted standards of pharmacy practice ordinarily exercised by a pharmacist or pharmacy intern, with or without established proof of actual injury;
 - (e) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
 - (f) Selling, transferring, dispensing, ingesting, or administering a drug for which a prescription drug order is required, without having first received a prescription drug order for the drug;
 - (g) Willfully or knowingly failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with federal and state laws, rules, or administrative regulations;
 - (h) Obtaining any remuneration by fraud, misrepresentation, or deception; or
 - (i) Accessing or attempting to access confidential patient information for persons other than those with whom a pharmacist has a current pharmacist-patient relationship and where such information is necessary to the pharmacist to provide pharmacy care.
- (3) Any licensee, permit holder, or certificate holder entering an "Alford" plea, pleading nolo contendere, or who is found guilty of a violation prescribed in subsection (1)(c) of this section shall within thirty (30) days notify the board of that plea or conviction. Failure to do so shall be grounds for suspension or revocation of the license, certificate, or permit.
- (4) Any person whose license, permit, or certificate has been revoked in accordance with the provisions of this section, may petition the board for reinstatement. The petition shall be made in writing and in a form prescribed by the board. The board shall investigate all reinstatement petitions, and the board may reinstate a license, permit, or certificate upon showing that the former holder has been rehabilitated and is again able to engage in the practice of pharmacy with reasonable skill, competency and safety to the public. Reinstatement may be on the terms and conditions that the board, based on competent evidence, reasonably believes necessary to protect the health and welfare of the citizens of the Commonwealth.
- (5) Upon exercising the power of revocation provided for in subsection (1) of this section, the board may reasonably prohibit any petition for reinstatement for a period up to and including five (5) years.

Section 550. KRS 317.440 is amended to read as follows:

- (1) To protect the health and safety of the public or to protect the public against misrepresentation, deceit or fraud in the practice or teaching of barbering, the barber board shall prescribe reasonable rules and regulations:
 - (a) Governing the location and housing of barber shops or schools;
 - (b) Governing the quantity and quality of equipment, supplies, materials, records and furnishings required in barber shops or schools;
 - (c) Governing the training and supervision of barber apprentices;
 - (d) Governing the qualifications of teachers of barbering;
 - (e) Governing the hours and courses of instruction at barber schools;
 - (f) Governing the examinations of applicants for barber, apprentice barber or teacher of barbering.
- (2) Regulations pertaining to health and sanitation shall be approved by the Kentucky secretary for **health services**~~human resources~~ before becoming effective.

Section 551. KRS 318.134 is amended to read as follows:

- (1) No person, firm, or corporation shall:
 - (a) Construct, install, or alter, or cause to be constructed, installed, or altered, any plumbing without first having procured a plumbing installation permit therefor from the department;
 - (b) Use or continue to use, or permit the use or continued use of, any plumbing constructed, installed, or altered under a plumbing installation permit issued therefor where the department through a duly-authorized inspector, employee, or agent, finds that the plumbing was not constructed, installed, or altered in accordance with such permit and the Kentucky State Plumbing Code.
- (2) All applications for plumbing installation permits shall be accompanied by plans and specifications of the proposed plumbing installation, location, and construction of the water supply system to be used. If an on-site sewage disposal system that does not have a surface discharge is proposed, a valid on-site sewage disposal permit issued by the Cabinet for **Health Services**~~Human Resources~~ or its designated agent shall accompany the application.
- (3) The department shall fix a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. The department shall also fix a reasonable schedule of fees and charges to be paid for necessary inspections of the construction, installation, or alteration of plumbing in public buildings.

Section 552. KRS 318.160 is amended to read as follows:

Except as otherwise provided by law or by regulation of the department, no person shall construct, install, or extensively alter any plumbing, sewerage or water supply system of any public building or establishment without having first obtained the approval of the department in writing. Detailed plans and specifications of the proposed facility showing the plumbing system, sewage disposal system, and water supply system shall be submitted to the department prior to the construction or alteration of the facility. In the event no public sewer is available, the plan shall include the proposed type of sewage disposal system. In the event a sewage subsoil drainage system is used, or some other type of on-site sewage disposal system that does not have a surface discharge, the application for construction, installation, or alteration of such system shall be submitted to the Cabinet for **Health Services**~~Human Resources~~ or its designated agent. All other plans and specifications shall be submitted in triplicate to the department. The department shall notify the applicant in writing of the approval or disapproval of the plans. The construction, installation, or alteration shall be done in accordance with the approved plans.

Section 553. KRS 333.020 is amended to read as follows:

As used in this chapter unless the context clearly indicates otherwise, the following terms shall have the meanings set forth below:

- (1) "Person" means any individual, firm, partnership, association, corporation, municipality, political subdivision, or any other entity whether organized for profit or not;~~[-]~~
- (2) "Cabinet" means the ~~[-]~~Cabinet for **Health Services**~~Human Resources~~."

- (3) "Medical laboratory" means any institution, building, place or any other facility in which operations and procedures for the microbiological, serological, chemical, hematological, immunohematological, biophysical, cytological, pathological or other methods of examination of tissues including blood, secretions and excretions of the human body are performed to obtain information in diagnosing, preventing or treating disease, or in which the results of any examination, determination or test are used as a basis for health advice. These activities include the diagnosis and identification of disease by the examination of tissues removed by surgery and also the determination of cause of death by the examination of tissues removed at autopsy. The term "clinical laboratory" shall be deemed synonymous with the term "medical laboratory," and includes laboratories operated and maintained exclusively for teaching purposes;{+}
- (4) "Medical laboratory director" means the individual who is responsible for the administrative, scientific and technical operation of the medical laboratory, including supervision of laboratory procedures, reporting of findings, and active participation to such extent as may be necessary to assure compliance with the law. He shall be responsible for the proper performance of all work in the laboratory and shall direct, supervise and be responsible for the work of subordinates;{+}
- (5) "Medical laboratory supervisor" means an individual who, under the general supervision of a medical laboratory director, supervises technical personnel, performs tests requiring special scientific skills, experience and educational background, and, in the absence of the director, is held responsible for the proper performance of all medical laboratory procedures and the reporting of results;{+}
- (6) "Medical laboratory technologist" means an individual who performs tests which require the exercise of independent judgment and responsibility, with minimal supervision by the director or supervisor, in only those specialties or subspecialties in which they are qualified by education, training, and experience;{+}
- (7) "Medical laboratory technician" means any individual other than the medical laboratory director, supervisor, technologist, or trainee who functions under the supervision of a medical laboratory director, supervisor, or technologist and performs only those medical laboratory procedures which require limited skill, responsibility, and a minimal exercise of independent judgment;{+}
- (8) "Medical laboratory trainee" means any individual in a medical laboratory who is seeking training and experience which, combined with the appropriate educational background, will qualify that person for employment as a "medical technologist" or "medical laboratory technician." Trainees may perform procedures under the direct supervision of the laboratory director, supervisor, or medical technologist;{+}
- (9) "Medical laboratory personnel" includes the medical laboratory director, supervisor, technologist or technician, but does not include medical laboratory assistants, trainees, or other individuals employed by a medical laboratory to perform clerical or other administrative responsibilities;{+}
- (10) "Medical laboratory evaluation program" means a program for evaluating the proficiency of medical laboratories by the cabinet; **and**{+}
- (11) "Medical laboratory advisory committee" shall mean a group of consultants appointed by the secretary for **health services**{human resources} or his designee to advise the cabinet on matters relating to the regulation of medical laboratories.

Section 554. KRS 333.040 is amended to read as follows:

This chapter applies to all medical laboratories within the State of Kentucky, except:

- (1) Medical laboratories operated by the United States government;
- (2) Medical laboratories operated by a licensed physician, or a group of licensed physicians, solely and exclusively in connection with the diagnosis and treatment of their own patients; if any referred work is received or performed by such medical laboratories, all provisions of this chapter shall apply;
- (3) Medical laboratories operated by hospitals licensed by the secretary for **health services**{human resources};
- (4) Medical laboratories operated and maintained exclusively for research purposes, involving no patient or public health service whatsoever.

Section 555. KRS 333.220 is amended to read as follows:

The secretary for **health services**{human resources} shall appoint an advisory committee to advise the cabinet in the fulfillment of its responsibilities under this chapter. The committee shall be composed of nine (9) appointed members. The secretary for **health services**{human resources} or his designated representative shall be an ex officio member.

All appointed members shall serve for a term of four (4) years or until their successors are appointed and qualified. One (1) member shall be appointed from a list of three (3) names submitted by the Kentucky Hospital Association. One (1) member shall be appointed from a list of three (3) names submitted by the Kentucky State Society of American Medical Technologists. Two (2) members shall be appointed from a list of three (3) names for each position submitted by the Kentucky State Society of Medical Technologists. Five (5) members shall be appointed from a list of three (3) names for each position submitted by the Kentucky Medical Association, provided, however, that at least three (3) of such positions shall be filled only by pathologists who are directors of medical laboratories, and who have been recommended to the Kentucky Medical Association by the Kentucky Society of Pathologists.

Section 556. KRS 334.140 is amended to read as follows:

- (1) There is ~~hereby~~ created the "Kentucky Licensing Board for Specialists in Hearing Instruments".
- (2) The board shall be composed of nine (9) members who shall be appointed by the Governor. Terms of office shall be at the Governor's discretion, not to exceed four years. All terms shall expire on July 31 of the designated year. Each member shall serve for the term of his appointment and until his successor has been appointed and qualified. If a vacancy occurs on the board, a new member shall be appointed to serve out the unexpired term. No member shall serve consecutive terms on the board. Upon recommendation of the board, the Governor may remove any member of the board for excessive absenteeism, neglect of duty, or malfeasance in office.
- (3) Five (5) members shall be specialists in hearing instruments licensed under KRS 334.080. The appointees shall have at least five (5) years' relevant experience. The Governor shall consider nominations from the Hearing Aid Association of Kentucky. No two (2) members from the same place of business may serve on the board at the same time.
- (4) One (1) member shall be a physician licensed to practice medicine in Kentucky and specializing in otology or otolaryngology.
- (5) One (1) member shall be an audiologist holding at least a master's degree from a recognized college or university and having the certification of clinical competence in audiology from the American Speech-Language-Hearing Association and licensed under KRS Chapter 334A.
- (6) One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated.
- (7) One (1) member shall be the secretary of the Cabinet for **Health Services** ~~Human Resources~~ or his designee.
- (8) Five (5) members of the nine (9) members of the board, when properly convened, may conduct the business of the board.

Section 557. KRS 336.090 is amended to read as follows:

- (1) The department shall be furnished with a copy of all the laws and rulings of the secretary for **health services** ~~human resources~~ affecting sanitary conditions in places of employment, not covered by the labor laws of the state, and shall report in writing to the state, county, or city health authorities any violations coming under the observation of its inspectors while visiting places of employment in the regular performance of their duty.
- (2) The inspectors shall be furnished with a copy of all the laws and rulings of the Department of Housing, Buildings and Construction relating to fire hazards in places of employment, and shall report in writing to the state, county, or city authorities any violations coming under their observation while visiting places of employment in the regular performance of their duty.

Section 558. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Commissioner" means commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;
 - (b) "Department" means Department of Workplace Standards in the Labor Cabinet;
 - (c) "Wages" include any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any

other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;

- (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
 - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
 1. Any individual employed in agriculture;
 2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
 3. Any individual employed by the United States;
 4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
 5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
 6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;
 7. Any individual employed as a babysitter in employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
 8. Any individual engaged in the delivery of newspapers to the consumer;
 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the commissioner of the Department of Personnel shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
 10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year; or
 11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for **Families and Children** ~~(Human Resources)~~ under KRS 199.640 to 199.670.
 - (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering

operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

- (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
 - (d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
 - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
 - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
 - (c)
 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but, if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
 2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;
 - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly-owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works; and
 - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

Section 559. KRS 337.285 is amended to read as follows:

No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed. This provision does not apply to employees of retail stores engaged in work connected with selling, purchasing and distributing merchandise, wares, goods, articles or commodities or to employees of restaurant, hotel and motel operations, to employees as defined and

exempted from the overtime provision of the Fair Labor Standards Act in Sections 213(b)(1), 213(b)(10) and 213(b)(17) of Title 29, U.S.C. or to employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected and abused and who are in the care of private nonprofit childcaring facilities licensed by the Cabinet for **Health Services**~~[Human Resources]~~ under KRS 199.640 to 199.670.

Section 560. KRS 338.041 is amended to read as follows:

- (1) There is hereby created in the Department of Workplace Standards a Program for Occupational Safety and Health. This program shall consist of a Division of Occupational Safety and Health Compliance and a Division of Education and Training for Occupational Safety and Health. This program shall administer all matters pertaining to occupational safety and occupational health and shall be under the supervision of an occupational safety and health coordinator. The secretary of the Labor Cabinet shall appoint the occupational safety and health coordinator.
- (2) The Department of Workplace Standards may require the assistance of other state agencies and may enter into agreements with other state agencies and political subdivisions of the Commonwealth for the administration of this chapter.
- (3) The Department of Workplace Standards may enter into an agreement with the Cabinet for **Health Services**~~[Human Resources]~~ and other appropriate departments or agencies to conduct research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems in the administration of this chapter.

Section 561. KRS 339.230 is amended to read as follows:

A minor who has passed his fourteenth birthday but is under eighteen (18) years of age may be employed, permitted or suffered to work in, about or in connection with any gainful occupation, except:

- (1) If he is under sixteen (16) years of age, he may not be employed during regular school hours, unless:
 - (a) The school authorities have made arrangements for him to attend school at other than the regular hours, in which event he may be employed subject to regulations of the commissioner of workplace standards during such of the regular school hours as he is not required to be in attendance under the arrangement; or,
 - (b) He has graduated from high school.
- (2) A minor who has passed his fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted or suffered to work:
 - (a) In any place of employment or at any occupation, that the commissioner of workplace standards shall determine to be hazardous or injurious to the life, health, safety or welfare of such minor;
 - (b) More than the number of days per week, nor more than the number of hours per day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he make them less restrictive;
 - (c) During the hours of the day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he make them less restrictive; and
 - (d) In, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except he may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.
- (3) The commissioner of workplace standards shall promulgate regulations to properly protect the life, health, safety or welfare of minors. He may consider sex, age, premises of employment, substances to be worked with,

machinery to be operated, number of hours, hours of the day, nature of the employment and other pertinent factors. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the commissioner with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for **Health Services**~~[Human Resources]~~, the Department of Education, the Kentucky Commission on Human Rights and the Department of Personnel. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the commissioner of workplace standards.

Section 562. KRS 340.010 is amended to read as follows:

As used in KRS 340.020 to 340.070, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for **Workforce Development**~~[Human Resources]~~;
- (2) "Employment" means any service rendered, or to be rendered, or any engagement undertaken for remuneration;
- (3) "Employment agency" means any person or organization that offers or agrees to furnish or assist in furnishing employment, engagements for help, information, or service concerning or purporting to effect employment, except that it does not include bona fide educational, religious, charitable, fraternal, or benevolent organizations in which no charge is made for service rendered other than the ordinary membership dues and assessments for their members, bona fide labor organizations undertaking to secure employment for their members, bona fide employers' organizations undertaking to secure labor for their own members without cost to the applicant employees, teachers' agencies finding positions for schoolteachers only, nurses' registries or agencies operated in conjunction with a bona fide educational institution, temporary help agencies;
- (4) "Hire" means any compensation, service, or benefit exacted, or accepted, or any gratuity received in connection with any act of any employment agency or in connection with, any transaction concerning any employment agency; and
- (5) "Secretary" means the secretary of the Cabinet for **Workforce Development**~~[Human Resources]~~.

Section 563. KRS 340.070 is amended to read as follows:

- (1) The cabinet shall have exclusive jurisdiction over the administration and enforcement of KRS 340.010 to 340.070.
- (2) The cabinet shall inspect the offices and places of business of employment agencies and shall have access to all files and records of employment agencies.
- (3) The secretary for **workforce development**~~[human resources]~~ may promulgate any administrative regulations necessary to effectuate the purposes of this chapter.
- (4) Any administrative hearing conducted pursuant to KRS 340.010 to 340.070 shall be conducted in accordance with KRS Chapter 13B.

Section 564. KRS 341.067 is amended to read as follows:

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

- (1) "Hospital" means an institution which has been licensed, certified or approved by the secretary for **health services**~~[human resources]~~ as a hospital;~~[-]~~
- (2) "Institution of higher education" means an educational institution which:
 - (a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
 - (b) Is legally authorized in this state to provide a program of education beyond high school;
 - (c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or

postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

- (d) Is a public or other nonprofit institution;~~[-]~~
- (3) Notwithstanding any of the foregoing provisions of this section, all recognized colleges and universities in this state are institutions of higher education for purposes of this chapter; **and**~~[-]~~
- (4) (a) "Educational institution," including an institution of higher education as defined in subsection (2) of this section, means:
1. A school in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor(s) or teacher(s);
 2. It is approved, licensed or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school; and
 3. The courses of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.
- (b) In any particular case, the question of whether or not an institution is an educational institution within the meaning of the criteria described above will depend on what that particular institution actually does.

Section 565. KRS 341.080 is amended to read as follows:

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

- (1) Except in so far as the Cabinet for Workforce Development by regulation prescribes the equivalent thereof to meet particular conditions:
- (a) "Calendar year" means a year beginning on January 1; and
 - (b) "Calendar quarter" means three (3) consecutive months beginning on January 1, April 1, July 1, or October 1;~~[-]~~
- (2) "Week" means such period of seven (7) consecutive calendar days as the Cabinet for **Workforce Development**~~Human Resources~~ by regulation prescribes; **and**~~[-]~~
- (3) ~~The term~~ "Week of unemployment" means any period of seven (7) consecutive days, as prescribed by Cabinet for Workforce Development regulations, during which a worker performed less than full-time work and earned less than an amount equal to one and one-fourth (1-1/4) times the benefit rate determined for him in accordance with the provisions of subsection (2) of KRS 341.380.

Section 566. KRS 342.315 is amended to read as follows:

- (1) The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.
- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The commissioner, an arbitrator, or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with the commissioner within fifteen (15) days after such examination a written report. The medical evaluator appointed may charge a reasonable fee not exceeding fees established by the commissioner for those services.

- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically-recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.

Section 567. KRS 346.050 is amended to read as follows:

- (1) Except as provided in subsections (2) and (3) of this section, the following persons shall be eligible for awards pursuant to this chapter:
 - (a) A victim of criminally injurious conduct;
 - (b) A surviving spouse, parent, or child of a victim of criminally injurious conduct who died as a direct result of such conduct;
 - (c) Any other person dependent for his principal support upon a victim of criminally injurious conduct who died as a direct result of such crime; and
 - (d) Any person who is legally responsible for the medical expenses or funeral expenses of a victim.
- (2) No victim or dependent shall be denied compensation solely because he is a relative of the offender or was living with the offender as a family or household member at the time of the injury or death. However, the board may award compensation to a victim or dependent who is a relative, family or household member of the offender only if the board can reasonably determine the offender will not receive significant economic benefit or unjust enrichment from the compensation.
- (3) No compensation of any kind shall be awarded when injury occurred while the victim was confined in any state, county, urban-county, or city jail, prison, or other correctional facility, or any state institution maintained and operated by the Cabinet for **Health Services**~~[Human Resources]~~.

Section 568. KRS 347.040 is amended to read as follows:

- (1) The secretaries of the Cabinet for **Health Services**~~[Human Resources]~~ and the Education, Arts, and Humanities Cabinet and the chief state school officer shall jointly develop and implement a statewide plan, with adequate opportunity for public comment, to serve all persons with developmental disabilities not otherwise entitled to and receiving the same services under another state or federal act, which will include provisions for:
 - (a) Identification and prompt and adequate interdisciplinary assessment;
 - (b) Case management services; and
 - (c) Services and residential alternatives as defined by this chapter in the least restrictive, individually appropriate environment.
- (2) The first plan and annual updates shall be presented to the Legislative Research Commission which shall refer it to an appropriate committee for review and comment.
- (3) The plan shall include:
 - (a) The number of institution residents on waiting lists for placement in the community;
 - (b) The number of persons outside institutions on waiting lists for placement in the institution;

- (c) The number of persons for whom no placement is made nor services provided because of a lack of community resources;
 - (d) The number, type, nature, and cost of services necessary for placement to occur;
 - (e) The status of compliance with the plan;
 - (f) The cabinets' specific efforts to increase residential and institutional services and documentation of the success of these efforts; and
 - (g) The specific plans for new efforts to enhance the opportunities for persons with developmental disabilities to move into less restrictive environments.
- (4) The state health plan shall be developed consistently with the plan required under this chapter.

Section 569. KRS 347.050 is amended to read as follows:

The Cabinet for **Health Services**~~Human Resources~~, the Education, Arts, and Humanities Cabinet, and the Department of Education shall promulgate and implement rules and regulations for the:

- (1) Enhancement and protection of the rights of persons receiving services and active treatment in both the public and private sectors under this chapter, including, but not limited to, the right to:
 - (a) Provision of services in the least restrictive, individually appropriate environment;
 - (b) An individualized service plan;
 - (c) Privacy and humane service;
 - (d) Confidentiality, access, referral and transfer of records;
 - (e) Monitored active treatment in the least restrictive, individually appropriate environment;
 - (f) Notice of rights under this chapter; and
 - (g) A fair, timely and impartial grievance procedure to resolve grievances concerning identification and evaluation, services and active treatment, residential alternatives and the protection of the rights of persons with developmental disabilities under this chapter.
- (2) Implementation of this chapter providing for the orderly development of services and coordination among organizational units, administrative bodies and service providers to assure effective provision of services in both the public and private sectors to persons with developmental disabilities.

Section 570. KRS 347.060 is amended to read as follows:

The Cabinet for **Health Services**~~Human Resources~~, the Education, Arts, and Humanities Cabinet and the Department of Education may assess reasonable charges for services rendered under this chapter, based upon a sliding fee scale which takes into account the extensive services required as a result of, and the extraordinary expenses related to, a developmental disability; provided that no charges for services rendered under this chapter may be assessed for compliance with requirements and responsibilities mandated under any state or federal act as provided under subsection (5) of KRS 347.010.

Section 571. KRS 363.840 is amended to read as follows:

Nothing contained in KRS 363.510 to 363.850 shall be construed as amending, repealing or superseding any provision of KRS 217.005 to 217.215 (the Kentucky Food, Drug and Cosmetic Act) or the regulations adopted thereunder by the secretary for **health services**~~human resources~~.

Section 572. KRS 365.425 is amended to read as follows:

No application for a going out of business sale shall be accepted by the county clerk if the sale involves foods or drugs damaged by fire or other casualty unless the approval of the Cabinet for **Health Services**~~Human Resources~~ has first been obtained.

Section 573. KRS 367.46951 is amended to read as follows:

As used in KRS 367.46951 to 367.46999, unless the context otherwise requires:

- (1) "Telephone solicitation" means:

- (a) A telephone call to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:
1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
 2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
 3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
 4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan; or
- (b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant or who have not previously requested credit from the merchant, to a prospective purchaser if the merchant represents or implies to the recipient of the notification that any of the following applies:
1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
 2. That the recipient will receive a prize or gift if the recipient calls the merchant; or
 3. That if the recipient buys one (1) or more items from the merchant, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;
- (2) "Telephone solicitation" does not mean:
- (a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;
- (b) A telephone call made primarily in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;
- (c) A telephone call made by any of the following:
1. A real estate broker or sales associate properly licensed under the provisions of KRS Chapter 324;
 2. A broker-dealer, agent, or investment adviser properly registered under the provisions of KRS Chapter 292;
 3. An insurance agent, solicitor, or consultant properly licensed under the provisions of Subtitle 9 of KRS Chapter 304;
 4. An employment agency that has obtained a current permit from the Cabinet for **Workforce Development** ~~(Human Resources)~~ under the provisions of KRS Chapter 340;
 5. A person soliciting the sale of a subscription to a newspaper, magazine, or periodical of general circulation, or a cable television service;
 6. A merchant or the merchant's affiliate or authorized agent, when the merchant is regulated by the Public Service Commission;
 7. A merchant soliciting the sale of food costing less than one hundred dollars (\$100) to each address;
 8. A person who periodically issues and delivers catalogs to potential purchasers if the catalog includes a written description or illustration and the sales price of each item offered for sale,

includes at least twenty-four (24) full pages of written material or illustrations, is distributed in more than one (1) state, and has an annual circulation of not less than two hundred fifty thousand (250,000) customers;

9. The solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;
 10. Any corporation, partnership, or individual whose business or activities are regulated by the Commonwealth of Kentucky, Department for Financial Institutions;
 11. A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;
 12. A merchant or the merchant's affiliate or authorized agent when the merchant is subject to the control or licensure regulations of the Federal Communications Commission;
 13. A book, video, or record club or contractual plan or arrangement in which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise, or which is regulated by federal regulation concerning the use of negative option plans by sellers in commerce, or which otherwise provides for the sale of books, records, or videos. Examples of the latter plan include continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;
 14. A merchant who: solicits without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; does not make the major sales presentation during the solicitation but arranges for the major presentation to be made at a later, face-to-face meeting between the sales person and the purchaser; and does not go or cause another to collect payment for the purchase or deliver any item purchased to the prospective purchaser directly following the telephone solicitation; or
 15. Any telephone marketing service company which provides telemarketing sales services under contract to merchants and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) of whose services are performed for merchants exempted under KRS 367.46951 to 367.46999, if the company files an annual certification with the Office of the Attorney General on a form prescribed by the Attorney General. The certification shall include the company's basis for claiming the exemption and shall indicate the company's agreement to comply with the provisions of KRS 367.46951 to 367.46999, if applicable;
- (d) A telephone call made by a merchant or his employee if the merchant has operated for at least two (2) years, under the same name as that used in connection with its telemarketing operations, a retail establishment in Kentucky where consumer goods are displayed and offered for sale on a continuing basis if a majority of the merchant's business involves the buyers obtaining services or products at the merchant's retail establishment; or
- (e) A telephone call made by a merchant or the merchant's affiliate or authorized agent, where the merchant is a publicly traded corporation;

Except for subparagraph (2)(c)15. of this section, the exemptions provided under subsection (2) of this section shall apply only to a merchant or the merchant's affiliate or authorized agent engaging in a telephone solicitation on the merchant's behalf;

- (3) "Consumer goods or services" means goods, services, or interests in real property used by natural persons primarily for personal, family, or household purposes;
- (4) "Consumer loan" means any extension of credit, including credit cards and other forms of revolving credit, to a natural person primarily for the purposes of purchasing consumer goods or services or for paying existing personal, family, or household debts;
- (5) "Consumer" means a natural person who receives a telephone solicitation;
- (6) "Legal name of the merchant" means the real name of the merchant, as defined in KRS 365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to KRS 365.015;

- (7) "Merchant" means the individual or business entity offering the consumer goods or services, an investment, business, or employment opportunity, or a consumer loan;
- (8) "Caller" or "sales person" means the individual making the call or operating the automatic dialing or recorded message device and causing the call to be made;
- (9) "Division" means the Consumer Protection Division of the Office of the Attorney General;
- (10) "Automated calling equipment" means any device or combination of devices used to select or dial telephone numbers and to deliver recorded messages to those numbers without the use of a live operator; and
- (11) "Publicly-traded corporation" means an issuer or subsidiary of an issuer that has a class of securities which is:
 - (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 781) and which is registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
 - (b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or
 - (c) A reported security within the meaning of subparagraph (4) of Regulation Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A subsidiary of an issuer that qualifies for exemption under this paragraph shall not itself be exempt unless at least sixty percent (60%) of the voting power of its shares is owned by the qualifying issuer.

Section 574. KRS 387.540 is amended to read as follows:

- (1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for **Families and Children**~~Human Resources~~ who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for **Families and Children**~~Human Resources~~ residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.
- (2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.
- (3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011(12). If the respondent is alleged to be partially disabled or disabled due to mental retardation, at least one (1) person participating in the compilation of the evaluation report shall be a qualified mental retardation professional as defined in KRS 202B.010(12).
- (4) The interdisciplinary evaluation report shall contain:
 - (a) A description of the nature and extent of the respondent's disabilities, if any;
 - (b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;
 - (c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;
 - (d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;

- (e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;
 - (f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;
 - (g) A determination whether alternatives to guardianship or conservatorship are available;
 - (h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;
 - (i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;
 - (j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;
 - (k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and
 - (l) Any dissenting opinions or other comments by the evaluators.
- (5) The evaluation report may be compiled by a community mental health-mental retardation center, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.
 - (6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.
 - (7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.
 - (8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried employee of a state agency for an evaluation performed within the course of his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community mental health-mental retardation center or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.
 - (9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.
 - (10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

Section 575. KRS 387.600 is amended to read as follows:

- (1) The court may appoint as limited guardian, guardian, limited conservator, or conservator any suitable person or any entity, public or private, capable of conducting an active guardianship or conservatorship program. The court shall not ordinarily or customarily appoint the Cabinet for **Families and Children**~~[Human Resources]~~ or any other person or entity, public or private, that is directly providing services to the respondent unless no other suitable person or entity is available and willing to be appointed. Appointment of the Cabinet for **Families and Children**~~[Human Resources]~~ shall be consistent with the provisions of KRS 210.290.
- (2) Prior to the appointment, the court shall make a reasonable effort to question the respondent concerning his preference regarding the person or entity to be appointed limited guardian, guardian, limited conservator, or conservator, and any preference indicated shall be given due consideration. If the respondent has designated another as his attorney in fact or agent by executing a power of attorney in writing, that designation shall be treated as an indication of the respondent's preference as to the person or entity to be appointed as his limited

guardian, guardian, limited conservator, or conservator, and that preference shall be given due consideration. The court shall appoint the person or entity best qualified and willing to serve.

Section 576. KRS 387.610 is amended to read as follows:

Prior to the expiration of a term of guardianship or conservatorship, the limited guardian, guardian, limited conservator, or conservator may petition, pursuant to KRS 387.620, for a renewal of his appointment for a period not to exceed five (5) years. The petition shall be accompanied by verified affidavits of a physician, or a psychologist licensed or certified under the provisions of KRS Chapter 319, or a person licensed or certified as a social worker or an employee of the Cabinet for *Families and Children* ~~Human Resources~~ who meets the qualifications of KRS 335.080(1)(a), (b) and (c) or 335.090(1)(a), (b) and (c) supporting the need for the continuation of the guardianship or conservatorship.

Section 577. KRS 402.320 is amended to read as follows:

Every physician examining applicants for a marriage license may obtain an appropriate blood specimen from each applicant and forward same to the Division of Laboratory Services, Cabinet for *Health Services* ~~Human Resources~~, or to a laboratory approved by the cabinet, to ascertain the existence or nonexistence of sickle cell trait or sickle cell disease, or any other genetically-transmitted disease which affects hemoglobin. In the event the laboratory tests indicate that both applicants are carriers of a trait or disease, the physician may provide genetic counseling or refer the applicants to the cabinet or to an agency approved by the cabinet for such counseling.

Section 578. KRS 402.340 is amended to read as follows:

The secretary for *health services* ~~human resources~~ shall adopt rules and regulations for the proper administration and enforcement of KRS 402.310 to 402.340.

Section 579. KRS 403.211 is amended to read as follows:

- (1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.
- (2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.
- (3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:
 - (a) A child's extraordinary medical or dental needs;
 - (b) A child's extraordinary educational, job training, or special needs;
 - (c) Either parent's own extraordinary needs, such as medical expenses;
 - (d) The independent financial resources, if any, of the child or children;
 - (e) Combined parental income in excess of the Kentucky child support guidelines;
 - (f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and
 - (g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.
- (4) "Extraordinary" as used in this section shall be determined by the court in its discretion.
- (5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine

gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.

- (6) The court shall allocate between the parents, in proportion to their adjusted gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.
- (7) (a) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:
 1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include, but not be limited to, insurance coverage, payments of necessary health care deductibles or copayments; and
 2. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.
- (b) If health care insurance coverage is not reasonable and available at the time the request for the coverage is made, the court order shall provide for health care insurance coverage at the time it becomes reasonable and available.
- (8) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their adjusted gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of one hundred dollars (\$100) per child per calendar year. "Extraordinary medical expenses" includes, but is not limited to, the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.
- (9) In any case administered by the Cabinet for *Families and Children* ~~Human Resources~~, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for *Families and Children* ~~Human Resources~~ may, upon application, enroll the child.

Section 580. KRS 403.213 is amended to read as follows:

- (1) The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing.
- (2) Application of the Kentucky child support guidelines to the circumstances of the parties at the time of the filing of a motion or petition for modification of the child support order which results in equal to or greater than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed to be a material change in circumstances. Application which results in less than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed not to be a material change in circumstances. For the one (1) year period immediately following enactment of this statute, the presumption of material change shall be a twenty-five percent (25%) change in the amount of child support due rather than the fifteen percent (15%) stated above.
- (3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18). In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years. Provisions for the support of the child shall not be terminated by the death of a parent obligated to support the child. If a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

- (4) The child support guidelines table shall be reviewed at least once every four (4) years by a commission consisting of the following persons:
- (a) The secretary of the Cabinet for *Families and Children*~~[Human Resources]~~ or a supervisory staff person designated by him;
 - (b) Two (2) members of the Kentucky Bar Association who have at least six (6) consecutive years' experience and are presently practicing domestic relations cases, one (1) member from a metropolitan or large urban area and one (1) member from a less populated area;
 - (c) Two (2) Circuit Judges appointed by the Chief Justice of the Kentucky Supreme Court, one (1) from a metropolitan or large urban area, and one (1) from a less populated area;
 - (d) One (1) District Judge appointed by the Chief Justice of the Kentucky Supreme Court;
 - (e) Two (2) county attorneys appointed by the president of the County Attorneys Association, one (1) from a metropolitan or large urban area and one (1) from a less populated area; and
 - (f) The Attorney General or his designee, who shall be an attorney from his office.
- (5) The commission shall make a recommendation to the Kentucky General Assembly to ensure that the child support guidelines table results in a determination of appropriate child support amounts.

Section 581. KRS 403.7505 is amended to read as follows:

- (1) The Cabinet for *Health Services*~~[Human Resources]~~ shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.
- (2) The standards created by the cabinet shall be based on the following principles:
 - (a) Domestic violence is a pattern of coercive control which includes physical, sexual, psychological, and environmental abuse, and is considered to be criminal conduct;
 - (b) The primary goal of treatment programs for domestic violence offenders shall be the cessation of violence which will provide for the safety of victims and their children; and
 - (c) Domestic violence offenders are responsible and shall be held accountable for the violence which they choose to perpetrate.
- (3) The standards created by the cabinet shall address the following:
 - (a) Qualifications of providers of court-mandated domestic violence offender treatment services which shall include appropriate requirements for degree, experience, training, and continuing education;
 - (b) Procedures for application by providers to receive certification which shall include methods of appeal if certification is denied, and sanctions for noncompliance with the standards which may include revocation of certification;
 - (c) Admittance and discharge criteria for domestic violence offenders to enter court-mandated treatment services provided pursuant to this section;
 - (d) Written protocols for referral by a court to certified providers and for progress reports to be made to the court by providers;
 - (e) Contracts for domestic violence offenders to sign prior to entering court-ordered treatment services provided pursuant to this section. The contract shall specify that certified providers may contact the victims of the offender if the victim chooses to be contacted. The contract shall authorize the provider to release information regarding the offender's progress in treatment to the court, victims, probation and parole officers, and other individuals authorized by the court to receive the information;
 - (f) Written procedures in compliance with KRS 202A.400, 209.030, and 620.030;
 - (g) Payment protocols which require the offender to pay the actual cost for any court-mandated evaluation or treatment pursuant to this section, subject to the offender's ability to pay; and

- (h) Other provisions which shall further the availability and quality of court-mandated domestic violence offender services.
- (4) The cabinet shall:
 - (a) Maintain a list of providers certified pursuant to this section and regularly submit the list to the Administrative Office of the Courts; and
 - (b) Collect data from certified providers, which shall include the number of domestic violence offenders served by the certified providers, to be compiled annually and submitted to the Governor, the Chief Justice of the Kentucky Supreme Court, and the Legislative Research Commission.

Section 582. KRS 403.783 is amended to read as follows:

- (1) For the purposes of KRS 403.783 to 403.785, "law enforcement agency" means any agency of state, county, city, or metropolitan government, or a combination of these, responsible for employing and directing the action of peace officers, including sheriffs and their deputies, sworn police officers, sworn enforcement officers of the Kentucky State Police or other duly-authorized state law enforcement agency whose officers are persons with authority to make arrests under the provisions of KRS 403.760(2).
- (2) The secretary of the Justice Cabinet, or a designee, in consultation with legal, victims services, victim advocacy, and mental professionals with an expertise in domestic violence, shall develop a written model policy and procedures manual related to domestic violence for law enforcement agencies. The model policy shall set forth the core elements required to be addressed in each law enforcement agency's policy. The model policy shall also recommend procedures which may be included in local policies. The model policy shall be developed to comply with the provisions of KRS 403.715 to 403.785. The policy shall include purpose statements; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for *Families and Children* [~~Human Resources~~], Department for Social Services; victim rights, assistance and service responsibilities; and duties related to timely completion of records. The model policy shall be completed no later than four (4) months after July 15, 1996. The cabinet shall distribute a copy of the model policy to each law enforcement agency in the Commonwealth.
- (3) No later than January 1 after July 15, 1996 and July 31 of every even numbered year which follows, every law enforcement agency shall submit a copy of the agency's written domestic violence policy to the Justice Cabinet.
- (4) If a law enforcement agency fails to submit a copy of the agency's written domestic violence policy in a timely manner, the secretary shall promptly notify the law enforcement agency in writing of the requirements contained in this section.
- (5) If the secretary determines that a law enforcement agency has submitted a domestic violence policy which is inadequate, the secretary shall reject the policy and provide assistance to the agency in developing an adequate domestic violence policy.

Section 583. KRS 403.785 is amended to read as follows:

- (1) Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for *Families and Children* [~~Human Resources~~], Department for Social Services, within forty-eight (48) hours of learning of the incident or of the suspected incident.
- (2) When a law enforcement officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:
 - (a) Remaining at the location of the domestic violence and abuse so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;
 - (b) Assisting the victim of domestic violence and abuse in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
 - (c) Advising the victim immediately of the rights available to them, including the provisions of KRS 403.715 to 403.785.

Section 584. KRS 405.465 is amended to read as follows:

- (1) This section shall apply only to those child support, medical support, maintenance, and medical support insurance orders that are established, modified, or enforced by the Cabinet for *Families and Children*~~[Human Resources]~~ or those court orders obtained in administering Part D, Title IV of the Federal Social Security Act.
- (2) All child support orders and medical support insurance orders being established, modified, or enforced by the Cabinet for *Families and Children*~~[Human Resources]~~, or those orders obtained pursuant to the administration of Part D, Title IV of the Federal Social Security Act, shall provide for income withholding which shall begin immediately.
- (3) The court shall order either or both parents who are obligated to pay child support, medical support, or maintenance under this section to assign to the Cabinet for *Families and Children*~~[Human Resources]~~ or the domestic relations clerk of the court or other officer designated by the court to receive the payment, that portion of salary or wages of the parent due and to be due in the future as will be sufficient to pay the child support amount ordered by the court.
- (4) The order shall be binding upon the employer or any subsequent employer upon the service by certified mail of a copy of the order upon the employer and until further order of the court. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order.
- (5) The employer shall notify the cabinet when an employee, for whom a wage withholding is in effect, terminates employment and provide the terminated employee's last known address and the name and address of the terminated employee's new employer, if known.
- (6) Any assignment made pursuant to court order shall have priority as against any attachment, execution or other assignment, unless otherwise ordered by the court.
- (7) No assignment under this section by an employee shall constitute grounds for dismissal of the obligor, refusal to employ, or taking disciplinary action against any obligor subject to withholding required by this section.

Section 585. KRS 405.467 is amended to read as follows:

- (1) All support orders issued by the Cabinet for *Families and Children*~~[Human Resources]~~, including those issued pursuant to Part D, Title IV of the Federal Social Security Act, shall provide for immediate withholding of earnings of the parent or parents obligated to pay child support and medical support as is necessary to pay the child support obligation, except where one (1) of the parties demonstrates, and the court or administrative order finds that there is good cause not to require immediate income withholding, or a written agreement is reached by both parties which provides for an alternative arrangement.
- (2) In any case in which a parent is required to pay court ordered or administratively determined child support, medical support, maintenance, and medical support insurance, wage withholding is not in effect, and an arrearage accrues that is equal to the amount of support payment for one (1) month, upon request of the absent parent, request of the custodial parent, or upon administrative determination, the secretary shall issue an order for withholding of earnings of the parent as is necessary to comply with the order plus interest at the legal rate on the arrearage, if any.
- (3) In any case in which a parent is required either by court order or administrative order to provide medical insurance coverage for the child and the parent has failed to make application to obtain coverage for the child, the secretary shall issue an order for withholding of the employee's share, if any, of premiums for health coverage and to pay the share of premiums to the insurer.
- (4) Advance notice shall be sent to the obligor prior to the issuance of the order to withhold earnings. The only basis for contesting the withholding shall be a mistake of fact or law. If the parent contests the withholding, the cabinet shall give the obligor an opportunity to present his or her case at an administrative hearing conducted in accordance with KRS Chapter 13B and decide if the withholding will occur, based on an evaluation of the facts within forty-five (45) days from the date of the advance notice. The cabinet shall notify the obligor of the decision of whether the withholding is to occur, the date on which it will begin, and shall furnish the obligor with the information contained in any order served on the employer with respect to the withholding.
- (5) The cabinet shall combine any administrative or judicial wage withholding order, or multiple administrative or judicial orders for child support and medical support into a single wage withholding order when payable through the cabinet to a single family or to multiple family units.

- (6) The cabinet shall serve the order to withhold earnings or notice of multiple wage withholding orders specifying wage withholding requirements on the employer of an obligor by certified mail, return receipt requested. The order shall state the amount to be withheld, or the requirement to enroll the child under the health insurance coverage, including amounts to be applied to arrearages, plus interest at the legal rate on the arrearage, if any, and the date the withholding is to begin. The total amount to be withheld, including current support and payment on arrearages plus interest, and medical insurance coverage may not exceed the limit permitted under the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b).
- (7) If there is more than one (1) notice for child support withholding against a single absent parent, the cabinet shall allocate amounts available for withholding, giving priority to current child support, up to the limits imposed under Section 303(b) of the Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b). The allocation by the cabinet shall not result in a withholding for one (1) of the support obligations not being implemented. Amounts resulting from wage withholding shall be allocated on a proportionate basis between multiple family units. Any custodial parent adversely affected by the provisions of this subsection shall have standing to challenge any proportionate allocations and, for good cause shown, a District Court, Circuit Court, or Family Court of competent jurisdiction may set aside the cabinet's proportional allocations as to the custodial parent.
- (8) If the amounts to be withheld preclude collection of the total amount of combined child support and medical support due to the limits of the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b), the actual amount received shall be applied first to the current monthly child support obligation amount. Any payment exceeding the current monthly child support obligation shall then be applied by the cabinet to the administratively-ordered or judicially-ordered medical support obligation.
- (9) The employer shall be held liable to the cabinet for any amount which the employer fails to withhold from earnings due an obligor following receipt of an order to withhold earnings.
- (10) Any order to withhold earnings under this section shall have priority as against any attachment, execution, or other assignment, notwithstanding any state statute or administrative regulation to the contrary.
- (11) No withholding under this section shall be grounds for discharging from employment, refusing to employ, or taking disciplinary action against any obligor subject to withholding required by this section.
- (12) The remedies provided for in this section shall also be available for applicable support orders issued in other states.
- (13) Interstate requests for withholding of earnings shall be processed by the cabinet.

Section 586. KRS 405.490 is amended to read as follows:

- (1) Any person, including the obligor, who has been served with an order to withhold and deliver the obligor's property shall answer the order within twenty (20) days.
- (2) The person in possession of any obligor's property shall withhold it and deliver it to the cabinet in accordance with the secretary's directions; or the obligor may offer a bond which is satisfactory to the cabinet.
- (3) The person in possession of obligor's property shall have no liability or further responsibility after fulfilling the duties under this section.
- (4) The obligor may dispute the amount of delinquent support by requesting a dispute hearing with twenty (20) days.
- (5) If the obligor does not request a hearing, acknowledgment of the obligation is presumed and the secretary may apply the withheld property to the delinquent child support obligation.
- (6) If a hearing is requested, when property or a bond is released to the secretary pursuant to an order to withhold and deliver property, the secretary shall hold the property or bond, pending determination of the obligor's liability by a hearing officer, pursuant to KRS 405.450.
- (7) Upon a decision adverse to the Cabinet for *Families and Children* (~~Human Resources~~) by a hearing officer, of the Circuit Court on appeal, the cabinet shall return the property together with interest at the legal rate for judgments.

Section 587. KRS 406.021 is amended to read as follows:

- (1) Paternity may be determined upon the complaint of the mother, putative father, child, person, or agency substantially contributing to the support of the child. The action shall be brought by the county attorney or by

the Cabinet for *Families and Children*~~(Human Resources)~~ or its designee upon the request of complainant authorized by this section.

- (2) Paternity may be determined by the District Court when the mother and father of the child, either:
 - (a) Submit affidavits in which the mother states the name of the child's father and the father admits paternity of the child; or
 - (b) Give testimony before the District Court in which the mother states the name of the child's father and the father admits paternity of the child.
- (3) If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the father may be enforced in the same or other proceedings by the mother, child, person, or agency substantially contributing to the cost of pregnancy, confinement, education, necessary support or funeral expenses. An action to enforce the liabilities shall be brought by the county attorney upon the request of such complainant~~(herein)~~ authorized *by this section*. An action to enforce the liabilities of the cost of pregnancy, birthing costs, child support, and medical support shall be brought by the county attorney or by the Cabinet for *Families and Children*~~(Human Resources)~~ or its designee.
- (4) Voluntary acknowledgment of paternity pursuant to KRS 213.046 shall create a rebuttable presumption of paternity.
- (5) Upon a showing of service of process on the defendant and if the defendant has made no pleading to the court or has not moved to enter evidence pursuant to KRS 406.091, the court shall order paternity to be established by default.

Section 588. KRS 407.190 is amended to read as follows:

If this state is acting as an initiating state, the county attorney, upon the request of the court or an appropriate welfare official or state agency, shall represent the plaintiff in any proceeding under this chapter. If the county attorney neglects or refuses to represent the plaintiff, the secretary for *families and children*~~(human resources)~~ or his authorized representative may employ private counsel to represent the obligee.

Section 589. KRS 407.240 is amended to read as follows:

- (1) The Cabinet for *Families and Children*~~(Human Resources)~~ is~~(hereby)~~ designated as the state information agency under this chapter, and it shall be its duty:
 - (a) To compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the chapter and a statement of their effective date to all other state information agencies;
 - (b) To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this chapter;
 - (c) To forward to the court in this state which has jurisdiction over the obligor or his property, petitions, certificates and copies of the act it received from courts or information agencies of other states.
- (2) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.
- (3) After the deposit of three (3) copies of the complaint and certificate and one (1) copy of the act of the initiating court with the clerk of the appropriate court, if the state information agency knows or believes that the county attorney is not prosecuting the case diligently, and a reasonable period of time since the deposit of the complaint has lapsed, it shall send an inquiry to the county attorney to determine why the case is not prosecuted diligently. If the county attorney fails to respond to the inquiry, fails to give sufficient reason why he has not prosecuted the case diligently or refuses to proceed in prosecution of the case, the secretary for

families and children~~{human resources}~~ or his authorized representative may employ private counsel to represent the obligee.

Section 590. KRS 407.250 is amended to read as follows:

- (1) When the court of this state, acting as a responding court, receives from the initiating court the aforesaid copies, it shall docket the cause, notify the county attorney, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to obtain jurisdiction.
- (2) The county attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court clerk to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.
- (3) If the county attorney neglects or refuses to represent the obligee, the secretary for *families and children*~~{human resources}~~ or his authorized representative may employ private counsel to represent the obligee.

Section 591. KRS 407.440 is amended to read as follows:

If the secretary for *families and children*~~{human resources}~~ or his authorized representative is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may perfect an appeal to the proper appellate court if the support order was issued by a court of this state, or if the support order was issued in another state, cause the appeal to be taken in the other state. In either case, expenses of appeal may be paid on his order from funds appropriated for his office.

Section 592. KRS 407.5101 is amended to read as follows:

As used in KRS 407.5101 to 407.5902:

- (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;~~{-}~~
- (2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state;~~{-}~~
- (3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support;~~{-}~~
- (4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six (6) month or other period;~~{-}~~
- (5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;~~{-}~~
- (6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by KRS 403.212, to withhold support from the income of the obligor;~~{-}~~
- (7) "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to KRS 407.5101 to 407.5902, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state;~~{-}~~
- (8) "Initiating tribunal" means the authorized tribunal in an initiating state;~~{-}~~
- (9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage;~~{-}~~
- (10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage;~~{-}~~
- (11) "Law" includes decisional and statutory law and rules and regulations having the force of law;~~{-}~~
- (12) "Obligee" means:

- (a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
 - (b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
 - (c) An individual seeking a judgment determining parentage of the individual's child;{+}
- (13) "Obligor" means an individual, or the estate of a decedent:
- (a) Who or is alleged to owe a duty of support;
 - (b) Who is alleged but has not been adjudicated to be a parent of a child; or
 - (c) Who is liable under a support order;{+}
- (14) "Register" means to file a support order or judgment determining parentage with the Cabinet for *Families and Children*;{+~~Human Resources.~~}
- (15) "Registering tribunal" means a tribunal in which a support order is registered;{+}
- (16) "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to KRS 407.5101 to 407.5902, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act;{+}
- (17) "Responding tribunal" means the authorized tribunal in a responding state;{+}
- (18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor;{+}
- (19) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter;{+}
- (20) "Support enforcement agency" means a public official or agency authorized to seek:
- (a) Enforcement of support orders or laws relating to the duty of support;
 - (b) Establishment or modification of child support;
 - (c) Determination of parentage; or
 - (d) To locate obligors or their assets;{+}
- (21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief; **and**{+}
- (22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Section 593. KRS 407.5102 is amended to read as follows:

The Circuit Court, District Court, and family courts shall be the state tribunals for judicial proceedings, and the Cabinet for *Families and Children*{+~~Human Resources~~} and the Division of Child Support Enforcement (DCSE) shall be the state tribunals for administrative proceedings.

Section 594. KRS 407.5201 is amended to read as follows:

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with summons, or notice within this state;
- (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive pleading having the effect of waiving any contest to personal jurisdiction;

- (3) The individual resided with the child in this state;
- (4) The individual resided in this state and provided prenatal expenses or support for the child;
- (5) The child resides in this state as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in the putative father registry maintained in this state by the Cabinet for **Families and Children**~~[Human Resources]~~; or
- (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

Section 595. KRS 407.5308 is amended to read as follows:

If the Cabinet for **Families and Children**~~[Human Resources]~~ determines that a contracting official is neglecting or refusing to provide services to an individual, the Cabinet for **Families and Children**~~[Human Resources]~~ may order that official to perform his duties under KRS 407.5101 to 407.5902 or may provide those services directly to the individual.

Section 596. KRS 407.5310 is amended to read as follows:

- (1) The Cabinet for **Families and Children**~~[Human Resources]~~ is the state information agency under KRS 407.5101 to 407.5902.
- (2) The state information agency shall:
 - (a) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under KRS 407.5101 to 407.5902 and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;
 - (b) Maintain a register of tribunals and support enforcement agencies received from other states;
 - (c) Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under KRS 407.5101 to 407.5902 received from an initiating tribunal or the state information agency of the initiating state; and
 - (d) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

Section 597. KRS 407.5602 is amended to read as follows:

- (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the Cabinet for **Families and Children**~~[Human Resources]~~ or the appropriate tribunal within this state wherein the obligor resides, works, or owns property:
 - (a) A letter of transmittal to the tribunal requesting registration and enforcement;
 - (b) Two (2) copies, including one (1) certified copy, of all orders to be registered, including any modification of an order;
 - (c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
 - (d) The name of the obligor and, if known;
 1. The obligor's address and Social Security number;
 2. The name and address of the obligor's employer and any other source of income of the obligor; and

3. A description and the location of property of the obligor in this state not exempt from execution; and
 - (e) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
- (2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one (1) copy of the documents and information, regardless of their form.
- (3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

Section 598. KRS 411.095 is amended to read as follows:

- (1) An adult or emancipated minor who damages, destroys, or takes possession of any goods, wares, or merchandise, stored, displayed or offered for sale by any wholesale or retail store or other mercantile establishment, or who alters the price indicia of the merchandise, in violation of the provisions of KRS Chapters 512 and 514, without having paid the purchase price thereof, shall be civilly liable to the owner for actual damages, if any, and for a penalty to the owner in the amount of the retail value of the merchandise not to exceed five hundred dollars (\$500), plus an additional penalty to the owner of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).
- (2) The custodial parents or legal guardian having custody of an unemancipated minor who damages, destroys, or takes possession of any goods, wares, or merchandise, stored, displayed, or offered for sale by any wholesale or retail store or other mercantile establishment, or who alters the price indicia of the merchandise, which would be a public offense, without having paid the purchase price thereof, shall be civilly liable to the owner for actual damages, if any, and for a penalty to the owner in the amount of the retail value of the merchandise not to exceed five hundred dollars (\$500), plus an additional penalty to the owner of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250). For purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parents assigned responsibility for the minor child pursuant to a court order or action of the Cabinet for *Families and Children* [~~Human Resources~~], or any agency thereunder.
- (3) For the purposes of this section, "owner" shall include any agent or employee of the owner.
- (4) A conviction of an offense under KRS Chapters 512 or 514 is not a condition precedent to the maintenance of a civil action under this section.
- (5) Civil liability under this section shall not be limited by any other law that limits liability of parents of minor children.
- (6) An action for recovery of damages, or penalty, or both, and costs under this section may be brought in any court of competent jurisdiction, including the small claims division of District Court, if the total amount sought does not exceed the jurisdictional limit of the respective court.
- (7) The fact that an owner has a right to bring an action against any individual as provided in this section shall not limit the right of the owner to demand, in writing, that a person who is liable under this section remit the amount of the claim prior to the commencement of any legal action.
- (8) Judgments, but not claims, arising under this section may be assigned.
- (9) In addition to any civil damages or penalties, or both, which may be recovered under this section, a judgment for recovery shall also include court costs.
- (10) Civil claims under this section shall apply to those claims which arise after July 13, 1990.

Section 599. KRS 411.148 is amended to read as follows:

- (1) No physician licensed under KRS Chapter 311, registered or practical nurse licensed under KRS Chapter 314, person certified as an emergency medical technician by the Kentucky *Cabinet* [~~Department~~] for *Health Services* [~~Human Resources~~], person certified by the American Heart Association or the American Red Cross to perform cardiopulmonary resuscitation, or employee of any board of education established pursuant to the provision of KRS 160.160, who has completed a course in first aid and who maintains current certification

therein in accordance with the standards set forth by the American Red Cross shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment excluding house calls, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

- (2) Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration or with the expectation of remuneration.
- (3) The administering of emergency care or treatment at the scene of an emergency by employees of a board of education shall not be considered to be rendered for remuneration or with the expectation of remuneration because such personnel perform such care as part of their regular professional or work responsibilities for which they receive their regular salaries from the school board which is their employer.

Section 600. KRS 431.100 is amended to read as follows:

- (1) Except as provided in this section, all fines and forfeitures imposed by law or ordinance shall inure to and vest in the Commonwealth.
- (2) Fines and forfeitures imposed by law for violation of KRS 222.202 or ordinances relating to similar subject matter shall inure to and vest in the Commonwealth and shall be placed in a special fund in the State Treasury, which shall not lapse, and which, effective July 1, 1987, shall be used solely by the Cabinet for **Health Services**~~[Human Resources]~~ for the provision of treatment and counseling programs for alcoholics.
- (3) Fines for violation of KRS 512.070 shall be transferred by the Circuit Clerk to the county treasurer for inclusion in the general fund of the county in which the offense occurs.
- (4) Court costs assessed pursuant to KRS 610.360 shall be placed in a trust and agency account in the State Treasury which shall be subject to appropriation by the General Assembly for the purposes of providing services and programs and for matching funds for grants for providing services and programs to juvenile public offenders.
- (5) The court shall not order a fine, forfeiture, service fee, cost, or any other money due the state or any other public officer paid to any person or organization other than one specifically required by statute nor shall a court suspend payment of a fine, forfeiture, service fee, cost, or any other money due the state if the defendant makes a payment to another person or organization.

Section 601. KRS 431.600 is amended to read as follows:

- (1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for **Families and Children**~~[Human Resources]~~. Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.
- (2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.
- (3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.
- (4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.
- (5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.
- (6) Commonwealth's attorneys and county attorneys and the Cabinet for **Families and Children**~~[Human Resources]~~ shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.

- (7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.

Section 602. KRS 431.650 is amended to read as follows:

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
- (2) The commission shall be comprised of the following members:
 - (a) The commissioner of the Department for Social Services or a designee;
 - (b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;
 - (c) One (1) family service worker who is employed by the Department for Social Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~;
 - (d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~;
 - (e) The commissioner of the Kentucky State Police or a designee;
 - (f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice Cabinet;
 - (g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
 - (h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
 - (i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
 - (j) The commissioner of the Department of Education or a designee;
 - (k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education; and
 - (l) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.
- (3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The commission shall elect a chairperson annually from its membership.

Section 603. KRS 441.047 is amended to read as follows:

- (1) Whenever a prisoner confined in the county jail is in need of psychiatric or similar evaluation, treatment or services, it shall be the responsibility of the Commonwealth to provide such evaluation, treatment, or services at the expense of the Commonwealth at the nearest state operated or state supported facility suitable for the provision of the required evaluation, treatment, or services at no cost to the county.
- (2) Whenever a criminal defendant is in need of psychiatric, sociological, or similar evaluation in connection with the criminal proceedings in which he is a defendant it shall be the responsibility of the Commonwealth to provide the evaluation at the nearest state operated or state supported facility suitable for the provision of the required evaluation at no cost to the county.
- (3) In the event that no suitable state operated or state supported facility is located within a reasonable distance, then the evaluation may be made at a suitable local facility or at the jail. In such instances a request must first be made to the Cabinet for ***Health Services***~~[Human Resources]~~ to provide the evaluation, treatment or service unless the situation is an emergency requiring immediate attention. If the cabinet cannot provide the service or if the situation is an emergency, then local resources may be utilized.
- (4) In the event that local resources are utilized in an emergency situation, or when the Cabinet for ***Health Services***~~[Human Resources]~~ is unable to provide the evaluation, treatment, or service, then the reasonable cost

of providing such service, treatment, or evaluation shall be paid from the State Treasury in the same manner as other medical expenses of indigent prisoners confined in the county jail.

- (5) The Cabinet for *Health Services*~~[Human Resources]~~ shall administer the provisions of this section and shall issue such administrative regulations as necessary to carry out the provisions of this section.

Section 604. KRS 441.115 is amended to read as follows:

- (1) For the purpose of raising the level of competence of jailers and jail personnel, the department shall maintain a jail staff training program to provide training for jailers and jail personnel consistent with the standards promulgated pursuant to KRS 441.055 and shall keep records of jailers and jail personnel who satisfactorily complete basic and annual continuing education. The training program shall include training on the human immunodeficiency virus infection and acquired immunodeficiency syndrome approved by the Cabinet for *Health Services*~~[Human Resources]~~. A curriculum advisory committee composed of jailers, their representatives and recognized professionals in the field of jail administration shall advise the department concerning the training needs of jailers and jail personnel. The jail staff training program shall be directed and staffed, in coordination with the governmental services center at Kentucky State University, by knowledgeable persons who have sufficient experience, training, and education in jail operations. The department shall not charge a fee for training jailers, their deputies, or jailers-elect.
- (2) Beginning in August, 1982, each jailer shall receive an expense allowance to help defray the costs of his participation in the jail staff training program. The expense allowance shall be in the amount of three hundred dollars (\$300) per month payable out of the State Treasury. Expense allowance payments shall be discontinued if the jailer fails to satisfactorily complete annual continuing training. Expense allowance payments shall be resumed following a discontinuance for failure to satisfactorily complete basic or annual training only upon the jailer's satisfactory completion of the training.
- (3) The allowance authorized in subsections (2) and (4) of this section shall be considered as operating expenses of the jailer's office and shall not be considered as part of his compensation. Jailers shall not be required to keep records verifying the expenditures from the allowance provided by the state.
- (4) In order to receive the expense allowance for their first year in office, jailers who have been elected to office for the first time, shall, before taking office, successfully complete a training program designed for new jailers and conducted by the personnel of the jail staff training program. This provision shall not apply if the jailer-elect is ill and unable to complete the training before taking office. In such cases, the jailer-elect shall successfully complete a new jailer training program during his first year in office in order to receive the expense allowance. The county or urban-county government in which the jailer-elect serves shall pay out of the jail budget, once he takes office, all necessary and reasonable travel expenses incurred by the jailer-elect in attending the new jailer training program.
- (5) All jailers shall successfully complete the training required. If a jailer does not successfully complete the required training within the time specified, he shall not receive the expense allowance specified in subsection (2) of this section until he successfully completes the required training.

Section 605. KRS 504.060 is amended to read as follows:

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

- (1) "Department" means the Department of Corrections;
- (2) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary of the Cabinet for *Health Services*~~[Human Resources]~~ for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill or mentally retarded persons who have been charged with or convicted of a felony;
- (3) "Foreseeable future" means not more than three hundred sixty (360) days;
- (4) "Incompetency to stand trial" means that, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense;
- (5) "Insanity" means that, as a result of mental condition, lack of substantial capacity either to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law;
- (6) "Mental illness" means substantially impaired capacity to use self-control, judgment, or discretion in the conduct of one's affairs and social relations, associated with maladaptive behavior or recognized emotional

symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological or social factors;

- (7) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period and is a condition which may exist concurrently with mental illness or insanity;
- (8) "Psychiatrist" means a physician licensed pursuant to KRS Chapter 311 who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
- (9) "Psychologist" means a person licensed at the doctoral level pursuant to KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to perform examinations;
- (10) "Treatment" means medication or counseling, therapy, psychotherapy, and other professional services provided by or at the direction of psychologists or psychiatrists. "Treatment" shall not include electroshock therapy or psychosurgery; and
- (11) "Treatment facility" means an institution or part thereof, approved by the Cabinet for **Health Services**~~[Human Resources]~~, which provides evaluation, care and treatment for insane, mentally ill or mentally retarded persons on an inpatient or outpatient basis, or both.

Section 606. KRS 504.080 is amended to read as follows:

- (1) A court may commit a defendant to a treatment facility or forensic psychiatric facility for up to thirty (30) days so that a psychologist or psychiatrist can examine, treat and report on the defendant's mental condition, except that if the defendant is charged with a felony and it is determined that inpatient examination or treatment is required, the defendant shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ or the secretary's designee determines that the defendant shall be examined and treated in another Cabinet for **Health Services**~~[Human Resources]~~ facility.
- (2) Reports on a defendant's mental condition prepared under this chapter shall be filed within ten (10) days of the examination.
- (3) The defendant shall be present at any hearing on his mental condition unless he waives his right to be present.
- (4) The examining psychologist or psychiatrist shall appear at any hearing on defendant's mental condition unless the defendant waives his right to have him appear.
- (5) A psychologist or psychiatrist retained by the defendant shall be permitted to participate in any examination under this chapter.
- (6) The Cabinet for **Health Services**~~[Human Resources]~~, if the cabinet or its agent or employee does not provide the examination, shall pay a reasonable fee to any psychologist or psychiatrist ordered to examine, treat and report on a defendant's mental condition.
- (7) The termination of criminal proceedings under this chapter is not a bar to the institution of civil commitment proceedings.

Section 607. KRS 504.110 is amended to read as follows:

- (1) If the court finds the defendant incompetent to stand trial but there is a substantial probability he will attain competency in the foreseeable future, it shall commit the defendant to a treatment facility or a forensic psychiatric facility and order him to submit to treatment for sixty (60) days or until the psychologist or psychiatrist treating him finds him competent, whichever occurs first, except that if the defendant is charged with a felony, he shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ or the secretary's designee determines that the defendant shall be treated in another Cabinet for **Health Services**~~[Human Resources]~~ facility. Within ten (10) days of that time, the court shall hold another hearing to determine whether or not the defendant is competent to stand trial.
- (2) If the court finds the defendant incompetent to stand trial but there is no substantial probability he will attain competency in the foreseeable future, it shall conduct an involuntary hospitalization proceeding under KRS Chapter 202A or 202B.
- (3) If the court finds the defendant competent to stand trial, the court shall continue the proceedings against the defendant.

Section 608. KRS 510.320 is amended to read as follows:

- (1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection.
- (2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.
- (3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for **Health Services**~~{Human Resources}~~.
- (4)
 - (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.
 - (b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for **Health Services**~~{Human Resources}~~ to the victim, or the parent or guardian of a victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing and to any other agency as directed pursuant to KRS Chapter 214.
 - (c) In addition, the Cabinet for **Health Services**~~{Human Resources}~~ shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.
- (5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for **Health Services**~~{Human Resources}~~ shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.
- (6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.
- (7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

Section 609. KRS 529.090 is amended to read as follows:

- (1) Any person convicted of prostitution or procuring another to commit prostitution under the provisions of KRS 529.020 shall be required to undergo screening for human immunodeficiency virus infection under direction of the Cabinet for **Health Services**~~{Human Resources}~~ and, if infected, shall submit to treatment and counseling as a condition of release from probation, community control, or incarceration. Notwithstanding the provisions of KRS 214.420, the results of any test conducted pursuant to this subsection shall be made available by the Cabinet for **Health Services**~~{Human Resources}~~ to medical personnel, appropriate state agencies, or courts of appropriate jurisdiction to enforce the provisions of this chapter.
- (2) Any person who commits prostitution and who, prior to the commission of the crime, had tested positive for a sexually transmitted disease and knew or had been informed that he had tested positive for a sexually transmitted disease pursuant to KRS 214.410 and that he could possibly communicate such disease to another person through sexual activity is guilty of a Class A misdemeanor. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution.
- (3) Any person who commits, offers, or agrees to commit prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of the crime, had tested positive for human immunodeficiency virus and knew or had been informed that he had tested positive for human immunodeficiency virus and that he could possibly communicate the disease to another person through sexual activity is guilty of a Class D felony. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution.

- (4) Any person convicted of procuring another to commit prostitution in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of the crime, had tested positive for human immunodeficiency virus and knew or had been informed that he had tested positive for human immunodeficiency virus and that he could possibly communicate the disease to another person through sexual activity is guilty of a Class D felony.

Section 610. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
- (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and
 - (l) If the defendant's record indicates a controlled substance or alcohol problem, submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, said fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. For good cause shown, the testing fee may be waived by the court.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for **Health Services**~~Human Resources~~, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1)

defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- (a) Restitution by payment may be ordered in a lump sum or in specified payments;
 - (b) Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;
 - (c) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (d) Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;
 - (e) The circuit clerk shall assess an additional fee of two percent (2%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall enure to the general fund of the State Treasury;
 - (f) When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court. The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation; and
 - (g) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.
- (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2), or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

Section 611. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

- (2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (3) "Cabinet" means the Cabinet for *Families and Children*~~[Human Resources]~~;
- (4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for *Families and Children*~~[Human Resources]~~ and other appropriate state agencies;
- (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for *Families and Children*~~[Human Resources]~~, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;
- (10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (15) "Department" means the Department for Social Services;
- (16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;
- (18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

- (20) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;
- (21) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment;
- (22) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (23) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (24) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (25) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (26) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- (27) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (28) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (29) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (30) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (31) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (32) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;
- (33) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- (34) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (35) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (36) "Parent" means the biological or adoptive mother or father of a child;
- (37) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (38) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

- (39) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (40) "Public offense action" means an action brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (41) "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- (42) "Residential treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (43) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (44) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (45) "Secretary" means the secretary of the Cabinet for *Families and Children* ~~Human Resources~~;
- (46) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- (47) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (48) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ;
- (49) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

- (50) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (51) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (52) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (53) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (54) "Youth alternative center" means a nonsecure facility, approved by the Department of Corrections, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- (55) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 612. KRS 600.040 is amended to read as follows:

When KRS 605.090, 605.100, 605.110, 605.115, 610.110, or any other section of this code refer jointly to the operation of a program or service by both the Department of Juvenile Justice and the Cabinet for *Families and Children*~~[Human Resources]~~, the following divisions are intended:

- (1) Facilities, programs, and services relating to juveniles under KRS Chapter 635 or 640, or under KRS Chapter 645 as relates to a child who is mentally ill and who also comes within the purview of KRS Chapter 635 or 640, shall be the responsibility of the Department of Juvenile Justice.
- (2) Facilities, programs, and services relating to juveniles under other chapters of the code, including KRS Chapter 630, shall be the responsibility of the Cabinet for *Families and Children*~~[Human Resources]~~.

Section 613. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
 - (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for *Families and Children*~~[Human Resources]~~ Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for *Families and Children*~~[Human Resources]~~.

- ~~Resources~~] and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for ***Families and Children***~~[Human Resources]~~, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.
- (b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
- (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
 2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;
 3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
 4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
 5. The funding for school services for state agency children authorized by KRS 158.135; and
 6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.
- (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~ shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
1. Provide for the development and implementation of interagency agreements that:
 - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
 - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
 2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for ***Families and Children***~~[Human Resources]~~.
- (e) The commissioner of Juvenile Justice and the secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~ and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 614. KRS 605.115 is amended to read as follows:

The commissioner of the Department of Juvenile Justice and the secretary of the Cabinet for ***Families and Children***~~[Human Resources]~~, with the cooperation of the Kentucky Board of Education and the commissioner of

education, shall implement policies to assure that local school districts providing a funding match shall have direct access to Medicaid funding as Medicaid providers for the provision of health-related services to eligible children with disabilities under the age of twenty-one (21) years of age. They shall develop policies and procedures so the Department of Education can transfer the local school districts' matching funds to the Department for Medicaid Services. They shall also review state and federal statutes and regulations to determine the eligibility of local school districts to receive Medicaid reimbursement for health-related services identified on a child's individual education plan.

Section 615. KRS 610.330 is amended to read as follows:

- (1) Any child who has been adjudicated as coming within the purview of KRS Chapters 630, 635 (with regard to status offenses, misdemeanors, or violations only), or 645, but not KRS Chapters 620 or 640, may petition the court for the expungement of his juvenile court record, except for adjudications involving guilt of an offense which would have been a felony if the offense was committed by an adult. He shall be informed of such right at the time of adjudication. The court on its own motion, or on the motion of a probation officer of the court, a representative of the cabinet, or any other interested person may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. The petition shall be filed or the court order entered no sooner than two (2) years after the date of termination of the court's jurisdiction over the person, or two (2) years after his unconditional release from commitment to the Cabinet for ***Families and Children***~~{Human Resources}~~ or a public or private agency, except that the two (2) year period may be waived if the court finds that such extraordinary circumstances exist with regard to the petitioner as to make the waiver advisable.
- (2) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall notify the county attorney and anyone else whom the court or the child, his parents, relatives, guardian, or custodian has reason to believe may have relevant information related to the expungement of the record.
- (3) The court shall order sealed all records in the petitioner's case in the custody of the court and any of these records in the custody of any other agency or official, including law enforcement and public or private elementary and secondary school records, if at the hearing the court finds that:
 - (a) Since the termination of the court's jurisdiction or his unconditional release from commitment to the cabinet or a public or private agency, the person whose record is in question has not been convicted of a felony, and has not been adjudicated under KRS 610.010(1)(a); and
 - (b) No proceeding concerning a felony and no petition under KRS 610.010(1)(a) is pending or being instituted against him.
- (4) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred and all index references shall be deleted and the person and court may properly reply that no record exists with respect to such person upon any inquiry in the matter.
- (5) Copies of the order shall be sent to each agency or official named therein.
- (6) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

Section 616. KRS 615.040 is amended to read as follows:

The following provisions apply to the compact described in KRS 615.030:

- (1) The following definitions apply to KRS 615.030:
 - (a) As used in paragraph (a) of Article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the Cabinet for ***Families and Children***~~{Human Resources}~~.
 - (b) The "appropriate public authorities" as used in Article III of the interstate compact on the placement of children shall, with reference to this state, mean the Cabinet for ***Families and Children***~~{Human Resources}~~ and said cabinet shall receive and act with reference to notices required by said Article III.
 - (c) As used in Article VII of the interstate compact on the placement of children, the term "executive head" means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

- (2) Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children:
 - (a) Shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of KRS 405.020 shall apply.
 - (b) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in another party state pursuant to paragraph (b) of Article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the secretary of the Finance and Administration Cabinet in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.
- (3) Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in Article V of KRS 615.030 thereof.
- (4) No person or institution shall bring or send, or cause to be brought or sent, a dependent child into this state from another state for the purpose of placing him in a family home, either with or without indenture or for adoption, without first filing a ten thousand dollar (\$10,000) bond with the county judge/executive of the county in which the child is to be placed.
- (5) The bond shall be conditioned as follows:
 - (a) That they will not bring or send, or cause to be brought or sent, into this state any child that is incorrigible or of unsound mind or body or who has any contagious or incurable disease;
 - (b) That they will immediately, upon placing the child, report to the department the name and age of the child, and the name and residence of the person with whom he is placed;
 - (c) That if the child becomes a public charge before reaching his majority, they will, within thirty (30) days after receiving written notice of such fact from the department, remove the child from the state;
 - (d) That if the child is convicted of a crime or misdemeanor and is imprisoned, within five (5) years of the time of his arrival, they will remove the child from the state immediately upon his release;
 - (e) That they will place each dependent child by written contract with a person who will furnish the child a proper home, and will make the person receiving the child responsible for its proper care, education and training;
 - (f) That they will properly supervise the care and training of the child, and visit each child at least once a year;
 - (g) That they will make such reports to the department as the department requires.
- (6) The provisions of KRS 615.030 shall not apply to a parent, stepparent, grandparent, adult brother or sister, or adult uncle or aunt going to any other state or country and bringing a child into this state for the purpose of giving it a home in his own family, and may be waived by the department for any child brought into the state under the supervision of the division or licensed child-caring or child-placing institution or agency by written agreement with the responsible agency of the other state or country, or under special circumstances agreed to in writing by the cabinet and the persons wishing to import a child.
- (7) The provisions of subsections (4) and (5) of this section shall not apply to placements made pursuant to the interstate compact on the placement of children.

Section 617. KRS 620.040 is amended to read as follows:

- (1) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall forthwith notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source. The cabinet shall investigate the matter immediately and within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or

Kentucky State Police concerning the action which has been taken on the matter. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

- (2) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall forthwith notify the cabinet or its designated representative. The cabinet shall investigate reports of alleged dependency not later than forty-eight (48) hours after receipt of the report but need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of such reports. If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative may participate in an investigation of noncustodial abuse at the request of the local law enforcement agency or the Kentucky State Police.
- (3) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- (4)
 - (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be issued by the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
 - (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
 - (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exists reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
 - (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.
- (5)
 - (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
 - (b) Membership of the multidisciplinary team shall include, but is not limited to, family service workers employed by the Cabinet for *Families and Children* ~~(Human Resources)~~ and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.
 - (c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
 - (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.
 - (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.

- (f) Multidisciplinary team members, and anyone invited by the multidisciplinary team to participate in a meeting, shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members, and others attending meetings, shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
- (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.
- (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

Section 618. KRS 620.100 is amended to read as follows:

- (1) If the court determines, as a result of a temporary removal hearing, that further proceedings are required, the court shall advise the child and his parent or other person exercising custodial control or supervision of their right to appointment of separate counsel:
 - (a) The court shall appoint counsel for the child to be paid for by the Finance and Administration Cabinet. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for *Families and Children*~~[Human Resources]~~, of the order appointing counsel. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);
 - (b) The court shall appoint separate counsel for the parent who exercises custodial control or supervision if the parent is unable to afford counsel pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for *Families and Children*~~[Human Resources]~~, of the order appointing counsel. The parent's counsel shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);
 - (c) The court may, in the interest of justice, appoint separate counsel for a nonparent who exercises custodial control or supervision of the child, if the person is unable to afford counsel, pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for *Families and Children*~~[Human Resources]~~, of the order appointing counsel. Counsel for the person shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250); and
 - (d) The court may, in the interest of justice, appoint a court-appointed special advocate volunteer to represent the best interests of the child pursuant to KRS 620.500 to 620.550. The clerk of the court shall arrange for service on all parties, including the local representative of the cabinet, of the order appointing the court-appointed special advocate volunteer.
- (2) If the court determines that further proceedings are required, the court also shall advise the child and his parent or other person exercising custodial control or supervision that they have a right to not incriminate themselves, and a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal.
- (3) The adjudication shall determine the truth or falsity of the allegations in the complaint. The burden of proof shall be upon the complainant, and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence. The Kentucky Rules of Civil Procedure shall apply.
- (4) The disposition shall determine the action to be taken by the court on behalf of the child and his parent or other person exercising custodial control or supervision.

Section 619. KRS 620.145 is amended to read as follows:

- (1) Within sixty (60) days of the commitment date of a child due to abuse, neglect, or dependency, the Cabinet for ***Families and Children***~~[Human Resources]~~ shall provide the court with jurisdiction an assessment of the child to determine:
 - (a) The child's current and historical educational functioning;
 - (b) The child's emotional and behavioral functioning; and
 - (c) The extent to which the child's life experiences and circumstances of commitment have created a disabling condition requiring special educational programming or other services to provide the child an appropriate public education.
- (2) Upon discerning of an emotional, behavioral, or other disabling condition with negative impact upon a child's educational experience, the Cabinet for ***Families and Children***~~[Human Resources]~~ as guardian of the child shall ensure that whatever services necessary are obtained to allow the child the benefit of a free, appropriate public education.
- (3) Services required to allow the child a free, appropriate public education shall be limited to those required under Section 504 of Public Law 93-112, Public Law 94-142, or other federal statutes affecting children with emotional or behavioral disabilities.
- (4) The Cabinet for ***Families and Children***~~[Human Resources]~~ shall include activities undertaken to ensure a child committed to the Cabinet for ***Families and Children***~~[Human Resources]~~ receives adequate public education in the six (6) month case progress report required by KRS 620.240.
- (5) Any child removed from his home due to abuse, neglect, or dependency and placed in the least restrictive appropriate placement available shall, for the purposes of acquiring an appropriate public education, be considered a resident of the school district where the placement occurs.

Section 620. KRS 625.041 is amended to read as follows:

- (1) The only party to an action for voluntary termination of parental rights shall be the parent seeking termination, but the court shall appoint a guardian ad litem to represent the best interest of the child.
- (2) The guardian ad litem shall be paid a fee to be fixed by the court, not to exceed five hundred dollars (\$500), to be paid by the petitioner, except if the Cabinet for ***Families and Children***~~[Human Resources]~~ receives custody of the child, the guardian ad litem shall be paid by the Finance and Administration Cabinet.

Section 621. KRS 625.043 is amended to read as follows:

- (1) If the Circuit Court determines that parental rights are to be voluntarily terminated in accordance with the provisions of this chapter, it shall make an order terminating all parental rights and obligations of the parent and releasing the child from all legal obligations to the parent and vesting care and custody of the child in the person, agency, or cabinet the court believes is best qualified to receive custody.
- (2) Upon consent by the Cabinet for ***Families and Children***~~[Human Resources]~~, the child may be declared a ward of the state and custody vested in the cabinet or in any child-placing agency or child-caring facility licensed by the cabinet or in another person if all persons with parental rights to the child under the law have had their rights terminated voluntarily or involuntarily. If the other person is not excepted by KRS 199.470(4) or (5), a grant of permanent custody shall be made only if the proposed custodian has received the written approval of the secretary or the secretary's designee for the child's placement.

Section 622. KRS 625.100 is amended to read as follows:

- (1) If the Circuit Court determines that parental rights are to be terminated involuntarily in accordance with the provisions of this chapter, it shall enter an order that the termination of parental rights and the transfer of custody are in the best interest of the child, and that each petitioner is fully aware of the purpose of the proceedings and the consequences of the provisions of this chapter. The order shall terminate all parental rights and obligations of such parent and release the child from all legal obligations to such parent and vest care and custody of the child in such person, agency or cabinet as the court believes best qualified.
- (2) Upon consent by the Cabinet for ***Families and Children***~~[Human Resources]~~, the child may be declared a ward of the state and custody vested in the cabinet or in any child-placing agency or child-caring facility licensed by the cabinet or in another person, if all persons with parental rights to the child under the law have had their rights terminated voluntarily or involuntarily. If the other person is unrelated to the child, a grant of custody shall be made only with the written approval of the secretary or his designee.

Section 623. KRS 635.520 is amended to read as follows:

- (1) The Department of Juvenile Justice shall have the sole authority and responsibility for establishing the design of the juvenile sexual offender treatment program but shall consult with the Administrative Office of the Courts and the Cabinet for *Families and Children*~~[Human Resources]~~.
- (2) The Department of Juvenile Justice may enter into agreements with public or private agencies in order to implement and operate the juvenile sexual offender treatment program.

Section 624. KRS 640.050 is amended to read as follows:

- (1) Any period of probation or conditional discharge required by the sentencing court to be served shall be supervised, as the court may determine by written order, by:
 - (a) The Department of Juvenile Justice;
 - (b) The Department of Corrections; or
 - (c) The designated representative of either of the above.
- (2) The Cabinet for *Families and Children*~~[Human Resources]~~ may make recommendations to the Circuit Court concerning the disposition of the youthful offender.
- (3) The court may order any of the above alternatives without regard to the age of the youthful offender.

Section 625. KRS 640.090 is amended to read as follows:

Upon the determination that a person is a youthful offender, the Cabinet for *Families and Children*~~[Human Resources]~~, the Department of Juvenile Justice, and all other public agencies possessing records relating to the youthful offender shall, upon request, provide copies of the records to the Kentucky Parole Board and to the Department of Corrections. No record relating to the child, except records maintained by the youthful offender's defense attorney or the Department of Public Advocacy, if he was defended by that department, shall be deemed privileged from disclosure to the Parole Board.

Section 626. KRS 640.100 is amended to read as follows:

All officials of the Cabinet for *Families and Children*~~[Human Resources]~~ and the Department of Corrections shall furnish members of the Parole Board, or its properly accredited representatives:

- (1) Access at all reasonable times to any youthful offender over whom the board has jurisdiction under this chapter;
- (2) Facilities for communicating with and observing the youthful offender;
- (3) The reports the board requires concerning the conduct and character of any youthful offender in its custody; and
- (4) Any other facts deemed pertinent by the board in determining whether the youthful offender shall be paroled.

Section 627. KRS 640.110 is amended to read as follows:

When a youthful offender is transferred to the Department of Corrections in accordance with this chapter, the Cabinet for *Families and Children*~~[Human Resources]~~ shall transfer a copy of all records relating to the youthful offender to the Department of Corrections.

Section 628. The following KRS sections are repealed:

- 194.010 Cabinet for Human Resources -- Functions.
- 194.025 Power and authority of secretary.
- 194.030 Major organizational units of cabinet.
- 194.040 Internal organization of offices and bureaus.
- 194.050 Execution of policies, plans, and programs -- Administrative regulations -- Fees.
- 194.060 Confidentiality of records and reports.
- 194.070 Utilizing community resources for delivery of services.

- 194.080 Cost allocation plan.
- 194.090 Citizen advisory bodies.
- 194.100 Annual joint conference of citizen advisory bodies.
- 194.110 Bodies attached for administrative and support purposes.
- 194.120 Bodies attached to cabinet with statutory authority to issue administrative regulations.
- 194.130 Limitation on administrative processes.
- 194.135 Developmental Disabilities Planning Council -- Members -- Duties.
- 194.140 Special subcommittees.
- 194.150 State officials as voting members of citizens' councils.
- 194.160 Alternates or representatives for boards, councils, committees, and similar bodies.
- 194.170 Secretary's authority to create special task forces, advisory committees, and citizens' panels.
- 194.180 Rules and regulations of various bodies.
- 194.190 Gifts and grants.
- 194.200 Compensation and expenses of members of councils.
- 194.350 Liability insurance for physicians, hospital administrators, and directors employed by cabinet.
- 194.360 Annual report on committed children -- Contents.
- 194.370 In-service training for social workers on child sexual abuse.
- 194.500 Definitions.
- 194.505 Prohibited activities -- Commencement of proceedings for enforcement.
- 194.510 Defense in prosecution.
- 194.515 Access to criminal records by cabinet's agents.
- 194.530 Training and continuing education courses for Department for Social Services staff.
- 194.535 Training requirements for staff of agencies providing shelter services for victims.
- 194.540 Training courses for mental health professionals and health care providers.
- 194.550 Definitions for KRS 194.550 to KRS 194.559.
- 194.552 Office on Alzheimer's Disease and Related Disorders -- Director -- Report -- Purposes and duties.
- 194.555 Alzheimer's Disease and Related Disorders Council -- Members -- Duties.
- 194.559 Authority to promulgate administrative regulations.
- 194.990 Penalties.
- 195.120 Purpose of KRS 195.130 and 195.140.
- 195.130 Definition for KRS 195.120 to 195.140.
- 195.140 Programs for displaced homemakers.
- 195.180 Duties.

Section 629. In order to reflect the reorganization effectuated by this Act, the Reviser of Statutes, in codifying newly-enacted text in legislation from this 1998 Regular Session of the General Assembly, shall, where he deems it necessary and appropriate, replace references to the former Cabinet for Human Resources and to its officers and subagencies with references to the appropriate successor cabinet, officer, or subagency established by this Act. In so doing, the Reviser of Statutes shall base his actions on the functions assigned to the various new entities by this Act and may consult with the Secretaries of the Cabinet for Human Services and the Cabinet for Children and Families, or their designees, to receive their suggestions.

Section 630. To the extent that the following specified executive orders are not otherwise confirmed or superseded by this Act, the General Assembly hereby confirms Executive Order 96-862, dated July 2, 1996, relating to reorganization of the Cabinet for Human Resources, as amended by the following:

(1) Executive Order 96-1494, dated November 8, 1996, relating to the internal structure of the Cabinet for Health Services. The Divisions of State and Local Health Administration, of Laboratory Services, of Epidemiology, of Individual and Clinic Providers, and of Facilities and Alternative Services were established within the Department for Public Health. Specified state owned, contracted, operated, or comanaged facilities were attached to the Office of the Commissioner within the Department for Mental Health and Mental Retardation Services for management and administrative purposes, and Divisions of Administration and Financial Management, of Maternal and Child Health, of Health Systems Development, and of Environmental Health and Community Safety were established within that department. Divisions of Administration and Development, of Mental Health, of Mental Retardation, and of Substance Abuse were established within the Department for Medicaid Services. Divisions of Licensing and Regulation, of Audits, and of Special Investigations were established within the Office of the Inspector General. Divisions of Administrative Services and of Clinical Services were established for the Commission for Children with Special Health Care Needs.

(2) Executive Order 96-1499, dated November 8, 1996, relating to the internal structure of the Cabinet for Families and Children. The Divisions of Operations and Resource Management and of Financial Management were established within the Office of Program Support. The Divisions of Program Management, of Aging Services, and of Family Services were established within the Department of Social Services. The Divisions of Management and Development, of Field Services, of Administrative Review, of Child Support Enforcement, and of Disability Determinations were established within the Department for Social Insurance. The Office of Advocacy and Accountability was renamed the Office of the Ombudsman.

(3) Executive Order 97-1348, dated October 16, 1997, reorganizing the divisional structure within the Department for Public Health that had been established in Executive Order 96-1494. The Division of State and Local Health Administration was renamed the Division of Resource Management; the Division of Maternal and Child Health was renamed the Division of Adult and Child Health; the Division of Epidemiology was renamed the Division of Epidemiology and Health Planning; the Division of Environmental Health and Community Safety was renamed the Division of Public Health Protection and Safety; the Division of Local Health Department Operations was established; and the Division of Health Systems Development was abolished.

Approved April 9, 1998

CHAPTER 427

(HB 864)

AN ACT relating to health and welfare.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *All insurers issuing individual health insurance policies in this Commonwealth providing coverage on an expense-incurred basis shall make available and offer to the purchaser coverage for:*
 - (a) *All stages of breast reconstruction surgery following a mastectomy that resulted from breast cancer if the insurer also covers mastectomies;*
 - (b) *Diagnosis and treatment of endometriosis and endometritis if the insurer also covers hysterectomies; and*
 - (c) *Bone density testing for women age thirty-five (35) and older, as indicated by the health care provider, in accordance with standard medical practice, to obtain baseline data for the purpose of early detection of osteoporosis.*
- (2) *No insurer under this section shall offer coverage for mastectomies that requires the procedure to be performed on an outpatient basis.*

SECTION 2. A NEW SECTION OF KRS 304.17A-100 TO 304.17A-160 IS CREATED TO READ AS FOLLOWS:

- (1) *A health benefit plan issued or renewed on or after July 15, 1996, shall make available and offer to the purchaser coverage for:*
 - (a) *Breast reconstruction surgery following a mastectomy that resulted from breast cancer if the insurer also covers mastectomies;*
 - (b) *Diagnosis and treatment of endometriosis and endometritis if the insurer also covers hysterectomies; and*
 - (c) *Bone density testing for women age thirty-five (35) and older, as indicated by the health care provider, in accordance with standard medical practice, to obtain baseline data for the purpose of early detection of osteoporosis.*
- (2) *No health benefit plan under this section shall offer coverage for mastectomies that requires the procedure be performed on an outpatient basis.*

SECTION 3. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *All insurers issuing group or blanket health insurance policies and certificates in this Commonwealth providing coverage on an expense-incurred basis shall make available and offer to the purchaser coverage for:*
 - (a) *Breast reconstruction surgery following a mastectomy that resulted from breast cancer if the insurer also covers mastectomies;*
 - (b) *Diagnosis and treatment of endometriosis and endometritis if the insurer also covers hysterectomies; and*
 - (c) *Bone density testing for women age thirty-five (35) and older, as indicated by the health care provider, in accordance with standard medical practice, to obtain baseline data for the purpose of early detection of osteoporosis.*
- (2) *No insurer under this section shall offer coverage for mastectomies which requires the procedure be performed on an outpatient basis.*

SECTION 4. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *All nonprofit hospital, medical-surgical, dental, and health service corporations issuing contracts in this Commonwealth providing hospital, medical, or surgical expense benefits shall make available and offer to the purchaser coverage for:*
 - (a) *Breast reconstruction surgery following a mastectomy that resulted from breast cancer if the insurer also covers mastectomies;*
 - (b) *Diagnosis and treatment of endometriosis and endometritis if the insurer also covers hysterectomies; and*
 - (c) *Bone density testing for women age thirty-five (35) and older, as indicated by the health care provider, in accordance with standard medical practice, to obtain baseline data for the purpose of early detection of osteoporosis.*
- (2) *No insurer under this section shall offer coverage for mastectomies that requires the procedure be performed on an outpatient basis.*

SECTION 5. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Health maintenance organizations issuing contracts in this Commonwealth that provide hospital, medical, or surgical expense benefits shall make available and offer to the purchaser coverage for:*
 - (a) *Breast reconstruction surgery following a mastectomy that resulted from breast cancer if the insurer also covers mastectomies;*
 - (b) *Diagnosis and treatment of endometriosis if the insurer also covers hysterectomies; and*

- (c) *Bone density testing for women age thirty-five (35) and older, as indicated by the health care provider, in accordance with standard medical practice, to obtain baseline data for the purpose of early detection of osteoporosis.*
- (2) *No insurer under this section shall offer coverage for mastectomies that requires the procedure be performed on an outpatient basis.*

SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No health benefit plan shall deny coverage, refuse to issue or renew, cancel or otherwise terminate, restrict, or exclude any person from any health benefit plan issued or renewed on or after the effective date of this Act, on the basis of the applicant's or insured's status as a victim of domestic violence and abuse as defined in KRS 403.720.*
- (2) *No health benefit plan shall deny a claim on the basis of the insured's status as a victim of domestic violence.*
- (3) *Domestic violence shall not be considered to be a preexisting condition.*

Section 7. KRS 216.2920 is amended to read as follows:

As used in KRS 216.2920 to 216.2929, unless the context requires otherwise:

- (1) "Ambulatory facility" means a facility, including an ambulatory surgical facility, ambulatory care clinic, alternative birth center, mobile health service, or a specialized medical technology service, which is not part of a hospital, and which is licensed pursuant to KRS Chapter 216B, and which provides one (1) or more major ambulatory procedures to patients not requiring hospitalization.
- (2) "*Cabinet*" means the *Cabinet for Human Resources*.
- (3) "Charge" means all amounts billed by a hospital or ambulatory facility, including charges for all ancillary and support services or procedures, prior to any adjustment for bad debts, charity contractual allowances, administrative or courtesy discounts, or similar deductions from revenue. However, if necessary to achieve comparability of information between providers, charges for the professional services of hospital-based or ambulatory facility-based physicians shall be excluded from the calculation of charge.
- (4) "*Facility*" means any hospital or other health care facility, whether operated for profit or not, required to be licensed pursuant to KRS Chapter 216B.
- (5) "*Health care provider*" or "*provider*" means any facility and service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
- (a) *Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;*
 - (b) *Chiropractors licensed pursuant to KRS Chapter 312;*
 - (c) *Dentists licensed pursuant to KRS Chapter 313;*
 - (d) *Optometrists licensed pursuant to KRS Chapter 320;*
 - (e) *Physician assistants regulated pursuant to KRS Chapter 311;*
 - (f) *Nurse practitioners licensed pursuant to KRS Chapter 314;*
 - (g) *Other health care practitioners as determined by the Cabinet for Human Resources by administrative regulation promulgated pursuant to KRS Chapter 13A.*
- (6)~~(3)~~ "Hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility.
- (7)~~(4)~~ "Procedures" means those surgical, medical, radiological, diagnostic, or therapeutic, procedures performed by a provider, as periodically determined by the cabinet in administrative regulations promulgated pursuant to KRS Chapter 13A as those for which reports to the cabinet shall be required. "Procedures" also includes procedures that are provided in hospitals or other licensed ambulatory facilities, or those which require the use of special equipment, including fluoroscopic equipment, computer tomographic scanners,

magnetic resonance imagers, mammography, ultrasound equipment, or any other new technology as periodically determined by the cabinet.

~~(8)(5)~~ "Quality" means the extent to which a provider renders care which obtains for patients optimal health outcomes.

~~(9)(6)~~ "Secretary" means the secretary of the Cabinet for Human Resources.

Section 8. KRS 216.2921 is amended to read as follows:

- (1) The Cabinet for Human Resources shall collect, pursuant to KRS 216.2925, analyze, and disseminate information *in a timely manner* on the cost, quality, and outcomes of health services provided by health facilities and health care providers in the Commonwealth. *The cabinet shall make every effort to make health data findings that can serve as a basis to educate consumers and providers for the purpose of improving patient morbidity and mortality outcomes, available to the public, and state and local leaders in health policy, through the cost-effective and timely use of the media and the Internet and through distribution of the findings to health facilities and health care providers for further dissemination to their patients.*
- (2) The secretary of the Cabinet for Human Resources shall serve as chief administrative officer for the health data collection functions of KRS 216.2920 to 216.2929.
- (3) Neither the secretary nor any employee of the cabinet shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of under KRS 216.2920 to 216.2929.

Section 9. KRS 216.2923 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may:
 - (a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;
 - (b) Apply for and accept any funds, property, or services from any person or government agency;
 - (c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under KRS 216.2920 to 216.2929; and
 - (d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of KRS 216.2920 to 216.2929; however, unless permission is granted specifically by the secretary a third party hired by the secretary shall not release, publish, or otherwise use any information to which the third party has access under its contract.
- (2) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary shall:
 - (a) Publish and make available information that relates to the health care financing and delivery system, the cost of workers' compensation health benefits, motor vehicle health insurance benefits, and health insurance premiums and benefits that is in the public interest;
 - (b) Periodically participate in or conduct analyses and studies that relate to:
 1. Health care costs;
 2. Health care quality and outcomes;
 3. Health care providers and health services;
 4. Health insurance costs; and
 5. The cost of health benefits covered by motor vehicle insurance and workers' compensation insurance;
 - (c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to KRS 216.2920 to 216.2929;
 - (d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of KRS 216.2920 to 216.2929; and
 - (e) *No later than thirty (30) days after the effective date of this Act*, appoint *and convene* a permanent advisory committee, *which shall include a member of the Kentucky Commission on Women*, to define quality outcome measurements and to advise the cabinet on technical matters including proper

interpretation of the data and the manner in which it should be published *and disseminated to the public, state and local leaders in health policy, health facilities, and health care providers.*

- (3) All insurers and self-insurers authorized to write motor vehicle, workers' compensation, or health insurance in this state shall transmit at least annually by March 30 to the Department of Insurance the following information on their insurance experience in this state for the preceding calendar year:
- (a) Total premiums paid;
 - (b) Total cost of claims filed and paid;
 - (c) Total cost of health and medical claims paid for by motor vehicle insurance and by workers' compensation insurance;
 - (d) Total policies canceled by type and the aggregate reasons therefor;
 - (e) List of total health and medical services paid for, grouped by types of services and costs:
 1. Total cost per health and medical service per insured group per month;
 - a. Cost paid by insurer;
 - b. Cost paid by insured; and
 2. Percentage of insureds who received each service.

If the secretary finds it necessary for the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may require quarterly transmission to the cabinet of the information specified under paragraphs (a) to (e) of this subsection. Nothing in this subsection shall prohibit the cabinet from requesting nonidentifying specific claims data for the purpose of identifying expenditure trends for health and medical claims and developing approaches to cost containment.

- (4) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars (\$500) for each violation for knowingly failing to file a report as required *under KRS 216.2920 to 216.2929*. The amount of any fine imposed shall not be included in the allowed costs of a facility for Medicare or Medicaid reimbursement.

Section 10. KRS 216.2925 is amended to read as follows:

- (1) The Cabinet for Human Resources shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than January 1, 1995, those data elements required to be submitted to the cabinet by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms. Thereafter, every hospital and ambulatory facility shall be required to report, on a periodic basis, which may include quarterly reporting, information regarding the charge for and quality of the procedures and health care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The cabinet shall accept data which, at the option of the provider is submitted through a third party, including, but not limited to, organizations involved in the processing of claims for payment, so long as the data elements conform to the requirements established by the cabinet. The cabinet may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers. *On at least a biennial basis, the cabinet shall conduct a statistical survey that addresses the status of women's health, specifically including data on patient age, ethnicity, geographic region, and payor sources.* The cabinet shall rely on data from readily-available reports and statistics whenever possible.
- (2) The cabinet shall require for submission to the cabinet by any group of providers, except for physicians providing services or dispensaries, first aid stations, or clinics located within business or industrial establishments maintained solely for the use of their employees, including those categories within the definition of provider contained in KRS 216.2920 and any further categories determined by the cabinet, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the cabinet for that year, and as provided by cabinet promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:
- (a) A list of medical conditions, health services, and procedures for which charge and quality data shall be collected and published at specified time intervals and in a specified manner;

- (b) A timetable for filing data, which may include quarterly reporting of the information provided for under paragraph (a) of this subsection;
 - (c) A list of data elements that are necessary to enable the cabinet to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;
 - (d) An acceptable format for data submission which shall include use of the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the cabinet, and which may be in the form of magnetic computer tape, computer diskettes, or other electronic media, or through an electronic network, or in the form of hard copy;
 - (e) Procedures to allow health care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the cabinet to reflect valid corrections by the provider before the information is released to the public; and
 - (f) Procedures pertaining to the confidentiality of data collected.
- (3) The cabinet shall coordinate its data-gathering activities with other data-collection activities conducted by the Department of Insurance, as well as other state agencies which collect health-related service, utilization, financial, and health care personnel data, and shall review all administrative regulations promulgated pursuant to KRS 216.2920 to 216.2929 to prevent duplicate filing requirements. The cabinet shall periodically review the use of all data collected under KRS 216.2920 to 216.2929 to assure its use is consistent with legislative intent.
 - (4) The cabinet shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health care charges and quality.
 - (5) The cabinet may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the cabinet and shall, to the extent practicable, be coordinated with other audits performed by state agencies.
 - (6) The cabinet may initiate activities set forth in subsection (1) or (2) of this section at any time after July 15, 1996.
 - (7) The Cabinet for Human Resources shall collect all data elements under this section using only the uniform health insurance claim form pursuant to KRS 304.14-135.

SECTION 11. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

By the year 2000, there shall be created in the Cabinet for Human Resources an Office of Women's Health for the purpose of:

- (1) *Serving as a repository for data and information affecting women's health and mental health;*
- (2) *Analyzing and communicating trends in women's health issues and mental health;*
- (3) *Recommending to the Cabinet for Human Resources and to any advisory committees created under KRS 216.2923, data elements affecting women's health and mental health that should be collected, analyzed, and reported in a timely manner under KRS 216.2920 to 216.2929;*
- (4) *Cooperating with the Cabinet for Human Resources in receiving and disseminating through the Internet relevant aggregate data findings under KRS 216.2920 to 216.2929 which affect women; and*
- (5) *Administering a Women's Health Resource Center to focus on targeted preventive care and comprehensive health education.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

Any public assistance recipient under Title IV of the Federal Social Security Act and any federal food stamp program recipient who has been convicted of a drug felony after August 22, 1996, may remain eligible for the program benefits if the recipient has been assessed as chemically dependent and is participating in or has successfully completed a chemical dependency treatment program or is pregnant, and the recipient is otherwise eligible.

Section 13. KRS 314.142 is amended to read as follows:

- (1) The Kentucky Board of Nursing shall promulgate administrative regulations pursuant to KRS Chapter 13A to create a Sexual Assault Nurse Examiner Program. These administrative regulations shall address, at a minimum:
 - (a) Educational requirements for sexual assault nurse examiners and statewide standards for provision of the education;
 - (b) The application process through which registered nurses who submit documentation of required education and clinical experience and who remit the designated application fee may apply to the board to be credentialed as a "Sexual Assault Nurse Examiner";
 - (c) Continuing education requirements for maintenance of the sexual assault nurse examiner credential; and
 - (d) Methods of monitoring overall program implementation.
- (2) For the purpose of providing recommendations to the Kentucky Board of Nursing on the development and implementation of the Sexual Assault Nurse Examiner Program, there is hereby created a ~~fourteen (14) member~~ Sexual Assault Nurse Examiner Advisory Council. The following members shall serve on the council by virtue of their office: the executive director of the Kentucky Board of Nursing or the executive director's designee; the executive director of the Kentucky Hospital Association or the executive director's designee; the state medical examiner or the examiner's designee; the *commissioner of the Department for Social Services* ~~secretary~~ of the Cabinet for Human Resources or the *commissioner's* ~~secretary's~~ designee; *the executive director of the Governor's Office of Child Abuse and Domestic Violence Services or the executive director's designee*; the president of the *Kentucky Association of Sexual Assault Programs* ~~Statewide Association of Rape Crisis Centers~~ or the president's designee; the commissioner of the Department for Health Services of the Cabinet for Human Resources or the commissioner's designee; *the commissioner of the Kentucky State Police or the commissioner's designee*; the chair of the *Kentucky Association of Baccalaureate and Higher Degree Nursing Programs* ~~Council on Postsecondary Education~~ or the chair's designee; the director of the Victim's Advocacy Division of the Office of the Attorney General or the director's designee; the director of the Prosecutors Advisory Council of the Office of the Attorney General or the director's designee; and the director of the Kentucky State Police Crime Lab or the director's designee. Two (2) members shall be registered nurses with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Nurses Association. *One (1) member shall be a physician with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Medical Association.* Two (2) members with a demonstrated interest and experience in victims' services shall be appointed by the Governor to serve as at-large members. Of the at-large members, one (1) shall be appointed from a list of three (3) names recommended by the Kentucky Board of Nursing and one (1) from a list of three (3) names recommended by the Cabinet for Human Resources.
- (3) Members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The chair of the advisory council shall be elected by a majority vote of council members.
- (5) Each member of the council may be reimbursed for necessary expenses incurred in attending its meetings from funds available through the collection of fees required under subsection (1) of this section.
- (6) *Any person in this state who holds a credential as a Sexual Assault Nurse Examiner as defined in KRS 314.011(14) shall have the right to use the title "Sexual Assault Nurse Examiner" and the abbreviation "SANE". No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a Sexual Assault Nurse Examiner.*

Section 14. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsections (2) and (5) of Section 7 of this Act and throughout Section 11 of this Act shall be codified as the Cabinet for Health Services.

Section 15. This Act may be cited as the Women's Health Act of 1998.

Approved April 9, 1998

CHAPTER 428

(HB 78)

AN ACT relating to community education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

- (1) *A state Council for Community Education shall be established for the purpose of advising the commissioner of education and the Department of Education on issues relating to community education programs and making recommendations for the funding of local community education programs.*
- (2) *The council shall have a membership of fifteen (15) persons, appointed by the Governor. Membership may include, but not be limited to, representatives of the following groups:*
 - (a) *Civic organizations;*
 - (b) *Community-based organizations;*
 - (c) *Community education organizations;*
 - (d) *Local government;*
 - (e) *Local school district administrators;*
 - (f) *Parent organizations;*
 - (g) *Postsecondary education;*
 - (h) *School boards; and*
 - (i) *Teachers.*
- (3) *The commissioner of education or the commissioner's designee shall convene the first meeting of the council for the purpose of establishing the bylaws of the council and electing officers to include: chairman, vice chairman, and secretary.*
- (4) *The council shall not meet more than four (4) times annually. Members may be reimbursed for expenses, but shall not receive a per diem allowance.*

Section 2. KRS 160.156 is amended to read as follows:

- (1) The Kentucky Board of Education shall develop a state plan for community education which sets forth the goals and objectives of the program and establishes a system of priorities for targeting available resources on the areas with the greatest need.
- (2) The Kentucky Board of Education shall administer a grant program pursuant to KRS 160.155 and 160.157 to provide money to local school districts to:
 - (a) Support staff to plan and manage programs and services for community education;~~and~~
 - (b) Support programs that are targeted to the greatest educational needs in the community; **and**
 - (c) **Encourage cooperation among all local school districts in a county.**
- (3) **Funds appropriated for this purpose shall be distributed by the Kentucky Board of Education through a grant process.** Districts shall provide a twenty-five percent (25%) cash match in order to receive state community education funding.

Section 3. KRS 160.157 is amended to read as follows:

- (1) ~~Subject to the availability of funds,~~ A public school district may receive funding for a community school program if it meets all of the following criteria:
 - (a) Submits an application for approval by the Kentucky Board of Education in the manner and form prescribed by the Department of Education;

- (b) Submits a plan, approved by the local board, which outlines the proposed community education program, including procedures for obtaining the involvement and cooperation of other agencies and groups in identifying and recommending programs for meeting *locally determined*~~the~~ needs~~of citizens~~;
 - (c) Establishes *a council with the power to make district-wide decisions of policy*~~[an advisory council, appointed by the board of education,]~~ to assist in conducting community needs assessments and recommending program priorities;
 - (d) Employs at least one (1) full-time community education director.~~;~~
- (2) Two (2) or more school districts may combine for purposes of qualifying *for state funds if the local districts identify a district of record for purposes of receiving state community education funds, maintaining records, and filing reports. Two (2) or more districts in the same county that wish to apply for state funds shall submit a joint proposal*~~[as a community school. Any qualified school district or combination of school districts with a total population of five thousand (5,000) or more persons is eligible to receive state funding equal to seventy five percent (75%) of the state average of the salaries paid to local instructional supervisors. Certification requirements for the position shall be developed by the Department of Education].~~
- (3)~~[Funded positions shall be awarded to qualified districts in the ratio of district population to state population.~~
- (4)~~]~~ Each *grantee*~~[community school]~~ receiving state funds for a community education program *shall*~~[must]~~ submit an annual report to the State Department of Education. The report shall include an evaluation of the program and a financial statement. Failure to submit the report shall result in the loss of *state funding*~~[the community school designation].~~

Approved April 9, 1998

CHAPTER 429

(HB 271)

AN ACT relating to executive branch ethics.

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

Section 1. KRS 11A.010 is amended to read as follows:

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

- (1) "Business" means any corporation, *limited liability corporation*, partnership, *limited liability partnership*, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries,

general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any *person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection* ~~other management personnel with procurement authority~~;

- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
- (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) ~~The Superintendent of Public Instruction;~~
 - ~~(h)~~ The Auditor of Public Accounts;
 - ~~(h)~~⁽ⁱ⁾ Each Railroad Commissioner; and
 - ~~(i)~~^(j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "~~State~~ Agency" means every state office, *cabinet*, department, ~~division,~~ board, commission, ~~institution,~~ public corporation, ~~or~~ ~~and~~ authority ~~in~~ ~~within~~ the executive branch *of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;*
- (11) "Lobbyist" means any person employed as a legislative agent *as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8)* ~~or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people~~;
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts ~~with reference to legislative action~~; ~~and~~
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to ~~(h)~~⁽ⁱ⁾ of this section;
- (14) *"Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;*
- (15) *"Public agency" means any governmental entity;*
- (16) *"Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments; and*
- (17) *"Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.*

Section 2. KRS 11A.040 is amended to read as follows:

- (1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business *or regulatory action* with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, *bid on, negotiate*, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
 - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
 - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
 - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.
- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, *or is regulated by*, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- (7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:
 - (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- (8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:
 - (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- (9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

Section 3. KRS 11A.050 is amended to read as follows:

- (1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (i), and each candidate shall file a statement of financial disclosure with the commission, as follows:
- (a) Each officer and each public servant listed in KRS 11A.010(9)(a) to *(h) who occupies his position during any portion of a calendar year shall file the statement for that entire calendar year on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in subsection (9)(a) to (h) of Section 1 of this Act*~~[(i) appointed to or employed in any position as of January 1 of any year shall file the statement for the preceding calendar year, complete through December 31, with the commission on or before April 15 of each year].~~
 - ~~(b) [Each officer and each public servant listed in KRS 11A.010(9)(a) to (i) appointed to or employed in any position after January 1 of any year shall file the statement reflecting the previous calendar year with the commission no later than thirty (30) days after the date of appointment or employment.~~
 - ~~(c)]~~ A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.
- (2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.
- (3) The statement shall include the following information for the preceding calendar year:
- (a) Name and entire residential and business address of filer;
 - (b) Title of position or office whereby filing is required;
 - (c) Any other occupations of filer and spouse;
 - (d) Positions held by the filer or his spouse in any business, partnership, or corporation for profit;
 - (e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more;
 - (f) Sources of gross income of the filer or his spouse, as well as information concerning the nature of the business, and the form of the income;
 - (g) Sources of retainers received by the filer or his spouse;
 - (h) Any representation or intervention for compensation by the filer or his spouse for any person before policy-making entities in state government;
 - (i) All positions of a fiduciary nature in a business;
 - (j) Information regarding any real property in which there is an interest of ten thousand dollars (\$10,000) or more held by the filer, his spouse, or dependent children;
 - (k) Sources of gifts of money or property with a retail value of more than two hundred dollars (\$200) to the filer, his spouse, or dependent children, except those from spouse, parents, or grandparents; and
 - (l) Identity of creditors owed more than ten thousand dollars (\$10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

Section 4. KRS 11A.110 is amended to read as follows:

The commission shall perform the following additional duties:

- (1) On its own initiative or upon *a signed* request in writing, issue and publish advisory opinions on the requirements of this chapter for those who wish to use the opinion to guide their own conduct. *If requested in writing by the person seeking the advisory opinion, the commission shall not release that person's name;*
- (2) Provide a continuing program of education, assistance, and information to public servants, including, but not limited to, publishing and making available to the persons subject to this chapter and the public explanatory information concerning this chapter, the duties imposed by it, and the means of enforcement;
- (3) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement this chapter;

- (4) Prescribe forms for statements required by this chapter and furnish the forms to persons required to file the statements. The forms shall be adopted as administrative regulations or adopted by reference in an administrative regulation;
- (5) Prepare and publish a manual of guidelines setting forth uniform methods of reporting for use by persons required to file under this chapter;
- (6) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter;
- (7) Preserve the disclosure statements filed with it for four (4) years from the date of receipt;
- (8) Make statements and reports filed with the commission available for public inspection and copying pursuant to KRS 61.870 to KRS 61.884 (Kentucky Open Records Law);
- (9) Compile and maintain a current index of all statements filed with the commission to facilitate public access to the reports and statements;
- (10) Prepare and publish reports as it may deem appropriate;
- (11) Audit statements and reports filed with the commission;
- (12) Make recommendations for legislation relating to governmental ethics and other matters included in this chapter as the commission deems desirable; and
- (13) Prepare a biennial written report, no later than December 1 of each odd-numbered year, to the Legislative Research Commission, the Governor, and the public on the activities of the commission in the preceding two (2) fiscal years. The report shall contain the names and duties of each individual employed by the commission and a summary of commission determinations and advisory opinions. The commission shall prevent disclosure of the identity of a person involved in decisions or advisory opinions. The report may contain other information on matters within the commission's jurisdiction and recommendations for legislation as the commission deems desirable.

Approved April 9, 1998

CHAPTER 430

(HB 274)

AN ACT relating to executive branch ethics.

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

Section 1. KRS 11A.040 is amended to read as follows:

- (1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
 - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
 - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.
- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- (7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:
- The date of leaving office or termination of employment; or
 - The date the term of office expires to which the public servant was elected.
- (8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:
- The date of leaving office or termination of employment; or
 - The date the term of office expires to which the public servant was elected.
- (9) Without the approval of *his appointing authority*~~[the commission]~~, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds~~]. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer].~~
- The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.*
 - The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.*
 - The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.*

Approved April 9, 1998

CHAPTER 431

(HB 275)

AN ACT relating to executive branch ethics.

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

Section 1. KRS 11A.045 is amended to read as follows:

- (1) *No public servant, his spouse, or dependent child knowingly shall accept tangible gifts or gratuities totaling a value greater than twenty-five dollars (\$25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with, is*

regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. The following items are exempt:

- (a) *Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;*
 - (b) *Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;*
 - (c) *Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;*
 - (d) *A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;*
 - (e) *A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;*
 - (f) *Food, clothing, and shelter in times of natural disaster or other emergency;*
 - (g) *Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;*
 - (h) *Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;*
 - (i) *Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;*
 - (j) *Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;*
 - (k) *Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and*
 - (l) *A single copy of a textbook received by an educator for review.*
- (2) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:
- (a)~~(1)~~ Was not solicited by the public servant;
 - (b)~~(2)~~ Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky Economic Development Partnership and with the Executive Branch Ethics Commission and that all tangible property with a value in excess of twenty-five dollars (\$25), other than food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; *and*
 - (c)~~(3)~~ Was not accepted under circumstances which would create a violation of KRS Chapter 521.

Section 2. KRS 11A.010 is amended to read as follows:

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

- (1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, **and** the Council on Postsecondary Education ~~and any other management personnel with procurement authority~~;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
 - (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Superintendent of Public Instruction;
 - (h) The Auditor of Public Accounts;
 - (i) Each Railroad Commissioner; and
 - (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;
- (11) "Lobbyist" means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people;
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts with reference to legislative action; and
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

CHAPTER 432**(HB 319)**

AN ACT making appropriations for operations, maintenance, and support of the legislative branch of the Commonwealth of Kentucky.

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

PART I

OPERATING BUDGET

Funds are appropriated to the Legislative Research Commission out of the General Fund, restricted funds accounts, or federal funds accounts for the fiscal year beginning July 1, 1998, and ending June 30, 1999, and for the fiscal year beginning July 1, 1999, and ending June 30, 2000, in the following discrete sums, or so much thereof as may be necessary. Each appropriation is made by the source of respective fund or funds accounts to be used for the purposes of the legislative branch of government of the Commonwealth of Kentucky. For column display purposes, 1999-00 represents fiscal year 1999-2000.

	1998-99	1999-00	
1. General Assembly			
General Fund	8,759,000	14,300,000	
Restricted Funds		115,000	65,000
Total	8,874,000	14,365,000	

The above General Fund appropriation to the General Assembly includes funds for the Legislators Retirement Plan in each fiscal year. Included in the above General Fund appropriation is \$786,000 in fiscal year 1998-99 and \$1,725,000 in fiscal year 1999-2000 for increases in salary and per diem for members of the General Assembly, notwithstanding the provisions of KRS 6.190, 6.213, and 6A.020.

The above General Fund appropriation provides for the continuation of the annual cost of living adjustment authorized for the 1996-98 biennium. Notwithstanding KRS 6.190, 6.213, and 6A.020, the daily compensation provided by KRS 6.190 and 6A.020 and the interim expense allowance provided by KRS 6.213 for members of the General Assembly shall continue as adjusted on January 1, 1997, and January 1, 1998. Notwithstanding KRS 6.190, 6.213, and 6A.020, the daily compensation provided by KRS 6.190, and 6A.020 and the interim expense allowance provided by KRS 6.213 for members of the General Assembly shall be adjusted on January 1, 1999, and January 1, 2000, by the all urban consumer price index (CPI-U) not to exceed 5 percent (5%) per annum but not less than zero percent (0%) per annum.

2. Legislative Research Commission			
General Fund	22,966,500	25,579,000	
Restricted Funds		125,000	125,000
Total	23,091,500	25,704,000	

The total number of permanent full-time employees hired by the Legislative Research Commission with the above appropriation shall not exceed 261 in fiscal year 1998-99 and 261 in fiscal year 1999-2000. Within this total, the permanent full-time employees assigned specifically to the House members of the Legislative Research Commission shall not exceed 19 and the permanent full-time employees assigned specifically to the Senate members of the Legislative Research Commission shall not exceed 10.

The above General Fund appropriation includes \$364,000 in fiscal year 1998-99 and \$264,000 in fiscal year 1999-2000 for the capital projects authorized in the Capital Projects Budget, Part II. Project funds may be transferred to the Capital Construction Fund.

TOTAL - OPERATING BUDGET

	1998-99	1999-00
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ACTS OF THE GENERAL ASSEMBLY

General Fund	31,725,500	39,879,000	
Restricted Funds		240,000	190,000
TOTAL	31,965,500	40,069,000	

Notwithstanding the provisions of KRS 45.229, any unexpended balance remaining at the close of fiscal year 1997-98 shall not lapse but shall continue into the 1998-99 fiscal year and any unexpended balance in any succeeding fiscal year shall not lapse, but shall continue into the following fiscal year.

PART II

CAPITAL PROJECTS BUDGET

	1998-99	1999-00
1. Legislative Research Commission		
a. Printing/duplicating machine - rental		
General Fund	264,000	264,000
b. Collating system		
General Fund	100,000	
TOTAL	364,000	264,000

The amounts listed above are not in addition to the funds appropriated in the Operating Budget, Part I.

TOTALS - LEGISLATIVE BRANCH BUDGET

	1998-99	1999-00
General Fund	31,725,500	39,879,000
Restricted Funds		240,000
TOTAL FUNDS		40,069,000

PART III

GENERAL PROVISIONS

1. The director of the Legislative Research Commission with the approval of the Legislative Research Commission may expend any of the funds appropriated for legislative operation and administration in any lawful manner and for any legal purpose which the Commission shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the legislative branch of government.

2. The director of the Legislative Research Commission shall submit monthly to the Legislative Research Commission a report listing all travel expenses reimbursed, travel related per diem, and any other travel related reimbursement for each General Assembly member and each employee of the Legislative Research Commission who was reimbursed during the previous month.

3. No member of the General Assembly except members of the Legislative Research Commission shall receive in any one fiscal year per diem compensation in excess of 7 days in connection with out-of-state travel unless prior written approval has been received from the Legislative Research Commission.

4. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provisions thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

5. Any appropriation item and sum in this Act and in an appropriation provision in another act of the 1998 General Assembly which constitute a duplicate appropriation shall be governed by KRS 48.312.

6. KRS 48.313 shall control when a total, subtotal, or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

7. Proposed revisions to restricted funds and federal funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The director of the Legislative Research Commission shall notify on a timely

basis the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

8. The Legislative Research Commission shall cause the director of the Legislative Research Commission to prepare a final budget document reflecting the 1998-00 biennial budget of the legislative branch. A copy shall be provided to the Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within sixty (60) days of the adjournment of the 1998 session of the General Assembly.

9. A Task Force on Parenting Functions and Access to Children shall be established to perform a study of the issues relating to parenting, parenting functions, and access to the children, and to make recommendations for changes to the current system that are in the best interest of the child. The task force shall be composed of members of the General Assembly as well as nonmembers, determined by the Legislative Research Commission, but shall contain at least one (1) Circuit Judge, one (1) family court judge, one (1) attorney who does domestic relations work, one (1) person who has expert knowledge of domestic violence, one (1) psychologist, mediator, or domestic relations commissioner, and at least one (1) organization that is known for child advocacy relating to divorce and separation. The Legislative Research Commission shall designate the chair of the committee. The Task Force on Parenting Functions and Access to Children shall make its recommendations to the Legislative Research Commission no later than July 1, 1999. Funding for staff services to be utilized in completing this study shall be provided from the regular Legislative Research Commission budget and are subject to the limitations and other research responsibilities of the Commission.

PART IV

BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The legislative branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

Approved April 9, 1998

CHAPTER 433

(HB 447)

AN ACT relating to the education of state agency children.

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

Section 1. KRS 158.135 is amended to read as follows:

(1) As used in this section, unless the context otherwise requires:

(a) "State agency children" means:

1. **a.** Those children of school age committed to or in custody of the Cabinet for Human Resources and placed, or financed by the cabinet, in a Cabinet for Human Resources operated or contracted institution, treatment center, facility, **including those for therapeutic foster care and excluding those for nontherapeutic foster care;** or
- b.** **Those children** placed or financed by the Cabinet for Human Resources in a private facility pursuant to child care agreements **including those for therapeutic foster care and excluding ~~other than~~ those for nontherapeutic foster care;**
2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the mentally retarded; and
3. Those children committed to or in custody of the Department of Juvenile Justice, except for children placed in a juvenile detention facility or jail as defined in KRS 15A.067.

(b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if identified on an individual educational plan, and more intensive educational programming.

- (c) *"Therapeutic foster care" means a remedial care program for troubled children and youth that is in the least restrictive environment where the foster parent is trained to implement planned, remedial supervision and care leading to positive changes in the child's behavior. Children served in this placement have serious emotional problems and meet one (1) or more of the following criteria:*
1. *Imminent release from a treatment facility;*
 2. *Aggressive or destructive behavior;*
 3. *At risk of being placed in more restrictive settings, including institutionalization; or*
 4. *Numerous placement failures.*
- (2) (a) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.
- (b) *The Department of Education shall, to the extent possible within existing appropriations, set aside an amount of the state agency children funds designated by the General Assembly in the biennial budget to reimburse a school district for its expenditures exceeding twenty percent (20%) of the total amount received from state and federal sources to serve a state agency child.*
- (3) *The General Assembly shall, if possible, increase funding for the education programs for state agency children by a percentage increase equal to that provided in the biennial budget for the base funding level for each pupil in the program to support education excellence in Kentucky under KRS 157.360 and, if applicable, by an amount necessary to address increases in the number of state agency children being served.*
- (4) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for Human Resources unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.
- (5)~~(4)~~ The Cabinet for Human Resources shall contract with a university-affiliated training resource center utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.
- (6)~~(5)~~ Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

Section 2. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.

- (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Human Resources, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. ***The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.***
- (b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
- (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
 2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;
 3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
 4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
 5. The funding for school services for state agency children authorized by KRS 158.135; and
 6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.
- (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
1. Provide for the development and implementation of interagency agreements that:
 - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
 - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
 2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.

- (e) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Approved April 9, 1998

CHAPTER 434

(HB 484)

AN ACT relating to the primary program.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *In this section, "primary school program" means that part of the elementary school program in which children are enrolled from the time they begin school until they are ready to enter the fourth grade. Notwithstanding any statute to the contrary, successful completion of the primary school program shall be a prerequisite for a child's entrance into fourth grade.*
- (2) *The Kentucky Board of Education shall establish, by administrative regulation, methods of verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451.*
- (3) *The primary program shall include the following critical attributes: developmentally appropriate educational practices; multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement.*
- (4) *Each school council or, if none exists, the school shall determine the organization of its ungraded primary program including the extent to which multiage groups are necessary to implement the critical attributes based on the critical attributes and meeting individual student needs.*
- (5) *The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.*
- (6) *Data shall be collected by each school district on the number of students, in each school having a primary program, who take five (5) years to complete the primary program. The data shall be reported in the annual performance report described in KRS 158.6453.*

Section 2. KRS 156.160 is amended to read as follows:

- (1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:
 - (a) Courses of study for the different grades and kinds of common schools. ~~subject to the following conditions:~~
 1. ~~a. Procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year, except as provided in subparagraph 1.b. of this paragraph. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.~~

- ~~b. A school council established pursuant to KRS 160.345 or if none exists, a school may determine, based on individual student needs, that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council or school shall revise the action plan to reflect any changes in the primary program's design.~~
2. The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
- (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;
- (c) The minimum requirements for high school graduation. ~~Prior to the beginning of the 1994-95 school year,~~ The ~~Kentucky State~~ Board ~~of~~ ~~for Elementary and Secondary~~ Education shall **regularly** review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;
- (d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
- (e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
- (f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;
- (g) The transportation of children to and from school;
- (h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;
- (i) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;
- (j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and
- (k) The disposal of real and personal property owned by local boards of education.
- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:
1. An alternative approach will achieve the same result required by the administrative regulation;
 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or

3. There is a finding of good cause for the waiver.
 - (b) Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools shall not be subject to waiver.
 - (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.
- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 3. KRS 158.030 is amended to read as follows:

~~{(1)—}~~"Common school" means an elementary or secondary school of the state supported in whole or in part by public taxation. No school shall be deemed a "common school" or receive support from public taxation unless the school is taught by a certified teacher for a minimum school term as defined by KRS 158.070 and every child residing in the district who satisfies the age requirements of this section has had the privilege of attending it. Provided, however, that any child who is six (6) years of age, or who may become six (6) years of age by October 1, shall attend public school or qualify for an exemption as provided by KRS 159.030. Any child who is five (5) years of age, or who may become five (5) years of age by October 1, may enter a primary school program, as defined in *Section 1 of this Act*~~{subsection (2) of this section}~~.

~~{(2)—}~~"Primary school program" means that part of the elementary school program in which children are enrolled from the time they begin school until they are ready to enter the fourth grade. Notwithstanding any statute to the contrary, successful completion of the primary school program shall be a prerequisite for a child's entrance into fourth grade. The Kentucky Board of Education shall establish, by regulation, methods of verifying successful completion of the primary school program pursuant to the goals of education as described in KRS 158.6451.

Section 4. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
 - (a) Bingo in which the gross receipts do not exceed a total of five thousand dollars (\$5,000) per year;
 - (b) A raffle or raffles for which the gross receipts do not exceed five thousand dollars (\$5,000) per year; and
 - (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed five thousand dollars (\$5,000) per year.
- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the division in writing, on a form issued by the division, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter, except:
 - (a) Payment of the fee imposed under the provisions of KRS 238.570; and
 - (b) The reporting requirements imposed under the provisions of KRS 238.550(2), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.
- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
 - (a) Report the amount to the division; and
 - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the division shall investigate to determine if the organization is otherwise qualified to hold the license.

- (5) If the division determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
 - (6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
 - (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities.
 - (8) In order to qualify for licensure, a charitable organization shall:
 - (a) 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
 2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030~~(4)~~, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
 - (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;
 - (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "accomplishing its charitable purposes" means relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3); and
 - (d) Have maintained an office or place of business or operation, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered.
- (9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:
 - (a) The name and address of the charitable organization;
 - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
 - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
 - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;
 - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
 - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
 - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

- (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
 - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
 - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming; and
 - (k) Any other information the division deems appropriate.
- (10) The division may issue a limited license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- (12) In order to continue to be qualified for licensure, a charitable organization shall continuously meet the requirements set forth in KRS 238.550(3) and (4). If a charitable organization is unable to meet those requirements, the division shall revoke the charitable organization's license or deny its application for renewal licensure by administrative action as provided in KRS 238.560.

Approved April 9, 1998

CHAPTER 435

(HB 552)

AN ACT relating to liens.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 376 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context otherwise requires:*
- (a) *"Customer" means any person who causes a molder to fabricate, cast, or otherwise make a die, mold, form, or pattern, or who provides a molder with a die, mold, form, or pattern, to manufacture, assemble, cast, fabricate, or otherwise make a product for a customer; and*
 - (b) *"Molder" means any person who fabricates, casts, or otherwise makes or uses a die, mold, form, or pattern for the purpose of manufacturing, assembling, casting, fabricating, or otherwise making a product for a customer. "Molder" includes, but is not limited to, a tool or die maker.*
- (2) (a) *In the absence of any agreement to the contrary, a customer shall have all rights and title to any die, mold, form, or pattern in the possession of a molder.*
- (b) *If a customer does not claim possession from a molder of a die, mold, form, or pattern, all rights and title to any die, mold, form, or pattern shall be transferred by operation of law to the molder for the purpose of destroying or otherwise disposing of the die, mold, form, or pattern, consistent with this subsection.*
- (c) *If a molder chooses to have all rights and title to any die, mold, form, or pattern transferred to the molder by operation of law, the molder shall send written notice by registered mail to the chief executive officer of the customer or, if the customer is not a business entity, to the customer, at the customer's last known address. The written notice shall indicate that the molder intends to terminate the customer's rights and title by having the rights and title transferred to the molder by operation of law under this section. The notice shall include a statement of the customer's rights set forth in paragraph (d) of this subsection.*
- (d) 1. *If a customer does not respond in person or by mail to claim possession of a particular die, mold, form, or pattern within one hundred twenty (120) days following the date that the notice was mailed, or does not make contractual arrangements with the molder for storage of the die,*

mold, form, or pattern, all rights and title of the customer, except patents and copyrights, shall transfer by operation of law to the molder. Thereafter, the molder may destroy or otherwise dispose of the particular die, mold, form, or pattern as the molder's own property without any risk of liability to the customer.

2. *This section shall not be construed in any manner to affect any right of the customer under federal patent or copyright law or federal law pertaining to unfair competition.*
- (3) (a) *A molder shall have a lien, dependent on possession, on all dies, molds, forms, or patterns in his hands and that belong to a customer, for the balance due him from the customer for any manufacturing or fabrication work, and in the value of all material related to the work. The molder may retain possession of the die, mold, form, or pattern until the charges are paid.*
 - (b) *Before enforcing a lien, a molder shall give notice in writing to the customer, whether delivered personally or sent by registered mail to the last known address of the customer. The notice shall state that a lien is claimed for the damages set forth in or attached to the writing for manufacturing or fabrication work contracted or performed for the customer. The notice shall also include a demand for payment.*
 - (c) *If the molder has not been paid the amount due within sixty (60) days after the notice has been received by the customer, as provided in paragraph (b) of this subsection, the molder may sell the die, mold, form, or pattern at a public auction.*
- (4) (a) *Before a molder may sell the die, mold, form, or pattern, the molder shall notify the customer by registered mail, return receipt requested. The notice shall include:*
 1. *The molder's intention to sell the die, mold, form, or pattern thirty (30) days after the customer's receipt of the notice;*
 2. *A description of the die, mold, form, or pattern to be sold;*
 3. *The time and place of the sale; and*
 4. *An itemized statement for the amount due.*
 - (b) *If there is not a return of the receipt of the mailing or if the postal service returns the notice as being nondeliverable, the molder shall publish the notice of the molder's intention to sell the die, mold, form, or pattern in a newspaper of general circulation in the customer's last known place of business. The notice shall include a description of the die, mold, form, or pattern.*
 - (c)
 1. *If the sale is for a sum greater than the amount of the lien, the excess shall be paid to any prior lienholder known to the molder at the time of the sale and any remainder shall be paid to the customer, if the customer's address is known, or the Kentucky State Treasurer for deposit in the general fund if the customer's address is unknown to the molder at the time of the sale.*
 2. *A molder shall not conduct a sale if the sale violates any right of a customer under federal patent or copyright law.*

Approved April 9, 1998

CHAPTER 436

(HB 590)

AN ACT relating to Social Security coverage of public employees.

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

Section 1. KRS 61.410 is amended to read as follows:

- (1) It is declared to be the policy of the General Assembly to extend the federal old-age, survivors, ~~and~~ disability, **and hospital** insurance coverage to all public employees regardless of whether ~~the~~ ~~such~~ employees are occupying positions which are covered by a retirement system; but no employee occupying a position to which KRS 161.220 to 161.710 are applicable shall be held to fall within the class of persons sought to be affected by

this statement of policy except for employees of the state universities, ~~Kentucky State College,~~ and public junior colleges.

- (2) It is also the policy of the General Assembly that the protection afforded public employees by membership in a retirement system or by the right to receive periodic benefits under a retirement system will not be impaired as a result of any agreement made between the Commonwealth and the *commissioner*~~secretary~~ pursuant to KRS 61.410 to 61.500.
- (3) The General Assembly ratifies the extension of federal old-age, survivors,~~and~~ disability, *and hospital* insurance coverage to public employees in positions covered by a retirement system prior to June 14, 1962, if the procedures specified by former KRS 61.430(6) were substantially followed.

Section 2. KRS 61.420 is amended to read as follows:

For the purpose of KRS 61.410 to 61.500:

- (1) "Wages" means all remuneration for employment as defined *in subsection (2) of this section*~~herein~~, including the cash value of all remuneration paid in any medium other than cash, except that ~~the~~~~such~~ term shall not include that part of the remuneration which, even if it were for "employment" within the meaning of Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;
- (2) "Employment" means any service performed by an employee in the employ of the Commonwealth, a political subdivision, or an interstate instrumentality, for those employers, except (a) service of an emergency nature, (b) service which in the absence of an agreement entered into under KRS 61.410 to 61.500 would constitute "employment" as defined in the Social Security Act, or (c) service which under the Social Security Act may not be included in any agreement between the Commonwealth and the *commissioner*~~secretary~~ entered into under KRS 61.410 to 61.500; ~~except~~~~provided, however,~~ that service, the compensation for which is on a fee basis, may be excluded in any plan approved under KRS 61.410 to 61.500, and provided also, that service in any class or classes of positions, the exclusion of which is permitted under the Social Security Act, may be excluded in any plan approved under KRS 61.460;
- (3) "Employee" means any person in the service of the Commonwealth, a political subdivision or an interstate instrumentality of which the Commonwealth is a principal and shall include all persons designated officers including those which are elected and those which are appointed;
- (4) "State agency" means the Division of Social Security, Office of the Controller, which agency shall be subject to the authority of the secretary of finance and administration;
- (5) "Political subdivision," in addition to counties, municipal corporations, and school districts, includes instrumentalities of the Commonwealth, of one (1) or more of its political subdivisions, or of the Commonwealth and one (1) or more of its political subdivisions, and any other governmental unit thereof;
- (6) "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," including regulations and requirements issued pursuant thereto, as that act has been and may from time to time be amended;
- (7) "Federal Insurance Contributions Act" means ~~subchapters~~~~subchapter~~ *A, B, and C* of Chapter ~~21~~~~9~~ of the Federal Internal Revenue Code and all amendments thereto;
- (8) "*Commissioner*~~Secretary~~" means the *commissioner of Social Security*~~Secretary of Health, Education and Welfare~~ and includes any individual to whom the *commissioner*~~secretary~~ may delegate any of ~~the commissioner's~~~~his~~ functions under the Social Security Act; and, with respect to any transactions regarding insurance coverage occurring prior to April 11, 1953, includes the federal security administrator and any individual to whom ~~the administrator~~~~he~~ may have delegated any of ~~the administrator's~~~~his~~ functions under the Social Security Act; *and, with respect to any transactions regarding insurance coverage occurring from April 11, 1953 to March 30, 1995, includes the secretary of health and human services and any individual to whom the secretary may have delegated any of the secretary's functions under the Social Security Act;*
- (9) "Insurance coverage" means coverage by the old-age, survivors,~~and~~ disability, *and hospital* insurance provisions of the Social Security Act;
- ~~(10) "Sick leave with pay" means any payment made in lieu of salary on account of sickness or accident disability.~~

Section 3. KRS 61.430 is amended to read as follows:

Consistent with the terms and conditions of KRS 61.410 to ~~61.500~~~~[61.490]~~, the state agency, with the approval of the Governor, is hereby authorized to enter into an agreement with the ~~commissioner~~~~[secretary]~~ for the purpose of extending insurance coverage to employees with respect to services specified in ~~the~~~~[such]~~ agreement which constitute employment as defined in KRS 61.420. An agreement entered into under this section may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration and other appropriate provisions as the state agency and ~~commissioner~~~~[secretary]~~ shall agree upon. Any agreement, subject to the provisions of the Social Security Act, shall provide in effect that:

- (1) Insurance coverage shall be provided for employees whose services are described in the agreement, and their dependents and survivors on the same basis as though ~~the~~~~[such]~~ services constituted employment within the meaning of Title II of the Social Security Act;
- (2) The state shall pay to the secretary of the Treasury, at ~~such~~ times ~~as may be~~ prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes imposed by sections ~~3101~~~~[1400]~~ and ~~3111~~~~[1410]~~ of the Federal Insurance Contributions Act if the services covered by the agreement constitute employment within the meaning of that act;
- (3) Insurance coverage will be afforded with respect to services performed after an effective date specified in the agreement or modification thereof; ~~except~~~~[provided, however,]~~ that ~~the effective~~~~[such]~~ date shall not be earlier than January 1, 1955, in the case of an agreement or modification made between January 1, 1955, and January 1, 1958; or earlier than January 1, 1956, in the case of an agreement or modification made at any time in the years 1958 or 1959; or earlier than the first day of the year in which the agreement or modification was made, in the case of an agreement or modification made at any time between January 1, 1960, and July 1, 1962; or earlier than the first day of the fifth year preceding the year in which the agreement or modification is made, in the case of an agreement or modification made at any time after July 1, 1962;
- (4) Insurance coverage shall be afforded with respect to all services constituting employment; ~~except~~~~that~~~~[provided, however,]~~ in order for insurance coverage to be afforded with respect to services performed in the employ of a political subdivision of the state there must be in existence in regard to those services a plan which meets the requirements of KRS 61.460;
- (5) Subject to the provisions of KRS 61.435, insurance coverage shall be afforded with respect to all services in positions covered by a retirement system; ~~except~~~~[provided, however,]~~ that no agreement ~~shall~~~~[will]~~ be effective to afford insurance coverage to any services performed in positions to which KRS 161.220 to 161.710 are applicable except for services performed in positions in a state ~~university~~~~[college]~~ or public junior college.

Section 4. KRS 61.435 is amended to read as follows:

- (1) In order for any service performed by an employee in a position covered by a retirement system to be included in an agreement as permitted by KRS 61.430, a majority of the members of ~~the~~~~[such]~~ retirement system must vote in the affirmative on the question of whether the service covered by the retirement system should be included in the agreement. The procedure for obtaining the vote of the members of the retirement systems shall be as follows:
 - (a) Upon request of the political subdivision concerned, the Governor shall authorize a referendum within the retirement system concerned and designate an agency or individual to supervise the manner of conducting it;
 - (b) Any ~~such~~ referendum shall be conducted in accordance with the requirements of Section 218 (d) (3) of the Social Security Act;
 - (c) The votes shall be cast in secret on written ballots;
 - (d) An opportunity to vote shall be given only to those employees who occupied positions covered by ~~the~~~~[such]~~ retirement system, and were members of ~~the~~~~[such]~~ system, on the date upon which the notice of referendum was given and on the date upon which the referendum was held; and
 - (e) Notice that the referendum is to be conducted shall be given to every member of the retirement system at least ninety (90) days before the date the referendum is held.

- (2) Upon receiving satisfactory evidence that the conditions specified in this section and Section 218 (d) (3) of the Social Security Act have been fulfilled, the Governor or any agency or individual designated by him shall so certify to the *commissioner*~~Secretary~~.
- (3) For purposes of this section, in any case where a retirement system covers the employees of two (2) or more political subdivisions, or of the Commonwealth and one or more political subdivisions, there are deemed to exist separate retirement systems with respect to the Commonwealth or each political subdivision. Also for purposes of this section, where a retirement system covers the employees of one or more of the state *universities*~~colleges~~ or of one or more of the public junior colleges or of any combination of ~~such~~ state *universities*~~colleges~~ there shall be deemed to exist separate retirement systems with respect to each state *university*~~college~~ and each public junior college.

Section 5. KRS 61.440 is amended to read as follows:

Any instrumentality jointly created by this state and any other state or states is hereby authorized, to the extent that this Commonwealth may confer authority, (1) to enter into an agreement with the *commissioner*~~federal security administrator~~ whereby the benefits of the federal old-age, ~~and~~ survivors, *disability, and hospital* insurance system shall be extended to employees of ~~the~~~~such~~ instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under subsection (1) of KRS 61.450 if they were covered by an agreement made pursuant to KRS 61.430, and (3) to make payments to the secretary of the treasury in accordance with ~~the~~~~such~~ agreement, including payments from its own funds, and otherwise to comply with ~~the~~~~such~~ agreement. ~~The~~~~Such~~ agreement shall, to the extent practicable, be consistent with the terms and provisions of KRS 61.430, and all other terms and provisions, of KRS 61.410 to 61.500.

Section 6. KRS 61.460 is amended to read as follows:

- (1) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending insurance coverage to employees of ~~the~~~~such~~ political subdivision; ~~except provided, however,~~ that no ~~such~~ plan shall provide insurance coverage to an employee occupying a position to which KRS 161.220 to 161.710 are applicable except for employees of the state *universities*~~colleges~~ and public junior colleges. Each ~~such~~ plan and any amendments thereof shall be approved by the state agency if it finds that ~~the~~~~such~~ plan, or ~~the~~~~such~~ plan as amended, is in conformity with ~~such~~ requirements as are provided in *administrative* regulations of the state agency, except that no ~~such~~ plan shall be approved unless:
- (a) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under KRS 61.430;
 - (b) It provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;
 - (c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that ~~those~~~~such~~ sources will be adequate for ~~that~~~~such~~ purpose;
 - (d) It provides for ~~such~~ methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration thereof; *and*
 - (e) It provides that the political subdivision will make ~~such~~ reports, in ~~the~~~~such~~ form and containing ~~the~~~~such~~ information, as the state agency may from time to time require, and will comply with *any*~~such~~ provisions ~~as~~ the state agency or the *commissioner*~~secretary~~ may from time to time find necessary to assure the correctness and verification of ~~the~~~~such~~ reports; ~~and~~
 - ~~(f) It authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and as may be consistent with the provisions of the Social Security Act.~~
- (2) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1) of this section ~~, and shall not terminate an approved plan,~~ without reasonable notice and opportunity for hearing to the political subdivision affected thereby.
- (3) (a) Each political subdivision for which a plan has been approved under this section is authorized to and shall pay into the contribution fund, with respect to *contributions due for wages paid prior to 1987*, at

~~the[such]~~ time or times as the state agency may by *administrative* regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under KRS 61.430; and, furthermore, in anticipation of the due date of any payments of contributions required *by this paragraph*~~herein~~, is authorized to and shall make *any*~~[such]~~ advancements ~~[as]~~ the state agency, by *administrative* regulation or contract, may require.

- (b) Each political subdivision is authorized to and shall make ~~the[such]~~ payments as are determined by the state agency to be necessary for the purpose of defraying the expenses incurred by the state agency in administering KRS 61.410 to 61.500 for the benefit of those employees covered under any plan approved under subsection (1) of this section, but in no event shall such amount be greater than five percent (5%) of the contributions required under paragraph (a) of this subsection. ~~The[Such]~~ payments shall be made into the State Treasury and shall be credited to a separate trust and agency fund to be used by the state agency solely for the purpose stated *in this paragraph*~~herein~~.
- (c) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after the effective date of KRS 61.410 to 61.500, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to wages received for each calendar year, at the rate established by the Federal Insurance Contributions Act, as amended, and the Social Security Act, as amended. Contributions so collected *for wages paid prior to 1987* shall be paid into the contribution fund in partial discharge of the liability of ~~the[such]~~ political subdivision under paragraph (a) of this subsection. Failure to deduct ~~the[such]~~ contribution shall not relieve the employer of liability therefor.
- (4) Delinquent payments due under paragraph (a) of subsection (3) of this section, with interest at the rate prescribed by Section 218 (j) of the Social Security Act, may be recovered by action in the Franklin Circuit Court against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to ~~the[such]~~ subdivision by any department or agency of the state.
- ~~{(5) Each political subdivision may exclude sick leave with pay from wages if such payments are made under a plan or system approved by the state agency for Social Security. Any such plan or system shall conform to the Social Security Act and to any regulations promulgated thereunder.}~~

Approved April 9, 1998

CHAPTER 437

(HB 611)

AN ACT relating to prohibited cosmetology products.

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

Section 1. KRS 317A.130 is amended to read as follows:

No instructor, student, cosmetologist, apprentice, or nail technician shall:

- (1) Knowingly continue to practice while he has an infectious or communicable disease;
- (2) Fail to provide the head rest of each chair with a relaundersed towel or a sheet of clean paper for each person;
- (3) Fail to place around the patron's neck a strip of cotton, towel, or neck strip so that the haircloth does not come in contact with the patron's skin;
- (4) Use on one (1) patron a towel that has been used upon another patron, unless the towel has been relaundersed;~~{~~
~~or}~~
- (5) Use on any patron any razor, scissors, tweezers, comb, sachet, rubber disc, or part of vibrator or other similar equipment or appliance that comes into contact with the head, face, hands, or neck of a patron, until the equipment or appliance has been immersed in boiling water for ten (10) minutes or in a sterilizing solution and placed in a wet or dry sterilizer until again used. Only those methods of sterilization that are bacteriologically effective and approved by the Department for Health Services shall be used; *or*

- (6) *Use on any patron a liquid nail enhancement product containing monomeric methyl methacrylate, also known as dental acrylic monomer, for the purpose of creating artificial nail enhancements in the practice of cosmetology and nail technology.*

Approved April 9, 1998

CHAPTER 438

(HB 618)

AN ACT relating to health insurance coverage for cancer drugs.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purposes of this section, "medical literature" means the official United States Pharmacopoeia Drug Information, the American Hospital Formulary Service Drug Information, or published scientific studies published in any peer-reviewed national professional journal provided that each of the following applies:*
- (a) *One article from a major peer-reviewed professional medical journal has recognized, based on scientific or medical criteria, the drug's safety and effectiveness for treatment of the indication for which it has been prescribed; and*
 - (b) *No article for a major peer-reviewed professional medical journal has concluded, based on scientific or medical criteria, that the drug is unsafe or ineffective or that the drug's safety and effectiveness cannot be determined for the treatment of the indication for which it has been prescribed; and*
 - (c) *Each article meets the uniform requirements for manuscripts submitted to biomedical journals established by the International Committee of Medical Journal Editors or is published in a journal specified by the United States Department of Health and Human Services pursuant to Section 1861(t)(2)(b) of the Social Security Act, 107 Stat. 591 (1993), 42 U.S.C. sec. 1395(x)(t)(2)(B), as amended, as accepted peer-reviewed medical literature.*
- (2) *No health benefit plan issued or renewed on or after the effective date of this Act shall exclude coverage of any cancer drug for a particular indication on the grounds that the drug has not been approved by the Federal Food and Drug Administration for that indication, if the drug has been prescribed for a member or a member's dependent covered by the plan who has been diagnosed with cancer and is recognized as safe and effective for the treatment of the indication in the official compendium or in the medical literature.*
- (3) *Any coverage of a cancer drug required by this section shall also include medically necessary services associated with the administration of this drug.*
- (4) *This section shall not be construed to alter any existing law that limits the coverage of drugs that have not been approved by the Federal Food and Drug Administration.*
- (5) *This section shall not be construed to require coverage for any drug when the Federal Food and Drug Administration has determined its use to be contraindicated.*
- (6) *This section shall not be construed to require coverage for experimental drugs not otherwise approved for any indication by the Federal Food and Drug Administration.*
- (7) *This section shall not be construed to require a health maintenance organization as defined by KRS Chapter 304.38-030 to cover any drug required by this section:*
- (a) *When the drug is dispensed by a provider who does not have a contract with the health maintenance organization; or*
 - (b) *When the drug is not included in the drug formulary of the health maintenance organization for any reason other than the exclusion prohibited by subsection (2) of this section.*
- (8) *The commissioner of the Department of Insurance shall create a panel of five (5) medical experts to review off-label uses not included in any of the official compendia or in the medical literature and to advise the commissioner whether a particular off-label use is medically appropriate. The meetings of the panel shall comply with the open meetings provisions of KRS Chapter 61. The panel shall make recommendations to*

the commissioner from time to time and whenever there is a particular dispute about payment under this section for the off-label drug use. The five (5) member panel appointed by the commissioner shall include:

- (a) *Three (3) medical oncologists recommended by the Kentucky Medical Association; and*
 - (b) *Two (2) physicians recommended by the Kentucky Medical Association.*
- (9) *The commissioner shall have the authority to direct any person or agency which issues an insurance policy to make payments required by this section.*

Approved April 9, 1998

CHAPTER 439

(HB 625)

AN ACT relating to air boards.

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

Section 1. KRS 183.132 is amended to read as follows:

- (1) Any **urban-county government**, city, or county, or city and county acting jointly, or any combination of two (2) or more cities and/or counties may establish a nonpartisan air board composed of six (6) members.~~[- or -]~~ Any city other than the first class and county jointly ~~or [other than]~~ an urban-county government established pursuant to KRS Chapter 67A may establish a nonpartisan board composed of ten (10) members.~~[- or -]~~ Any existing six (6) member board, **including**~~[except]~~ a board established in an urban-county government, may be expanded to ten (10) members by **action of the government entity or entities that established the six (6) member board**~~[joint action of the county and city].~~
- (2) Any city of the first class, jointly with the county containing ~~the [such]~~ city may establish a nonpartisan air board composed of ten (10) members.~~[If a joint air board has been established prior to July 15, 1986, by a city of the first class and the county, the terms of the members on such board shall terminate as of July 15, 1986, and the]~~ Membership of the board shall be appointed in accordance with subsection (6) of this section.
- (3) The board shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the duties prescribed by statute. The board shall constitute a legislative body for the purposes of KRS 183.630 to 183.740.
- (4) The members of an air board composed of six (6) members shall be appointed as follows:
 - (a) If the air board is established by a city,~~[such]~~ members shall be appointed by the mayor of the city;
 - (b) If the air board is established by a county,~~[such]~~ members shall be appointed by the county judge/executive except that in the event that an airport is located outside the boundary of the county establishing the airport board, the county judge/executive shall appoint an additional member to the air board from the jurisdiction where the airport is physically located. The additional member shall serve a four (4) year term in accordance with the provisions of subsection (7) of this section and receive full voting privileges on matters brought before the airport board;
 - (c) If the air board is established as a joint city-county air board,~~[such]~~ members shall be appointed jointly by the mayor of the city and the county judge/executive;
 - (d) If a combination of cities and/or counties establishes a joint air board, the mayors and/or county judges/executive involved shall jointly choose six (6) members, and shall jointly choose successors;
 - (e) ***If the air board is established by an urban-county government, the mayor of the urban-county government or an officer of the urban-county government designated by the mayor shall serve as one (1) member of the board. The remaining five (5) members shall be appointed by the mayor. One (1) of the members appointed by the mayor shall live within a three (3) mile radius of the airport.***

- (5) The members of an air board composed of ten (10) members in a city other than a city of the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A shall be appointed as follows:
- (a) Five (5) members shall be appointed by the mayor of the city, without approval of the legislative body;
 - (b) Five (5) members shall be appointed by the county judge/executive without approval of the other members of the fiscal court.
- (6) The members of an air board composed of ten (10) members established jointly by a city of the first class and the county containing ~~the [such]~~ city shall be composed of the mayor of the city of the first class and the county judge/executive of the county and eight (8) other members appointed as follows:
- (a) Three (3) members shall be appointed by the mayor of the city of the first class;
 - (b) Three (3) members shall be appointed by the county judge/executive of the county, with the approval of the fiscal court; and
 - (c) Two (2) members, who shall be residents of ~~the [such]~~ county containing a city of the first class or of counties contiguous thereto, shall be appointed by the Governor of the Commonwealth.
- (7) ***The members of an air board composed of ten (10) members established by an urban-county government shall be composed of the mayor of the urban-county government or an officer of the urban-county government designated by the mayor. The remaining nine (9) members shall be appointed by the mayor. Two (2) of the members appointed by the mayor shall live within a three (3) mile radius of the airport.***
- (8) Members of the board composed of six (6) members, shall serve for a term of four (4) years each, and until their successors are appointed and qualified. ~~The [provided, however, that]~~ initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years and two (2) members for four (4) years. Upon expiration of ~~the [these]~~ staggered terms, successors shall be appointed for a term of four (4) years.
- ~~(9)~~~~(8)~~ Members of the board composed of ten (10) members in a city other than a city of the first class and county jointly ~~[other than an urban-county government established pursuant to KRS Chapter 67A,]~~ shall serve for a term of four (4) years each, and until their successors are appointed and qualified. ***The initial appointments made by [provided, however, that] the mayor and the county judge/executive shall be made [each make their initial appointments] so that one (1) member is appointed for two (2) years, two (2) members are appointed for three (3) years, and two (2) members are appointed for four (4) years. [except that] If an existing six (6) member board is being increased to a ten (10) member board, initial appointments of the four (4) new members shall be made so that the mayor and the county judge/executive, or the mayor if the board is established by an urban-county government, each appoint one (1) member for two (2) years and one (1) member for four (4) years. Upon expiration of the [these] initial terms, successors shall be appointed for a term of four (4) years. In the case of a board established by an urban-county government, the term of the mayor for the urban-county government, or the officer of the urban-county government designated by the mayor, shall be coextensive with the term of the mayor.***
- ~~(10)~~~~(9)~~ Members of the board composed of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, shall serve for a term of three (3) years each, and until their successors are appointed and qualified. ~~[except that]~~ The terms of the mayor and the county judge/executive shall be coextensive with their terms of office. The mayor and the county judge/executive shall each make their initial appointments so that one (1) member is appointed for one (1) year, one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. The Governor shall make the initial appointments so that one (1) member is appointed for two (2) years and one (1) member is appointed for three (3) years. Upon the expiration of ~~the [these]~~ initial terms, successors shall be appointed for a term of four (4) years.
- ~~(11)~~~~(10)~~ Members of the board shall serve without compensation but shall be allowed any reasonable expenses incurred by them in the conduct of the affairs of the board. The board shall, upon the appointment of its members, organize and elect officers. The board, except for a board composed of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, shall choose a chairman and vice chairman who shall serve for terms of one (1) year. Where the board is composed of ten (10) members, and established jointly by a city of the first class and the county containing a city of the first class, the mayor of the city of the first class and the county judge/executive shall jointly appoint the chairman

from among the membership of the board. The board shall also choose a secretary-treasurer who may or may not be a member of the board. The board may fix a salary for the secretary-treasurer and the secretary-treasurer shall execute an official bond to be set and approved by the board, and the cost *of the bond*~~thereof~~ shall be paid by the board.

- (12)~~(11)~~ The board may employ necessary counsel, agents and employees to carry out its work and functions, and prescribe~~such~~ rules and regulations as it deems necessary.
- (13)~~(12)~~ The secretary-treasurer shall keep the minutes of all meetings of the board and shall also keep a set of books showing the receipts and expenditures of the board. *The secretary-treasurer*~~He~~ shall preserve on file duplicate vouchers for all expenditures and shall present to the board, upon request, complete reports of all financial transactions and the financial condition of the board.~~Such~~ Books and vouchers shall at all times be subject to examination by the legislative body or bodies by whom the board was created. *The secretary-treasurer*~~He~~ shall transmit at least once annually a detailed report of all acts and doings of the board to the legislative body or bodies by whom the board was created.
- (14)~~(13)~~ In the event that a joint air board is created by cities and/or counties, and thereafter a city or cities or county or counties desire to withdraw from participation, then the remaining participants may jointly choose a successor member or members of the board. *A local government wanting to withdraw from participation in the board*~~No such withdrawing city or cities, county or counties~~ shall **not** be entitled to return of any moneys or property advanced *the*~~such~~ board.
- (15)~~(14)~~ A quorum for the transacting of the business of a six (6) member board shall consist of four (4) members, and of a ten (10) member board shall consist of six (6) members. Meetings of the board may be called by the chairman or by four (4) members. In case of tie voting by the board, the issue shall be deemed to have failed passage.
- (16)~~(15)~~ A board member may be replaced by the appointing authority upon a showing to *the*~~such~~ authority of misconduct as a board member or upon conviction of a felony. ~~A~~~~no~~ board member **shall not hold any official office with the appointing authority**, except for the mayor of a city of the first class and the county judge/executive on a board made up of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, **or the mayor of an urban-county government or an officer of the urban-county government designated by the mayor on a board established by an urban-county government**~~shall hold any official office with the appointing authority~~.

Approved April 9, 1998

CHAPTER 440

(HB 626)

AN ACT relating to animal control.

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

Section 1. KRS 258.095 is amended to read as follows:

As used in KRS 258.095 to 258.365 and subsections (3) and (4) of KRS 258.990, unless the context requires otherwise:

- (1) "Department" means the Department of Agriculture;
- (2) "Commissioner" means the Commissioner of Agriculture;
- (3) "Committee" means the advisory committee created by KRS 258.115;
- (4) "Dog" means any member of the canine family, six (6) months of age or over;
- (5) "Owner," when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every person who keeps or harbors the dog, or has it in his care, or permits it to remain on or about premises owned or occupied by him;

- (6) "Livestock" includes horses, stallions, colts, geldings, mares, sheep, rams, lambs, bulls, bullocks, steers, heifers, cows, calves, mules, jacks, jennets, burros, goats, kids, swine and confined and domesticated hares and rabbits;
- (7) "Poultry" includes all domesticated fowl and all game birds which are legally kept in captivity;
- (8) "Kennel" means any establishment where dogs are kept for the purpose of breeding, sale, show or sporting purposes, and which is so constructed that dogs cannot stray therefrom;
- (9) "Livestock fund" means the fund created by KRS 258.125 for the purpose of administering its provisions;
- (10) ***"Attack" means a dog's attempt to bite or successful bite of a human being. This definition shall not apply to a dog's attack of a person who has illegally entered or is trespassing on the dog owner's property in violation of KRS 511.060, 511.070, 511.080, or 511.090;***
- (11) ***"Vicious dog" means any individual dog declared by a court to be a vicious dog; and***
- (12) ***"Animal control officer" means an individual employed by a city, county, urban-county government, or charter county government who enforces the provisions of this chapter and local dog control ordinances.***

Section 2. KRS 258.195 is amended to read as follows:

- (1) On or before July 1, 1954, the fiscal court of each county shall employ a dog warden. On or before July 1, 1955, the fiscal court of each county shall establish and maintain a dog pound as a means of facilitating and administration of this chapter. In counties of small population, arrangements may be made for the joint establishment and operation of dog pounds by two (2) or more counties on a mutually satisfactory basis. Instead of setting up pounds, one (1) or more counties acting jointly may take advantage of the facilities of suitable pounds already in operation by counties, cities, humane societies, or other organizations or individuals. Fiscal courts may adopt and enforce regulations relative to pound standards, the naming of persons who shall serve as dog wardens, providing for the fixing of salaries of wardens and assistants, and such other matters that may be incidental to efficient and proper operation of the dog pound plan.
- (2) As a means of providing a portion of the funds for setting up and operating dog pounds, fifty cents (\$0.50) out of the one dollar and fifty cents (\$1.50) paid for every dog license sold in each county shall be credited by the department to a special enforcement fund to be refunded to the respective counties on a pro rata basis determined by the licenses sold in each county, and shall be used in meeting expenses of the dog warden and the dog pound plan.
- (3) Dog wardens may be designated as agents of the department for purposes of appraising livestock losses pursuant to KRS 258.275.
- (4) ***Cities, counties, urban-county governments, or charter county governments may employ animal control officers for the enforcement of KRS Chapter 258 and local dog control ordinances within their corporate limits. Cities, urban county governments, or charter county governments may enter into agreements with the counties for the enforcement of the county's ordinances. The agreement shall include, but shall not necessarily be limited to, setting out the jurisdiction and the duties of the officer or warden respective to the agreement.***
- (5) ***Dog wardens and animal control officers shall have the authority to issue uniform citations only for the enforcement of the provisions of this chapter or dog control ordinances in their respective jurisdictions.***

Section 3. KRS 258.215 is amended to read as follows:

- (1) Peace officers, ***dog wardens, or animal control officers*** shall seize and impound any dog which does not bear a proper license tag or other legible identification which is found running at large, but if an officer, ***dog warden, or animal control officer***, after diligent effort to do so, should fail to seize such a dog, it shall then become his duty to destroy the dog by any reasonable and humane means. Any such dog which an officer, ***dog warden, or animal control officer*** seizes shall be impounded for seven (7) days, and if not claimed by the owner or sold in accordance with other provisions of this chapter, then such dog may be destroyed in some humane manner.
- (2) A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under reasonable control of its owner or handler while engaged in or returning from hunting, and, if such hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, such owner or handler shall not be deemed to be in violation of the provisions of this section as a

result of such dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler.

Section 4. KRS 258.225 is amended to read as follows:

- (1) It shall be unlawful for any peace officer, **dog warden, or animal control officer** to refuse to perform his duties under the provisions of this chapter, or to refuse to assist in the enforcement of this chapter upon request of the Commissioner.
- (2) It shall be unlawful for any person to interfere with any officer, **dog warden, or animal control officer**, or agent in the enforcement of this chapter.

Section 5. KRS 258.235 is amended to read as follows:

- (1) Any person may kill **or seize** any dog which he sees in the act of pursuing~~[, worrying,]~~ or wounding any livestock, or wounding or killing poultry, or attacking human beings, whether or not such dog bears the license tag required by the provisions of this chapter. There shall be no liability on such person in damages or otherwise for~~[such]~~ killing, **injuring from an attempt to kill, or for seizing the dog.**
- (2) Any unlicensed dog, not accompanied by its owner or keeper, that enters any field or inclosure where livestock or poultry are confined shall constitute a private nuisance and the owner or tenant of such field **or inclosure**, or his agent or servant, may kill **or seize** such dog while it is in the field or inclosure, without liability or responsibility of any nature for~~[such]~~ killing, **injuring from an attempt to kill, or for seizing the dog.**
- (3) **Any dog deemed in violation of this section, and seized by a property owner or his agent shall be surrendered over to the dog warden, animal control officer, or a peace officer for impoundment as stipulated in Section 3 of this Act.**
- (4) Subsection (2) of this section shall not apply to licensed dogs, when accompanied by their owner or handler, unless caught in the act of~~[, worrying,]~~ wounding~~[,]~~ or killing any livestock, or wounding or killing poultry, or attacking human beings.
- ~~(5)~~~~(4)~~ (a) Any person who has been attacked by a dog, or anyone for such person, may make a complaint before the district court, charging the owner or keeper of such dog with harboring a vicious dog. A copy of such complaint shall be served upon the person so charged in the same manner and subject to the laws regulating the service of summons in civil actions directing him to appear for a hearing of such complaint at a time fixed therein. If such person fails to appear at the time fixed, or if upon a hearing of the parties and their witnesses, the court finds the person so charged is the owner or keeper of the dog in question, and that the dog has viciously and without cause, attacked a human being when off the premises of the owner or keeper, **the person shall be subject to the penalties set forth in subsection (3)(b) of Section 11 of this Act, and** the court shall **further** order the~~[said]~~ owner or keeper to henceforth keep ~~the~~~~[such]~~ dog securely confined **by chain leash or enclosed pen of sufficient strength to securely restrain the dog from being a public threat, or the court may order the dog to be destroyed.**
- (b) **The dog warden or duly appointed animal control officer shall act as an officer of the court for the enforcement of any orders of the court in their jurisdiction pertaining to subsection (5) of this section.**

- ~~(6)~~~~(5)~~ For his services in such proceedings, the peace officer shall be entitled to the same fees to which he is entitled for performing similar services in civil cases. In all proceedings under this section, such court shall place the costs upon either party as he may determine.

- ~~(7)~~~~(6)~~ It shall be unlawful for the owner or keeper of any vicious dog after receiving ~~an~~~~[such]~~ order **under subsection (5) of this section**, to permit such dog to run at large, or to appear on the public highways unless in leash. Any such dog found running at large may be killed by any **dog warden, animal control officer, or** peace officer without liability for damages for such killings.

Section 6. KRS 258.245 is amended to read as follows:

- (1) All licensed dogs are hereby declared to be personal property and subjects of larceny. Except as provided in KRS 258.235, it shall be unlawful for any person, except a peace officer, **dog warden, or animal control**

officer to destroy, injure, or poison, or attempt to destroy, injure, or poison, any dog which bears a license tag for the current year.

- (2) It shall be unlawful for any person to place any dog button or any poison of any description in any place, on his own premises or elsewhere where it may be easily found and eaten by dogs.

Section 7. KRS 258.265 is amended to read as follows:

- (1) The owner or keeper of every dog shall at all times between the hours of sunset and sunrise of each day keep such dog:
- (a) Confined within an inclosure from which it cannot escape, or
 - (b) Firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured, or
 - (c) Under the reasonable control of some person or, when engaged in lawful hunting accompanied by an owner or handler. A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under reasonable control of its owner or handler while engaged in or returning from hunting, and, if such a hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, such owner or handler shall not be deemed to be in violation of the provisions of this section as a result of such dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler.
- (2) Any peace officer, *dog warden, or animal control officer* may *seize or* destroy any dog found running at large between the hours of sunset and sunrise and unaccompanied and not under the control of owner or handler. However, a peace officer, *dog warden, or animal control officer* shall be under a duty to make a fair and reasonable effort to determine whether any dog found at large between sunset and sunrise is a hound or other hunting dog which has become lost temporarily from a pack or wandered from immediate control of its owner, or handler, and if he is reasonably sure that the dog is a hunting dog, then he shall not destroy the dog, unless it is found in the act of pursuing~~[-worrying,]~~ or wounding livestock or wounding, killing poultry or attacking human beings.

Section 8. KRS 258.305 is amended to read as follows:

Owners of licensed dogs which are killed by any peace officer, *dog warden, or animal control officer*, without justification under the provisions of this chapter, shall be recompensed for the value of such dog out of the livestock fund in the same manner as owners of livestock or poultry killed or injured by dogs are recompensed. The proceeding for appraisal of the value of the dog and payment of the claim shall conform to the procedures prescribed by KRS 258.275 and 258.285, except that no claim shall exceed one hundred dollars (\$100).

Section 9. KRS 258.325 is amended to read as follows:

- (1) If, in the report of the appraiser, the name of the owner of any dog or dogs having caused loss or damage to any livestock or poultry or person is definitely and conclusively shown or if written complaint is filed with the commissioner by any owner of livestock or poultry against any dog, stating that such dog has been seen pursuing~~[-or worrying]~~ livestock or poultry, and if such charge is proven by investigation on the part of the department, the commissioner may notify the owner or keeper of such dog to immediately destroy the same, whereupon it shall be unlawful and a violation of this chapter for such owner, or keeper to permit or cause such dog, while alive, to leave or to be removed from such premises. The destroying of such dogs shall not remove the liability of the owner for such damage done by his dog. Upon failure of such owner to comply with such order within a period of ten (10) days, any peace officer, *dog warden, or animal control officer*, upon notice from the department, shall destroy such dog wherever found. For such service, *a peace officer*~~he~~ shall be entitled to a fee of one dollar (\$1.00) for each dog destroyed, to be paid out of the livestock fund upon presentation to the department of satisfactory proof that such dog has been destroyed by him.
- (2) Any person who owns or harbors an unlicensed dog shall forfeit any right to be reimbursed out of the livestock fund for any damage to his livestock or poultry by dogs.

Section 10. KRS 258.345 is amended to read as follows:

- (1) When the inhabitants of any city, or county, or any part thereof, have suffered an excessive amount of damage to livestock or poultry or domestic game birds by dogs, a petition may be presented to the commissioner, signed by twenty (20) or more of such inhabitants who are owners of livestock or poultry, alleging such excessive damage and requesting that a quarantine be placed on all dogs within the limits of such city, or

county, or such part thereof. Upon receipt of such petition, the department may, through its authorized agents, have an investigation made of the facts alleged therein, and, if convinced that conditions in such city, county, or such designated area demand such stringent measures, may establish a dog quarantine therein.

- (2) When such a quarantine is established, at least ten (10) notices thereof shall be posted throughout the area affected thereby, and notice thereof shall also be published pursuant to KRS chapter 424, in the city, or county.
- (3) It shall be unlawful for any person, residing in the area affected by such quarantine, to permit a dog owned or harbored by him to run at large in such quarantined area, or to leave the premises where it is kept, unless accompanied by and under the control of the owner or handler. ***A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under control of its owner or handler while engaged in or returning from hunting, and if that hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, the owner or handler shall not be deemed to be in violation of the provisions of this section as a result of the dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler.***
- (4) Any peace officer, ***dog warden, or animal control officer*** may destroy any dog running at large in a quarantined area, ***not accompanied by or under control of its owner, and*** in violation of such quarantine, without any liability for such destruction.

Section 11. KRS 258.990 is amended to read as follows:

- (1) Any person who violates KRS 258.015, 258.035, 258.055, 258.065 or 258.085, shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Each day of violation shall constitute a separate offense.
- (2) The owner of any dog not vaccinated according to the provisions of this chapter shall be liable to pay all damages for personal injuries resulting from the bite of such dog, if rabid.
- (3) (a) Any person violating or failing or refusing to comply with KRS 258.095 to 258.365 and subsections (3) and (4) of this section, ***except subsection (5)(a) of Section 5 of this Act***, shall, upon conviction, be fined not less than five dollars (\$5) and not more than one hundred dollars (\$100) or be imprisoned for not less than five (5) nor more than sixty (60) days or both so fined and imprisoned.
 (b) ***Any person violating subsection (5)(a) of Section 5 of this Act shall be punished by a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or by imprisonment in the county jail for not less than ten (10) nor more than sixty (60) days, or by both fine and imprisonment.***
- (4) All fines collected under subsection (3) of this section shall after costs and commissions have been deducted, be paid to the department to be credited to the livestock fund.

Section 12. KRS 258.135 is amended to read as follows:

- (1) On or before July 1, 1954, and on or before July 1 of each year thereafter, the owner of any dog six (6) months old or over shall apply to the dog warden of the county in which he resides for a license for each dog owned or kept by him. The application shall be accompanied by a license fee of one dollar and fifty cents (\$1.50) for each dog. Any license issued for the year of 1954 before July 1, 1954, shall be effective until July 1, 1955. Dog wardens shall be agents of the Commonwealth in the collection of the license fees provided for herein, unless the department determines, with the approval of the Governor, to issue all licenses either directly or through other agents. For services rendered in collecting and paying over the fee, dog wardens shall be allowed to retain the sum of twenty-five cents (\$0.25) for each license. The balance of the license fee collected shall be paid to the department on or before the fifteenth day of each next succeeding month and shall be credited to the livestock fund. If the committee finds it to be in the interest of maximum enforcement of this chapter to permit certain other portions of the license fee to be retained by the respective counties for use in enforcement, the department may allow these portions of the license fee to be so retained by the counties.
- (2) Any county may choose to issue ***additional licenses***~~(the license)~~ in conjunction with effective dates of a valid rabies vaccination, provided the dog shall be licensed each fiscal year.

Approved April 9, 1998

CHAPTER 441

(HB 630)

AN ACT relating to constables.

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

Section 1. KRS 64.527 is amended to read as follows:

In order to equate the compensation of county judges/executive, county clerks, sheriffs, jailers, ***constables in counties having an urban-county form of government***, justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the Department of Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The Department of Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the Department of Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department of Local Government.

Approved April 9, 1998

CHAPTER 442

(HB 650)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 186A.040 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky. The department shall provide appropriate insurance information to the Department of Information Systems for inclusion in the AVIS database.
- (2) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, the department shall immediately notify the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the department or the county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall ***revoke the registration of the motor vehicle*** ~~[suspend the operator's license of all persons listed on the certificate of title pursuant to KRS 186.570]~~ until:
 - (a) The person presents proof of insurance to the department or county clerk and pays the reinstatement fee required by ***Section 2 of this Act*** ~~[KRS 186.440 and the relicensing fee required by KRS 186.450];~~
 - (b) The person presents proof in the form of an affidavit stating under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;
 - (c) The person presents proof in the form of an affidavit stating under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or
 - (d) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires ***a registered motor vehicle*** ~~[an operator's license]~~ in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of subtitle 39 of KRS Chapter 304. The person shall also

declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has **his or her motor vehicle registration revoked in accordance with**~~an operator's license suspended, pursuant to~~ this subsection, three (3) times within any twelve (12) month period, the **revocations**~~suspensions~~ shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.

- (3) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by subsection (2) of this section. The notice that the department gives to the county attorney **in accordance with**~~pursuant to~~ subsection (2) of this section shall include a certified copy of the person's driving record which shall include:
- (a) The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and
 - (b) A dated notice that the department sent to the person requiring the person to present proof of insurance to the department or the county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had **his or her motor vehicle registration revoked**~~an operator's license suspended~~ three (3) times within any twelve (12) month period **in accordance with**~~pursuant to~~ subsection (2) of this section.

- (4) The certified copies sent by the department described in subsection (3) of this section, shall be prima facie evidence of a violation of KRS 304.39-080.
- (5) If the insured provides proof of insurance to the department or the clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.

Section 2. KRS 186.180 is amended to read as follows:

- (1) (a) If the owner loses his copy of a registration or transfer receipt, he may obtain a duplicate from the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and by filing an affidavit, upon a form furnished by the cabinet. The owner shall pay to the clerk a fee of three dollars (\$3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.
 - (b) When the owner's copy of any registration or transfer receipt shows that the spaces provided thereon for noting and discharging security interests have been exhausted, the owner may apply to the county clerk who issued the receipt in order to obtain a duplicate thereof. The owner shall surrender his copy of the current receipt to the clerk and provide proof of insurance on the motor vehicle in compliance with KRS 304.39-080, before a duplicate may be issued. The owner shall pay the clerk a fee of three dollars (\$3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.
 - (c) Any security interest which has been discharged as shown by the records of the clerk or upon the owner's copy of the current receipt shall be omitted from the duplicate receipt to be issued by the clerk.
- (2) If the owner loses a registration plate, he shall surrender his registration receipt to the county clerk from whom it was obtained and file a written statement as to the loss of the plate. Upon presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and upon the payment of the sum of three dollars (\$3) for each plate and a fee of three dollars (\$3) to the clerk for his services, the owner shall be issued another registration receipt and a plate or plates which shall bear a different number from that of the lost plate. The clerk shall retain the owner's statement and a copy of the owner's proof of insurance, and shall make a notation on the triplicate copy of the surrendered registration receipt stating the number of the registration receipt replacing it. The original copy of the surrendered receipt shall be forwarded to the cabinet. The cabinet shall forthwith cancel the registration corresponding to the number of the lost plate. The cancellation shall be reported by the cabinet to the commissioner of the Department of State Police. Any person finding a lost registration plate shall deliver it to the Transportation Cabinet or to any county clerk for forwarding it to the cabinet.
- (3) If the owner moves from one (1) county into another county of the Commonwealth, he may obtain a registration plate bearing the name of the county of residence. In order to obtain a new registration plate, the owner shall surrender his current registration receipt and current registration plate to the county clerk. Upon

being provided with proof of insurance on the motor vehicle in compliance with KRS 304.39-080, the clerk shall provide the owner with a new registration receipt and plate bearing the county name. The surrendered receipt and plate shall be forwarded to the Transportation Cabinet. The fee for this registration shall be five dollars (\$5) of which the clerk shall be entitled to three dollars (\$3) and the cabinet shall be entitled to two dollars (\$2).

- (4) *If the owner's registration is revoked as a result of the provisions set forth in Section 1 of this Act, the owner may have his registration reinstated by the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of insurance on the motor vehicle in compliance with Section 3 of this Act and by filing an affidavit, upon a form furnished by the cabinet. The owner shall pay to the clerk a fee of twenty dollars (\$20), which shall be equally divided between the county clerk and the cabinet.*

Section 3. KRS 304.39-080 is amended to read as follows:

- (1) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."
- (2) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.
- (3) This Commonwealth, its political subdivisions, municipal corporations, and public agencies may continuously provide, pursuant to subsection (6), security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.
- (4) The United States and its public agencies and any other state, its political subdivisions, municipal corporation, and public agencies may provide, pursuant to subsection (6), security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.
- (5) Except for entities described in subsections (3) and (4), every owner of a motor vehicle registered in this Commonwealth or operated in this Commonwealth by him or with his permission, shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle. The owner of a motor vehicle who fails to maintain security on a motor vehicle *in accordance with* ~~pursuant to~~ this subsection shall have his or her *motor vehicle registration revoked in accordance with* ~~operator's license suspended pursuant to~~ KRS 186A.040.
- (6) Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this subtitle.
- (7) Self-insurance, subject to approval of the commissioner of insurance, is effected by filing with the commissioner in satisfactory form:
 - (a) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by this subtitle;
 - (b) Evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided by this subtitle; and
 - (c) Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a policy of insurance, complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.
- (8) An entity described in subsection (3) or (4) may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this subtitle; and
- (9) A person providing security pursuant to subsection (7) is a "self-insurer." An entity described in subsections (3) or (4) that has provided security pursuant to subsection (6) is an "obligated government."

Section 4. KRS 304.39-090 is amended to read as follows:

An owner of a motor vehicle registered in this Commonwealth who ceases to maintain security as required by the provisions on security may not operate or permit operation of the vehicle in this Commonwealth until security has

again been provided as required by this subtitle. An owner who fails to maintain security as required by this subtitle shall have his or her **motor vehicle registration revoked in accordance with** ~~operator's license suspended pursuant to~~ KRS 186A.040. All other owners shall provide such security while operating a motor vehicle in this Commonwealth.

Section 5. KRS 186.440 is amended to read as follows:

An operator's license shall not be granted to:

- (1) Any person under the age of sixteen (16);
- (2) Any person under the age of eighteen (18) who holds a valid Kentucky instruction permit issued pursuant to KRS 186.450, but who has not graduated from high school or who is not enrolled and successfully participating in school or who is not being schooled at home, except those persons who satisfy the District Court of appropriate venue pursuant to KRS 159.051(3) that revocation of their license would create an undue hardship. Persons under the age of eighteen (18) shall present proof of complying with the requirements of KRS 159.051;
- (3) Any person whose operator's license has been suspended, during the period of suspension;
- (4) Any person whose operator's license has been revoked, nor to any nonresident whose privilege of exemption under KRS 186.430 has been refused or discontinued, until the expiration of the period for which the license was revoked, or for which the privilege was refused or discontinued;
- (5) Any applicant adjudged incompetent by judicial decree;
- (6) Any person who in the opinion of the State Police, after examination, is unable to exercise reasonable and ordinary control over a motor vehicle upon the highways;
- (7) Any person who is unable to understand highway warnings or direction signs in the English language;
- (8) Any person required by KRS 186.480 to take an examination who has not successfully passed the examination;
- (9) Any person required by KRS Chapter 187 to deposit proof of financial responsibility, who has not deposited that proof;
- (10) Any person who has not filed a correct and complete application attested to in the presence of a person authorized to administer oaths;
- (11) Any person who cannot meet the requirements set forth in KRS 186.411(1) or (3); or
- (12) Any person whose operator's license has been suspended or revoked under the provisions of ~~KRS 186A.040 for failure to maintain motor vehicle insurance, or of~~ KRS Chapter 186, 187, or 189A until the person has forwarded to the cabinet a reinstatement fee of fifteen dollars (\$15). The fee shall be paid by certified check or money order payable to the State Treasurer who shall deposit five dollars (\$5) of the fee in a trust and agency fund to be used in defraying the costs and expenses of administering a driver improvement program for problem drivers. Ten dollars (\$10) of the fee shall be deposited by the State Treasurer in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees, providing salary adjustments for employees, providing training for employees, and purchasing additional equipment used in administering the issuance of driver's licenses. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions set out in KRS 186.411 when, within one (1) year of suspension, the driving privileges of the individuals are reinstated or to any student who has had his license revoked pursuant to KRS 159.051.

Section 6. KRS 186.570 is amended to read as follows:

- (1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:
 - (a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.
 - (b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.

- (c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability of these persons. The board shall consist of licensed medical and rehabilitation specialists. The non-state government members of the Medical Review Board shall be paid a fee of one hundred dollars (\$100) per day plus reasonable expenses for performing this service.
 - (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.
 - (e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.
 - (f) A person required by KRS 186.480 to take an examination has been issued a license without first having passed the examination.
 - (g) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.
 - (h) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.
 - (i) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
 - ~~(j) That person has failed to provide proof of motor vehicle security pursuant to KRS 186A.040.~~
- (2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied or suspended. The denial or suspension shall continue until the arrearage has been eliminated, or payments on the child support arrearage are being made in accordance with a court or administrative order. Before the license may be reinstated, proof of elimination of the child support arrearage from the Cabinet for Human Resources shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for Human Resources and the Transportation Cabinet.
- (3) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by first class mail to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which if committed in this state would be grounds for the suspension or revocation of an operator's license. If a person so convicted is not the holder of a Kentucky operator's license, the cabinet shall deny him a license for the same period as if he had possessed a license and license had been suspended. The cabinet may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.
- (5) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a commercial driver's license.
- (6) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.

- (7) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

Section 7. KRS 186A.035 is amended to read as follows:

- (1) All motor vehicles, including motorcycles, with a gross vehicular weight of six thousand (6,000) pounds or less, first registered, or for which the registration is renewed in this state on or after January 1, 1983, shall be placed in a system of year-round registration based upon the birth month of the owner, in order to distribute the work of registering motor vehicles as uniformly as practicable throughout the twelve (12) months of the year.
- (2) If the owner of a motor vehicle is other than an individual, the month in which the owning entity came into being shall be used for purposes of this section. If a motor vehicle is jointly owned, the owners shall indicate to the county clerk the birth month of one (1) of them to be used for purposes of this section. In addition, if a motor vehicle is jointly owned by a husband and wife, the ownership shall exist as a joint tenancy with right of survivorship, unless the registration expressly states to the contrary and gives an alternative specific status. Upon the death of one (1) of the spouses, the jointly-owned vehicle shall transfer to the surviving spouse free from payment of any state-required transferral fees.
- (3) The certificate of registration and license plate issued for a motor vehicle first registered, renewed, or titled in this state on or after January 1, 1983, shall be valid, unless *revoked in accordance with Section 1 of this Act* or canceled by the cabinet in accordance with KRS Chapter 186 or this chapter, upon payment of the required fee, for a period beginning on the first day of the month of the year in which registration is applied for, and expiring on the last day of the next birth month of the owner following the month during which registration is applied for. Upon the owner's request, and after payment of the proper prorated fee, an owner may obtain a certificate of registration and license plate valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration. Any transaction relating to registration or registration renewal which would cause an unexpired Kentucky motor vehicle license plate to be surrendered shall have that unexpired fee prorated or credited against any additional fee required by a subsequent registration.
- (4) After a motor vehicle has been initially placed in the system of year-round registration, the owner shall renew the registration annually during the owner's birth month, by making application to the county clerk and paying the fee required for twelve (12) consecutive months of registration, which shall take effect on the first day of the month succeeding the owner's birth month and shall expire on the last day of the owner's next birth month. The county clerk shall be entitled to a registration fee of two dollars (\$2) for each registration, or if the registration exceeds a twelve (12) month period the clerk shall receive a fee of three dollars (\$3).
- (5) At least forty-five (45) days prior to the expiration of the registration of any motor vehicle previously registered in the Commonwealth as provided by subsection (1) of this section, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. Any registration renewal or vehicle transfer notice by mail shall require payment of an additional one dollar (\$1) fee which shall be received by the county clerk. Nonreceipt of the notice required by this subsection shall not constitute a defense to any registration related offense.
- (6) Any owner who fails to renew the registration of a motor vehicle during the month in which the previous registration expired, shall, if he applies for renewal of the registration in some later month, pay the same fees that would have been required if the registration had been renewed in the month which the previous registration expired.
- (7) Fees which must be prorated in carrying out the intent of this section shall be prorated on the basis of twelfths of the annual registration fee. Any vehicle which is registered at any time during a month shall pay the fee required for that whole month plus any additional months of registration purchased consistent with the intent of the section.
- (8) The county clerk shall ensure that the certificate of registration issued to an owner displays the month and year in which the registration period begins and the month and year of its expiration, and shall issue to the owner a decal or decals corresponding to the month and year of expiration shown in the certificate of registration which shall be placed upon the corresponding license plate by the owner in the manner required by administrative regulations of the Department of Vehicle Regulation.

Section 8. KRS 304.99-060 is amended to read as follows:

- (1) The owner or operator of any vehicle who fails to have in full force and effect the security required by Subtitle 39 of this chapter shall:
 - (a) Be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or sentenced to not more than ninety (90) days in jail, or both;
 - (b) Have the *registration of the motor vehicle revoked and the* license plates of the vehicle suspended for a period of one (1) year or until such time as proof, in a form satisfactory to the commissioner, is furnished that the security is then and will remain in effect; and
 - (c) For the second and each subsequent offense within any five (5) year period, have his operator's license revoked in accordance with KRS 186.560, and may be sentenced to one hundred and eighty (180) days in jail, or fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or both.
- (2) Penalties under subsection (1) of this section for the first offense are subject to conditional discharge, suspension, or other forms of reduction of penalty by judicial discretion upon production of proof of security.
- (3) For the second and each subsequent offense, minimum fines, suspensions, and penalties under subsection (1) of this section are subject to conditional discharge, suspension, or other forms of reduction of penalty, by judicial discretion only upon production of proof of security and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
- (4) Upon expiration of the minimum six (6) month policy period, the court shall order the vehicle owner to appear before it to verify renewal of the security required by Subtitle 39 of this chapter by production of proof of security and a receipt showing that a premium for a minimum six (6) month policy period has been paid.
- (5) Failure to appear shall result in the suspension of the vehicle owner's operator's license pursuant to KRS 186.570.
- (6) Unless uninterrupted coverage is maintained, cancellation or expiration of the procured security before the end of the minimum six (6) month policy period shall be a Class B misdemeanor.
- (7) Unless the requirement of subsection (4) of this section is satisfied, the court shall revoke any conditional discharge, suspension, or other form of reduction of penalty granted under subsection (3) of this section.

Approved April 9, 1998

CHAPTER 443

(HB 690)

AN ACT relating to juvenile justice.

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

Section 1. KRS 15A.200 is amended to read as follows:

As used in KRS 15A.210 to 15A.240 and 15A.990:

- (1) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the *Department of Juvenile Justice* ~~Cabinet~~ after consultation with ~~the Cabinet for Human Resources and~~ other appropriate state agencies;
- (2) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (3) "Juvenile holding facility" means a physically secure setting, approved by the *Department of Juvenile Justice* ~~Cabinet~~, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed exclusively by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the *Department of Juvenile Justice* ~~Cabinet~~ may supervise juvenile as well as adult prisoners; and

- (4) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lock-up, intermittent holding facility, or any building which is a part of or attached to any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined.

Section 2. KRS 15A.210 is amended to read as follows:

The *Department of Juvenile Justice* Cabinet shall, *after consultation with the Detention Facility Standards Committee*, issue and enforce administrative regulations to govern at least the following aspects of the operation of secure juvenile detention facilities *and juvenile holding facilities*:

- (1) Administration;
- (2) Personnel;
- (3) Training and staff development;
- (4) Recordkeeping;
- (5) Physical plant;
- (6) Security and control;
- (7) Safety and emergency procedures;
- (8) Sanitation and hygiene;
- (9) Medical and health services;
- (10) Food services;
- (11) Intake and classification;
- (12) Programs and services;
- (13) Residents' rights;
- (14) Rules and discipline;
- (15) Admission procedures;
- (16) Communication, including mail, visitation and telephone;
- (17) Release preparation and transfer programs; and
- (18) Volunteer involvement.

Section 3. KRS 15A.220 is amended to read as follows:

- (1) On or before July 1, ~~1998~~¹⁹⁸⁸, each person or organization operating a secure juvenile detention facility shall register with the Justice Cabinet and shall comply with the regulations issued pursuant to KRS 15A.210.
- (2) After July 1, ~~1998~~¹⁹⁸⁸, each organization operating or seeking to operate a secure juvenile detention facility *or juvenile holding facility* shall:
 - (a) Apply to the *Department of Juvenile Justice* ~~Cabinet~~ in a period of time set by regulation prior to the scheduled opening of the secure juvenile detention facility *or juvenile holding facility*;
 - (b) Permit inspection of the secure juvenile detention facility *or juvenile holding facility* by the *Department of Juvenile Justice* ~~Cabinet~~ not less than thirty (30) days prior to the scheduled opening of the ~~secure juvenile detention~~ facility; and
 - (c) Supply to the *Department of Juvenile Justice* ~~Cabinet~~ not less than thirty (30) days prior to the scheduled opening of the secure juvenile detention facility all data, plans, and other materials required by the Justice Cabinet.
- (3) No secure juvenile detention facility *or juvenile holding facility* shall operate after July 1, ~~1998~~¹⁹⁸⁸, except with the approval of the *Department of Juvenile Justice* ~~Cabinet~~.

Section 4. KRS 15A.230 is amended to read as follows:

- (1) After July 1, ~~1998~~~~[1988]~~, the **Department of Juvenile Justice** ~~Cabinet~~ shall inspect, at least annually, each registered secure juvenile detention facility to assure its compliance with administrative regulations.
- (2) After July 1, ~~1998~~~~[1988]~~, the **Department of Juvenile Justice** ~~Cabinet~~ may require reports and other data at least annually from each secure juvenile detention facility *and juvenile holding facility*.

Section 5. KRS 15A.240 is amended to read as follows:

- (1) The **Department of Juvenile Justice** ~~Cabinet~~ shall enforce the provisions of KRS 15A.210 to 15A.230 and the administrative regulations issued thereunder.
- (2) The **Department of Juvenile Justice** ~~Cabinet~~ may institute legal proceedings, including, but not limited to, injunctive remedies, to secure compliance with the provisions of KRS 15A.210 to 15A.230.

Section 6. KRS 15A.250 is amended to read as follows:

There is hereby created in the State Treasury the "Local Alternatives to Detention Fund" to be administered by the **Department of Juvenile Justice** ~~Cabinet~~ for the purposes set forth in KRS 15A.260. The fund may receive moneys from state appropriations, the federal government, donations, or other sources. Moneys in the fund shall not lapse.

Section 7. KRS 15A.270 is amended to read as follows:

- (1) The **Department of Juvenile Justice** ~~Cabinet~~ shall promulgate and enforce administrative regulations to govern at least the following aspects of the operation of the local alternatives-to-detention fund:
 - (a) Application procedures, including granting and denying applications;
 - (b) Program and funding restrictions;
 - (c) Program and funding reports;
 - (d) Termination of programs; and
 - (e) Other related matters.
- (2) Administrative hearings promulgated by administrative regulation under authority of this section shall be conducted in accordance with KRS Chapter 13B.

SECTION 8. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Secretary" means the secretary of the Justice Cabinet;*
- (2) *"Commissioner" means the commissioner of the Department of Juvenile Justice;*
- (3) *"Department" means the Department of Juvenile Justice;*
- (4) *"Facility" means any facility operating under the authority or control of the Department of Juvenile Justice; and*
- (5) *"Cabinet" means the Justice Cabinet.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner of the Department of Juvenile Justice may, with the approval of the Finance and Administration Cabinet, purchase liability insurance for the protection of health care professionals employed by or serving the department to protect them from liability for acts and claims of medical and professional malpractice arising in the course and scope of their employment or service to the department.*
- (2) *The commissioner may purchase the type and amount of liability coverage deemed appropriate to best serve the department's interest.*

Section 10. KRS 200.115 is amended to read as follows:

- (1) The cabinet *or the Department of Juvenile Justice, as appropriate*, is authorized and may pay for such care and treatment as it deems necessary for the well-being of any child committed to it, including medical expenses, room and board, clothing, and all other necessities for such children committed to its care and custody, but only if no similar services are rendered by other agencies.

- (2) Where the person having charge of the child is able to pay for the care or treatment or portions thereof, the court shall so direct and in what amounts, and such funds as he is able to pay shall be turned over to the cabinet *or the Department of Juvenile Justice, as appropriate*, or the person having custody and care of the child to be applied on the cost of the treatment and care of the child.

Section 11. KRS 605.100 is amended to read as follows:

- (1) The Department of Juvenile Justice or the cabinet shall arrange for a program of care, treatment, and rehabilitation of the children committed to it, which program shall be designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics, and to provide a coordinated system of probation and parole services.
- (2) The Department of Juvenile Justice or the cabinet shall be responsible for the operation, management, and development of the existing state facilities for the custodial care and rehabilitation of children committed to *the Department of Juvenile Justice or* the cabinet under provisions of this chapter. The Department of Juvenile Justice or the cabinet shall further be responsible for the development of such facilities as are necessary to provide an adequate and modern program for the care, treatment, and rehabilitation of such children.
- (3) The facilities and programs under the control of the Department of Juvenile Justice or the cabinet shall be designed and operated in such a manner as to rehabilitate, train, develop, and educate the children to become good citizens and useful members of society.
- (4) Suitable programs of vocational education and training shall be carried on in the facilities and programs, with the view of preparing the children for future self-support.
- (5) The children in each facility and program shall be employed so far as practicable in labor incident to the maintenance and operation of the facility and program, and in suitable industries conducted by the facilities and programs as a part of the vocational training program.
- (6) The superintendent or managing officer of each facility may use, for the maintenance of the facility, the products of farms, dairies, and other departments and industries of the facility, or may sell or exchange such products for the benefit of the facility.

Section 12. KRS 605.150 is amended to read as follows:

- (1) The cabinet may promulgate administrative regulations to implement the provisions of this chapter.
- (2) *The Department of Juvenile Justice may promulgate administrative regulations to implement the provisions of this chapter.*
- (3) *The cabinet and the department shall not promulgate administrative regulations under this chapter that conflict.*

Section 13. KRS 610.010 is amended to read as follows:

- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:
 - (a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent, nor any offense which constitutes a felony;

- (b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child;
 - (c) Is an habitual truant from school;
 - (d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;
 - (e) Is dependent, neglected, or abused; or
 - (f) Is mentally ill.
- (2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.
 - (3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.
 - (4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.
 - (5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.
 - (6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus, or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights. The court shall have no jurisdiction to make permanent awards of custody of a child, but if the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
 - (7) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence, or the county wherein the offense was committed, as the case may be.
 - (8) Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce *valid court* orders previously issued by the court.
 - (9) Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the *Department of Juvenile Justice or the* cabinet in the placement, care, or treatment of a child committed to the *Department of Juvenile Justice or the* cabinet; or to require the *department or the* cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the *department or the* cabinet.
 - (10) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
 - (11) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct dispositional hearings under 42 U.S.C. sec. 675(5)(c), until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Section 14. KRS 610.060 is amended to read as follows:

- (1) If the Circuit or District Court determines that a formal proceeding is required in the interest of the child or to determine the truth or falsity of the allegations against the child, a petition shall be required pursuant to KRS 610.020, and the court shall, when the child is brought before the court:

- (a) Explain to the child and his parents, guardian, or person exercising custodial control their respective rights to counsel and, if the child and his parents, guardian, or person exercising custodial control are unable to obtain counsel, shall appoint counsel for the child and, unless specified to the contrary by other provisions of KRS Chapters 600 to 645, may appoint counsel for the parents, guardian, or person exercising custodial control;
 - (b) Explain the right against self-incrimination by saying that the child, parents, relative, guardian, or custodian may remain silent concerning the charges against the child, and that anything said may be used against the child;
 - (c) Unless limited by statute, explain the right to confront anyone who has accused the child and to cross-examine that person on the allegations made against the child;
 - (d) Advise the child and his parents, guardian, or person exercising custodial control of the right to appeal from a determination of the court; and
 - (e) Advise the child that these rights belong to him and may not be waived by his parents, guardian, or person exercising custodial control.
- (2) Unless otherwise exempted in KRS Chapters 600 to 645, a child and his parents or person exercising custodial control shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing.
 - (3) Subject to the provisions of KRS 31.125, the court may order a parent to pay for counsel for the child if the court determines that the parent has the ability to pay for such counsel. ***The fact that a child is committed to a state agency shall not be cause for the court to order that agency to pay for counsel.***
 - (4) Subject to Rule 43.09 of the Rules of Civil Procedure, the court shall permit the victim, the victim's parents or legal guardian, or, if emancipated, the victim's spouse, or the legal representative of any of these, to attend all proceedings under this section.
 - (5) An attempt shall be made to notify the persons specified in subsection (4) of this section of the time, date, and place of all proceedings under this section. Each District Court shall, by rule, establish the means of notification and the person or agency responsible for making the notifications. The failure of a victim or other person specified in subsection (4) of this section to receive notice shall not delay the proceedings in the case.

Section 15. KRS 610.070 is amended to read as follows:

- (1) All cases involving children brought before the court whose cases are under the jurisdiction of the court shall be granted a speedy hearing and shall be dealt with by the court without a jury.
- (2) The hearings shall be conducted in a formal manner, unless specified to the contrary by other provisions of KRS Chapters 600 to 645.
- (3) The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, ***a representative from the Department of Juvenile Justice***, the victim, his parent or legal guardian, or if emancipated, his spouse, or a legal representative of either, such persons admitted as the judge shall find have a direct interest in the case or in the work of the court, and such other persons as agreed to by the child and his attorney may be admitted to the hearing. A parent, legal guardian, or spouse if a witness shall be admitted to the hearing only during and after his testimony at the hearing, and witnesses shall be admitted to the hearing only for the duration of their testimony. The court may order the exclusion of a parent, legal guardian, or spouse, if it is shown to the satisfaction of the court that the parent, legal guardian, or spouse may physically disrupt the proceedings or may do violence to any participant therein. The mere presence of a parent, legal guardian, or spouse shall not be deemed to be a disruption of the proceedings merely because their presence may make the defendant uncomfortable; the court shall find a potential for actual physical disruption of the proceedings before an exclusion may be granted for this reason.
- (4) The court may order the parents, guardians, or persons exercising custodial control over the child to be present at any hearing or other proceeding involving the child.

Section 16. KRS 610.100 is amended to read as follows:

- (1) Unless there is a suitable prior disposition investigation report or unless waived by the child, before making disposition of the case of a child brought before the court under the provisions of KRS Chapters 630 or 635,

whether by complaint pursuant to KRS 610.020, or by reason of having been taken into custody pursuant to KRS 610.190, the judge shall cause an investigation to be made concerning the nature of the specific act complained of and any surrounding circumstances which suggest the future care and guidance which should be given the child. The investigation shall include an inquiry into the child's age, habits, school record, general reputation, and everything that may pertain to his life, and character. The investigation shall also include an inquiry into the home conditions, life, and character of the person having custody of the child. The investigation shall also include an assessment of the parent or guardian's ability to pay all or part of the cost of the child's care and treatment should the child be ordered into a treatment program or placed on supervised probation. The result of the investigation shall be reported in writing to the court and to counsel for the parties three (3) days prior to the child's dispositional hearing and shall become a part of the record of the proceedings. The child may waive the three (3) day requirement. Objections by counsel at the dispositional hearing to portions of the dispositional report shall be noted in the record.

- (2) The investigation shall be conducted by volunteer or salaried probation officers of the juvenile court or by a suitable public or private agency. The cabinet and the Department of Juvenile Justice may furnish investigation services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county government may enter into a contract on behalf of his county with the *Department of Juvenile Justice or the* cabinet for the furnishings of such services.
- (3) Upon the court's motion or the motion of any party, an informal adjustment may be made at any time during the proceedings and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.

Section 17. KRS 610.170 is amended to read as follows:

If it appears from the investigation required in KRS 610.100 or otherwise that the parent or other person exercising custodial control or supervision of any child, or the estate of any child, who has been found to fall within the purview of KRS Chapters 600 to 645 and who has been left in his own home or in the home of a relative, placed on probation or placed in a foster home or boarding home, or in the care of a public or private facility or agency, or the Department of Juvenile Justice or the cabinet, is able to contribute to the support of the child, the court shall, ~~if a petition has been filed,~~ enter an order requiring the parent or estate to pay a reasonable sum for the support, maintenance, or education of the child. The order shall direct that the money be paid to the circuit clerk to be disbursed as ordered by the court or be paid to the person, facility, agency, or the Department of Juvenile Justice or cabinet to which the child was committed or probated. On application and on such notice as the court may direct, the court may make alterations in the requirement for contribution. The court may issue such orders necessary to compel payment of the sum due. The enforcement of a sentence imposed on a parent who fails to comply with the order of the court may be suspended at the discretion of the court, but the suspension may be revoked at the discretion of the court upon the failure of the parent to obey further orders of the court. This section shall not apply when the parent or other person exercising custodial control or supervision of the child was the victim of the child's criminal conduct or filed the complaint against the child.

Section 18. KRS 610.200 is amended to read as follows:

- (1) When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, *the Department of Juvenile Justice or the cabinet, as appropriate*, and if the parent is not available, then a relative, guardian, person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.
- (2) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice *or the cabinet, as appropriate*; or if the parent is not available, then a relative, guardian, person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise, accompanied by a written report by the officer, shall be submitted forthwith to the court or court-designated worker and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.

- (3) If the person fails to produce the child as agreed or upon notice from the court, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.
- (4) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.
- (5) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:
 - (a) Release the child to his parents;
 - (b) Release the child to such other persons or organizations as are authorized by law;
 - (c) Release the child to either of the above subject to stated conditions; or
 - (d) Authorize the peace officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a secure juvenile detention facility or juvenile holding facility. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.

Section 19. KRS 610.267 is amended to read as follows:

- (1) Any other provision of KRS Chapters 600 to 645 to the contrary notwithstanding, any county or charter county~~[that operates a secure detention facility for juveniles]~~ may construct, operate, or contract for the operation of a youth alternative center.
- (2) The youth alternative center shall be a nonsecure facility and shall be under the jurisdiction of the county jailer or a correctional services division established pursuant to KRS 67A.028.
- (3) The youth alternative center shall be used only for the detention of juveniles. The youth alternative center shall not be part of a county jail or other facility which houses adult offenders.
- (4) The youth alternative center may be used as a place of detention for juveniles by order of a court prior to adjudication and after adjudication regardless of whether the child is a status offender, public offender, or youthful offender.
- (5) A judge shall not be required to house a juvenile in a youth alternative center if he believes that the youth alternative center lacks the security necessary for the detention of that particular juvenile. If the child requires a more secure facility, the judge may order his detention in a more appropriate facility authorized by law.
- (6) The Department of *Juvenile Justice*~~[Corrections]~~ shall promulgate administrative regulations relating to the construction, reconstruction, remodeling, and operations of youth alternative centers.

Section 20. KRS 610.330 is amended to read as follows:

- (1) Any child who has been adjudicated as coming within the purview of KRS Chapters 630, 635 (with regard to status offenses, misdemeanors, or violations only), or 645, but not KRS Chapters 620 or 640, may petition the court for the expungement of his juvenile court record, except for adjudications involving guilt of an offense which would have been a felony if the offense was committed by an adult. He shall be informed of such right at the time of adjudication. The court on its own motion, or on the motion of a probation officer of the court, a representative of the *Department of Juvenile Justice or the* cabinet, or any other interested person may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. The petition shall be filed or the court order entered no sooner than two (2) years after the date of termination of the court's jurisdiction over the person, or two (2) years after his unconditional release from commitment to the *Department of Juvenile Justice or the* Cabinet for Human Resources or a public or private agency, except that the two (2) year period may be waived if the court finds that such extraordinary circumstances exist with regard to the petitioner as to make the waiver advisable.
- (2) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall notify the county attorney and anyone else whom the court or the child, his parents, relatives, guardian, or custodian has reason to believe may have relevant information related to the expungement of the record.

- (3) The court shall order sealed all records in the petitioner's case in the custody of the court and any of these records in the custody of any other agency or official, including law enforcement and public or private elementary and secondary school records, if at the hearing the court finds that:
- (a) Since the termination of the court's jurisdiction or his unconditional release from commitment to the *Department of Juvenile Justice, the cabinet*, or a public or private agency, the person whose record is in question has not been convicted of a felony, and has not been adjudicated under KRS 610.010(1)(a); and
 - (b) No proceeding concerning a felony and no petition under KRS 610.010(1)(a) is pending or being instituted against him.
- (4) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred and all index references shall be deleted and the person and court may properly reply that no record exists with respect to such person upon any inquiry in the matter.
- (5) Copies of the order shall be sent to each agency or official named therein.
- (6) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

Section 21. KRS 610.360 is amended to read as follows:

- (1) Court costs commensurate with those in District or Circuit Court, as appropriate, shall be charged by the juvenile session of District Court against juveniles who are informally adjusted, or found delinquent because of status offenses or public offenses and by the Circuit Court against juveniles who are found to be youthful offenders.
- (2) Where possible, court costs shall be assessed against the child, but they may be assessed against the child's parent or legal guardian.
- (3) Court costs shall not be assessed against a parent or guardian who is the complainant against the child or who has been the victim of the child's acts.
- (4) ***In the case of children who have been committed, court costs shall not be assessed against the Department of Juvenile Justice or the cabinet.***
- (5) The court may require juveniles to pay court costs on the installment plan or in any other manner provided for fines by KRS Chapter 534 or to engage in community labor at state minimum wage rates to pay off their court costs. Labor to pay court costs shall be in addition to community labor ordered for other purposes.

Section 22. KRS 635.090 is amended to read as follows:

- (1) If the court chooses to treat the child as other than a youthful offender, if the Commonwealth fails to prove the criteria bringing a case under KRS Chapter 640 or if the county attorney elects not to proceed under KRS Chapter 640, the court may:
 - (a) If a child is fourteen (14) years of age or older, and is adjudicated a public offender in the commission of a capital offense, Class A felony, or Class B felony, the court in its discretion may commit the child to the Department of Juvenile Justice for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The *Department of Juvenile Justice*~~cabinet~~ may petition the court to continue the commitment for the purpose of completing a treatment program but the commitment shall not extend past the child's nineteenth birthday; or
 - (b) If a child is sixteen (16) years of age or older, and is adjudicated a public offender in the commission of a felony offense and has previously been adjudicated delinquent of one (1) or more felony offenses not arising out of the same course of conduct in separate adjudications, or has previously been adjudicated a public offender for one (1) or more felony offenses not arising out of the same course of conduct in separate adjudications, the court in its discretion may commit the child to the Department of Juvenile Justice for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The Department of Juvenile Justice may petition the court to continue the commitment for the purpose of completing a treatment program, but the commitment shall not extend past the child's nineteenth birthday.

- (2) The Department of Juvenile Justice shall maintain jurisdiction over the child during the period of the commitment. The committing court may, upon motion of the Department of Juvenile Justice, order the child released from the facility or program operated by the Department of Juvenile Justice.
- (3) The Department of Juvenile Justice shall notify the committing court if it transfers the child to a different facility or program and note the reasons for the transfer.
- (4) The Department of Juvenile Justice shall notify the committing court prior to the termination of treatment or placement as to the future intentions of the Department of Juvenile Justice as they relate to continued treatment of the child.
- (5) The committing court may, upon motion of the child, grant shock probation to any child committed under this section after the child has been committed for a minimum of thirty (30) days.
- (6) After a child has been committed to the Department of Juvenile Justice as provided in this section, he may not then be transferred to the Circuit Court as provided for in KRS 640.020.

SECTION 23. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice may promulgate administrative regulations to implement provisions of this chapter.

Section 24. KRS 640.050 is amended to read as follows:

- (1) Any period of probation or conditional discharge required by the sentencing court to be served shall be supervised, as the court may determine by written order, by:
 - (a) The Department of Juvenile Justice;
 - (b) The Department of Corrections; or
 - (c) The designated representative of either of the above.
- (2) The ***Department of Juvenile Justice***~~[Cabinet for Human Resources]~~ may make recommendations to the Circuit Court concerning the disposition of the youthful offender.
- (3) The court may order any of the above alternatives without regard to the age of the youthful offender.

Section 25. KRS 640.100 is amended to read as follows:

All officials of the ***Department of Juvenile Justice***~~[Cabinet for Human Resources]~~ and the Department of Corrections shall furnish members of the Parole Board, or its properly accredited representatives:

- (1) Access at all reasonable times to any youthful offender over whom the board has jurisdiction under this chapter;
- (2) Facilities for communicating with and observing the youthful offender;
- (3) The reports the board requires concerning the conduct and character of any youthful offender in its custody; and
- (4) Any other facts deemed pertinent by the board in determining whether the youthful offender shall be paroled.

Section 26. KRS 640.110 is amended to read as follows:

When a youthful offender is transferred to the Department of Corrections in accordance with this chapter, the ***Department of Juvenile Justice***~~[Cabinet for Human Resources]~~ shall transfer a copy of all records relating to the youthful offender to the Department of Corrections.

Section 27. KRS 645.250 is amended to read as follows:

- (1) The cabinet may promulgate administrative regulations to implement the provisions of this chapter.
- (2) ***The Department of Juvenile Justice may promulgate administrative regulations to implement the provisions of this chapter.***
- (3) The cabinet shall promulgate administrative regulations to insure that necessary and appropriate treatment is provided to children hospitalized under this chapter, including the establishment of:

- (a) Reasonable time periods in which an individualized written treatment plan shall be developed, reviewed, and revised in accordance with each child's needs and progress; and
 - (b) Procedures so that a hospitalized child, his parent or other person exercising custodial control or supervision, including the state if applicable, can obtain an independent medical review of the appropriateness of decisions made to continue hospitalization or to discharge a child.
- (4) *The cabinet and the department shall not promulgate administrative regulations under this chapter which conflict.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Juvenile Justice shall establish a Detention Facility Standards Committee which shall review and recommend administrative regulations relating to at least the following aspects of county-operated juvenile detention facilities:*
- (a) *Health and safety conditions;*
 - (b) *Fire safety;*
 - (c) *Jail operations, recordkeeping, and administration;*
 - (d) *Curriculum of basic and continuing annual training for jailers and jail personnel;*
 - (e) *Custody, care, and treatment of detainees;*
 - (f) *Medical care; and*
 - (g) *Jail equipment, renovation, and construction.*
- (2) *The committee shall be appointed by the commissioner and shall be composed of representatives having knowledge of juvenile detention facilities and of the various areas identified in subsection (1) of this section. At least thirty-three percent (33%) of the membership shall be appointed from persons representing county interests.*
- (3) *The committee shall be in force until such time as the state reimburses counties eighty percent (80%) of the cost of detention in accordance with the statewide detention program.*

Section 29. The following KRS section is repealed:

441.057 Administrative regulations governing juvenile holding facilities.

Approved April 9, 1998

CHAPTER 444

(HB 724)

AN ACT relating to a school to careers system and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the intent of the General Assembly that a School to Careers system be developed to serve as an umbrella for career related programs in the public schools, including School-to-Work, Tech Prep, and High School's That Work initiatives.*
- (2) *The goals of the School to Careers system shall be to:*
- (a) *Increase the math, science, communications, social studies, and technical skills of all students through the implementation of a more rigorous and relevant applied curriculum and instructional process;*
 - (b) *Increase the awareness of job and career availability in the future workforce and the skills required to obtain those positions;*
 - (c) *Increase the postsecondary education's entry and completion rates and reduce the percentage of students taking remedial courses;*

- (d) *Decrease the high school dropout rate through a system of increased guidance and extra help focused on academics and career achievement;*
- (e) *Make all students aware of employer expectations in order to be successful;*
- (f) *Increase the daily attendance rate at all secondary schools; and*
- (g) *Provide the educational experiences that will cause all students to meet the goals and capacities identified in KRS 158.645 and KRS 158.6451 for Kentucky students.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *The School to Careers grant program shall be provided by the General Assembly to provide matching funds to school districts or consortia of school districts for the development and implementation of comprehensive plans that include:*
 - (a) *A comprehensive career awareness and exploration program for all students in grades K-8 to include study of Kentucky's fourteen (14) career clusters;*
 - (b) *High level academic and vocational courses for all secondary students to replace a general track curriculum;*
 - (c) *A comprehensive career guidance program to assist all secondary students in developing individual graduation plans;*
 - (d) *Applied academic instructional models for all disciplines and integration of academics and vocational education curriculum;*
 - (e) *Implementation of industry skill standards within all relevant academic and vocational education programs;*
 - (f) *Planned instructional programs to meet the needs of students with disabilities and other special needs students;*
 - (g) *Opportunity for students to receive, in addition to a high school diploma, a Career Major Certificate upon completion of the high school graduation requirements, work-based learning experiences, specific course work, and a career culminating project;*
 - (h) *Opportunity for students to participate in structured workbased learning;*
 - (i) *Linkages with postsecondary institutions that create a smooth and seamless transition from secondary to postsecondary education;*
 - (j) *Professional development for faculty and staff focused on developing integrated and applied curriculum; and*
 - (k) *A School to Careers Partnership Council composed of representatives of business, labor, education agencies, parents, students, teachers, administrators, and community organizations.*
- (2) *The Kentucky Board of Education shall promulgate administrative regulations that set forth the request for proposal process, the criteria for grant awards, the responsibilities of local districts and consortia seeking matching funds, the level of funding available, and criteria for evaluating the success of the programs.*
- (3) *The Department of Education shall administer the funds and shall provide technical assistance to local districts and consortia in developing, implementing, and evaluating School to Careers programs.*
- (4) *The commissioner of education shall establish a state advisory committee composed of business, industry, labor, education, and government with a minimum of fifty-one percent (51%) of its membership from the employment sector to advise the department in the School to Careers program. The members shall serve without compensation but may be reimbursed for necessary travel expenses.*
- (5) *The grant funds may be used to enhance on-going efforts such as Tech Prep, School-to-Work, and High Schools that Work initiatives.*

Section 3. KRS 151B.250 is amended to read as follows:

- (1) It is the intent of the General Assembly to create and support a *School to Careers*~~[school to work transition]~~ system that involves business, labor, education, and government~~[in developing school curriculum and~~

~~workplace training] to prepare students for careers[jobs] in an ever-changing economy. [Agencies of state government shall participate in the development and implementation of the system.]~~

- (2) ***It is the intent of the General Assembly that the*** ~~[There shall be an] Office of School-to-Work attached to the office of the secretary of the Workforce Development Cabinet [to] coordinate~~ ***its efforts with the Kentucky Department of Education in the implementation of this overall effort. As the School to Work effort is a federally supported program that fits within the overall mission of the School to Careers system, it is critical that collaboration and coordination occur.*** ~~[the school to work transition system. The system shall foster community partnerships to provide education and skill development that ensure all individuals can successfully compete in the workforce. It shall include]~~ The following elements ***shall be coordinated when possible:***
- (a) ~~[Community ownership by setting a vision through]~~ Planning and partner involvement of business, labor, education, government, community-based organizations, employers, parents, and students;
 - (b) Career awareness, exploration, preparation, and guidance incorporated in the school curriculum;
 - (c) A comprehensive system approach from the primary through postsecondary levels with all students having the opportunity to participate;
 - (d) Applied learning experiences;
 - (e) Integration of academic and occupational education;
 - (f) Performance assessment;
 - (g) Actual or simulated learning at the school or the worksite;
 - (h) Curriculum based on skill standards representing all aspects of an industry;
 - (i) Secondary to postsecondary articulation;
 - (j) Postsecondary articulation; and
 - (k) Professional development opportunities for all partners.
- (3) The executive director of the Office of School-to-Work shall be appointed by the secretary of the Workforce Development Cabinet pursuant to KRS 12.050.
- (4) The Office of School-to-Work may promulgate administrative regulations establishing policy for the development and implementation of a school-to-work transition system.
- (5) The Office of School-to-Work shall comply with the provisions of the federal School-to-Work Opportunities Act, Pub.L. 103-239 as it is amended from time to time.

Section 4. KRS 151B.255 is amended to read as follows:

The Office of School-to-Work ***in cooperation with the Kentucky Department of Education*** shall convene representatives of business, labor, education, and government to:

- (1) Develop school curriculum and resource materials to assist educators, employers, and students with career planning and workplace training. The curriculum and materials shall define career-related courses that are necessary for each career cluster that may ultimately lead to a career major. The curriculum shall outline the academic and technical courses that are necessary for each career major;
- (2) Advise the Office of School-to-Work on the design of model projects geographically placed across the state to test the curriculum for each career cluster. Each project shall include local representatives of business, labor, education, and government to advise on the specific skills and knowledge necessary to be a successful employee in the specific career; and
- (3) Evaluate and disseminate the findings of each model project to all other school-to-work labor market areas.

Section 5. Whereas, it is important that local districts be able to request grant funds during the 1998-99 school year and administrative regulations must be promulgated by the Kentucky Board of Education regarding the request for proposals, time is critical and an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming the law.

Approved April 9, 1998

CHAPTER 445**(HB 716)**

AN ACT relating to the building construction industry.

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

Section 1. KRS 198B.130 is amended to read as follows:

- (1) Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this chapter or the Uniform State Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation. An award may include damages and the cost of litigation, including reasonable attorney's fees.
- (2) *Any action based upon a claim of violation of this section shall be brought within one (1) year of the date on which the damage is discovered or in the exercise of reasonable diligence could have been discovered. However, in no event shall an action be brought under this section more than ten (10) years after the date of first occupation or settlement date, whichever is sooner.*
- (3) *Nothing in this section shall be construed to bar any common law liability of a contractor or subcontractor or any right or cause of action against any contractor or subcontractor created by any other statute.*

Approved April 9, 1998

CHAPTER 446**(HB 746)**

AN ACT relating to commercial drivers licenses.

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

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

In addition to the penalties established by this chapter for driving a commercial motor vehicle under the influence of alcohol:

- (1) *Any person convicted of driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is four hundredths (0.04) to eight hundredths (0.08) shall be fined not less than twenty dollars (\$20) and not more than fifty dollars (\$50).*
- (2) *Any person convicted of driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is greater than eight hundredths (0.08) shall be fined under the provisions of KRS 189A.010(4)(a) to (d).*

Approved April 9, 1998

CHAPTER 447**(HB 754)**

AN ACT relating to the judiciary.

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

Section 1. KRS 21A.110 is amended to read as follows:

Any retired justice or judge assigned to active judicial service pursuant to Section 110(5)(b) of the Constitution shall be compensated for his service as follows:

- (1) The salary for each day which the justice or judge serves shall be the difference, if any, between 1/250 of annual retirement benefits and 1/250 of the annual salary for the judicial office in which he performs the judicial duties. However, *no special judge shall receive compensation that is less than one hundred fifty*

dollars (\$150) per day. This section shall not be construed to require a reduction in retirement benefits if the applicable salary would be less than the retirement benefits.

- (2) Necessary expenses incidental to the performance of the duties of such assignment shall be paid out of the State Treasury upon approval by the Chief Justice or his designee.

Approved April 9, 1998

CHAPTER 448

(HB 782)

AN ACT relating to deaf and hard of hearing students.

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

Section 1. KRS 164.478 is amended to read as follows:

- (1) It is the intent of the General Assembly to increase the educational level of deaf and hard of hearing persons by assuring them an equal opportunity to obtain an education in the public **postsecondary** institutions~~[of higher education]~~.
- (2) The public **postsecondary** institutions~~[of higher education]~~ shall make their programs accessible to deaf and hard of hearing students by providing support services necessary for such students to fully participate in the programs. The support services shall include, but not be limited to, interpreters and notetakers in the classroom, and equal access to all support services available to those who are not deaf or hard of hearing. Appropriate assistive listening devices and alerting devices shall be available in dormitories housing deaf or hard of hearing students.
- (3) (a) The General Assembly shall appropriate funds to the Department of Vocational Rehabilitation excluding costs of capital equipment or modifications for installation of assistive listening or alerting devices to cover the costs of support services at the institutions for students who are deaf or hard of hearing.
- (b) The Department of Vocational Rehabilitation shall administer funding of support services at institutions for students who are deaf or hard of hearing contingent on General Assembly funding. The **postsecondary** institutions~~[of higher education]~~ and the Department of Vocational Rehabilitation shall cooperate to assure that funds are used to effectively provide support services to students who are deaf and hard of hearing.
- (c) The funds shall be distributed to institutions based upon actual costs or established fees for service of providing support services to individual students.

Approved April 9, 1998

CHAPTER 449

(HB 880)

AN ACT relating to escheats.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, refunds of workers' compensation special fund assessments levied in accordance with KRS 342.122 shall be deemed "unclaimed refunds" if held by an insurance carrier and owed to an insured employer.*
- (2) *For purposes of this section, "unclaimed refunds" means all unremitted workers' compensation special fund assessments collected by a carrier, as defined in KRS 342.0011(6), in excess of the applicable special fund assessment rate, owing and unpaid to an insured employer after the Kentucky Workers' Compensation Funding Commission has made a determination that the carrier has made a reasonable attempt to return the unclaimed refunds to the insured employer.*

- (3) *Unclaimed refunds shall be remitted by the insurance carrier to the Kentucky Workers' Compensation Funding Commission, created under KRS 342.1223, and shall be credited to the benefit reserve fund, created under KRS 342.1229, within the Kentucky Workers' Compensation Funding Commission. Unclaimed refunds remitted to the Kentucky Workers' Compensation Funding Commission and held by that commission for more than two (2) years shall become the property of the benefit reserve fund.*
- (4) *The unclaimed refunds remitted as required in this section to the Kentucky Workers' Compensation Funding Commission and held for more than two (2) years shall not thereafter be available to any party who may have a claim to the remitted unclaimed refunds and any claims that arise under this section including claims for the remitted sums shall be forever barred against the Kentucky Workers' Compensation Funding Commission and any carrier complying with this section.*
- (5) *The provisions of this section shall apply to any refunds or unclaimed refunds owing and held by a carrier on or after the effective date of this Act.*

Approved April 9, 1998

CHAPTER 450

(HCR 7)

A CONCURRENT RESOLUTION confirming the appointment of LaVerne M. Waldrop to the Governor's Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed LaVerne M. Waldrop as a member of the Governor's Postsecondary Education Nominating Committee for a term expiring April 14, 2002; and

WHEREAS, appointments to the Governor's Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has submitted LaVerne M. Waldrop's name for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that LaVerne M. Waldrop meets the requirements established in KRS 164.005 for membership on the Governor's Postsecondary Education Nominating Committee;

NOW, THEREFORE,

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

Section 1. That the House of Representatives and Senate hereby confirm the appointment of LaVerne M. Waldrop to the Governor's Postsecondary Education Nominating Committee for a term ending April 14, 2002.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and LaVerne M. Waldrop, 610 Pryor Street, Mayfield, Kentucky 42066, in writing, of the General Assembly's action.

Approved April 9, 1998

CHAPTER 451

(HCR 15)

A CONCURRENT RESOLUTION confirming the appointment of Morton J. Holbrook, Jr., to the Governor's Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Morton J. Holbrook, Jr., as a member of the Governor's Postsecondary Education Nominating Committee for a term expiring April 14, 2002; and

WHEREAS, appointments to the Governor's Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of April 30, 1996, the Governor has delivered the name of Morton J. Holbrook, Jr., for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Morton J. Holbrook, Jr., meets the requirements established in KRS 164.005 for membership on the Governor's Postsecondary Education Nominating Committee;

NOW, THEREFORE,

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

Section 1. The House of Representatives and Senate hereby confirm the appointment of Morton J. Holbrook, Jr., to the Governor's Postsecondary Education Nominating Committee for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Morton J. Holbrook, Jr., 26 Stone Creek Road, Owensboro, Kentucky 42303, in writing, of the General Assembly's action.

Approved April 9, 1998

CHAPTER 452

(HCR 16)

A CONCURRENT RESOLUTION confirming the appointment of Alcie Ann Combs to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Alcie Ann Combs as an at-large member of the Kentucky Board of Education for a term expiring April 14, 2000; and

WHEREAS, at-large appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of May 13, 1996, the Governor has delivered Alcie Ann Combs's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Alcie Ann Combs meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Alcie Ann Combs to the Kentucky Board of Education for a term ending April 14, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Alcie Ann Combs, 102 Hickory Knoll, Quail Ridge, Pikeville, Kentucky 41501, in writing, of the General Assembly's action.

Approved April 9, 1998

CHAPTER 453

(HCR 17)

A CONCURRENT RESOLUTION confirming the appointment of Martha Dell Sanders to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Martha Dell Sanders as an at-large member of the Kentucky Board of Education for a term expiring April 14, 2000; and

WHEREAS, by letter of May 13, 1996, the Governor has delivered Martha Dell Sanders's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Martha Dell Sanders meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Martha Dell Sanders to the Kentucky Board of Education for a term ending April 14, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, and Martha Dell Sanders, 142 Locust Hill Drive, Frankfort, Kentucky 40601-4824, in writing, of the General Assembly's action.

Approved April 9, 1998

CHAPTER 454

(HCR 18)

A CONCURRENT RESOLUTION confirming the appointment of Dr. Samuel Robinson to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Dr. Samuel Robinson as an at-large member of the Kentucky Board of Education for a term expiring April 14, 2000; and

WHEREAS, at-large appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of May 13, 1996, the Governor has delivered Dr. Samuel Robinson's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Dr. Samuel Robinson meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Dr. Samuel Robinson to the Kentucky Board of Education for a term ending April 14, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Dr. Samuel Robinson, 5503 Apache Road, Louisville, Kentucky 40207, in writing, of the General Assembly's action.

Approved April 9, 1998

CHAPTER 455

(HCR 20)

A CONCURRENT RESOLUTION confirming the appointment of Jeffrey C. Mando to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Jeffrey C. Mando as an at-large member of the Kentucky Board of Education for a term expiring April 14, 2000; and

WHEREAS, at-large appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of May 13, 1996, the Governor has delivered Jeffrey C. Mando's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Jeffrey C. Mando meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Jeffrey C. Mando to the Kentucky Board of Education for a term ending April 14, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and Jeffrey C. Mando, 2015 River Vista Court, Villa Hills, Kentucky 41017, in writing, of the General Assembly's action.

Approved April 9, 1998

CHAPTER 456

(HCR 94)

A CONCURRENT RESOLUTION requesting a study relating to emergency services dispatchers.

WHEREAS, the prompt and efficient provision of emergency services depends upon effective communications; and

WHEREAS, more and more communities are availing themselves of 911 emergency telephone service; and

WHEREAS, 911 emergency telephone service is predicated upon all emergency services calls that request emergency service responses going through a single communications center; and

WHEREAS, it is duplicative and wasteful to have more than one emergency dispatch center per community; and

WHEREAS, 911 or other emergency dispatcher must dispatch police, fire, rescue, emergency medical services, hazardous materials, and emergency management units on a routine basis; and

WHEREAS, the only present certification for these persons is the Law Enforcement Telecommunicator Program; and

WHEREAS, the Law Enforcement Telecommunicator Program focuses, of necessity, on dispatch of law enforcement officers and services to law enforcement officers, such as record checks, vehicle registration checks, and similar routine matters; and

WHEREAS, modern emergency dispatch centers, and their dispatchers, must dispatch and service a myriad of emergency services, and the dispatchers do not receive in-depth training as to how to dispatch and serve those services; and

WHEREAS, proposals have been made to certify emergency medical dispatchers; and

WHEREAS, it is not in the best interest to continue to certify single subject dispatchers in a world which requires multifaceted responses;

NOW, THEREFORE,

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

Section 1. The Interim Joint Committee on Local Government is directed to undertake a study of current and future:

- (1) Emergency dispatch center needs;
- (2) Emergency dispatch center personnel needs;
- (3) Needs of emergency services for emergency dispatch center personnel training;
- (4) Types of training needed;

- (5) Types of certification needed;
- (6) The necessity of combining training and certification into one program;
- (7) The ability of state agencies to deliver the needed training; and
- (8) Any other matter relating to emergency dispatch centers, 911 centers, and their personnel deemed necessary by the committee.

Section 2. To make findings and recommendations to the Legislative Research Commission not later than July 1, 1999, along with a draft of any statutory changes proposed to implement the findings and recommendations and a cost estimate for implementing the findings and recommendations.

Section 3. Staff services to be utilized in completing this study are estimated to cost \$15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 9, 1998

CHAPTER 457

(HCR 97)

A CONCURRENT RESOLUTION in recognition of J. Roy Shoffner and the restoration of the P-38 and in support of an aviator museum.

WHEREAS, the restoration of this historic aircraft commemorates the activities, adventures, and history of the Lost Squadron; and the restoration of the P-38 constitutes a unique recognition of the role of United States aviators in World War II; and

WHEREAS, the project provides an avenue for Kentucky to lead the nation in honoring aviators and their role in World War II, as well as other wars and conflicts in which Kentucky aviators have demonstrated their valor and courage;

NOW, THEREFORE,

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

Section 1. The General Assembly of the Commonwealth of Kentucky hereby honors, salutes, and congratulates the effort put forth by J. Roy Shoffner, entrepreneur and philanthropist, for creating this unique shrine to Kentucky aviators.

Section 2. The General Assembly of the Commonwealth of Kentucky pledges its support for the planning of the development of a complete museum honoring the role of aviators in World War II, and pledges to assist the project in whatever manner possible towards completion of that task.

Approved April 9, 1998

CHAPTER 458

(HJR 98)

A JOINT RESOLUTION directing the Transportation Cabinet to name the Hazard By-Pass the "Johnny Cox All-American Drive".

WHEREAS, Johnny Cox was born in Neon, Kentucky, one of six children of W. B. and Lula Mae Cox, and destined for greatness; and

WHEREAS, Johnny Cox moved to Hazard in 1953, where he still resides, and was a standout basketball player for Hazard High School until he graduated in 1955; and

WHEREAS, Johnny Cox was recruited to play for the Big Blue of the University of Kentucky in Lexington, Kentucky, where he earned All-American honors for the Wildcats in 1958 and 1959; and

WHEREAS, after graduating from the University of Kentucky in 1959, Johnny Cox went on to play for the Cleveland Pipers and George Steinbrenner in the American Basketball Association and then for the Chicago Zephers of the National Basketball Association;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name the Hazard By-Pass on KY 15, the "Johnny Cox All-American Drive".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Johnny Cox All-American Drive" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to Johnny Cox, 849 North Main Street, Hazard, Kentucky 41701.

Approved April 9, 1998

CHAPTER 459

(HJR 109)

A JOINT RESOLUTION naming the new bridge on US 641 over the East Fork of the Clarks River in north Benton the "Coy B. Creason Bridge".

WHEREAS, Coy B. Creason was born on September 23, 1929, and achieved fame as a four-year letterman on the State Champion Brewers High School basketball team and was named Kentucky's Mr. Basketball in 1948; and

WHEREAS, Coy B. Creason attended Memphis State University, served as captain and co-captain on its basketball team, was selected to the All-Time Memphis State Team in 1960, and was named as one of ten outstanding seniors; and

WHEREAS, upon returning to Benton in 1952, Coy B. Creason went to work for Atochem in Calvert City and began his political career as a Benton City councilman in the 1960's; and

WHEREAS, Coy B. Creason was elected Mayor of Benton in 1973, and held that office for 24 years until he died; and

WHEREAS, Coy B. Creason was a timeless worker for his constituents and city employees, and lived as he played basketball: at a fast pace, while showing respect, consideration, and good sportsmanship to one and all;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name the new bridge on US 641 over the East Fork of the Clarks River in north Benton the "Coy B. Creason Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Coy B. Creason Bridge" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to Melonie Chambers, Marshall County courthouse, Benton, Kentucky 42025.

Approved April 9, 1998

CHAPTER 460

(HCR 113)

A CONCURRENT RESOLUTION to create a Task Force on Information Technology.

WHEREAS, information technology is permitting governments, business, and commerce to migrate increasingly toward a paperless society in which information is created, stored, and communicated electronically;

WHEREAS, the appropriate use of information technology is essential to the effective and efficient operation of government, providing necessary services to the public and enhancing citizen access to government; and

WHEREAS, vigilance is required to ensure the security, quality, and integrity of governmental information; and

WHEREAS, the privacy of the citizens of the Commonwealth should not be sacrificed by the use of information technology; and

WHEREAS, it is imperative that the General Assembly keep abreast of the development of information technologies and their impact on both citizen and private enterprise constituents; and

WHEREAS, the General Assembly must not only keep abreast of development of information technologies, it must also assume a leadership role in enacting legislation which will ensure that information technologies are utilized in ways that promote and protect the public interest;

NOW, THEREFORE,

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

Section 1. There is hereby established a Task Force on Information Technology as a subcommittee of the Legislative Research Commission to review current and emerging information technologies that impact both the public and private sectors, review associated issues and application of the technologies, keep the General Assembly informed regarding the technologies and their impact, and make recommendations to the General Assembly for needed legislation.

Section 2. The membership shall consist of the following:

- (1) One (1) member of the House of Representatives appointed by the Speaker of the House;
- (2) One (1) member of the Senate appointed by the President of the Senate;
- (3) The Chief Information Officer of the Commonwealth;
- (4) One (1) representative of the judicial branch appointed by the Chief Justice;
- (5) One (1) representative of the Department of Financial Institutions appointed by the Commissioner of the Department of Financial Institutions;
- (6) One (1) representative of the Finance and Administration Cabinet appointed by the Secretary of Finance and Administration;
- (7) One (1) representative of the Health Services Cabinet appointed by the Secretary of Health Services;
- (8) One (1) representative of the Department of Education appointed by the Commissioner of Education;
- (9) The Lieutenant Governor or his designee;
- (10) The Secretary of State or his designee;
- (11) The Attorney General or his designee;
- (12) The Treasurer or his designee;
- (13) The Commissioner of Agriculture or his designee;
- (14) The Auditor of Public Accounts or his designee;
- (15) The Director of the Long-Term Policy Research Center or his designee;
- (16) One (1) representative of the American Bankers' Association appointed by the Legislative Research Commission;
- (17) One (1) representative of the Kentucky Hospital Association appointed by the Legislative Research Commission;
- (18) One (1) representative of the Kentucky Bar Association appointed by the Legislative Research Commission;

(19) One (1) representative of the Kentucky Chamber of Commerce appointed by the Legislative Research Commission.

Section 3. The member of the Senate and the member of the House of Representatives shall serve as co-chairs. Members of the Task Force who are not otherwise public officials shall receive reimbursement for their actual and necessary expenses.

Section 4. The duties and responsibilities of the Task Force shall include but not be limited to:

(1) Examining current and emerging information technology, including electronic data and information processing, telecommunications, software and hardware technology, and the application of those technologies;

(2) Researching the potential impact of information technology on public policy and commerce and determining areas that may need legislative attention;

(3) Serving as a forum for private sector entities to present their concerns, perspectives, and suggestions for possible legislation to address their needs;

(4) Reviewing legal aspects and issues relating to information technologies and their application;

(5) Studying information security issues and requirements as they relate to electronic commerce and on-line state and local government;

(6) Assisting the General Assembly in determining whether it is in the public interest to regulate specific areas of information technology;

(7) Studying means to minimize the incidence of computer-related crimes;

(8) Evaluating current and emerging technologies to ensure the privacy of the citizens of the Commonwealth; and

(9) Conducting any other studies or evaluations the task force considers pertinent or necessary to effectuate its purpose.

Section 5. No later than August 1, 1999, the Task Force on Information Technology shall report its findings and recommendations, including proposals for legislation, to the Legislative Research Commission for review by the Interim Joint Committee on State Government.

Section 6. Staff services shall be provided by the staff of the Legislative Research Commission and are estimated to cost \$30,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 9, 1998

CHAPTER 461

(HJR 115)

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on US 23 over Sookey's Creek in Pike County in honor of Hobert Potter and to erect appropriate signs.

WHEREAS, Hobert Potter is a lifelong resident of Pike County; and

WHEREAS, Hobert Potter is a business and civic leader in Pike County and has employed hundreds of individuals; and

WHEREAS, Hobert Potter is an active member of the Caney Creek Old Regular Baptist Church;

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

Section 1. The Transportation Cabinet shall name the bridge on US 23 over Sookey's Creek in Pike County in honor of Hobert Potter.

Section 2. The Transportation Cabinet shall prepare appropriate highway signs to be erected at the site of the bridge.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Pikeville, and Mr. Potter, Yeager, Kentucky.

Approved April 9, 1998

CHAPTER 462

(HJR 116)

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on US 62 over the North Fork of the Licking River in Mason County in memory of Lloyd "Buss" Hitt.

WHEREAS, Lloyd "Buss" Hitt was born on August 8, 1907, in Mason County, Kentucky; and

WHEREAS, Lloyd "Buss" Hitt served as Sheriff of Mason County from 1962 to 1966; and

WHEREAS, Lloyd "Buss" Hitt showed his concern for his neighbors through a lifetime of community involvement; and

WHEREAS, Lloyd "Buss" Hitt passed away on December 30, 1996 and his memory is cherished by his wife, Margaret, his son, William D. Hitt, and his three daughters, Betty Jane Chain, Mary Leslie Borger, and Jo Ann Berry; and

WHEREAS, Lloyd "Buss" Hitt worked diligently to replace the bridge and approaches on US 62 over the North Fork of the Licking River, a road that was prone to flooding, causing lengthy detours and severely affecting the delivery of emergency services; and

WHEREAS, Lloyd "Buss" Hitt's determination has paid dividends with the construction of a new bridge over the North Fork of the Licking River in 1984 and current work to elevate the bridge's approaches out of the flood plain;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet is directed to name the bridge on US 62 over the North Fork of the Licking River the "Lloyd "Buss" Hitt Memorial Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Lloyd "Buss" Hitt Memorial Bridge" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and to Mr. William D. Hitt, 221 Duke of York, Maysville, Kentucky 41056.

Approved April 9, 1998

CHAPTER 463

(HJR 118)

A JOINT RESOLUTION directing the Transportation Cabinet to name US 23 current route from the Letcher/Pike County line to the top of Dorton Hill in honor of Marlow Tackett and to erect appropriate highway signs.

WHEREAS, Marlow Tackett was born on February 28, 1948, in Dorton, Kentucky; and

WHEREAS, Marlow Tackett has had a 25-year career in country music; and

WHEREAS, Marlow Tackett recorded such songs as "Searching For My Mind" and "Would You Know Love" and made three appearances at the legendary Grand Ole Opry; and

WHEREAS, Marlow Tackett has brought entertainment back to his native Pike County by operating the Country Palace night club, a stop for many great country stars; and

WHEREAS, Marlow Tackett has spread holiday cheer throughout Eastern Kentucky with his Christmas party for needy families, held this past December for the 21st time, and his Christmas tour of nursing homes, rest homes, and health-care centers in Pike, Floyd, Letcher, Martin, Johnson, and Magoffin Counties; and

WHEREAS, Marlow Tackett deserves recognition for his talents, accomplishments, and good works;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet shall name US 23 current route from the Letcher/Pike County line to the top of Dorton Hill the "Marlow Tackett Highway."

Section 2. The Transportation Cabinet shall prepare appropriate signs to be erected at each end of the highway by the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet, the District Highway Engineer in Pikeville, Kentucky, and Mr. Marlow Tackett, North Mayo Trail, Pikeville, Kentucky 41501.

Approved April 9, 1998

CHAPTER 464

(HCR 119)

A CONCURRENT RESOLUTION authorizing and directing a comprehensive study of highway signage in Kentucky.

WHEREAS, Congress has declared that outdoor advertising in areas adjacent to the interstate and Federal-aid primary systems should be controlled in order to protect the public investment in these highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, on June 12, 1961, Kentucky entered into an agreement pursuant to Section 131 of Title 23, United States Code, as amended by Section 106 of the Federal-Aid Highway Act of 1959, commonly known as the "Bonus Act" that mandated certain restrictions be placed upon outdoor advertising in return for bonus payments of one-tenth of one percent of the cost of interstate construction; and

WHEREAS, Kentucky has upheld its June 12, 1961, agreement by placing certain restrictions upon outdoor advertising while Congress has failed to appropriate moneys duly owed to the Commonwealth of Kentucky; and

WHEREAS, the General Assembly of the Commonwealth of Kentucky recognizes that outdoor advertising is a legitimate commercial use of private property adjacent to the interstate and primary highway systems, that outdoor advertising is of vital importance to the state's seven billion dollar per year tourism industry, and that it is necessary to regulate and control outdoor advertising to promote highway safety, convenience, and enjoyment of highway travel, and to preserve the natural scenic beauty of highways and adjacent areas;

NOW, THEREFORE,

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

Section 1. That the General Assembly of the Commonwealth of Kentucky requests the Legislative Research Commission to direct staff to conduct a study to:

(1) Examine the historical evolution of federal legislation and regulations pertaining to the control of outdoor advertising adjacent to interstates and federal-aid highways;

(2) Examine the nature and scope of agreements entered into by the Commonwealth of Kentucky and the federal government as they pertain to the control of outdoor advertising adjacent to interstates and federal-aid highways;

(3) Determine if the agreements entered into by the Commonwealth of Kentucky and the federal government as they pertain to the control of outdoor advertising adjacent to interstates and federal-aid highways are, by comparison with other states, more restrictive;

(4) Examine current state regulations pertaining to outdoor advertising to determine if such regulations are more or less restrictive than what is required by federal legislation and regulations;

(5) Examine how current state regulations pertaining to highway signage affect Kentucky's tourism industry; and

(6) Examine official signage policies and regulations in Kentucky for the purpose of determining if these policies may be reasonably modified to better assist Kentucky's tourism industry.

Section 2. The study shall be completed by June 1, 1999, and shall be presented to the Interim Joint Committee on Economic Development and Tourism or its successor.

Section 3. Staff services to be utilized in completing this study are estimated to cost \$15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 9, 1998

CHAPTER 465

(SB 133)

AN ACT relating to school employees.

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

SECTION 1. A NEW SECTION OF KRS 161.730 TO 161.810 IS CREATED TO READ AS FOLLOWS:

- (1) *In cases where a decision or judgment was tendered in an administrative or judicial proceeding before the effective date of this Act, in an investigation of allegations that a teacher, administrator, or other school employee acted improperly relating to the statewide assessment program required by KRS 158.6453, all references relating to the investigation, findings, and disciplinary actions shall be expunged from the individual's personnel file by the local school district, and the Kentucky Department of Education and the Education Professional Standards Board shall expunge any references to the investigation, and findings in all agency files. This shall apply to all affected persons found not guilty of the allegations.*
- (2) *After July 15, 1998, allegations that a teacher, administrator, or other school employee has acted improperly relating to the statewide assessment program required by KRS 158.6453 shall be investigated. If the individual is found not guilty of the allegations, all references to the charges shall be immediately expunged from the individual's personnel file in the local school district, and the Kentucky Department of Education and the Education Professional Standards Board shall expunge all references to the investigation from all agency files.*

Section 2. KRS 161.120 is amended to read as follows:

- (1) (a) *Except as described in Section 1 of this Act, any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees may be revoked by the Education Professional Standards Board for immorality, misconduct in office, incompetency, violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, willful neglect of duty, conviction of a misdemeanor offense under KRS Chapter 510 involving a student, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or being found by the Education Professional Standards Board to have had sexual contact as defined in KRS 510.010(7) with a student, or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification.*
 - (b) The board may revoke an individual's certificate if the certificate was revoked or voluntarily surrendered in another state on the same or similar grounds provided in this subsection.
- (2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, Social Security number, position name, and position code of any certified school employee in his district whose contract is terminated or not renewed, for cause; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who is otherwise known to have engaged in any actions or conduct as might reasonably be expected to warrant consideration for certificate revocation. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and

the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.

- (b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, which are based on immorality, misconduct in office, incompetency, violation of school law or administrative regulation promulgated by the Kentucky Board of Education, willful neglect of duty, or falsification of certification credentials, and shall forward copies of all relevant documents and records in his possession.
 - (c) The Education Professional Standards Board may consider reports and information received from other sources. The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources and shall have the right to file a written rebuttal which shall be attached to the district superintendent's report.
- (3) (a) Upon taking action to initiate proceedings to revoke a certificate, the Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B.
 - (b) The hearing may be public or private at the discretion of the certified employee.
 - (c) The hearing shall be conducted by the full board or a person appointed as hearing officer by the board.
- (4) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student which are needed as a result of the sexual contact.
 - (5) Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation.
 - (6) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court in accordance with KRS Chapter 13B.

Approved April 9, 1998

CHAPTER 466

(SB 159)

AN ACT relating to reorganization.

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

Section 1. KRS 12.023 is amended to read as follows:

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

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department of Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs; ~~and~~
- (7) Coal Marketing and Export Council; *and*
- (8) *Office of Coal Marketing and Export.*

Section 2. KRS 154.12-250 is amended to read as follows:

- (1) The Coal Marketing and Export Council is established within the Office of the Governor. The council shall provide direction to the Governor in marketing efforts targeted to increasing opportunities for Kentucky coal and other products and it shall carry out other duties and responsibilities as assigned by the Governor.
- (2) *The Office of Coal Marketing and Export is established within the Office of the Governor. The office shall carry out the purposes of the council, and provide other staff support as is deemed necessary.*
- (3) *All personnel, equipment, supplies, and records relating to the Coal Marketing and Export Council shall be transferred to the Office of Coal Marketing and Export in the Office of the Governor.*

Section 3. The General Assembly confirms Executive Order 96-921, dated July 15, 1996, to the extent that it is not otherwise confirmed or superseded by this Act.

Approved April 9, 1998

CHAPTER 467

(SB 168)

AN ACT relating to school employees.

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

Section 1. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
 - (a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
 - (b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2)
 - (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.
 - (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
 - (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
 - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.

- (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is an employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is certified for the position he holds, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.
- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
- (g)
 - 1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.
 - 2. No spouse of a principal shall be employed in the principal's school, except:
 - a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; *or*
 - b. *A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.*
 - 3. *A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.*
 - 4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.
- (4)
 - (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
 - (b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.
- (5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

- (7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

Approved April 9, 1998

CHAPTER 468

(SB 197)

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established the Kentucky Appalachian Commission for the purpose of developing a comprehensive plan for the Appalachian region of Kentucky in the context of development planning for the Commonwealth as a whole. Its goal shall be the unification of resources from both the public and private sectors to achieve sustainable economic development and an improved quality of life in the region.*
- (2) *The commission shall be attached to the Governor's Office for administrative purposes.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *The membership of the commission shall consist of forty-five (45) members who have the resources to accomplish the goals set forth in Kentucky's Appalachian Development Plan created under subsection (1) of Section 1 of this Act.*
- (a) *Ex-officio members shall be: the Governor; secretary of the Governor's Executive Cabinet; secretary of the Cabinet for Economic Development; secretary of the Transportation Cabinet; secretary of the Natural Resources and Environmental Protection Cabinet; secretary of the Tourism Cabinet; secretary of the Cabinet for Human Resources; secretary of the Cabinet for Workforce Development; secretary of the Education, Arts, and Humanities Cabinet; commissioner of the Department of Agriculture; commissioner of the Department of Education; commissioner of the Department of Local Government; executive director of the Kentucky Housing Corporation; Governor's alternate to the Appalachian Regional Commission; president of Morehead State University; executive director of the University of Kentucky Appalachian Center; director of the Center for Kentucky Rural Economic Development; state director of Rural Development of the United States Department of Agriculture; executive director of the East Kentucky Corporation; chair of the Kentucky Appalachian Advisory Council's steering committee; and two (2) vice chairs of the Kentucky Appalachian Advisory Council's Steering Committee.*
- (b) *Members appointed by the Governor shall be:*
1. *A county judge/executive, mayor, executive director of an area development district, president of a community college, member of the House of Representatives, member of the Senate, and member of the state's judicial branch, all of whom shall be currently serving in the Appalachian region of the Commonwealth. The members who are a representative, a senator, and a representative of the judicial branch shall serve in a nonvoting capacity; and*
 2. *Nine (9) at-large members.*
- (c) *Members appointed by and representing certain entities shall be: two (2) members of the Kentucky Appalachian Advisory Council; one (1) member of the University of Kentucky Office of Management and Budget; one (1) member from the Christian Appalachian Project; one (1) member appointed by the United States Representative from the Fifth Congressional District; and one (1) member appointed by the East Kentucky Leadership Foundation's board of directors.*
- (2) *Members listed in subsection (1)(a) and (b)1. of this section shall serve during their terms of office or appointment. Members listed in subsection (1)(b)2. and subsection (1)(c) of this section shall serve four (4) year staggered terms and may be reappointed.*

- (3) *Members of the commission who are not state employees shall receive reimbursement for actual and necessary expenses incurred in the performance of their duties.*
- (4) *Each member of the commission may designate in writing over his signature an alternate with full authority, in the absence of the designating member for any reason, to attend any properly convened meeting of the commission and to participate in the consideration of any business and transactions of the commission. Any designation of an alternate may, in the discretion of the designating member, be limited to be effective only for a designated meeting or only for specified business. An alternate shall not be entitled to vote upon any business or transactions of the commission.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *The Governor shall serve as chair of the commission. The vice chair shall be appointed by the Governor and serve at the pleasure of the Governor.*
- (2) *The duties of the commission shall include, but not be limited to:*
 - (a) *Reviewing strategic planning recommendations from government agencies, the private sector, and the commission's working teams and committees;*
 - (b) *Facilitating coordination and integration of regional development activities;*
 - (c) *Auditing progress within the region;*
 - (d) *Participating in the development of the Kentucky Appalachian Development Plan on an annual basis;*
 - (e) *Providing independent leadership in promoting projects and activities that:*
 - 1. *Create opportunities for self-sustaining economic development; and*
 - 2. *Improve the quality of life for the citizens of eastern Kentucky;*
 - (f) *Advising the Governor and his cabinet on policy matters affecting eastern Kentucky;*
 - (g) *Creating multidisciplinary working teams in areas of special concern and interest; and*
 - (h) *Holding hearings, conducting seminars, sponsoring policy studies, and rendering advice to the Governor regarding development strategies for Appalachian Kentucky.*
- (3) *The commission staff shall consist of an executive director, advisory council and working team liaison, and administrative secretary, all of whom shall be appointed by and serve at the pleasure of the Governor.*
- (4) *By December 1 of each year, the commission shall report to the General Assembly its recommendations for implemented action, legislative or otherwise.*

Section 4. Commission members listed in subsection (1)(a) and (b)1. of Section 2 of this Act who are serving on the effective date of this Act shall continue to serve during their terms of office. Members listed in subsection (1)(b)2. and subsection (1)(c) of Section 2 of this Act who are serving on the effective date of this Act shall serve until Oct. 31, 1999, and may be reappointed. Beginning on Nov. 1, 1999, members listed in subsection (1)(b)2. and subsection (1)(c) of Section 2 of this Act shall be appointed as follows: three (3) members to a term of one (1) year, four (4) members to a term of two (2) years, four (4) members to a term of three (3) years, and four (4) members to a term of four (4) years.

Section 5. (1) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the secretary of the Cabinet for Human Resources appearing in subsection (1)(a) of Section 2 of this Act shall be codified as the secretary of the Cabinet for Families and Children and the secretary of the Cabinet for Health Services.

(2) If the reorganization of the Tourism Cabinet into the Tourism Development Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Tourism Cabinet appearing in subsection (1)(a) of Section 2 of this Act shall be codified as the Tourism Development Cabinet.

(3) If the reorganization of the Department of Local Government into the Department for Local Government is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Department of Local Government appearing in subsection (1)(a) of Section 2 of this Act shall be codified as the Department for Local Government.

Section 6. The General Assembly confirms, to the extent it is not otherwise confirmed or superseded by this Act, Executive Order 96-903, dated July 11, 1996, amended and superseded in part by: Executive Order 96-955, dated July 18, 1996; Executive Order 96-977, dated July 23, 1996; and Executive Order 96-1296, dated September 25, 1996.

Approved April 9, 1998

CHAPTER 469

(SB 242)

AN ACT relating to school employees.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1) *All records and references relating to an allegation of a criminal offense committed by a school employee that did not lead to formal charges, and all records relating to a criminal proceeding in which a school employee was found not guilty or the charges were dismissed shall be removed from the school employee's personnel file by the superintendent or the superintendent's designee in the local school district.*
- (2) *The provisions of subsection (1) of this section shall not preclude a school district from separately investigating, taking action upon, and creating and maintaining records on the same or a similar fact situation upon which the allegations of a criminal offense was based.*

Approved April 9, 1998

CHAPTER 470

(SB 300)

AN ACT relating to air quality.

WHEREAS, the United States is signatory to the 1992 United National Framework Convention on Global Climate Change ("FCCC");

WHEREAS, a protocol to expand the scope of the FCCC was negotiated in December 1997 in Kyoto, Japan ("Kyoto Protocol"), requiring the United States to reduce emissions of greenhouse gasses such as carbon dioxide and methane by seven percent (7%) from 1990 emission levels during the period 2008 to 2012, with similar reduction obligations for other major industrial nations;

WHEREAS, developing nations, including China, India, Mexico, Indonesia, and Brazil, are exempt from greenhouse gas emission limitation requirements in the FCCC;

WHEREAS, developing nations refused in the Kyoto negotiations to accept any new commitments for greenhouse gas emission limitations through the Kyoto Protocol or other programs;

WHEREAS, with respect to new commitments under the FCCC, President William J. Clinton pledged on October 22, 1997, that "The United States will not assume binding obligations unless key developing nations meaningfully participate in this effort";

WHEREAS, on July 25, 1997, the United States Senate adopted Senate Resolution No. 98 by a vote of 95-0, expressing the Sense of the Senate that, *inter alia*, "the United States should not be a signatory to any protocol to or other agreement regarding, the Framework Convention on Climate Change...which would require the advice and consent of the Senate to ratification, and which would mandate new commitments to mitigate green house gas emissions for the Developed Country Parties, unless the protocol or other agreement also mandates specific scheduled commitments within the same compliance period to mitigate greenhouse gas emissions for Developing Country Parties;"

WHEREAS, the Kyoto Protocol fails to meet the tests established for acceptance of new climate change commitments by President Clinton and by U.S. Senate Resolution No. 98;

WHEREAS, achieving the emission reductions proposed by the Kyoto Protocol would require more than a 35 percent reduction in projected United States carbon dioxide and other green house gas emissions during the period 2008 - 2012;

WHEREAS, developing countries exempt from emission limitations under the Kyoto Protocol are expected to increase their rates of fossil fuel use over the next two decades, and to surpass the United States and other industrialized countries in total emissions of greenhouse gases;

WHEREAS, increased emissions of greenhouse gases by developing countries would offset any potential environmental benefits associated with emissions reductions achieved by the United States and by other industrial nations;

WHEREAS, economic impact studies by the U.S. Government estimate that legally binding requirements for the reduction of U.S. greenhouse gases to 1990 emission levels would result in the loss of more than 900,000 jobs in the United States, sharply increased energy prices, reduced family incomes and wages, and severe losses of output in energy-intensive industries such as aluminum, steel, rubber, chemicals, and utilities;

WHEREAS, the failure to provide for commitments by developing countries in the Kyoto Protocol creates an unfair competitive imbalance between industrial and developing nations, potentially leading to the transfer of jobs and industrial development from the United States to developing countries;

WHEREAS, federal implementation of the Kyoto Protocol, if ratified by the United States Senate, would entail new Congressional legislation whose form and requirements cannot be predicted at this time, but could include national energy taxes or emission control allocation schemes that would preempt state-specific programs intended to reduce emissions of greenhouse gases;

WHEREAS, piecemeal or other uncoordinated state regulatory initiatives intended to reduce emissions of greenhouse gases may be inconsistent with subsequent Congressional determinations concerning the Kyoto Protocol, and with related Federal legislation implementing the Kyoto Protocol;

WHEREAS, individual state responses to the Kyoto Protocol, including development of new regulatory programs intended to reduce greenhouse gas emissions are premature prior to Senate ratification of that Protocol, in its current or amended form, and Congressional enactment of related implementing legislation; and

WHEREAS, there is neither federal or Kentucky statutory authority for new regulatory programs or other efforts intended to reduce greenhouse gas emissions for purposes of complying with or facilitating compliance with the provisions of the Kyoto Protocol;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall not promulgate administrative regulations or impose permit conditions on the emission of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride pursuant to the Kyoto Protocol for the purpose of reducing global warming until authorized by the General Assembly or by federal statute. The cabinet may promulgate administrative regulations or impose permit conditions on the emission of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride for any other reason authorized by this chapter or required under federal statute or administrative regulation, as long as the administrative regulations or permit conditions are not promulgated or imposed pursuant to the Kyoto Protocol.*
- (2) *Nothing in this section shall be construed to limit or to impede state, local, or private participation in voluntary initiatives to reduce emissions of greenhouse gases, such as the United States Environmental Protection Agency's Green Lights program and the United States Department of Energy's climate change program.*

Approved April 9, 1998

CHAPTER 471**(SB 304)**

AN ACT relating to dairy compacts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I**STATEMENT OF PURPOSE, FINDINGS, AND DECLARATION OF POLICY****Section 1. Statement of purpose, findings, and declaration of policy.**

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

ARTICLE II**DEFINITIONS AND RULES OF CONSTRUCTION****Section 2. Definitions.**

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) *"Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of Section 3 of this compact.*

(2) *"Commission" means the Southern Dairy Compact Commission established by this compact.*

(3) *"Commission marketing order" means regulations adopted by the Commission pursuant to Sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.*

(4) *"Compact" means this interstate compact.*

(5) *"Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to Sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.*

(6) *"Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.*

(7) *"Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.*

(8) *"Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.*

(9) *"Pool plant" means any milk plant located in a regulated area.*

(10) *"Region" means the territorial limits of the states which are parties to this compact.*

(11) *"Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.*

(12) *"State dairy regulation" means any state regulation of dairy prices and associated assessments, whether by statute, marketing order, or otherwise.*

Section 3. Rules of construction.

(a) *This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.*

(b) *This compact shall be construed liberally in order to achieve the purposes and intent enunciated in Section 1 of this compact. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined in this compact, but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.*

ARTICLE III

COMMISSION ESTABLISHED

Section 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three (3) nor more than five (5) persons. Each delegation shall include at least one (1) dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one (1)

consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three (3) consecutive terms with no single term of more than four (4) years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

Section 5. Voting requirements.

All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one (1) vote in the conduct of the commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds (2/3) vote of the delegations present. The establishment of a regulated area that covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

Section 6. Administration and management.

(a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and, together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one (1) member elected by each delegation.

(b) The commission shall adopt bylaws for the conduct of its business by a two-thirds (2/3) vote and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission may engage in all of the following:

- (1) Sue and be sued in any state or federal court.*
- (2) Have a seal and alter the same at pleasure.*
- (3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes.*
- (4) Borrow money and issue notes, provide for the rights of the holders thereof, and pledge the revenue of the commission as security therefor, subject to the provisions of Section 18 of this compact.*
- (5) Appoint such officers, agents, and employees as it may deem necessary, and prescribe their powers, duties, and qualifications.*
- (6) Create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees.*
- (7) Retain personal services on a contract basis.*

Section 7. Rule-making power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV

POWERS OF THE COMMISSION**Section 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.**

The commission may:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, and to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services, performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

Section 9. Equitable farm prices.

(a) The powers granted in this section and Section 10 of this compact shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article authorizes the commission to establish one (1) or more commission marketing orders, as provided in this compact, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents (\$1.50) per gallon at Atlanta, Georgia; however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing one dollar and fifty cents (\$1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission may establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission also may establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management,

machinery expense and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

Section 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

a. With respect to regulations establishing a compact over-order price, the commission may establish one (1) equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

b. With respect to any commission marketing order, as defined in Section 2, subdivision (3), of this compact, which replaces one (1) or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection (a) of Section 18 of Article VII of this compact.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V

RULE-MAKING PROCEDURE

Section 11. Rule-making procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9 of this compact, or amendment thereof, as provided in Article IV of this compact, the commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. sec. 553). In addition, the commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

Section 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. sec. 553 (c)), the commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV of this compact.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in Section 13 of this compact.

Section 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9 of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds (2/3) of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) of this subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

(1) No cooperative that has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative that is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the commission either directly or through his or her cooperative.

Section 14. Termination of over-order price or marketing order.

(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk, the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rule making prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. sec. 553).

ARTICLE VI

ENFORCEMENT

Section 15. Records, reports, access to premises.

(a) The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission may examine the books and records of any regulated person relating to his or her milk business and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may adopt rules further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, that is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than one (1) year, or both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

Section 16. Subpoena, hearings, and judicial review.

(a) *The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.*

(b) *Any handler subject to an order may file a written petition with the commission stating that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.*

(c) *The district courts of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty (30) days from the date of the entry of the ruling. Service of process in these proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (i) to make such ruling as the court shall determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to Section 17 of this compact. Any proceedings brought pursuant to Section 17 of this compact, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.*

Section 17. Enforcement with respect to handlers.

(a) *Any violation by a handler of the provisions of regulation establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:*

(1) *Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.*

(2) *Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.*

(b) *With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order, or other regulations adopted hereunder by:*

(1) *Commencing an action for legal or equitable relief brought in the name of the commission in any state or federal court of competent jurisdiction; or*

(2) *Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.*

(c) *With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.*

ARTICLE VII

FINANCE

Section 18. Finance of start-up and regular costs.

(a) *To provide for its start-up costs, the commission may borrow money pursuant to its general power under Section 6, subdivision (d), paragraph 4 of this compact. In order to finance the cost of administration and enforcement of this compact, including payback of start-up costs, the commission may collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one (1) year from the date the commission convenes, in an amount not to exceed \$0.015 per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two (2) month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order*

are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

(b) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it shall be its sole responsibility, and no participating state or the United States shall be liable therefor.

Section 19. Audit and accounts.

(a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(b) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII

ENTRY INTO FORCE; ADDITIONAL MEMBERS; AND WITHDRAWAL

Section 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three (3) states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, and when the consent of Congress has been obtained.

Section 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after notice in writing of the withdrawal is given to the commission and the governors of all the participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

Section 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three (3) or more compacting states. A compact state may accept the conditions of Congress by implementation of this compact.

SECTION 2. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *The delegation from the Commonwealth of Kentucky to the Southern Dairy Compact Commission, as established in Article III of the compact, set out in Section 1 of this Act shall be composed of five (5) members appointed by the commissioner of agriculture as follows:

 - (a) *Two (2) members shall represent the Commonwealth at large;*
 - (b) *One (1) member shall be a dairy farmer engaged in the production of milk at the time of appointment or reappointment;*
 - (c) *One (1) member shall represent consumers of milk; and*
 - (d) *One (1) member shall represent fluid milk processors.**
- (2) *Members must be registered to vote in the state.*
- (3) *Members shall serve a term of four (4) years and may be reappointed, but no member shall serve more than three (3) consecutive terms. Members shall serve until their successors are duly appointed. Any appointment to fill an unexpired term shall be for the balance of the unexpired term and shall be made by*

the appropriate appointing authority. A member may be removed by the appointing authority for cause. The Commissioner of Agriculture shall designate one (1) member of the delegation to serve as chair, at the pleasure of the Commissioner.

- (4) *Members of the delegation shall receive one hundred dollars (\$100) per diem while performing official duties for the commission.*
- (5) *A majority of the delegation shall constitute a quorum for the transaction of business.*
- (6) *All clerical and other services required by the delegation shall be provided by the Commissioner of Agriculture.*

Section 3. KRS 260.990 is amended to read as follows:

- (1) Any person who knowingly violates any of the provisions of KRS 260.040 to 260.120 shall, for the first offense, be fined not less than ten dollars (\$10), nor more than twenty-five dollars (\$25), for the second offense, he shall be fined not less than twenty-five dollars (\$25), nor more than fifty dollars (\$50), and for the third and each subsequent offense, he shall be fined not less than fifty dollars (\$50), nor more than two hundred dollars (\$200). Whenever a violation is with respect to a lot or shipment consisting of fifty (50) or more closed packages, there may be imposed in addition to the above penalties twenty-five cents (\$0.25) for the first offense, fifty cents (\$0.50) for the second offense and one dollar (\$1) for each subsequent offense for each package in excess of fifty (50) with respect to which the violation is committed.
- (2) Any person who violates any of the provisions of KRS 260.130 to 260.160 shall, for the first offense, be fined not more than twenty-five dollars (\$25); for the second offense, he shall be fined not more than fifty dollars (\$50), and for the third and each succeeding offense he shall be fined not more than one hundred dollars (\$100).
- (3) Any person who violates any of the provisions of the egg marketing law shall be fined an amount not exceeding one hundred dollars (\$100) for each offense. In a violation involving sales without a required license, each day of business operation shall constitute a separate offense.
- (4) *Any handler who violates a regulation adopted by the Southern Dairy Compact Commission established in Article III of the Southern Dairy Compact set out in Section 1 of this Act shall be subject to a penalty of up to five thousand dollars (\$5,000) per day. Each day of violation shall constitute a separate offense.*

Section 4. This Act becomes effective at such time as three states of the group of states given in Section 20 of the Southern Dairy Compact set out in Section 1 of this Act enact that compact into law, substantially in the form given in this Act, and when the consent of the Congress has been obtained to that compact.

Approved April 9, 1998

CHAPTER 472

(SB 343)

AN ACT relating to insurance.

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

Section 1. KRS 304.29-171 is amended to read as follows:

- (1) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society, unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.
- (2) A society may make provision for the payment of funeral benefits to the extent of the portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member. The portion so paid shall not exceed the sum of *ten thousand dollars (\$10,000)* [~~five hundred dollars (\$500)~~].

- (3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided, shall be payable to the personal representative of the deceased insured. If the owner of the certificate is other than the insured, the proceeds shall be payable to the owner.

Approved April 9, 1998

CHAPTER 473

(SB 353)

AN ACT relating to casualty insurance.

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

Section 1. The following KRS section is repealed:

304.3-245 Closed claim information -- Reporting of information -- Report of commissioner.

Approved April 9, 1998

CHAPTER 474

(SB 357)

AN ACT relating to wineries.

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

Section 1. KRS 241.010 is amended to read as follows:

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

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.
- (2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of that permitted under KRS Chapter 242 and capable of being consumed by a human being. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products if they are unfit for use for beverage purposes:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions; and
 - (d) Flavoring extracts and syrups.
- (3) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030.
- (4) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.
- (5) "Brewer" means any person who owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.
- (6) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.

- (7) "Building containing licensed premises" means the licensed premises themselves and includes any part of any building in which the premises are contained, and any part of any other building connected with the building by direct access or by a common entrance.
- (8) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)), or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.
- (9) "City administrator" means city alcoholic beverage control administrator.
- (10) "Commissioner" means the commissioner of alcoholic beverage control.
- (11) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.
- (12) "County administrator" means county alcoholic beverage control administrator.
- (13) "Department" means the Department of Alcoholic Beverage Control.
- (14) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine.
- (15) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state, and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.
- (16) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.
- (17) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail.
- (18) "Dry territory" means a county, city, district or precinct in which a majority of voters have voted in favor of prohibition, as prohibition is defined in KRS 242.010.
- (19) ***"Farm winery" means a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, manufacturing and bottling wines in an amount not to exceed twenty-five thousand (25,000) gallons per year.***
- ~~(20)~~~~(19)~~ "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes.
- ~~(21)~~~~(20)~~ "License" means any license issued pursuant to KRS 243.020 to 243.670.
- ~~(22)~~~~(21)~~ "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670.
- ~~(23)~~~~(22)~~ "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under KRS Chapter 242.
- ~~(24)~~~~(23)~~ "Manufacture" means distill, rectify, brew, bottle and operate a winery.
- ~~(25)~~~~(24)~~ "Manufacturer" means a vintner, distiller, rectifier, or brewer and any other person engaged in the production or bottling of alcoholic beverages.
- ~~(26)~~~~(25)~~ "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. It shall not include as a single unit two (2) separate businesses or enterprises of one (1) owner on the same lot or tract of land, in the same or in different buildings.
- ~~(27)~~~~(26)~~ "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or

compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.

- ~~(28)~~~~(27)~~ "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.
- ~~(29)~~~~(28)~~ "Retail sale" means any sale where delivery is made in Kentucky to any person not holding a license.
- ~~(30)~~~~(29)~~ "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.
- ~~(31)~~~~(30)~~ "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.
- ~~(32)~~~~(31)~~ "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.
- ~~(33)~~~~(32)~~ "Small winery" means a winery producing wines from grapes, other fruit, or honey produced in Kentucky unless exempt under KRS 243.155(2), in an amount not to exceed fifty thousand (50,000) gallons in one (1) year.
- ~~(34)~~~~(33)~~ "State administrator" means the administrator of the Distilled Spirits Unit or the administrator of the Malt Beverage Unit or both, as the context requires.
- ~~(35)~~~~(34)~~ "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively.
- ~~(36)~~~~(35)~~ "Warehouse" means any place in which alcoholic beverages are housed or stored.
- ~~(37)~~~~(36)~~ "Wholesale sale" means a sale to any person for the purpose of resale.
- ~~(38)~~~~(37)~~ "Wholesaler" means any person who sells at wholesale any alcoholic beverage for the sale of which a license is required, except a distiller, rectifier, brewer, or vintner.
- ~~(39)~~~~(38)~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions. It includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume.
- ~~(40)~~~~(39)~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded. It includes a winery for the manufacture of wine in any state or county other than Kentucky, if the out-of-state winery has and maintains a branch factory, office, or storeroom within this state and receives wine within this state consigned to a United States government bonded winery, warehouse or storeroom located within this state.

Section 2. KRS 243.730 is amended to read as follows:

- (1) (a) Wholesalers of distilled spirits and wine shall pay and report the tax levied by KRS 243.720(1) and (2) on or before the twentieth day of the calendar month next succeeding the month in which possession or title of the distilled spirits and wine is transferred from the wholesaler to retailers or consumers in this state, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth.
- (b) Distributors or retailers of malt beverages, who purchase malt beverages directly from a brewer, shall pay and report the tax levied by KRS 243.720(3) on or before the twentieth day of the calendar month next succeeding the month in which the brewer sells, transfers, or passes title of the malt beverage to the distributor or retailer, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth. The credit allowed brewers in this state, under the provisions of KRS 243.720(3)(b), shall flow through to the distributor or retailer who purchases malt beverages directly from the brewer. If a brewer sells, transfers, or passes title to malt beverages to any of its employees for home consumption or to any charitable or fraternal organization pursuant to the provisions of KRS 243.150, the brewer shall be responsible for paying and reporting the tax levied by KRS 243.720(3) in accordance with the provisions of subsection (c) of this section.

- (c) Every brewer selling, transferring, or passing title to malt beverages to any person in this state other than a distributor or retailer, and every other person selling, transferring, or passing title of distilled spirits, wine, or malt beverages to distributors, retailers, or consumers shall report and pay the tax levied by KRS 243.720(1), (2), or (3) on or before the twentieth day of the calendar month next succeeding the month in which possession or title of distilled spirits, wine, or malt beverages is transferred to a distributor, retailer, or consumer in this state, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth.
- (d) Every distributor, retailer, or consumer possessing, using, selling, or distributing distilled spirits, wine, or malt beverages in this state upon which the tax levied by KRS 243.720(1), (2), or (3) and KRS 243.884 has not been paid shall be jointly and severally liable for reporting and paying the tax due, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth. Such liability shall not be extinguished until the tax has been paid to the Revenue Cabinet.
- (e) *Notwithstanding the provisions of subsection 1(a) of this section, every owner of a farm winery shall pay and report the tax levied by KRS 243.720 (1) and (2) on a quarterly basis, in accordance with administrative regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth.*
- (2) Every wholesaler of distilled spirits or wine before using, selling, or distributing by sale or gift distilled spirits and wine shall qualify with the Revenue Cabinet. In order to so qualify, each wholesaler shall furnish to the Revenue Cabinet a certified copy of the bond required to be filed with the Cabinet of Alcoholic Beverage Control under the provisions of KRS 243.400(2).
- (3) Notwithstanding the provisions of KRS 243.400(1), every brewer before selling or distributing by sale or gift malt beverages, or before importing malt beverages into the state, shall qualify with the Revenue Cabinet in such manner as the cabinet may require.
- (4) The cabinet shall have the power to require a bond from any other person liable for Kentucky distilled spirits, wine, or malt beverage taxes provided such person is not otherwise required to post a bond under the provisions of this section. The amount of the bond for persons liable for Kentucky distilled spirits or wine taxes shall be computed as provided in KRS 243.400(2). The amount of the bond for persons liable for Kentucky malt beverage taxes shall be in the minimum amount of one thousand dollars (\$1,000) or an amount equal to three (3) times the person's average monthly Kentucky malt beverage tax liability, whichever is greater. The bond shall be on a form prescribed by the cabinet and have corporate surety registered by the Department of Insurance. The person liable for the tax shall be the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt payment by the person to the Revenue Cabinet of all malt beverage taxes due, with penalties and interest.

Approved April 9, 1998

CHAPTER 475

(SB 360)

AN ACT relating to "Kentucky Harvest Day."

WHEREAS, since the organization was founded in 1987, Kentucky Harvest: Food for the Hungry has collected over 18 million pounds of food; and

WHEREAS, Kentucky Harvest delivers 5,000 pounds of food daily to over 100 missions, soup kitchens, social service agencies, and shelters; and

WHEREAS, Kentucky Harvest's 1,000 volunteers are indeed heroes, because they are making a difference through feeding those who are hungry; and

WHEREAS, Kentucky Harvest represents the highest tenets of the human heart as it reaches down and lifts mankind a little higher; and

WHEREAS, the tradition of volunteerism, which Kentucky Harvest embodies, is the very best in the Kentuckian legacy, and this signifies that the tradition is alive and well in this Commonwealth today; and

WHEREAS, Kentucky Harvest deserves recognition from the Commonwealth of Kentucky for the spirit of volunteerism it inspires and for feeding so many of its needy citizens;

NOW, THEREFORE,

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

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

November 15 is designated as "Kentucky Harvest Day."

Approved April 9, 1998

CHAPTER 476

(HB 380)

AN ACT relating to health insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *All health benefit plans issued or renewed on or after the effective date of this Act shall provide coverage for equipment, supplies, outpatient self-management training and education, including medical nutrition therapy, and all medications necessary for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and noninsulin-using diabetes if prescribed by a health care provider legally authorized to prescribe the items.*
- (2) *Diabetes outpatient self-management training and education shall be provided by a certified, registered, or licensed health care professional with expertise in diabetes, as deemed necessary by a health care provider.*
- (3)
 - (a) *The benefits provided in this section shall be subject to the same annual deductibles or coinsurance established for all other covered benefits within a given health benefit plan.*
 - (b) *Private third-party payors may not reduce or eliminate coverage due to the requirements of this section.*

Approved April 9, 1998

CHAPTER 477

(SB 146)

AN ACT relating to tobacco products.

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

Section 1. KRS 438.311 is amended to read as follows:

- (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of eighteen (18) years to purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for such a person to accept receipt of a tobacco product from a family member, or from an employer when required in the performance of the person's duties.
- (2) Violation of this section shall be punishable by a fine of fifty dollars (\$50) and twenty (20) hours of community service work for a first offense within a one (1) year period, and a fine of two hundred dollars (\$200) and forty (40) hours of community service work for a second or subsequent offense within a one (1) year period.
- (3) *This offense shall be deemed a status offense and shall be under the jurisdiction of the Juvenile Session of the District Court.*

- (4) *All peace officers with general law enforcement authority and employees of the department may issue a uniform citation, but not make an arrest or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to the section, the court may compel the attendance of the defendant in the manner specified by law.*

Section 2. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute cigarettes or tobacco products, including samples thereof, free of charge or otherwise, to any person under the age of eighteen (18).
- (2) Any person who distributes cigarettes or tobacco products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).
- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the department using a civil enforcement procedure *for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the Juvenile Session of the District Court.*
- (4) *All peace officers with general law enforcement authority and employees of the department may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.*

Section 3. KRS 438.315 is amended to read as follows:

- (1) The sale of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (2) The purchase of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which minors are not permitted access, beginning one (1) year after July 15, 1994, any vending machine from which tobacco products are dispensed shall be located in the line of sight of the cashier for the retail establishment.
- (4) Any owner of a retail establishment violating this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the department using a civil enforcement procedure *for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years the offense shall be deemed a status offense and shall be under the jurisdiction of the Juvenile Session of the District Court.*
- (5) *All peace officers with general law enforcement authority and employees of the department may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.*

Section 4. KRS 438.335 is amended to read as follows:

Except for the provisions of Section 1 of this Act and for the provisions of Sections 1 and 3 of this Act, if committed by juveniles, which shall be under the jurisdiction of the Juvenile Session of the District Court, the Department of Agriculture shall enforce KRS 438.305 to 438.340. The department shall be entitled to the revenue produced by one-tenth of one cent (\$0.001) of the three-cent (\$0.03) per pack revenue collected by the Revenue Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 and keep one hundred percent (100%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.

Approved April 9, 1998

CHAPTER 478**(SB 311)**

AN ACT relating to mine safety.

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

Section 1. KRS 352.145 is amended to read as follows:

- (1) No employee of a surface coal mining operation shall be assigned, allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.
- (2) *At stockpiles with underground feeders or draw-off tunnels, the licensee shall install and maintain a visible warning device that shall be activated when the feeders are in operation.*
- (3) *The operator's cab of all equipment being operated on or in the immediate area of a stockpile with underground feeders or draw-off tunnels shall be enclosed by a compartment and shall be furnished with a self-contained self-rescuer that is capable of providing oxygen for a period of not less than one (1) hour.*
- (4) *On all haulage roadways, berms, guardrails, concrete barriers, or other suitable devices shall be installed in such a manner that they extend to at least the mid-wheel height of the highest vehicle or equipment that regularly travels that type of roadway.*

Approved April 9, 1998

CHAPTER 479**(SB 307)**

AN ACT relating to tobacco sales.

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

SECTION 1. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall sell or cause to be sold at retail cigarettes packaged in units of fewer than twenty (20) cigarettes.*
- (2) *No resident wholesaler, nonresident wholesaler, or subjobber shall make available to a retail establishment cigarettes packaged for retail sale in units of less than twenty (20) cigarettes.*
- (3) *Any person violating subsection (1) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any person violating subsection (2) of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500). These penalties shall be enforced by the department through civil enforcement procedures.*

Approved April 9, 1998

CHAPTER 480**(SB 313)**

AN ACT related to mining.

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

Section 1. KRS 351.090 is amended to read as follows:

- (1) The Governor shall appoint an adequate number of mine inspectors to insure at least two (2) inspections annually, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the state and sufficient additional inspectors to enable the commissioner to provide adequate surveillance of those underground coal mines where conditions or management policy dictate that more inspections are needed to

insure the safety of miners. One (1) or more of the appointees may be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety analysts and mine safety instructors. The term of office of each mine inspector, each mine safety analyst, each electrical inspector, and each mine safety instructor shall be during the period of capable, efficient service and good behavior.

- (2) All mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough and practical knowledge of mining gained by at least five (5) years' experience in coal mines in this state. All surface mine safety analysts shall have at least five (5) years' experience in surface mines in this state. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. Persons desiring to use their mining engineering or technology degree for practical experience credit shall file ~~a certified transcript of their grades and~~ proof of having received their degree prior to examination.
- (3) No person shall be appointed to the office of mine inspector, underground mine safety analyst, electrical inspector, or mine safety instructor unless he holds a current mine foreman's certificate. No person shall be appointed to the office of surface mine safety analyst unless he holds a current surface mine foreman's certificate. Persons appointed as mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall pass an examination administered by the board. The commissioner may recommend to the Governor applicants for *the positions of* mine inspector, mine safety analyst, electrical inspector, or mine safety instructor who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.
- (4) Mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.
- (5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by inspectors, analysts, and safety instructors who shall verify upon oath that the expenses were incurred in the discharge of their official duties.
- (6) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.
- (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.
- (8) Persons, other than those employed by a company, who by contractual or other rights, perform mine inspection work in any capacity, shall be familiar with mining and possess experience equal to that required of a state mine inspector. They shall also be held responsible for their conduct in the performance of their inspections and related acts. This subsection shall not apply to persons excluded by other laws or those who by agreement with the licensee make mine visits for technical and investigative work.

Section 2. KRS 351.125 is amended to read as follows:

The department shall provide first-aid training incorporating all training required by the state's approved program for emergency medical technicians *or the department's mine emergency technician program* which is applicable ~~to~~~~for~~ ~~underground coal~~ mines. Each candidate for certification as a mine foreman shall complete the department's first-aid course of instruction and shall pass an examination on the course as a prerequisite for certification. The course of instruction and examination shall have prior approval of the board.

Section 3. KRS 351.194 is amended to read as follows:

- (1) The commissioner or a majority of the board may convene a meeting of the board at which it shall consider whether to schedule a hearing regarding any licensee, coal operation, or other person involved in the mining of coal.
- (2) If the board determines that there is probable cause to believe that the licensee, coal operation, or other person against whom the department has made allegations of unsafe work practices or other violation of applicable law is guilty of an alleged violation, the board shall schedule a hearing at which the department shall offer evidence in support of the allegations made by it. The licensee, coal operation, or other person against whom

the allegations are made shall be given not less than **twenty (20)**~~thirty (30)~~ days' written notice of the charges against him, together with the date, time, and place at which the charges shall be heard, and of his opportunity to be represented by counsel, produce evidence and witnesses on his behalf, and examine the evidence and documents that may be produced against him. The board may also be represented by counsel and shall not be bound by the technical rules of evidence, but its order shall be based upon competent evidence. Any licensee or other person summoned to appear at a hearing in the manner established in this subsection may, in writing, waive the notice required to be given to him.

- (3) The board may proceed with its hearing of charges made by the department against any licensee, coal operation, or other person who, after being duly notified in accordance with the requirements of this section, fails to appear at or participate in the hearing and who fails to assert any legitimate basis for the failure.
- (4) Within **ninety (90)**~~thirty (30)~~ days after hearing, the board shall issue an order in which it sets out its determinations concerning each matter coming before it. Copies of the order shall be provided to all parties to the hearing. The department shall carry out or enforce, as appropriate, the order of the board, which may include though not be limited to the revocation, suspension, or probation of the mine license or the miner's certification.
- (5) An appeal of an order of the board shall be filed in the Circuit Court of the county in which the mining operation is located within thirty (30) days of entry of the order.

Section 4. KRS 351.242 is amended to read as follows:

- (1) There is hereby created in the department the Division of Mine Safety Analysis.
- (2) Persons employed in the division as underground or surface mine safety analysts shall satisfy the applicable requirements established in KRS 351.090.
- (3) The primary responsibility of the safety analyst is to prevent mine accidents and fatalities by observing and evaluating the work habits of persons involved in the direct production of coal and to contact, advise, and assist these persons in correcting their unsafe or potentially hazardous actions.
- (4) The safety analyst shall have the same powers as a mine inspector of the department, but these powers shall be considered secondary to the primary responsibilities provided in subsection (3) of this section. Each time a safety analyst enters a mine to perform his primary responsibility, he shall confer with the foreman as to the conditions of the mine and the work practices of the employees.
- (5) The safety analyst shall keep mine management, representatives of the employees, and the commissioner informed about all hazardous conditions and all matters which may improve the safety of mines.
- (6) The division shall assist the Division of Miner Training, Education, and Certification in assessing the effectiveness of miner training programs.
- (7) The commissioner shall at his discretion assign safety analysts to all ~~underground~~ mines in the state taking into consideration such factors as the history of accidents at the mine, experience of the work force, physical condition of the mine, and size of the mine.
- (8) The commissioner may coordinate the assignment of safety analysts with the appropriate federal authorities to minimize duplication of accident prevention efforts.
- (9) The commissioner shall report annually to the General Assembly and to the Governor on the effectiveness of the safety analysts in improving mine safety.

Section 5. KRS 352.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
 - (b) "Active workings" means all places in a mine that are ventilated and inspected regularly;
 - (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department of Mines and Minerals;

- (d) "Approved safety lamp" means any bonneted lamp that bears the approval plate of the Federal Bureau of Mines, ~~or the~~ Mining Enforcement and Safety Administration, **or the Mine Safety and Health Administration** and is approved by the department ~~of Mines and Minerals of this state~~;
- (e) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
- (f) "Board" means the Mining Board created in KRS 351.105;
- (g) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
- (h) "Commissioner" means commissioner of the Department of Mines and Minerals;
- (i) "Department" means the Department of Mines and Minerals;
- (j) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
- (k) "Excavations and workings" means the excavated portions of a mine;
- (l) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;
- (m) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
- (n) "Gassy mine" means any mine in which there is a record of methane having been ignited, or having been detected with a permissible flame safety lamp, or where methane in the amount of twenty-five hundredths percent (0.25%) or more has been found not less than twelve (12) inches from the roof, face, or rib, using approved methane testers or detectors or by analysis, provided, nevertheless, that on and after June 19, 1976, all underground mines shall be classified as gassy or gaseous;
- (o) "High voltage" means any voltage ~~of greater than~~ one thousand (1,000) volts **or more**;
- (p) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated;
- (q) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;
- (r) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, nor more than one-half of one percent (0.5%) of carbon dioxide, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (s) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (t) "Low voltage" means up to and including six hundred sixty (660) volts;
- (u) "Medium voltage" means voltages greater than six hundred sixty (660) **and up to nine hundred ninety-nine (999)** ~~one thousand (1,000)~~ volts;
- (v) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
- (w) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of persons employed therein;
- (x) "Open-pit mine" shall include open excavations and open-cut workings including auger mines for the extraction of coal;

- (y) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (z) "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification ~~by the bureau~~;
- (aa) "Preshift examination" means the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any on-coming shift;
- (bb) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible or pillared workings;
- (cc) "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- (dd) "Slope" means an inclined opening used for the same purpose as a shaft;
- (ee) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (ff) "Supervisory personnel" shall mean a person or persons ~~properly~~ certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (gg) "Tipple or dumping point" means the ~~tipple or~~ structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;
- (hh) "Working face" means any place in a coal mine ~~at in~~ which *the extraction of* ~~work of extracting~~ coal from its natural deposit in the earth is performed during the mining cycle;
- (ii) "Working place" means the area of a coal mine in by the last open crosscut; and
- (jj) "Working section" means all areas of a coal mine from the loading point to and including the working faces.

- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010.

Section 6. KRS 352.230 is amended to read as follows:

- (1) After June 16, 1972, all electrical equipment purchased for face use in underground mines shall be of the permissible type. The commissioner or his authorized representative shall reject any modification to mining equipment which would endanger the health or safety of employees.
- (2) No person shall be placed in charge of electrical face equipment in any mine unless he is a qualified person, capable of determining the safety of the roof, face, and ribs of the working places and detecting the presence of explosive gas where necessary. Operators of electrical face equipment shall undergo an examination to determine their fitness to detect explosive gas before they are permitted to have charge of electric face equipment, and shall have a minimum of *forty-five (45)* ~~ninety (90)~~ days of actual mining experience. Safety committeemen, shotfirers, and others whose duty may require them to make examination for gas shall undergo and pass an examination or possess a mine foreman's certificate ~~or fire boss certificate~~ before using a flame-safety lamp underground. The examination shall be given by the mine inspector; blank forms therefor to be furnished by the department. A copy shall be retained on file at the mine office and the original shall be sent to the department fully made out and signed by the applicant and approved by the mine inspector.
- (3) No electric face equipment shall be brought within the last breakthrough next to the working face until the equipment operator has made an inspection for explosive gas using a flame-safety lamp or other approved device or instrument in the place where the equipment is to work, unless the examination is then made by some other competent person authorized and appointed for that purpose by the mine foreman. If any explosive gas is found in the place the electric equipment shall not be taken in until the gas is removed.

- (4) While the electric equipment is operating at the face, an examination for gas shall be made at not more than twenty (20) minute intervals. If gas is found in excess of one percent (1%) the power shall be disconnected from the equipment and left disconnected until the gas is removed and the place reported safe by a certified official.
- (5) Headlights shall be installed and maintained in a permissible and working order on all mobile and face equipment at all times the equipment is in operation.
- (6) Headlights shall be mounted to provide maximum illumination where it will be most effective and shall be protected from damage by guarding or locations.
- (7) At all times when mining equipment is being used, it shall be maintained in safe working order.

Section 7. KRS 352.430 is amended to read as follows:

- (1) The operator or superintendent of every mine shall furnish the mine inspector proper facilities for entering the mine and making examinations or obtaining information.
- (2) If any inspector discovers that any mine does not conform to the provisions of KRS Chapters 351 and this chapter in respect to ~~appliances for~~ the safety of employees, or that by reason of any defect or practice not specifically covered by these chapters in or about the mine, the lives or health of persons employed therein are endangered, he shall immediately issue an emergency order to the ~~licensee~~~~operator~~ or superintendent. ~~pursuant to KRS 13B.125, and~~ If he deems it necessary for the immediate protection from imminent danger of bodily harm of the persons employed in the mine, he shall withdraw the men who may be endangered. If the entire mine is affected by the dangerous condition, all men shall be withdrawn and production shall be halted until all defects causing the imminently dangerous condition are corrected. If an imminent danger affects only a portion of the mine, the persons whose safety may be menaced thereby shall be withdrawn from the affected part of the mine and production halted in that area until the dangerous condition is corrected. However, where production is necessary to correct the unsafe condition, it shall be permitted to that extent, using only the necessary personnel. Production at the affected area of a mine from which men are withdrawn pursuant to this section may be resumed upon reinspection by a mine inspector and a finding by that inspector that the mine is no longer imminently unsafe.
- (3) In all emergency hearings, the Attorney General, the Commonwealth's attorney, or the county attorney of the judicial circuit or county in which the mine is situated shall appear for the state and defend the action.

Section 8. KRS 352.480 is amended to read as follows:

- (1) The commissioner shall, upon the application *therefor in the form of an affidavit by* ~~of~~ any *licensee*, owner, lessee, or operator, make or cause to be made, at the expense of the applicant, a duplicate of any map on file in his office of any mine owned, leased or operated by the applicant.
- (2) No copy of such a map shall be made without the consent of the *licensee*, owner, lessee, or operator, except that when the owner of any land adjacent to or near the land of the *licensee*, owner, lessee, or operator files an affidavit with the commissioner showing ownership of the adjacent or nearby property, and alleging that he believes that the *licensee*, owner, lessee, or operator is encroaching upon or mining on his property, the commissioner shall cause to be furnished to the affiant, at the expense of the affiant, a duplicate of the map filed by the *licensee*, owner, operator, or lessee.
- (3) When any underground mine is worked out or is about to be abandoned~~ed~~ or indefinitely closed, the ~~licensee~~~~operator of the mine~~ shall make or cause to be made a final survey of the mine, to show the entire worked-out area at the time the mine was abandoned or closed. The results shall be *indicated*~~extended~~ on the map of the mine previously made, and a copy of the survey shall be filed with the commissioner.
- (4) When satisfactory evidence, *in the form of an affidavit*, is furnished by any person planning to open or reopen a mine, a duplicate copy of a map of any abandoned mine which might affect the safety of the men to be employed in the proposed mine may be furnished the applicant upon request to the commissioner. The duplicate copy of the map shall be made at the expense of the applicant.

Approved April 9, 1998

CHAPTER 481

(SB 318)

AN ACT relating to miner training and certification.

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

Section 1. KRS 351.120 is amended to read as follows:

- (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, **surface or underground** mine safety instructor, **surface mine safety analyst**, assistant mine foreman, mine foreman, ~~fire boss,~~ shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position.
- (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, **surface or underground** mine safety instructor, **surface mine safety analyst**, assistant mine foreman, mine foreman, ~~fire boss,~~ shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such.
- (3) Certificates issued to mine foremen ~~and,~~ assistant mine foremen, ~~and fire bosses~~ shall be classified as follows:
 - (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; **and**
 - (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman;
 - ~~(c) Fire boss certificates, authorizing the holder to act as fire boss or mine examiner in any mine.~~
- (4) Any mine foreman or assistant mine foreman may act as **a** fire boss or mine examiner, ~~and any regularly employed fire boss may act in an emergency as a mine foreman or assistant mine foreman.~~ This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.
- (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant.
- (6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits ~~made by well known and responsible persons in the locality from which he came,~~ that the applicant ~~is a man of sobriety and good moral character, and that he~~ has had the required practical experience in underground **or surface** coal mines, ~~or to any person who is not either a bona fide resident of this state or employed at an underground mine in this state.~~ A data sheet ~~shall~~ **must** be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms ~~shall~~ **will** be furnished by the department. For the purpose of this ~~section~~ **subsection**, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for **any** mine foreman ~~or~~ **and** assistant mine foreman ~~certificate~~ **certificates**. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file ~~a certified transcript of their grades and~~ proof of having received their degree prior to the examination. ~~Applicants for mine foreman certificate must have five (5) years' practical underground experience gained after achieving the age of eighteen (18); at least one (1) year of this experience must be in or on an active working section. Applicants for assistant mine foreman or fire boss certificate must have three (3) years' practical underground experience gained after achieving the age of eighteen (18); at least one (1) year of this experience to be in or on an active working section.~~
- (7) **Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground**

assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.

- (8) *Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in post-mining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.*
- (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman or fire boss prior to July 15, 1982, are not affected by this section.
- (10)~~(8)~~ When approved by the commissioner, a~~any~~ person *who has successfully completed any mine foreman or assistant mine foreman examination may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting*~~[holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman's examination held by the department, but not to exceed a maximum of ninety (90) days].~~
- (11)~~(9)~~ A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.

Section 2. KRS 351.1291 is amended to read as follows:

- (1) All inexperienced surface coal miners shall complete a sixteen (16) hour course of instruction devised or approved by the department in subjects including, but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including miners' rights, safety around bins and hoppers, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least *forty-five (45)*~~ninety (90)~~ days at a surface coal mine in this Commonwealth.
- (2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section.
- (3) The commissioner shall certify all surface coal miners who complete the courses of instruction required in subsections (1) and (2) of this section.

Approved April 9, 1998

CHAPTER 482

(SJR 118)

A JOINT RESOLUTION directing the Kentucky Coal Marketing and Export Council to conduct a review of incentives appropriate to encourage the mining of economically marginal seams of coal.

WHEREAS, the mission of the Council includes advising the Governor on areas critical to marketing Kentucky coal and educating the public about coal; and

WHEREAS, a significant portion of Kentucky's coal reserves contain a high percentage of sulfur, which renders them unmarketable, and a significant portion of Kentucky's coal reserves, which have been previously mined and unreclaimed, have a potential to be remined; and

WHEREAS, the present state of the Kentucky coal industry does not allow for the economical mining of thin coal seams, high sulfur coal seams, or seams potentially available for remining; and

WHEREAS, it is to the benefit of the Commonwealth to maximize the mining of its natural resources; and

WHEREAS, the competing coal states have enacted legislation to encourage the mining of thin coal seams, high sulfur coal seams, or seams potentially available for re-mining; and

WHEREAS, coal mining is and will continue to be a major employer in eastern and western Kentucky;

NOW, THEREFORE,

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

Section 1. The Kentucky Coal Marketing and Export Council shall review incentives to encourage the mining of economically marginal seams of coal, which may be defined as thin seams, seams with high sulfur content, or seams where mining has previously occurred. The economics of coal markets and methods of coal conveyance may also be reviewed.

Section 2. The Council shall report its findings to the Interim Joint Committee on Agriculture and Natural Resources no later than one hundred eighty (180) days prior to the convening of the General Assembly in Regular Session in the year 2000.

Approved April 9, 1998

CHAPTER 483

(HB 496)

AN ACT relating to insurance.

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

Section 1. KRS 299.370 is amended to read as follows:

All portions of membership fees, policy fees, and assessments not necessarily used for expenses of writing insurance and payment of losses and expenses accrued at the time of their collection shall constitute a reserve fund, which may be used from time to time in anticipation of collection of assessments. The reserve fund shall be the property of the company, but in event of liquidation, voluntary or involuntary, the reserve fund shall be apportioned pro rata to the policyholders whose policies are in force at the time of liquidation, in proportion to the amount of premiums paid on the policies from the date of their issuance. The governing authorities of the company may invest the reserve fund or any portion of it in *the same*~~such~~ securities as fire insurance companies are~~now~~ permitted by law to invest in, and may pledge or sell the securities~~such~~ to raise money to more effectively carry out the lawful purposes of the company.

Section 2. KRS 304.2-065 is amended to read as follows:

- (1) There is created within the Department of Insurance the position of early warning analyst.
- (2) The commissioner shall appoint a qualified person to serve as early warning analyst.
- (3) The early warning analyst shall detect domiciled companies and companies doing a significant amount of business in the Commonwealth that are in a hazardous or potentially hazardous financial condition.
- (4) The early warning analyst shall be part of the Financial Standards and Examination Division.
- (5) The early warning analyst shall:
 - (a) Take advantage of the information available through the Insurance Regulatory Information System and use the information to monitor insurers;
 - (b) Seek information from other states' detection programs;
 - (c) Work with other Department of Insurance employees representing key regulatory areas of the department;
 - (d) Coordinate and develop the use of an indicator list to determine if an insurer is in a hazardous condition. The indicator list shall include but is not limited to the following indicators:
 1. An insurer fails to file a timely financial statement as established in KRS Chapter 304;

2. An insurer files financial information which is false or misleading;
 3. An insurer overstates its surplus by twenty-five percent (25%) or more;
 4. An insurer fails to grant authorization to amend its financial statement when requested;
 5. An insurer's financial ratios are outside of the ~~usual~~~~acceptable~~ range established by the National Association of Insurance Commissioners in the Insurance Regulatory Information System;
 6. A projection by the department of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next twelve (12) months;
 7. An insurer's aggregate net retained risk, direct or assumed, under any one (1) insurance policy or certificate of insurance under a group policy is more than ten percent (10%) of the insurer's surplus, except where otherwise permitted by law;
 8. An insurer's reserves for losses and loss adjustment expenses are discounted more than ten percent (10%) of the surplus;
 9. An affiliate or subsidiary of an insurer is unable to pay its obligations as the obligations become due and payable;
 10. A life, accident, and health insurer has premium writings that result in the surplus being less than five percent (5%) of the aggregate general account reserves for the life insurance in force plus twenty-five percent (25%) of the new annualized accident and health premium writing;
 11. An insurer has reinsurance reserve credits, recoverable or receivable, that are disputed by the reinsurer, or are due and payable and remain unpaid, and the reinsurance credits, recoverables, and receivables are more than ten percent (10%) of an insurer's surplus;
 12. An insurer consistently issues subordinate premium or surplus debentures to finance its operations;
 13. An insurer fails to adequately maintain books and records in a manner that permits examiners to determine the financial condition of the insurer;
 14. An insurer has reinsurance agreements affecting twenty percent (20%) or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do insurance business in the Commonwealth of Kentucky;
 15. An insurer's management does not have the experience, competence, or trustworthiness to operate the insurer in a safe and sound manner;
 16. An insurer's management engages in unlawful transactions;
 17. An insurer fails to have an appraisal made on real estate upon which the insurer has made a mortgage loan;
 18. An insurer fails to comply with the terms of an agreement with an affiliate;
 19. An insurer has a pattern of refusing to settle valid claims within a reasonable time after due proof of the loss has been received;
 20. An insurer fails to follow a policy on rating and underwriting standards appropriate to the risk;
 21. An insurer violates KRS Chapter 304;
 22. A final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer; and
 23. An insurer is in any condition that the commissioner finds is a hazard to policyholders, creditors, or the general public;
- (e) Recommend regulatory action and provide status reports to the commissioner; and

- (f) Appear before the Interim Joint Committee on Banking and Insurance or the Standing Committees on Banking and Insurance biannually to report on the status of domestic insurance companies and insurance companies doing a substantial amount of business in the Commonwealth of Kentucky.

Section 3. KRS 304.2-205 is amended to read as follows:

- (1) The provisions of this section apply to all domestic, foreign, and alien insurers fraternal benefit societies, **health maintenance organizations**, and nonprofit hospital, medical-surgical, dental, and health service corporations authorized to transact business pursuant to this chapter.
- (2)
 - (a) Each domestic, foreign, and alien insurer and fraternal benefit society, **health maintenance organization**, and nonprofit hospital, medical-surgical, dental, and health service corporation authorized to transact business pursuant to this chapter shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with ~~such~~ additional filings as prescribed by the commissioner, for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the life and health actuarial certification. Any amendments or additions to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners;
 - (b) Foreign insurers, **health maintenance organizations**, and fraternal benefit societies that are domiciled in states which have laws substantially similar to paragraph (a) of this subsection shall be deemed in compliance with this section; and
 - (c) Nothing contained in this section shall be deemed to require anyone filing documents with the National Association of Insurance Commissioners to pay any filing fee for ~~a~~~~such~~ filing.
- (3) Members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all others charged with the responsibility of collecting, reviewing, analyzing, or disseminating the information developed from the filing of the annual statement convention blanks shall not be subject to civil liability for defamation or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected from the filings required by this section while acting in good faith.

Section 4. KRS 304.2-210 is amended to read as follows:

- (1) For the purpose of determining financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations and compliance with law, the commissioner shall examine the affairs, transactions, accounts, records and assets of each authorized insurer as often as reasonably necessary. He shall so examine each domestic insurer not less frequently than every three (3) years. Examination of a reciprocal insurer may include examination of its attorney-in-fact as to its transactions relating to the insurer. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States, except as the commissioner otherwise requires.
- (2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.
- (3) In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the **most recently completed**~~last recent~~ examination of a foreign, or alien, insurer, certified to by the insurance supervisory official of another state.
- (4) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officers of other states in which the insurer transacts business, and for the purpose thereof the commissioner may participate in joint examinations of insurers or be represented in an examination by an examiner of another state.

Section 5. KRS 304.2-270 is amended to read as follows:

The report of examination of a domestic insurer, although filed in the department as provided in KRS 304.2-260 shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's current financial condition. The comments and recommendations of the examiner(s) shall be deemed confidential information

and shall not be available for public inspection, except that the commissioner may in his discretion disclose the content of an examination report, preliminary examination report, or results, or any matter relating to an examination report, to the Department of Insurance of any other state or country, or to law enforcement officials of this or any other state, or to an agency of *this or any other state or* the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this section and KRS 304.2-260.

Section 6. KRS 304.2-350 is amended to read as follows:

- (1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the commissioner, his deputy or examiner, or in any proceeding or action before any court upon a charge of violation of this code, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give ~~such~~ testimony or produce ~~such~~ evidence, he must, if so directed by the commissioner and the Attorney General, nonetheless comply with ~~the~~ ~~such~~ direction; but he shall not thereafter be prosecuted or subjected to any *criminal* penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation, or proceeding; except, however, that no ~~such~~ person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in *giving* ~~such~~ testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning ~~such~~ perjury.
- (2) Any ~~such~~ individual may execute, acknowledge, and file in the department a statement expressly waiving ~~such~~ immunity or privilege in respect to any transaction, matter, or thing specified in ~~a~~ ~~such~~ statement, and thereupon the testimony of ~~the~~ ~~such~~ individual or ~~the~~ ~~such~~ evidence in relation to ~~the~~ ~~such~~ transaction, matter, or thing may be received or produced before any judge, court, tribunal, grand jury or otherwise, and if so received or produced ~~the~~ ~~such~~ individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

Section 7. KRS 304.3-150 is amended to read as follows:

To apply for an original certificate of authority an insurer shall file with the commissioner its written application therefor on forms as prescribed and furnished by the commissioner, accompanied by the applicable fees specified in Subtitle 4, stating under the oath of the president or vice-president or other chief officer and the secretary of the insurer, or of the attorney-in-fact (if a reciprocal insurer or Lloyd's plan insurer), the insurer's name, location of its principal office, the kinds of insurance to be transacted, date of organization or incorporation, form of organization, its domicile, and *any* ~~such~~ additional information as the commissioner may reasonably require, together with the following documents, as applicable:

- (1) If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of incorporation, currently certified by the public official with whom the originals are on file in ~~a~~ ~~such~~ state or country.
- (2) A copy of its bylaws, certified by the insurer's secretary.
- (3) If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, and copy of its subscribers agreement, if any, both certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in KRS 304.2-060.
- (4) If a Lloyd's plan insurer, the names and addresses of all of the underwriters proposing to engage in the business, along with the number of underwriters which shall not be less than twenty-five (25), and that each underwriter is worth in his own right not less than twenty thousand dollars (\$20,000) over and above all his liabilities, along with a statement showing a list of all cash and invested assets owned by the associated underwriters and their value, certified and sworn to by their duly authorized attorney-in-fact.
- (5) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (6) A copy of the report of last examination of the insurer prior to the filing of the application, certified by the public insurance supervisory official of the insurer's state or country of domicile.

- (7) If a foreign or alien insurer, the name and address of the person to whom the Secretary of State shall forward lawful process served upon him. If a domestic reciprocal insurer, the name and address of the attorney designated pursuant to paragraph (e) of subsection (2) of KRS 304.27-060 shall be deemed to be the person to whom the Secretary of State shall forward lawful process served upon him. Any judgment against ~~a[such]~~ domestic reciprocal so served shall be binding upon each of the insurer's subscribers as their respective contingent liabilities.
- (8) If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in ~~a[such]~~ state or country the kinds of insurance proposed to be transacted in this state.
- (9) If an alien insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS ~~304.3-140~~~~[304.3-060]~~, and a copy of the trust deed, if any, pertaining to ~~a[such]~~ deposit, certified by the trustee.
- (10) If a foreign insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140.
- (11) If a life or health insurer, a copy of the insurer's rate book and of each form of policy currently proposed to be issued in this state, and of the form of application therefor.
- (12) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.
- (13) Designation by the insurer of its officers or representatives authorized to appoint and remove its agents in this state.
- (14) If to transact surety insurance, the names and addresses of all its attorneys in fact within this state together with the scope of authority of each ~~[such]~~ attorney-in-fact.

Section 8. KRS 304.4-010 is amended to read as follows:

- (1) The commissioner shall by regulation prescribe the fees charged by the commissioner and the services for which fees shall be charged, including the following fees:
 - (a) For copies of any document on file with the commissioner, per page, ~~thirty~~~~[fifty]~~ cents (~~\$0.30~~)(~~(\$0.50)~~); and
 - (b) For copies of annual statements, per page, one dollar (\$1).
- (2) All ~~[such]~~ fees shall be collected in advance.
- (3) ***Notwithstanding subsection (2) of this section, an insurer submitting applications, appointments, or filings through the electronic system adopted by the department shall remit the applicable fees to the department within fifteen (15) calendar days of the electronic submission.***

Section 9. KRS 304.9-105 is amended to read as follows:

For the protection of the people of this state, the commissioner shall not issue, continue or permit to exist, any permanent agent or solicitor license for or on behalf of any natural person unless ~~the~~~~[such]~~ person demonstrates to the satisfaction of the commissioner that he is qualified therefor pursuant to the standards contained in this section and any other applicable section of this subtitle:

- (1) That the person has attained the age of eighteen (18) years or more;
- (2) That the person has fulfilled the residence requirements as set forth in KRS 304.9-120;
- (3) That the person is trustworthy, reliable and of good reputation, evidence of which may be submitted on behalf of the person in the form of:
 - (a) A certificate by the insurer or agent by which or whom the person is to be appointed or employed, subject to the issuance of the license, stating that ~~the~~~~[such]~~ insurer or agent has either made, or caused to be made by responsible investigators, an investigation into the trustworthiness, reliability, and good reputation of the person together with a brief synopsis of the findings resulting therefrom; or
 - (b) Three (3) letters of recommendation attesting to the trustworthiness, reliability, and good reputation of the person written on his behalf by persons not related to him by blood or marriage and one (1) of whom shall be a licensed resident insurance agent, which letters shall also state the extent of familiarity, both

as to length of time and degree of knowledge, possessed by the writer with regard to both personal and business conduct of the person.

- (4) That the person is competent to exercise the license and has:
- (a) Successfully attained a general educational level equivalent to that required for graduation from an accredited high school in this state;
 - (b) Successfully completed ~~such~~ specific courses of instruction in the field of insurance as the commissioner shall by regulation prescribe for ~~a~~ license when initially issued, which courses of instruction shall in the aggregate consist of or equal forty (40) hours of classroom instruction administered by or under the supervision of persons qualifying with and approved by the commissioner for ~~the~~ purpose and the successful completion of which shall be certified to the commissioner, on forms prescribed by him, by the person under whose supervision ~~the~~ instruction was administered. Programs of instruction provided by insurers authorized, or agent associations recognized, by the commissioner may be substituted for the specific courses of instruction prescribed by the commissioner when ~~the~~ programs have been reviewed and approved by the commissioner prior to their use, which approval shall not be unreasonably withheld if ~~the~~ programs of instruction are substantially similar in content and emphasis placed thereon to those prescribed by the commissioner;
 - (c) Successfully passed any written examination required by the commissioner for the license pursuant to KRS 304.9-160 unless exempt pursuant to KRS 304.9-170; and
 - (d) The requirements contained in this subsection and subsection (3) of this section shall not be applicable to the continuance of any license issued prior to June 17, 1978.
- (5) That the person is financially responsible to exercise the license and has:
- (a) Filed with the commissioner the certificate of an insurer authorized to write legal liability insurance in this state, that ~~the~~ insurer has and will keep in effect on behalf of ~~the~~ person a policy of insurance covering the legal liability of ~~the~~ licensed person as the result of erroneous acts or failure to act in his capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single ~~such~~ occurrence in the sum of not less than ten thousand dollars (\$10,000) and fifty thousand dollars (\$50,000) in the aggregate for all ~~such~~ occurrences within one (1) year, and that ~~the~~ policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the commissioner; or
 - (b) Deposited with the commissioner cash, or a cash surety bond executed by an insurer authorized to write ~~such~~ business in this Commonwealth, in the sum of ten thousand dollars (\$10,000) which shall be subject to lawful levy of execution by any party to whom the licensed person has been found to be legally liable as the result of erroneous acts or failure to act in his capacity as an insurance agent; or
 - (c) Had filed with the commissioner on his behalf, by an authorized insurer or group of affiliated insurers for which he is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of ~~the~~ licensed person as the result of erroneous acts or failure to act in his capacity as an insurance agent on behalf of ~~the~~ insurer or group of affiliated insurers in the sum of ten thousand dollars (\$10,000) for any ~~such~~ single occurrence and that ~~the~~ agreement shall not be terminated until the license is surrendered to the commissioner or at least thirty (30) days' prior written notice will have been given to the commissioner, whichever shall first occur; and
 - (d) Agreed with the commissioner that if at any time notice is given to the commissioner that any policy filed pursuant to paragraph (a) of this subsection, or agreement filed pursuant to paragraph (c) of this subsection, is to be terminated and has not been replaced by another ~~such~~ policy or agreement within the time established by regulations of the commissioner, or if any deposit pursuant to paragraph (b) of this subsection be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by regulations of the commissioner, any and all licenses held by ~~the~~ person are ~~revoked~~~~suspended~~ and shall be promptly surrendered to the commissioner without demand.
- (6) That the person, to whom an agent's license has been or is to be issued, is the duly appointed agent of an authorized insurer, subject to issuance of the license.

- (7) That the person, to whom a solicitor's license has been or is to be issued, is regularly employed by a presently licensed resident agent, or is to be so employed subject to issuance of the license.
- (8) **Subsection**~~Subsections~~ (4)(b)~~and (5)~~ of this section shall not apply to any person holding a limited license pursuant to KRS 304.9-230.
- (9) No institution included in the Farm Credit System, as set forth and identified in 12 U.S.C. sec. 2002 (Public Law 92-181, sec. 1.2, Dec. 10, 1971, 85 Stat. 583) or any subsidiary or affiliate thereof doing business in this state, nor any officer or employee of any institution included in the Farm Credit System, or any subsidiary or affiliate thereof, may directly or indirectly be licensed to sell or solicit any type of insurance, except *term life*, credit life, accident, *disability* and health, and crop hail insurance in an amount appropriate to insure repayment of the loan.

Section 10. KRS 304.9-150 is amended to read as follows:

- (1) Application for an agent ~~or~~ solicitor~~, or consultant~~ license shall be made to the commissioner by *an insurer. The application for a consultant license shall be made by* the applicant.~~and~~ *Applications under this subsection shall* be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.
- (2) The form of application shall require full answers to ~~any~~~~such~~ questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.
- (3) If for an agent's or consultant's license the application shall state the kinds of insurance proposed to be transacted, and if an agent's, *the application shall be deemed an*~~be accompanied by written~~ appointment of the applicant as agent for ~~the~~~~such~~ kinds of insurance, by an authorized insurer, subject to issuance of the license.
- (4) If for solicitor's license, the application shall be accompanied by written appointment of the applicant as solicitor by a licensed resident general lines agent, subject to issuance of the license.
- (5) If the applicant for an agent's license is a firm or corporation, the application shall show in addition, the names of all members, officers, and directors, and shall designate each individual who is to exercise the license powers; and each~~such~~ individual shall furnish information with respect to himself, as part of the application, as though for an individual license.
- (6) If for license as agent, or solicitor, or consultant, the application shall also show whether the applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any~~such~~ license was ever refused, suspended, revoked, or renewal or continuance denied, whether any insurer, general agent, agent, claims applicant ~~is to be~~ indebted to it, and if so, the details thereof; whether applicant has ever had an agency contract canceled, and the facts thereof; and, if applicant is a married person, like information with respect to the spouse.
- (7) As part of ~~the~~~~such~~ application for agent's or solicitor's license, the commissioner shall require the certificate of the insurer or agent, proposed to be represented, relative to applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, trustworthiness, and reputation.
- (8) All~~such~~ applications shall be accompanied by the applicable license fee, appointment fee, and examination fee, in the respective amounts stated in KRS 304.4-010.
- (9) No applicant for license under this subtitle shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.

Section 11. KRS 304.9-170 is amended to read as follows:

KRS 304.9-160 shall not apply and no such examination shall be required of:

- (1) Any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed under a similar license in this state, other than a temporary license, within the twenty-four (24) months next preceding date of application, unless ~~the~~~~such~~ previous license was revoked, suspended, or continuation thereof refused by the commissioner *for reasons other than failure to maintain financial responsibility as required by Section 9 of this Act.*

- (2) In the commissioner's discretion, any applicant who has been licensed under a similar license in another state within twelve (12) months prior to his application for license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in ~~the~~^{such} other state as to applicant's license and good conduct in ~~the~~^{such} state.
- (3) Persons representing public carriers who, in the course of ~~their~~^{such} representation, solicit or sell insurance incidental to the transportation of persons or to the storage or transportation of property.
- (4) Persons soliciting or negotiating credit life, credit health and accident, credit personal property and credit unemployment insurance contracts.
- (5) An applicant for an agent's license who is currently licensed as a solicitor or as a consultant as to the same kind or kinds of insurance, or has been so licensed within twelve (12) months next preceding the date of application for the license, unless ~~the~~^{such} previous license was revoked or suspended or continuation thereof refused by the commissioner **for reasons other than failure to maintain financial responsibility as required by Section 9 of this Act.**
- (6) Any applicant for license covering the same kind or kinds of insurance as to which that applicant shall have held a valid license issued pursuant to this subtitle or other applicable Kentucky law which was surrendered, pursuant to KRS 304.2-080 or other applicable law, in order to accept employment with the Department of Insurance, provided, however, that ~~the~~^{such} applicant shall apply for relicensing within one (1) year of the date of termination of his employment with the Department of Insurance.
- (7) Persons soliciting or negotiating mechanical breakdown insurance contracts.

Section 12. KRS 304.9-220 is amended to read as follows:

- (1) A life agent may concurrently be licensed as to as many life insurers as duly file appointments of the licensee with the commissioner and ~~submit~~^{pay} the **license fee with the license application and the** appointment fee **with every appointment thereafter**, except as provided in subsection (2) of this section.
- (2) Any life insurer may file a request with the commissioner for notification that any life agent authorized to represent it has been appointed to represent another life insurer. Pursuant to ~~a~~^{such} request for notice the commissioner shall notify ~~the~~^{such} insurer of the appointment of life agents as life agents for other insurers.

Section 13. KRS 304.9-230 is amended to read as follows:

- (1) The commissioner may issue to an applicant qualified therefor, including, but not limited to, financial responsibility pursuant to KRS 304.9-105(5), under this code limited agent's licenses as follows:
 - (a) Covering motor vehicle **physical damage** insurance only;
 - (b) To persons representing common carriers, as provided in KRS 304.9-170;
 - (c) Covering only insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;
 - (d) Covering only credit life, credit health, credit personal property, and credit unemployment insurance;
 - (e) Covering agents writing mortgage guaranty insurance only;
 - (f) Covering agents:
 1. Writing industrial life insurance only; or
 2. Licensed by an insurer issuing policies having a face amount not in excess of five thousand dollars (\$5,000) on the debit plan, if ~~the~~^{such} agent actually collects and services a debit for ~~the~~^{such} insurer;
 - (g) Covering agents writing only policies commonly referred to as mortgage redemption insurance, which consist of reducing term life insurance and accident and health insurance, if any, contained therein or sold in conjunction therewith;
 - (h) Covering agents writing crop-hail insurance only; and
 - (i) Covering agents writing mechanical breakdown insurance only.
- (2) The fee for licenses is as specified in KRS 304.4-010.

Section 14. KRS 304.9-270 is amended to read as follows:

- (1) Each insurer appointing an agent in this state shall file with the commissioner the appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and ~~submit~~~~pay~~ the **license fee with the license application and the appointment fee with every appointment thereafter**, or license fee in the case of limited licenses, as specified in KRS 304.4-010.
- (2) Subject to continuation by the insurer as provided in subsection (3) of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.
- (3) Biennially on or before March 31 each insurer shall file with the commissioner an alphabetical list of the names and addresses of all its agents in this state whose appointments or licenses in the case of limited licenses were in effect during the preceding calendar year and are to remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently so appointed, accompanied by payment of the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010. At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are not to remain in effect, or whose appointment as to certain kinds or classifications of insurance are not to remain in effect as designated in ~~the~~~~such~~ list. Any appointment or license not so continued and not otherwise expressly terminated shall be deemed to have expired at midnight on March 31, except that any request for continuation received by the commissioner after ~~such~~~~March~~ March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter.

Section 15. KRS 304.13-320 is amended to read as follows:

- (1) The commissioner may suspend the license of any ~~advisory~~~~rating~~ organization or insurer which fails to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any ~~advisory~~~~rating~~ organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The commissioner may modify or rescind a suspension at any time.
- (2) No penalty shall be imposed and no license shall be suspended or revoked except upon a final order of the commissioner, stating his findings made after a hearing conducted in accordance with KRS Chapter 13B.

Section 16. KRS 304.14-130 is amended to read as follows:

- (1) The commissioner shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:
 - (a) If it is in any respect in violation of, or does not comply with, this code.
 - (b) If it contains or incorporates by reference, where ~~the~~~~such~~ incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
 - (c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in ~~a~~~~such~~ size of type or manner of reproduction **so** as to be substantially illegible.
 - (d) ***As to an individual, group, or blanket health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.***
 - (e) If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.
- (2) The insurer shall not use in this state any ~~such~~ form after disapproval or withdrawal of approval.

Section 17. KRS 304.16-200 is amended to read as follows:

There shall be a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of ~~such~~ termination, whose insurance

terminates and who has been so insured for at least five (5) years prior to ~~the~~ termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided in KRS 304.16-190, except that the group policy may provide that the amount of ~~the~~ individual policy shall not exceed the smaller of:

- (1) The amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one (31) days of ~~such~~ termination; and
- (2) ~~\$10,000~~ \$2,000.

Section 18. KRS 304.17-030 is amended to read as follows:

No policy of health insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this title, and complies with the following:

- (1) The entire money and other considerations therefor shall be expressed therein;
- (2) The time when the insurance takes effect and terminates shall be expressed therein;
- (3) It shall purport to insure only one (1) person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, **unmarried** dependent children ~~to age~~ ~~or any children under a specified age which shall not exceed~~ nineteen (19), **unmarried children from nineteen (19) to twenty-five (25) years of age who are full time students enrolled in and attending an accredited educational institution and who are primarily dependent on the policyholder for maintenance and support**, and any other person dependent upon the policyholder as provided pursuant to KRS 304.17-310;
- (4) The style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any indorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name on title of the policy, the brief description, if any, and captions and subcaptions);
- (5) The exceptions and reductions of indemnity shall be set forth in the policy and other than those contained in KRS 304.17-050 to 304.17-290, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of ~~the~~ exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each ~~such~~ form, including riders and indorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and
- (7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless ~~the~~ portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

Section 19. KRS 304.17-060 is amended to read as follows:

- (1) (a) There shall be a provision as follows:

"Time Limit on Certain Defenses: After three (3) years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for ~~the~~ policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of ~~the~~ three (3) year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during ~~the~~ initial three (3) year period, nor to limit the application of KRS 304.17-190 to 304.17-230, inclusive, in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) until at least age fifty (50) or (b) in the case of a policy issued after age forty-four (44) for at least

five (5) years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause in parentheses may be omitted at the insurer's option, under the caption "Incontestable":

"After the policy has been in force for a period of three (3) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

(b) No claim for loss incurred or disability as defined in the policy commencing after two (2) years from the date of issue of this policy, shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(2) *Paragraph (b) of subsection (1) of this section shall not apply to policies subject to KRS 304 Subtitle 17A.*

Section 20. KRS 304.17-130 is amended to read as follows:

(1) There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting ~~such~~ payment which may be prescribed herein and effective at the time of payment. If not ~~such~~ designation or provision is then effective, ~~any~~ ~~such~~ indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to ~~a~~ ~~such~~ beneficiary or to ~~the~~ ~~such~~ estate. All other indemnities will be payable to the insured."

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

(a) "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$... (insert an amount which shall not exceed ~~\$5,000~~ ~~(\$1000)~~), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of ~~the~~ ~~such~~ payment."

(b) "Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of ~~the~~ ~~such~~ loss, be paid directly to the hospital or person rendering ~~such~~ services; but it is not required that the service be rendered by a particular hospital or person."

Section 21. KRS 304.17-310 is amended to read as follows:

(1) Family expense health insurance is that provided under a policy issued to one (1) of the family members insured, who shall be deemed the policyholder, covering any two (2) or more eligible members of a family, including husband, wife, *unmarried* dependent children, ~~to age~~ ~~or any children under a specified age which shall not exceed~~ nineteen (19), *unmarried children from nineteen (19) to twenty-five (25) years of age who are full time students enrolled in and attending an accredited educational institution and who are primarily dependent on the policyholder for maintenance and support*, and any other person dependent upon the policyholder. Any authorized health insurer may issue ~~the~~ ~~such~~ insurance.

(2) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state more than 120 days after June 13, 1968, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of ~~the~~ ~~such~~ limiting age shall not operate to terminate the coverage of ~~the~~ ~~such~~ child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical disability and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of ~~the~~ ~~such~~ incapacity and dependency is furnished to the insurer or corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the two (2) year period following the child's attainment of the limiting age.

Section 22. KRS 304.18-127 is amended to read as follows:

- (1) This section shall indicate the insurer responsible for liability in those instances in which one (1) insurer's group policy replaces the group policy of another insurer.
- (2) The prior insurer shall remain liable only to the extent of its accrued liabilities, extensions of benefits, and for persons who are under continued group health insurance coverage pursuant to KRS 304.18-110 at the time the group policy terminates. The position of the prior insurer shall be the same whether the group policyholder secures replacement coverage from a new insurer, self insures, or forgoes the provision of a group policy, except that termination of continued group health insurance coverage shall occur in accordance with KRS 304.18-110.
- (3) The liability of a succeeding insurer shall be as follows:
 - (a) Each person who is eligible for coverage in accordance with the succeeding insurer's plan of benefits, in respect to classes eligible, ~~actively[activity]~~ at work, and nonconfinement rules, shall be covered by that insurer's plan of benefits.
 - (b) Each person not covered under the succeeding insurer's plan of benefits in accordance with paragraph (a) of this subsection shall nevertheless be covered by the succeeding insurer in accordance with the following provisions if the person was validly covered, including benefit extensions, under the prior insurer on the date of termination of the prior insurer's group policy and if the person is a member of the class or classes of persons eligible for coverage under the succeeding insurer's plan. Any reference in the following provisions to a person who was or was not totally disabled shall be a reference to that person's status immediately prior to the date the succeeding insurer's coverage becomes effective.
 1. The minimum level of benefits to be provided by the succeeding insurer shall be the applicable level of benefits of the prior insurer's group policy reduced by any benefits payable by the prior insurer under its group policy.
 2. Coverage shall be provided by the succeeding insurer until at least the earliest of the following dates:
 - a. The date the person becomes insured according to paragraph (a) of this subsection;
 - b. For each type of coverage, the date the person's coverage would terminate in accordance with the succeeding insurer's group policy provisions applicable to individual termination of coverage; or
 - c. In the case of a person who was totally disabled and the type of coverage is one for which KRS 304.18-126 requires an extension of accrued liability, the end of extension of accrued liability which is required of the prior insurer by KRS 304.18-126, or, if the prior insurer's group policy is not subject to KRS 304.18-126, would have been required of that insurer had its group policy been subject to KRS 304.18-126 at the time the prior insurer's group policy was discontinued and replaced by the succeeding insurer's plan.
 - (c) In the case of a pre-existing conditions limitation in the succeeding insurer's group policy, the level of benefits applicable to pre-existing conditions of persons becoming covered by the succeeding insurer's plan in accordance with this subsection during the period of time this limitation applies under the succeeding insurer's group policy shall be the lesser of:
 1. The benefits of the succeeding insurer's group policy determined without application of the pre-existing conditions limitation; or
 2. The benefits of the prior insurer's group policy.
 - (d) The succeeding insurer, in applying any deductibles or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior group policy. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible provisions of the prior insurer's group policy during the ninety (90) days preceding the effective date of the succeeding insurer's group policy, but only to the extent these expenses are recognized under the terms of the succeeding insurer's group policy and are subject to similar deductible provisions.

- (e) If a determination of the prior insurer's benefit is required by the succeeding insurer, at the succeeding insurer's request the prior insurer shall furnish a statement of the benefits available or pertinent information sufficient to permit verification of the benefit determination or the determination itself by the succeeding insurer. For purposes of this section, benefits of the prior insurer's group policy shall be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior insurer's group policy rather than those of the succeeding insurer's group policy. The benefit determination shall be made as if coverage had not been replaced by the succeeding insurer.

Section 23. KRS 304.20-040 is amended to read as follows:

- (1) As used in this section:
- (a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;
 2. Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:
 - a. To any policy issued under an automobile assigned risk plan;
 - b. To any policy insuring more than four (4) automobiles; or
 - c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;
- (b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, and automobile physical damage coverage;
- (c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and ~~the [such]~~ policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of cancellation prior to ~~the [such]~~ anniversary date, and ~~the [such]~~ cancellation shall not be subject to any other provisions of this section; and
- (d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of ~~the [such]~~ premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.
- (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:
1. Nonpayment of premium; or
 2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;
- (b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;

- (c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy; and
 - (d) This subsection shall not apply to nonrenewal.
- (3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.
 - (4) No insurer shall refuse to renew a policy of automobile insurance solely because of the age of the insured.
 - (5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew.
 - (6) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of ~~the~~~~[such]~~ renewal.
 - (7) If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.
 - (8)
 - (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (7) of this section.
 - (b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy, shall be sufficient proof of notice.
 - (9) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.
 - (10) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which subsection (5) of this section applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. ~~The~~~~[Such]~~ notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. ~~The~~~~[Such]~~ notice shall also inform the insured that he may, within four (4) days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the commissioner shall send his findings to the insurer and to the insured. When he sends his findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b). The party requesting the hearing shall give the commissioner written confirmation of attendance at the hearing not more than ~~five (5)~~~~[four (4)]~~ days before, nor less than ~~forty-eight (48)~~~~[twenty-four (24)]~~ hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the commissioner shall cancel the hearing.
 - (11) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.
 - (12) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.
 - (13) There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other

communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Section 24. KRS 304.24-040 is amended to read as follows:

- (1) This section applies to stock, combined stock and mutual life, or mutual insurers hereafter incorporated in this state. Such an insurer may be formed for the purpose of transacting any kind or kinds of insurance, as well as annuity business.
- (2) Incorporators. Three (3) or more individuals, none of whom is less than eighteen (18) years of age, may incorporate a stock insurer; ten (10) or more ~~such~~ individuals may incorporate a mutual insurer. At least a majority of the incorporators must be citizens of the United States. At least a majority of the incorporators must be residents of Kentucky.
- (3) Articles. The incorporators shall deposit the articles of incorporation, in quadruplicate originals, with the commissioner, and ~~the such~~ articles shall not be filed with the Secretary of State until approved by the commissioner as provided in KRS 304.24-050, and the commissioner's approval has been stamped upon or otherwise attached to the articles. In addition to the applicable requirements of laws in this state governing the incorporation of business corporations generally:
 - (a) The name of the corporation, which shall be subject to KRS ~~304.3-100~~~~[304.3-010]~~, shall contain the words "insurance company;" if a mutual, or a combined stock and mutual, the word "mutual" must be a part of the name.
 - (b) The articles of incorporation shall specify the kind or kinds of insurance proposed to be transacted.
 - (c) Each share of capital stock shall have a par value of not less than \$1.00.
 - (d) If a mutual, or a combined stock and mutual life, the articles of incorporation shall state the maximum contingent liability of its participating policyholder members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be as stated in the articles of incorporation, but shall not be less than one (1) or more than six (6) times the premium for member's policy at the annual premium rate for a term of one (1) year.
 - (e) The names and residence addresses of the incorporators.
- (4) Unless otherwise provided in the articles of incorporation or an amendment thereto, each stockholder of a combined stock and mutual life insurance company shall, at all meetings, be entitled to one (1) vote for each share of common stock held by him, and each holder of a policy entitled to participate in profits or savings shall be a member and, as such, shall be entitled to vote on the same basis to which he would be entitled in a mutual company under KRS 304.24-210.

Section 25. KRS 304.29-261 is amended to read as follows:

- (1) Every society transacting business in this state shall annually, on or before the first day of March, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay ~~the a~~ fee **required under Section 8 of this Act** ~~of ten dollars (\$10)~~ for filing it. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.
- (2) As part of the annual statement, each society shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December 31 last preceding. The commissioner may, in his discretion for cause shown, extend the time for filing the valuation for not more than two (2) calendar months. The valuation shall be done in accordance with the standards specified in KRS 304.29-251. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.
- (3) A society failing to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars (\$100) for each day during which the default continues; and, upon notice by the commissioner, its authority to do business in this state shall cease while the default continues.
- (4) Each society authorized to transact business in this state pursuant to this subtitle shall comply with KRS 304.2-205.

Section 26. KRS 304.30-040 is amended to read as follows:

- (1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this subtitle. If the commissioner does not so find, he shall, within ~~thirty (30)~~ **sixty (60)** days after he has received the application, at the request of the applicant, give the applicant an administrative hearing. Hearings under this subtitle shall be conducted in accordance with KRS Chapter 13B.
- (2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed:
 - (a) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
 - (b) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
 - (c) If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

Section 27. KRS 304.37-110 is amended to read as follows:

- (1) Any domestic insurer, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:
 - (a) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (b) Acting as an insurance agent for its parent or any of its parent's insurer subsidiaries;
 - (c) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
 - (d) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (e) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (f) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;
 - (g) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;
 - (h) Ownership and management of assets which the parent corporation may own or manage if the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to these investments by the insurer. This paragraph shall not prohibit investments permitted under KRS 304.7-120;
 - (i) Acting as an administrative agent for a governmental instrumentality which is performing an insurance function;
 - (j) Financing of insurance premiums, agents, and other forms of consumer financing;
 - (k) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
 - (l) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more businesses specified in this section.
- (2) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this chapter, a domestic insurer may also:
 - (a) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, if after these investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and

adequate to meet its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

1. Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and
 2. All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
- (b) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) of this subsection or in KRS Chapter 304.7. For the purpose of this paragraph, "the total investment of the insurer" shall ~~include~~**include**:
1. Any direct investment by the insurer in an asset; and
 2. The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;
- (c) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, if after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (3) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (2) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.
- (4) Whether any investment pursuant to subsection (2) of this section meets the requirements shall be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- (5) If an insurer ceases to control a subsidiary, it shall dispose of any investment made pursuant to this section within three (3) years of the time of the cessation of control, or within an extension of time as the commissioner may prescribe, unless at any time after the investment has been made, the investment has met the requirements for investment under any other provision of this chapter, and the insurer has notified the commissioner.

Section 28. KRS 304.38-090 is amended to read as follows:

Organizations subject to the provisions of this subtitle shall make and file with the commissioner and the Kentucky Certificate of Need and Licensure Board **annually before March 1 of each**~~within ninety (90) days from the end of the organization's fiscal~~ year, a statement under oath upon a form to be prescribed by the commissioner covering the preceding year, and shall include (a) a financial statement of the organization, including a balance sheet, receipts and disbursements for the preceding year; (b) the number of persons enrolled during the year, the number of enrollees as of the end of the year, the number of enrollments terminated during the year, and ~~any~~**any** other information relating to the operation of the health maintenance organization as may be prescribed by the commissioner in order to enable the commissioner to evaluate the performance of the health maintenance organization.

Section 29. KRS 304.43-030 is amended to read as follows:

- (1) No prepaid dental plan organization shall deliver or issue for delivery in this state any contract describing dental care services available, or any endorsement, rider, or application which becomes a part thereof or any amendment thereto or modification thereof, until a copy of ~~the~~**the** form or contract or certificate and the schedule of fees or other periodic charges to be paid by the enrollees, has been filed with and approved by the commissioner. Each form, contract, or certificate must contain a complete and clear statement of:

- (a) The dental care services to which the enrollee is entitled;
 - (b) Any limitations on the services, benefits, deductible, or copayments features;
 - (c) Where and in what manner information is available as to how services may be obtained; and
 - (d) Any other provisions pertaining to the delivery of the dental care services.
- (2) At the expiration of **sixty (60)**~~thirty (30)~~ days, the form or contract so filed shall be deemed approved unless it has been previously approved or disapproved by order of the commissioner. The commissioner may withdraw approval at any time with cause.

Section 30. KRS 304.44-010 is amended to read as follows:

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

- (1) "Department" means the Department of Insurance;
- (2) "Mine subsidence" means the collapse of underground coal mines resulting in direct damage to a structure. It does not include loss caused by earthquake, landslide, **water seepage**, volcanic eruption, or collapse of storm,~~water seepage,~~ and sewer drains;
- (3) "Mine subsidence insurance fund" or "fund" means the fund established by this subtitle and administered as determined by the department;
- (4) "Policy" means a contract of insurance providing mine subsidence insurance;
- (5) "Premium" means the gross rate charged policyholders for insurance provided by this subtitle;
- (6) "Structure" means any dwelling, building, or fixture permanently affixed to realty, but does not include land, trees, plants, or crops; and
- (7) "Administrator" means the organization designated by the commissioner of the department to administer the fund.

Section 31. KRS 304.44-030 is amended to read as follows:

After July 15, 1984, every insurance policy issued or renewed insuring on a direct basis a structure located in a county or portion of a county in this state except for counties exempted pursuant to KRS 304.44-060 shall include, at a separately stated premium, insurance for loss occurring after July 15, 1984, caused by mine subsidence unless waived in writing by the insured. The premium charged for coverage shall be the same as the premium level set by the administrator. The loss coverage shall be the loss in excess of two percent (2%) of the policy's total insured value, but at no time shall the deductible be less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500). The total insured value reinsured by the administrator shall not exceed **one hundred thousand**~~fifty thousand~~ dollars **(\$100,000)**~~(\$50,000)~~ per structure. The insurer shall not be required to write a policy for mine subsidence coverage in excess of the amount reimbursable from the fund as authorized by this subtitle.

Section 32. KRS 304.44-050 is amended to read as follows:

All insurers writing property insurance covering structures in this state shall enter into a reinsurance agreement with the administrator in which each insurer agrees to cede to the administrator one hundred percent (100%), up to **one hundred thousand**~~fifty thousand~~ dollars **(\$100,000)**~~(\$50,000)~~, of any subsidence insurance coverage issued and, in consideration of the ceding commission retained by the insurer, agrees to undertake adjustment of losses, and payment of taxes, and to absorb all other expenses of the insurer necessary for sale of policies and administration of the mine subsidence insurance program. The administrator shall agree to reimburse the insurer from the fund for all amounts paid policyholders for claims resulting from subsidence and shall pay from the fund all costs of administration incurred by the administrator, but an insurer is not required to pay any claim for any loss insured under this subtitle except to the extent that the amount available in the mine subsidence insurance fund is sufficient to reimburse the insurer for such claim. Claims made under the provisions of the subtitle shall not be deemed to constitute a debt, liability, or obligation of the Commonwealth or any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or any~~such~~ political subdivision except to the extent the fund has accumulated reserves from premiums, state or federal grants, investment income, or state appropriations.

Section 33. KRS 56.080 is amended to read as follows:

Before July 1 of each year, the Department of Insurance shall reconsider its appraisal and valuation of public buildings and personal property belonging to or under the control and use of the state or any state agency, and shall

certify any changes in value to the agency that has the custody or control of the property. The appraisal and valuation shall equal the amount that the Department of Insurance deems necessary to replace the property at the time of the appraisal, *which may be* less actual depreciation.

SECTION 34. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All policy forms filed with the department, and any other insurance policy or claim related information, shall be written in the English language. This section shall not prohibit an insurer from advertising or providing information or translations to consumers in a language other than English, if the advertisement or informational materials clearly state the insurance policy being advertised is available only in English. However, if there is a dispute, the insurance policy is controlling and any advertisements or informational materials used by an insurer shall not be construed to modify or change the insurance policy.

Section 35. The following KRS sections are repealed:

304.39-350 Commissioner's report on total payments made by insurers for personal injury accidents.

304.3-245 Closed claim information -- Reporting of information -- Report of commissioner.

Approved April 10, 1998

CHAPTER 484

(HB 495)

AN ACT relating to fiscal courts regulating traffic on county roads.

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

Section 1. KRS 189.230 is amended to read as follows:

- (1) The department, in respect to state and federal highways, and county judges/executive in respect to county highways, may prescribe, by notice as provided in subsection (3)~~(2)~~ of this section, load and speed limits lower than the limits prescribed in KRS 189.221 and subsection (4) of KRS 189.390, respectively, if in their judgment any highway may, by reason of its design, deterioration, rain, or other natural causes, be damaged or destroyed by motor trucks or semitrailer trucks, if their gross weight or speed exceeds certain limits. The department *or fiscal court*~~for county judges/executive~~ may, by like notice, regulate or prohibit the operation of motor trucks or semitrailer trucks on state highways or county roads for limited periods of specified days, or parts of days, if their load and speed exceed those limits, if in their judgment, the regulation or prohibition is necessary, by reason of traffic density or intensive use by the traveling public, to provide for the public safety and convenience on the highway.
- (2) The department, in respect to bridges on the extended weight coal haul system defined in KRS 177.9771, may prescribe, by notice, as provided in subsection (3) of this section, gross weight limits lower than the limits prescribed in KRS 177.9771, when in its judgment any bridge on the extended weight coal haul road system may, by reason of its design or deterioration, be damaged or destroyed to the point of catastrophic failure by motor vehicles, if their gross weight exceeds certain limits. For the purposes of KRS 177.9771, all bridges shall conform with KRS 177.9771(4)(a) to (d).
- (3) The notice or the substance of it shall be posted at conspicuous places at the termini of and at all intermediate crossroads and road junctions with the section of the highway to which the notice applies. After a notice has been posted, a person shall not operate any motor truck or semitrailer truck contrary to its provisions.
- (4) *A fiscal court shall require all persons applying for a permit issued under Section 2 of this Act to enter into a cooperative agreement with the fiscal court. The cooperative agreement shall provide for an equitable apportionment of the incremental costs for design, maintenance, construction, or reconstruction of those roads and bridges on which the person will be operating under the permit issued under Section 2 of this Act. A fiscal court may require as part of a cooperative agreement for the person to give the fiscal court a bond to ensure payment of the equitable costs associated with the permit issued under Section 2 of this Act. All funds collected under this subsection shall be expended on those roads covered by the cooperative agreement.*

- (5) *A fiscal court shall not be relieved of expending its normal routine maintenance on all roads covered by cooperative agreements under the provisions of this section.*
- (6) *A person who entered a cooperative agreement with a fiscal court under the provisions of subsection (4) of this section may terminate the agreement by submitting written notice to the fiscal court. If a person terminates a cooperative agreement with a fiscal court, the permit issued under Section 2 of this Act shall immediately be revoked by the fiscal court.*

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

- (1) *As used in this section, "materials" shall mean cargo, whether divisible or nondivisible, that a motor vehicle transports in the usual and ordinary course of business and shall specifically include, but not be limited to, agricultural products, minerals, or natural resources transported by a motor vehicle.*
- (2) *A fiscal court may issue special permits to the owners, operators, or lessees of motor vehicles for the purpose of hauling materials whose gross weight or dimensions, including vehicle and load, exceeds the limits prescribed by KRS 189.210 but that do not exceed the maximum weight limits established in KRS 189.222. A permit shall be issued for specified materials only and shall designate the portions of the fiscal court-owned road over which the vehicle may operate under the permit. The permit shall be issued for a stated period of time not to exceed one (1) year and shall be upon the terms and conditions as the fiscal court may, in its discretion, require. The fiscal court shall require, as a condition to issuing the permit, that the applicant pay a reasonable fee to be fixed by the fiscal court, and enter into a cooperative agreement under the provisions of Section 1 of this Act. The operation of any motor vehicle in accordance with the terms of the permit shall not constitute a violation of this chapter, if the operator has a valid permit, or a copy of a valid permit, in his or her possession.*
- (3) *The fiscal court shall not issue a permit under this section for a vehicle whose dimensions, including vehicle and load, exceed the maximum dimension limits established in KRS 189.222.*
- (4) *A person shall not operate a motor vehicle in violation of the terms and conditions of any permit issued by the fiscal court under this section.*
- (5) *A fiscal court may:*
 - (a) *Exercise general supervision for administering and enforcing the provisions of this section.*
 - (b) *Adopt ordinances regulating the issuance of a permit, including but not limited to matters concerning the duration of permits and weight limits for various types of vehicles, materials, and highways.*
 - (c) *Adopt rules and regulations governing the amount, terms and conditions of a bond, and the sufficiency of the surety of any bond required by this section.*
 - (d) *Issue, continue in effect, revoke, modify, or deny a permit issued under this section.*

Section 3. KRS 189.221 is amended to read as follows:

A person shall not operate on any highway, except those highways designated by the secretary of transportation under the provisions of KRS 189.222, or those locally maintained highways under the provisions of KRS 189.222(9) *or subsection (4) of Section 1 of this Act*, any of the following trucks, trailers, manufactured homes, or vehicles:

- (1) Any motor truck, semitrailer, trailer, manufactured home, or vehicle which exceeds eleven and one-half (11-1/2) feet in height or ninety-six (96) inches in width, including any part of the body or load;
- (2) Any motor truck, except a semitrailer truck, which exceeds twenty-six and one half (26-1/2) feet in length, including any part of the body or load;
- (3) Any semitrailer truck which exceeds thirty (30) feet in length, including any part of the body or load;
- (4) Any truck, semitrailer truck, or truck and trailer unit which exceeds 36,000 pounds gross weight, including the load;
- (5) Any truck, semitrailer truck, or tractor-trailer unit which exceeds a gross weight equal to the sum of six hundred (600) pounds per inch of the combined width of the tires upon which the vehicle may be propelled, but no more than thirty-six thousand (36,000) pounds.

- (6) Notwithstanding the provisions of this section, any truck hauling building materials to a road construction project on a highway rated less than the maximum weight provided above, may haul up to eighty thousand (80,000) pounds gross weight, including the load, without a permit. This privilege shall extend only to travel between the materials manufacturing site and the road construction project and shall be automatically rescinded upon completion of the project.

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

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, ~~or~~ 189.271, **or Section 2 of this Act**, shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars (\$60) ~~nor more than five hundred dollars (\$500)~~.
- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, ~~or~~ 189.490, **or the dimension provisions of Section 2 of this Act**, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be

subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100), and upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
 - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
 - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars (\$35) nor more than five hundred dollars (\$500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars (\$60) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
 - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Approved April 10, 1998

CHAPTER 485

(HB 475)

AN ACT relating to insurance.

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

Section 1. KRS 304.9-260 is amended to read as follows:

- (1) Each solicitor, consultant, adjuster, and surplus lines broker license issued under this code shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment to the commissioner at his office in Frankfort on or before March 31 of the applicable continuation fee ***for any appointment, or license in the case of a limited license, not terminated on or prior to December 31 of the preceding calendar year*** as stated in KRS 304.4-010, accompanied by written request for ~~such~~ continuation. Request for continuation shall be made as follows:
 - (a) As to adjuster, and surplus lines broker licenses, request made and signed by the licensee.
 - (b) As to solicitor licenses, request made and signed by the employer as to whom licensed.
 - (c) As to limited licenses issued under KRS 304.9-230, request made and signed by the insurer so represented.
- (2) ***Biennially, before January 31, the department shall distribute to each respective licensee, employer, and insurer a listing of the names and addresses of that person's licensees referred to in subsection (1) whose appointments were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall continue in effect as to the kinds of insurance or classifications thereof for which the respective licensees are currently appointed and subject to payment of the fees specified under KRS 304.4-010. On or before March 31, each licensee, employer, or insurer shall submit the continuation of appointment fee, as specified in KRS 304.4-010, for each appointment or license not terminated on or prior to December 31 of the preceding calendar year.*** Any license referred to in subsection (1) of this section as to which request for continuation and fee are not so received by the commissioner shall be deemed to have expired at midnight on ~~such~~ March 31; except that any ~~such~~ request ***and fees*** received by the commissioner after ~~such~~ March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter.

- (3) The license of an agent shall continue in force as long as there is in effect as to ~~the~~[such] licensee, as shown by the commissioner's records, an appointment or appointments as agent of authorized insurers covering collectively all of the kinds of insurance or classifications thereof included in the agent's license. Upon termination of all of the licensee's agency appointments as to a particular kind of insurance or classification thereof and failure to replace ~~an~~[such] appointment within sixty (60) days thereafter, the license shall thereupon expire and terminate as to ~~the~~[such] kind or classification of insurance and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to the kinds of insurance or classifications thereof, if any, covered by the licensee's remaining agency appointments. Upon termination of all of the licensee's agency appointments the license shall forthwith terminate.
- (4) As a condition to or in connection with the continuation of any agent, consultant, or solicitor license the commissioner may require the licensee to file with him information relative to use made of the license during the next preceding calendar year, and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.
- (5) As a condition to or in connection with the continuation of any agent or solicitor license the commissioner shall require continuous demonstration of financial responsibility as required by KRS 304.9-105(5) and any ~~such~~ license shall terminate and be surrendered to the commissioner, as provided for therein, if and when such demonstration becomes impaired whether or not valid appointments under the license are then existent.
- (6) Except as to the provisions of subsection (5) hereof, this section does not apply to temporary licenses issued under KRS 304.9-300.

Section 2. KRS 304.9-270 is amended to read as follows:

- (1) Each insurer appointing an agent in this state shall file with the commissioner the appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and pay the appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010.
- (2) Subject to continuation by the insurer as provided in subsection (3) of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.
- (3) Biennially, *before January 31, the department shall distribute to each insurer a listing of the names and addresses of that insurer's agents whose appointment, or licenses in the case of limited licenses, were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall* ~~on or before March 31 each insurer shall file with the commissioner an alphabetical list of the names and addresses of all its agents in this state whose appointments or licenses in the case of limited licenses were in effect during the preceding calendar year and are to~~ remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently ~~so~~ appointed, *and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit* ~~accompanied by payment of~~ the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010, *for each appointment not terminated on or prior to December 31 of the preceding calendar year.* ~~At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are not to remain in effect, or whose appointment as to certain kinds or classifications of insurance are not to remain in effect as designated in such list.~~ Any appointment or license not ~~so continued and not otherwise~~ expressly terminated shall *continue, unless otherwise terminated, canceled, suspended, or revoked by the department of insurance* ~~be deemed to have expired at midnight on March 31, except that any request for continuation received by the commissioner after such March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter.~~

Section 3. KRS 304.9-280 is amended to read as follows:

- (1) Subject to the agent's contract rights, if any, an insurer may terminate an agency appointment at any time. *However, if any agency appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.* The insurer shall promptly give written notice of such termination and the effective date thereof to the commissioner and to the agent where reasonably possible. ~~The list of appointments not being continued referred to in KRS 304.9-270 shall constitute such notice to the commissioner as to the terminations so listed.~~ The commissioner may require of the insurer reasonable proof that the insurer has given ~~such~~ notice to the agent where reasonably possible.

- (2) Accompanying the notice of termination given the commissioner the insurer shall file with him a statement of all the facts constituting the cause, if any, for termination. Any information, document, record or statement so disclosed or furnished to the commissioner shall be deemed an absolutely privileged communication and shall not be admissible as evidence in any action or proceeding unless consented to in writing by the insurer.
- (3) An agent terminating the employment as solicitor of a licensed solicitor shall give like notice of ~~the~~ termination to the commissioner, and like information as to the reasons for ~~the~~ termination, with like status as privileged communication unless ~~the~~ privilege is waived in writing by the agent.

Approved April 10, 1998

CHAPTER 486

(HB 460)

AN ACT relating to government contracts.

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

Section 1. KRS 45A.030 is amended to read as follows:

As used in this code, unless the context requires otherwise: ~~The words defined in this section shall have the meanings set forth below whenever they appear in this code, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular section, group of sections or provision.~~

- (1) "Business" ~~means~~ ~~shall mean~~ any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted; ~~;~~
- (2) "Change order" ~~means~~ ~~shall mean~~ a written order signed by the purchasing officer, directing the contractor to make changes ~~that~~ ~~which~~ the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor; ~~;~~
- (3) "Chief purchasing officer" ~~means~~ ~~shall mean~~ the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 176, 177, and 180; ~~;~~
- (4) "Construction" ~~means~~ ~~shall mean~~ the process of building, altering, repairing, improving or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property; ~~;~~
- (5) "Contract" ~~means~~ ~~shall mean~~ all types of state agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It ~~includes~~ ~~shall include~~ awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and insurance contracts except as provided in KRS 45A.022. It ~~also~~ includes supplemental agreements with respect to any of the foregoing; ~~;~~
- (6) "Contract modification" ~~means~~ ~~shall mean~~ any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It ~~includes~~ ~~shall include~~ bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option; ~~;~~
- (7) "Contractor" ~~means~~ ~~shall mean~~ any person having a contract with a governmental body; ~~;~~
- (8) "Data" ~~means~~ ~~shall mean~~ recorded information, regardless of form or characteristic; ~~;~~
- (9) "Designee" ~~means~~ ~~shall mean~~ a duly authorized representative of a person holding a superior position; ~~;~~
- (10) "Employee" ~~means~~ ~~shall mean~~ an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body; ~~;~~

- (11) "Governmental body" ~~means~~~~shall mean~~ any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of ~~the executive or legislative branch of the~~ state government; ~~[-]~~
- (12) ~~"May" shall mean permissive.~~
- (13) ~~"Negotiation" means~~~~shall mean~~ contracting by either the method set forth in KRS 45A.085, 45A.090, or 45A.095; ~~[-]~~
- (13)~~(14)~~ "Person" ~~means~~~~shall mean~~ any business, individual, organization, or group of individuals; ~~[-]~~
- (14)~~(15)~~ "Procurement" ~~means~~~~shall mean~~ the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It ~~includes~~~~shall also include~~ all functions that pertain to the ~~procurement~~~~obtaining~~ of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration; ~~[-]~~
- (15)~~(16)~~ "Purchase request" or "purchase requisition" ~~means~~~~shall mean~~ that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025; ~~[-]~~
- (16)~~(17)~~ "Purchasing agency" ~~means~~~~shall mean~~ any governmental body ~~that~~~~which~~ is authorized by this code or its implementing *administrative* regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer; ~~[-]~~
- (17)~~(18)~~ "Purchasing officer" ~~means~~~~shall mean~~ any person authorized by a governmental body in accordance with procedures prescribed by *administrative* regulations, to enter into and administer contracts and make written determinations and findings with respect thereto. The term ~~includes~~~~shall also include~~ an authorized representative acting within the limits of authority; ~~[-]~~
- (18)~~(19)~~ "Services" ~~means~~~~shall mean~~ the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports ~~that~~~~which~~ are merely incidental to the required performance of services; ~~[-]~~
- (19)~~(20)~~ ~~"Shall" shall mean imperative.~~
- (21) ~~"Supplemental agreement" means~~~~shall mean~~ any contract modification ~~that~~~~which~~ is accomplished by the mutual action of the parties; ~~[-]~~
- (20)~~(22)~~ "Supplies" ~~means~~~~shall mean~~ all property, including but not limited to leases of real property, printing and insurance, except land or a permanent interest in land; ~~and~~~~[-]~~
- (21)~~(23)~~ "Using agency" ~~means~~~~shall mean~~ any governmental body of the state ~~that~~~~which~~ utilizes any supplies, services, or construction purchased under this code.

Section 2. KRS 45A.690 is amended to read as follows:

- (1) As used in KRS 45A.690 to 45A.725:
- (a) *"Committee" means the Government Contract Review Committee of the Legislative Research Commission;*
- (b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services;
- (c)~~(b)~~ "Governmental emergency" means an unforeseen event or set of circumstances ~~that~~~~which~~ creates an emergency condition as *determined by the committee by promulgation of an administrative regulation*~~defined in KRS 45A.095(3)~~;
- (d) *"Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any*

other governmental body or political subdivision of the Commonwealth that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations, and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:

1. *Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;*
 2. *Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;*
 3. *Agreements between state agencies as required by federal or state law;*
 4. *Agreements between state agencies and state universities or colleges and agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;*
 5. *Agreements involving child support collections and enforcement;*
 6. *Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Human Resources, and transit authorities;*
 7. *Nonfinancial agreements;*
 8. *Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.060-140;*
 9. *Exchanges of confidential personal information between agencies;*
 10. *Agreements between state agencies and rural concentrated employment programs; or*
 11. *Any other agreement that the committee deems inappropriate for consideration;*
- (e) *"Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one contract;*
- ~~[(c) "Subcommittee" means the Personal Service Contract Review Subcommittee of the Legislative Research Commission;] and~~
- (f)~~(d)~~ *"Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain **services requiring professional skill or professional judgment**~~[duties, professional or otherwise,]~~ for a specified period of time ~~at~~~~for~~ a price agreed upon. **It includes all price contracts for personal services between a governmental body or political subdivision of the commonwealth and any other entity in any amount**~~[which is exempt from competitive bidding pursuant to KRS 45A.095].~~ This definition does not apply to:*
1. *Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;*
 2. *Agreements with public utilities, foster care parents, **providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Human Resources**~~[providers],~~ individuals performing homemaker services, and transit authorities;*
 - 3.~~[Agreements between a state agency and a state college or university, an area development district, a community action agency, a mental health/mental retardation board, another state agency, and a political subdivision;~~

- 4. Agreements between state universities *or colleges* and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority; ~~and~~
- 4.5. Agreements between a state agency and rural concentrated employment programs; ~~and~~
- 5.6. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board; *or*
- 6. *Any other contract that the committee deems inappropriate for consideration;* ~~and~~

- (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract *or memorandum of agreement* valid.

Section 3. KRS 45A.695 is amended to read as follows:

- (1) *Except as provided in subsection (8) of this section*, no one shall begin work on a personal service contract *entered into* ~~made~~ by any contracting body, ~~except as provided in subsection (8) of this section,~~ until *notification* ~~after a copy~~ of the personal service contract is filed with the *committee* ~~Legislative Research Commission~~. Each *personal* service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each ~~copy of a proposed~~ personal service contract *and memorandum of agreement shall be filed with the committee prior to the effective date and* ~~submitted to the Legislative Research Commission~~ shall be accompanied by *a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document* ~~documentation of~~:
- (a) The need for the service;
 - (b) The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service; ~~and~~
 - (c) *The total projected cost of the contract or agreement and source of funding;*
 - (d) *The total projected duration of the contract;*
 - (e) *Payment information, in detail;*
 - (f) *In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and*
 - (g) *Such other information as the committee deems appropriate* ~~In the case of an architectural or engineering services contract, the documents identified in KRS 45A.830(3)~~.
- (3) Adequate notice of the need for *a personal service contract* ~~the services~~ shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or *his* ~~a~~ designee ~~of the officer~~ may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or *his* ~~a~~ designee ~~of the officer~~, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

- (6) The *committee*~~[Legislative Research Commission]~~ shall *maintain a record or have readily accessible records of the date on which*~~[cause to be endorsed on the copies of]~~ each personal service contract *and memorandum of agreement was received*~~[submitted the time and date of the filing]~~ and shall maintain *or have access to electronic or paper files on all*~~[a file of]~~ personal service contracts *and memoranda of agreement*~~[for public inspection, with suitable indexes]~~. *Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts and memoranda of agreement shall be made available for public inspection.*
- (7) Payment on *personal service contracts and memoranda of agreement* submitted to the *committee for approval*~~[subcommittee]~~ shall not be made *for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority*~~[before completion of the review procedure provided for in KRS 45A.705 unless the secretary of the Finance and Administration Cabinet determines that the time involved with the normal review procedure would be detrimental to the state's ability to act or to procure services. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the subcommittee along with the personal service contract for which emergency payment is deemed necessary]~~.
- (8) In the event of a governmental emergency *as defined under Section 2 of this Act*, work may begin prior to filing *notification*~~[a copy]~~ of the personal service contract with the *committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and*~~[Legislative Research Commission providing that]~~ the normal process will not accommodate the *governmental* emergency. *Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.*
- (9) If a *governmental*~~[an]~~ emergency exists *as defined under Section 2 of this Act* and work is authorized to begin *on a personal service contract* immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet *or his designee*, setting forth in detail the nature of the emergency shall be filed with the *committee, along with a* copy of the personal service contract.

Section 4. KRS 45A.700 is amended to read as follows:

- (1) Personal service contracts *in aggregate amounts of ten*~~[on which the estimated cost does not exceed one]~~ thousand dollars *(\$10,000)*~~[\$1,000]~~ *or less during any one fiscal year* shall be exempt from *routine* review by the *committee and*~~[subcommittee. Personal service contracts of one thousand dollars (\$1,000) or less]~~ shall be filed with the *committee not more than thirty (30) days after*~~[subcommittee prior to]~~ their effective date~~[pursuant to KRS 45A.695]~~ for informational purposes *only. The committee shall examine all personal service contracts in aggregate amounts of ten thousand dollars (\$10,000) or less submitted more than thirty (30) days after the effective date. The committee may*~~[subcommittee shall]~~ periodically examine the informational copies of personal service contracts *in aggregate amounts of ten*~~[less than one]~~ thousand dollars *(\$10,000)*~~[\$1,000]~~ *or less*~~[and payment of less than one thousand dollars (\$1,000) for personal services]~~ and may request agency participation in discussions relative to their contracts or payments. *The provisions of this subsection shall not apply to price contracts for personal services.*
- (2) *Memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less during in any one fiscal year shall be exempt from routine review by the committee and shall be filed with the committee not more than thirty (30) days after their effective date for informational purposes only. The committee shall examine all memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less submitted more than thirty (30) days after the effective date. The committee may periodically examine memoranda of agreement and price contracts for personal services in aggregate amounts of fifty thousand dollars (\$50,000) or less and may request agency participation in discussions relative to their agreements or payments.*
- (3) ~~[All amendments to personal service contracts covered by subsection (1) of this section shall be filed with the subcommittee prior to their effective dates.]~~ If a personal service contract of less than *ten*~~[one]~~ thousand

dollars ~~(\$10,000)~~~~(\$1,000)~~ is amended to the extent the amended total of the contract exceeds ~~ten~~~~one~~ thousand dollars ~~(\$10,000)~~~~(\$1,000)~~ per ~~fiscal~~~~calendar~~ year *per contractor*, the amended contract shall be placed on the agenda for the *committee's routine*~~subcommittee's~~ review. *The provisions of this subsection shall not apply to price contracts for personal services.*

- (4) *If a memorandum of agreement or price contract for personal services of less than fifty thousand dollars (\$50,000) is amended to the extent the amended total of the agreement or contract exceeds fifty thousand dollars (\$50,000) per fiscal year per governmental body, the amended agreement or contract shall be placed on the agenda for the committee's routine review.*

Section 5. KRS 45A.705 is amended to read as follows:

- (1) There is hereby created a permanent ~~committee~~~~subcommittee~~ of the Legislative Research Commission to be known as the ~~Government~~~~Personal—Service~~ Contract Review ~~Committee~~~~Subcommittee~~. The ~~committee~~~~subcommittee~~ shall be composed of seven (7) members ~~that~~~~which~~ shall include members of the minority party as nearly proportioned to their membership in the General Assembly as mathematically possible. The Legislative Research Commission shall appoint the members of the ~~committee~~~~subcommittee~~ from the membership of the General Assembly for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as ~~chairperson~~~~chairman~~. Any vacancy ~~that~~~~which~~ may occur in the membership of the ~~committee~~~~subcommittee~~ shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.
- (2) The ~~committee~~~~subcommittee~~ shall meet monthly at ~~the~~~~such~~ time and place as the ~~chairperson~~~~chairman~~ may determine. *A quorum shall require at least four (4) members present and the vote shall be by majority.* The members of the ~~committee~~~~subcommittee~~ shall be compensated for attending meetings, as provided in KRS 7.090(3).
- (3) Any professional, clerical, or other employees required by the ~~committee~~~~subcommittee~~ shall be provided in accordance with the provisions of KRS 7.090(4) and (5).
- (4) All copies of proposed personal service contracts *and memoranda of agreement* received by the Legislative Research Commission shall be submitted to the ~~committee~~~~subcommittee~~ to:
- (a) Examine the stated need for the ~~contract~~ service;
 - (b) Examine whether the service could or should be performed by state personnel; ~~and~~
 - (c) Examine the ~~amount~~~~cost~~ and duration of the contract *or agreement; and*
 - (d) *Examine the appropriateness of any exchange of resources or responsibilities.*
- (5) If the ~~committee determines~~~~subcommittee believes~~ that the contract service *or agreement*, other than an emergency contract approved by the *secretary of the Finance and Administration Cabinet or his designee*~~Governor~~, is not needed *or inappropriate*, the service could ~~or~~~~and~~ should be performed by state personnel, the ~~amount or duration~~~~cost~~ is excessive, or the *exchange of resources or responsibilities are inappropriate*~~duration is excessive~~, the ~~committee~~~~subcommittee~~ shall attach a written notation of the reasons for its disapproval or objection to the personal service contract *or memorandum of agreement* and shall return the personal service contract *or memorandum of agreement* to the secretary of the Finance and Administration Cabinet *or his designee*.~~The subcommittee shall give notice of such disapproval or objection to the director of the Legislative Research Commission.~~ The ~~committee~~~~subcommittee~~ shall act on a personal service contract *or memorandum of agreement* submitted to the Legislative Research Commission within forty-five (45) days of the *date received*~~submission of the personal service contract~~.
- ~~(6)~~~~(5)~~ Upon receipt of the ~~committee's~~~~subcommittee's~~ disapproval or objection to a personal service contract *or memorandum of agreement*, the secretary of the Finance and Administration Cabinet *or his designee* shall determine whether ~~the~~~~a~~ personal service contract *or memorandum of agreement shall*:
- (a) ~~Shall~~ Be revised to comply with the objections of the ~~committee~~~~subcommittee~~;
 - (b) ~~Shall~~ Be *canceled and, if applicable, payment allowed for services rendered under the contract or amendment*~~cancelled if disapproved by the subcommittee~~; or
 - (c) ~~Shall~~ Remain effective as originally approved ~~by the Finance and Administration Cabinet~~.

(7)~~(6)~~ The secretary of the Finance and Administration Cabinet *or his designee* shall notify the *committee*~~subcommittee~~ of the action taken on personal service contracts *and memoranda of agreement disapproved or objected to* ~~referred to the Finance and Administration Cabinet by the subcommittee~~ within *ten (10)*~~thirty (30)~~ days from the date the *personal service contracts or memoranda of agreement* were reviewed by the *committee*~~subcommittee~~.

(8)~~(7)~~ *Contracting bodies*~~The subcommittee~~ shall *make annual reports* ~~report monthly~~ to the *committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to*~~Legislative Research Commission all actions taken on~~ personal service contracts *and memoranda of agreement submitted* by the secretary of the Finance and Administration Cabinet *or his designee*~~and the subcommittee~~.

Section 6. KRS 45A.725 is amended to read as follows:

- (1) The *Government Contract Review Committee may establish policies and procedures concerning*~~Legislative Research Commission shall review and comment on~~ the manner and form *of notification and*~~in which~~ the documentation to accompany the proposed personal service contract *or memorandum of agreement*~~shall be presented~~.
- (2) *Nothing in this code shall prohibit the committee from accepting personal service contracts or memoranda of agreement through the use of electronic instrumentalities.*

Section 7. KRS 45A.830 is amended to read as follows:

- (1) After the procuring officer has negotiated an architectural or engineering services contract for the Finance and Administration Cabinet or an engineering or related services contract for the Transportation Cabinet, but before the contract is submitted to the *Government*~~Personal Service~~ Contract Review *Committee*~~Subcommittee~~, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process.
- (2) The secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, *that*~~which~~ shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances *that*~~which~~ may constitute a violation of this chapter *occurring*~~which has arisen~~ in the procurement process. Any employee of the Auditor of Public Accounts, who was appointed to serve as a nonvoting member of the selection committee and who attended any committee proceeding, shall participate in the preparation of a report for filing with the *Government*~~Personal Service~~ Contract Review *Committee*~~Subcommittee~~ certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.
- (3) The procuring agency shall *maintain the following information, readily available to the Government*~~file with the Personal Service~~ Contract Review *Committee*~~Subcommittee~~:
 - (a) The certificates;
 - (b) The selection committee's ranking of firms; and
 - (c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Section 8. KRS 198A.040 is amended to read as follows:

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

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans

have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;

- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;
- (6) To acquire real property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;
- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;
- (10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;
- (11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to, housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
- (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
- (15) To encourage community organizations to participate in residential housing development;
- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
- (18) To sue and be sued in its own name, plead and be impleaded;
- (19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;
- (20) To adopt an official seal and alter the same at pleasure;

- (21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;
- (22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the ~~Government~~~~Personal Service~~ Contract Review ~~Committee~~~~Subcommittee~~ of the Legislative Research Commission;
- (23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;
- (24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation (a) that such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and (b) that such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders and developers;
- (26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as corporation shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the corporation;
- (27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income; and
- (28) The Kentucky Housing Corporation shall be exempt from the regulations of the Department of Insurance and the laws of the Commonwealth relating thereto.

Section 9. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by the 1998 Regular Session of the Kentucky General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (1)(d)6. and subsection (1)(f)2. of Section 2 of this Act shall be codified as the "Cabinet for Health Services."

Approved April 10, 1998

CHAPTER 487

(HB 438)

AN ACT relating to state personnel.

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

Section 1. KRS 18A.037 is amended to read as follows:

- (1) The commissioner shall develop and propose a new system of classification and compensation to be transmitted to the Legislative Research Commission by November 15, 1997. The system proposed by the commissioner shall be developed using a nationally-recognized system for evaluating job requirements. The proposed system shall determine the requirements of each job classification by using factors such as, but not

limited to, knowledge, skill, effort, responsibility, accountability, problem solving, discretion, challenge, and working conditions, to ensure pay equity as required by KRS Chapters 337 and 344.

(2) ~~{The commissioner shall consult with the secretary of the Labor Cabinet and the secretary of the Finance and Administration Cabinet in developing the new system of classification and compensation.~~

~~(3) —~~ The commissioner shall include, as a part of the proposal, estimated funding requirements for the implementation of the system.

Section 2. KRS 18A.110 is amended to read as follows:

(1) The commissioner shall promulgate comprehensive administrative regulations for the classified service governing:

- (a) Applications and examinations;
- (b) Certification and selection of eligibles;
- (c) Classification and compensation plans;
- (d) Incentive programs;
- (e) Layoffs;
- (f) Registers;
- (g) Types of appointments;
- (h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, and special leaves of absence, provided that the commissioner shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985.

(2) The commissioner shall promulgate comprehensive administrative regulations for the unclassified service.

(3) (a) Except as provided by KRS 18A.355, the commissioner shall not promulgate administrative regulations that would reduce an employee's salary; and

(b) As provided by KRS 18A.0751(4)(e), the commissioner may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.

(4) The commissioner may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.

(5) (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;

(b) Administrative regulations promulgated by the commissioner shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and

(c) No administrative body other than the Department of Personnel shall promulgate administrative regulations governing the subject matters specified in this section.

(6) Prior to filing an administrative regulation with the Legislative Research Commission, the commissioner shall submit the administrative regulation to the board for review.

(a) The board shall review the administrative regulation proposed by the commissioner not less than twenty (20) days after its submission to it;

(b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the commissioner;

(c) The commissioner shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and

(d) After the commissioner has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.

(7) The administrative regulations shall provide:

- (a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class.†

1. ~~—~~ The commissioner shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The commissioner shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;

~~2. The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments on the basis of the availability of funds. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the department of any review and approval conducted under the provisions of this section;~~

- (b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the *state budget director* ~~[secretary of the Finance and Administration Cabinet]~~. The plan shall take into account such factors as:

1. The relative levels of duties and responsibilities of various classes of positions;
2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
3. The state's financial resources.

Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;

- (c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly at least fifteen (15) days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio, and other media. The commissioner shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The commissioner shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;
- (d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the commissioner for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;
- (e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the commissioner in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;
- (f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;

- (g) For emergency employment for not more than thirty (30) working days with or without examination, with the consent of the commissioner;
- (h) For provisional employment without competitive examination when there is no appropriate eligible list available. No provisional employment shall continue longer than six (6) months, nor shall successive provisional appointment be allowed to the same position;
- (i) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);
- (j) For layoffs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;
- (k) For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility; and
- (l) For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.

Section 3. KRS 18A.1131 is amended to read as follows:

- (1) A layoff of a state employee with status in the executive branch due to the abolition of a position, lack of work or a material change in duties or organization shall comply with the provisions of this section.
- (2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a lay-off plan to the commissioner ~~and the secretary of the Finance and Administration Cabinet~~ for ~~their~~ approval. Such plan shall contain the name of the employee and the reasons, in detail, for such layoff. Upon approval of the plan by the commissioner ~~and the secretary~~, the employee shall be notified that he is subject to layoff, and of:
 - (a) The reason for the layoff;
 - (b) The procedures established by the provisions of KRS 18A.113 and this section for the layoff of employees; and
 - (c) The rights granted employees subject to layoff and to laid-off employees.
- (3)
 - (a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which he is qualified within the cabinet. Such position shall be located in the same county as the position from which the employee is subject to layoff;
 - (b) If such a vacancy does not exist, the employee shall be transferred to a vacant position within the cabinet for which he is qualified. Such position shall be located in the same county as the position from which the employee is subject to layoff; and
 - (c) If such a position is not available, the employee shall be notified of all vacant positions within the cabinet for which he is qualified to take an examination. The employee shall have the right to take an examination for any vacant position within the cabinet for which he is qualified. If he passes the examination, he shall be appointed to that position before any applicant or eligible on a register, except another laid-off employee with greater seniority already on such register.
- (4)
 - (a) If no position is available to an employee subject to layoff under the procedure established by subsection (3) of this section, the appointing authority shall notify the employee and the department; and
 - (b) The department shall coordinate efforts to transfer an employee subject to layoff to another agency. It shall have the authority to transfer an employee subject to layoff under this section, with the approval of the appointing authority of the agency to which the employee is to be transferred.
- (5) If no position is available, the employee shall have the right to take an examination for any position for which he is qualified. If he passes the examination, he shall be hired before any applicant or eligible on a register, except a laid-off employee with greater seniority already on such register.
- (6) If no position is available to an employee subject to layoff under the procedure established by subsections (3) and (4) of this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

Section 4. KRS 18A.1132 is amended to read as follows:

- (1) Prior to a layoff of state employees in the executive branch, required by a projected or actual reduction in tax receipts contemplated under the provisions of subsections (1) and (6) of KRS 48.130, each cabinet shall prepare a lay-off plan that complies with the provisions of KRS 18A.113 and this section.
- (2) Each lay-off plan shall provide that a layoff of state employees shall occur only after all other cost saving measures are taken and have failed to alleviate the projected or actual deficit. These measures shall be specified in the plan, in detail, and shall include but not be limited to:
 - (a) A hiring freeze of all types of appointments;
 - (b) A reduction or delay of expenditures that would not prevent the provision of services required by law;
 - (c) Consolidation of offices and job duties that would not prevent the provision of services required by law;
 - (d) Transfer of funds as provided by the budget reduction plan enacted pursuant to KRS Chapter 48;
 - (e) Transfer of funds appropriated for or allotted to vacant positions as provided by the budget reduction plan provided for by KRS 48.130, unless it is certified that the positions are essential and cannot be filled in the period during which layoffs are to occur by transfer of existing employees of the appointing authority;
 - (f) The filling of vacancies and promotions from within the cabinet; and
 - (g) Transfers of employees within the cabinet as provided by KRS 18A.1131(3) and (4).
- (3) Each cabinet shall submit:
 - (a) Its lay-off plan; and
 - (b) A list of employees who would remain subject to layoff after the implementation of cost-saving measures;

to the commissioner ~~and to the secretary of the Finance and Administration Cabinet~~ for review. Upon approval ~~by the secretary~~, the lay-off plans shall be submitted to the Governor for approval.
- (4) Upon approval of the plan by the Governor, the commissioner shall attempt to transfer employees as provided by KRS 18A.1131(4)(b). Employees who cannot be so transferred may be laid off.
- (5) If no position is available to an employee subject to layoff under the procedures established by this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.
- (6) When the hiring freeze is ended, laid-off employees shall be hired before any applicant or eligible except laid-off employees already on such registers.

Section 5. KRS 18A.155 is amended to read as follows:

- (1) The commissioner shall prepare and submit proposed administrative regulations to the Governor for employees in unclassified positions enumerated in paragraphs (g), (h), (i), (j), (k), (p), (u), and (v) of subsection (1) of KRS 18A.115. Such administrative regulations shall become effective after approval by the Governor and promulgation in accordance with KRS Chapters 12 and 13A. The administrative regulations shall provide:
 - (a) For the preparation, maintenance and revision of a position classification plan for all aforementioned positions in the unclassified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. After such classification plan has been approved by the Governor, the commissioner shall allocate the positions of every employee in the unclassified service to one (1) of the classes of the plan. Any employee affected by the allocation of a position to a class shall, after filing with the commissioner a written request for reconsideration thereof in such manner and form as the commissioner may prescribe, be given a reasonable opportunity to be heard thereon by the commissioner;

- (b) For a pay plan for all aforementioned employees in the unclassified service, after consultation with appointing authorities and the *state budget director*~~[secretary of Finance and Administration]~~, and taking into account such factors as:
1. The relative levels of duties and responsibilities of various classes of positions;
 2. Rates paid for comparable positions elsewhere; and
 3. The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner~~[through the secretary of Finance and Administration]~~. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed;

- (c) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;
- (d) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided in subsection (1) of this section;
- (e) For the development and operation of programs to improve the work effectiveness and morale of employees in the unclassified service, including training, safety, health, welfare, counseling, recreation, and employee relations; and
- (f) For such other rules and administrative regulations, not inconsistent with KRS 18A.005 to 18A.200, as may be proper and necessary for its enforcement.
- (2) Nothing herein shall be construed to preclude the optional use of administrative regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.115 and on behalf of members of state boards and commissions who work on a full-time, salaried basis.
- (3) ***Months of service earned as a contract employee of the Kentucky Department of Education shall be recognized and credited as service credit for calculating years of service in any public agency position held subsequent to the employment by contract. The provisions of this subsection are retroactive for employees hired in a public agency position on or after January 1, 1997.***

Section 6. KRS 18A.165 is amended to read as follows:

~~{(1)—}All officers and employees of the Commonwealth shall comply with, and aid in all proper ways in carrying out, the provisions of KRS 18A.005 to 18A.200 and the rules, regulations, and orders of the board thereunder. All officers and employees shall furnish any records or information pertaining to the administration of KRS 18A.005 to 18A.200 which the commissioner or the board may request. The commissioner or the board may require the Attorney General to institute and maintain such legal action as the commissioner or the board may consider necessary or appropriate to secure compliance with KRS 18A.005 to 18A.200 and the rules and orders thereunder.~~

~~{(2)—The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the department and the board of any review and approval conducted under the provisions of this section.}~~

Section 7. KRS 12.060 is amended to read as follows:

- (1) The heads of statutory departments, with the approval of the *commissioner*~~[secretary]~~ of *personnel*~~[the Finance and Administration Cabinet]~~, may establish such subordinate positions as may be necessary and make appointments thereto, within the limitations of their appropriations, and removals therefrom. All appointees to such positions shall be under the supervision, direction and control of the heads of the respective departments and shall perform such duties as the heads of the departments prescribe. The appointment of all employees not otherwise provided for shall be made by the heads of the departments.
- (2) The head of any department, with the approval of the *commissioner*~~[secretary]~~ of *personnel*~~[the Finance and Administration Cabinet]~~, may abolish unnecessary offices and positions, transfer officers and employees between positions, and change the duties, titles and compensation of existing offices and positions, subject to any provision of law in relation thereto.

Section 8. If the reorganization of the Department of Personnel into the Personnel Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the commissioner of personnel appearing in subsections (1) and (2) of Section 7 of this Act shall be codified as the secretary of personnel.

Approved April 10, 1998

CHAPTER 488

(HB 423)

AN ACT relating to disaster and emergency response activity.

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

Section 1. KRS 39.433 is amended to read as follows:

- (1) ~~Neither~~ The state **and its** ~~nor any~~ political **subdivisions** ~~subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof,~~ shall **not** be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer ~~disaster and emergency services or~~ disaster and emergency response worker, or **volunteer** member of any agency engaged in ~~disaster and emergency services or~~ disaster and emergency response activity **under the provisions of KRS 39.400 to 39.460**. The foregoing shall not affect the right of any **volunteer** ~~person~~ to **qualify for** ~~receive~~ benefits ~~or compensation to which he might otherwise be entitled~~ under the Workers' Compensation Law or KRS 39.417 and 39.418 hereof or any pension law or any act of Congress.
- (2) ~~Neither~~ The state **and its** ~~nor any~~ political **subdivisions** ~~subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary disaster and emergency services or disaster and emergency response worker or member of any agency engaged in any disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with KRS 39.400 to 39.460 and 39.990, or any order, rule, or regulation promulgated pursuant to the provisions of KRS 39.400 to 39.460 and 39.990, or other precautionary measures enacted by any city of the state,~~ shall **not** be liable for the death of or injury to persons, or for damage to property, as a result of any **disaster and emergency response** ~~such~~ activity **under the provisions of KRS 39.400 to 39.460**.
- (3) **Except in cases of willful misconduct, gross negligence, or bad faith, the following persons shall not be liable for the death or injury to persons, or for damage to property, as a result of disaster and emergency response activity when complying with or reasonably attempting to comply with the provisions of KRS 39.400 to 39.460:**
 - (a) **Employees, agents, or representatives of the state and its political subdivisions;**
 - (b) **Any volunteer or auxiliary disaster and emergency response worker enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations; or**
 - (c) **Any member of any agency engaged in any disaster and emergency response activity.**
- (4) **While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency services organization or with the division shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with a local disaster and emergency services organization or with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.**

SECTION 2. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) **Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of 1998 House Bill 453, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any**

person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:

- (a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.*
 - (b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.*
 - (c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.*
 - (d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.*
- (2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection. This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any act of Congress.*
 - (3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any order or administrative regulation promulgated pursuant to the provisions of this chapter, or other precautionary measures enacted by any city of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.*
 - (4) Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of*

malice or bad faith, even when those decisions are made rapidly in response to the exigencies of an emergency.

- (5) *Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.*
- (6) *Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency response worker only if the volunteer or worker is enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations.*
- (7) *While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency service organization or with the division in accordance with subsection (6) of this section shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with a local disaster or emergency service organization or with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.*

Section 3. Section 2 of this Act shall only take effect if House Bill 453 of this 1998 Regular Session becomes law, and Section 2 of this Act shall supersede Section 24 of that bill.

Approved April 10, 1998

CHAPTER 489

(HB 418)

AN ACT relating to school employees.

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

Section 1. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
 - (a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
 - (b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.

- (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
 - (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
 - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
 - (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is *a classified or certified*~~an~~ employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, *or prior to marrying a relative of the superintendent*, and who is *qualified*~~certified~~ for the position *the employee*~~he~~ holds. ~~At, and it shall not apply to a~~ superintendent's spouse who has at least twenty (20) years of service in school systems *may be an employee of the school district*. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote ~~a~~^{his} relative who continues employment under an exception of this subsection.
 - (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
 - (g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.
- (4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
- (b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.

- (5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
- (7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

Approved April 10, 1998

CHAPTER 490

(HB 377)

AN ACT relating to funding of public libraries in Kentucky.

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

Section 1. KRS 171.201 is amended to read as follows:

- (1) For grants to public libraries for promoting, aiding, and equalizing public library service in Kentucky, there may be funds appropriated out of the general expenditure fund of the State Treasury.
- (2) In addition to any other funds appropriated to the Department for Libraries and Archives, there shall be appropriated annually to the department out of the general expenditure fund of the State Treasury an amount sufficient to provide the following assistance to local public libraries:
 - (a) The department shall first distribute to each county public library system a foundation grant based upon the county population using the last official census as follows:
 1. Counties with a population of twenty-two thousand (22,000) or less shall receive nine thousand dollars (\$9,000);
 2. Counties with a population between twenty-two thousand one (22,001) and forty-five thousand (45,000) shall receive eight thousand dollars (\$8,000);
 3. Counties with a population over forty-five thousand (45,000) shall receive seven thousand dollars (\$7,000); and
 - (b) The department shall distribute the remaining funds appropriated for this program to each county public library system, based on the county's share of the state population, at a rate of ***fifty-three cents (\$0.53) per capita in fiscal year 1997-98, seventy-three cents (\$0.73) per capita in fiscal year 1998-99*** ~~and twenty three cents (\$0.23) per capita in 1986-87, twenty six cents (\$0.26) per capita in 1987-88 and fifty three cents (\$0.53)~~ each year thereafter to be used for the following purposes:
 1. ***Purchase, upgrading, and maintenance of the technology necessary to enable the staff and the public to have access to electronic information;***
 2. Purchase of library materials and equipment;
 3. ~~2.~~ Maintenance and operation of bookmobiles and extension programs;
 4. ~~3.~~ Staff training and compensation;
 5. ~~4.~~ Building maintenance;
 6. ~~5.~~ Debt service;
 7. ~~6.~~ Resource-sharing;
 8. ~~7.~~ Program development; and

~~9.8.~~All other local library needs and services; and

- (c) For counties which do not have a public library, the department shall make the foundation grant and per capita distribution to a recognized library organization for the purpose of providing or establishing countywide public library service under existing departmental guidelines. ~~[If there is no recognized library organization, the per capita distribution shall be made to the fiscal court of the county which shall distribute the funds to public education entities.]~~
- (3) The appropriation necessary to fund the formula foundation grants and a *seventy-three*~~[fifty-three]~~ cents ~~(\$0.73)~~~~(\$0.53)~~ per capita distribution shall constitute the base for the agency's biennial budget request for this program.

Approved April 10, 1998

CHAPTER 491

(HB 337)

AN ACT relating to the statewide public advocacy system.

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

Section 1. KRS 31.051 is amended to read as follows:

- (1) With the exception of the administrative fee contained in subsection (2) of this section, all moneys received by the public advocate from indigent defendants pursuant to KRS Chapter 31 or which are collected by the public advocate pursuant to KRS Chapter 431 shall be credited to the public advocate fund of the county in which the trial is held and shall not be credited to any general account maintained by or for the public advocate. Moneys credited to a county public advocate fund may be used only to support the public advocate program of that county.
- (2) Any person provided counsel under the provisions of this chapter shall be assessed at the time of appointment, a nonrefundable ~~fifty~~~~[forty]~~ dollar ~~(\$50)~~~~(\$40)~~ administrative fee, payable, at the court's discretion, in a lump sum or in installments. ***The first payment shall be accompanied by a handling fee of two dollars and fifty cents (\$2.50) to be paid directly to the Circuit Clerk and deposited in a trust and agency account to the credit of the Administrative Office of the Courts. The account shall be used to assist the circuit clerks in hiring additional employees and providing salary adjustments for deputy clerks.*** The court ~~shall~~~~[may]~~ reduce or waive the fee if the person ~~[remains in custody or]~~ does not have the financial resources to pay the fee. In any case or legal action a needy person shall be assessed a total administrative fee of no more than ~~fifty~~~~[forty]~~ dollars ~~(\$50)~~~~(\$40)~~, regardless of the stages of the matter at which the needy person is provided appointed counsel. In the event the defendant fails to pay the fee, the fee shall be deducted from any posted cash bond or shall constitute a lien upon any property which secures the person's bail, regardless of whether the bond is posted by the needy person or another. The failure to pay the fee shall not reduce or in any way affect the rendering of public defender services to the person.
- (3) The administrative fee shall be in addition to any other contribution or recoupment assessed by the court pursuant to KRS 31.120 and shall be collected in accordance with that section.
- (4) The administrative fees collected pursuant to this subsection (2) shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.
- (5) ***If the administrative fee, or any portion thereof, is not paid by the due date, the court's order is a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter 426.***

Section 2. KRS 31.070 is amended to read as follows:

If a court, after finding that the Department of Public Advocacy fails to provide an attorney to a person eligible for representation under KRS Chapter 31, appoints, under the court's inherent authority, an attorney to provide representation to the needy person, [judicial circuit, through the county or counties therein, adopts a plan involving appointed counsel] the public advocate is hereby authorized to pay reasonable and necessary fees and expenses subject to the following limitations:

- (1) No fee shall be paid in excess of ***the prevailing maximum fee per attorney paid by the Department of Public Advocacy for the type of representation provided, and no hourly rate shall be paid in excess of the***

prevailing hourly rate paid by the Department of Public Advocacy for the type of representation provided ~~[\$1,000 for any defense of a single person in any case]; and~~

~~(2) In the case of multiple defendants no fee shall be paid in excess of \$1,000 for each defendant in the case; and~~

~~(3)~~ Each fee plus expenses incurred in the defense shall be presented by the defense attorney to the Circuit Court Judge who shall review the fee and expenses request and shall approve, deny, or modify the amount of compensation and fee listed therein. After final approval of the fee and expenses the Circuit Judge shall, if state compensation is desired, certify the amount and transmit the document to the public advocate who shall review the fee and expense request and shall approve, deny, or modify the request. The request as approved or modified shall then be paid. Requests for payment of assigned counsel by the state shall be denied if the district has exceeded the amount of funds which may be allotted to it, if the district plan has not been approved, or if the public advocate finds that compensation is otherwise not warranted. The decision of the public advocate in all matters of fee and expense compensation shall be final.

Section 3. KRS 31.120 is amended to read as follows:

- (1) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court or in a suit for payment or reimbursement under KRS 31.150, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person. However, nothing herein shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation involved if he later is determined not a needy person under the terms of this chapter. At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person who has requested a public defender is able to pay a partial fee.
- (2) In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parent's or guardian's inability to pay, the court concerned shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.
- (3) It shall be prima facie evidence that a person is not indigent or needy within the meaning of this chapter if he and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), if his custodial parent or guardian:
 - (a) Owns real property in the Commonwealth or without the Commonwealth;
 - (b) Is not receiving, or if not receiving is not eligible to receive, public assistance payments at the time the affidavit of indigency is executed;
 - (c) Has paid money bail (other than a property bond of another), whether deposited by himself or another, to secure his release from confinement on the present charge of which he stands accused or convicted; or
 - (d) Owns more than one (1) motor vehicle.
- (4) To the extent that a person covered by KRS 31.110, and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court shall order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments. The determination shall be made at each stage of the proceedings.
- (5) The court shall order all moneys collected pursuant to subsection (4) of this section be paid to the clerk of that court pursuant to the schedule of payment. The clerk shall forward to the Department of Public Advocacy on a monthly basis a copy of all the orders *or an electronic report compiled by the Administrative Office of the Courts listing those orders. Additionally, the clerk shall forward to the Department of Public Advocacy on a*

monthly basis an accounting of and the moneys collected in ~~[and the moneys collected pursuant thereto with an accounting as to]~~ each case.

- (6) The affidavit of indigency, to be subscribed and sworn to by the person, and, in the case of an unemancipated minor under KRS 31.100(3)(c), by his custodial parent or guardian, shall be as set out herein:

Commonwealth of Kentucky

County of.....

Affiant....., being first duly sworn says that he is not now represented by private counsel and that he does not have the money or assets out of which to employ one; that he is indigent and requests the court to appoint counsel.

Affiant states that his income is; that he owns the following property:

Description	Value
.....
.....
.....;

that he has the following dependents:

Name	Age	Relationship
.....
.....
.....;

and that he has the following obligations:

To whom owed	Amount owing
.....
.....
.....

.....
Signature of affiant

Subscribed and sworn to before me this , day of, 19

.....
Signature and title of officer
administering the oath

Any persons making false statements in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523, the maximum penalty for which is five (5) years imprisonment.

Section 4. KRS 31.170 is amended to read as follows:

- (1) If the fiscal court of a county elects to establish and maintain an office for public advocacy, it shall:
 - (a) Appoint the district public advocate and any number of assistant district public advocates necessary to adequately perform the functions of said office.
 - (b) Prescribe the qualifications of the district public advocate, his term of office which may not be more than four (4) years and fix the rate of annual compensation for him and his assistants. In order to be qualified for appointment as district public advocate a person must have been admitted to the practice of law and licensed to practice in the Commonwealth of Kentucky and be competent to counsel and defend a person charged with a crime.
 - (c) Provide for the establishment, maintenance and support of his office.

- (2) If the fiscal court of a county elects to arrange with a nonprofit organization to provide attorneys, the county and any cities involved may reimburse the organization for such expenses as the fiscal courts respectively concerned have determined to be necessary in the representation of needy persons under this chapter, or may provide facilities described in KRS 31.180(2)(a) in addition to or in lieu of said reimbursement.
- (3) *If, in a county where the fiscal court has elected to provide representation under subsection (1) or (2) of this section, after finding that the fiscal court fails to provide an attorney to a person eligible for representation under KRS Chapter 31, a court assigns, under the court's inherent authority, an attorney to represent a needy person it shall prescribe a reasonable rate of compensation for his services and shall determine the direct expenses necessary to representation for which he would be reimbursed. The county shall pay the attorney the amounts so prescribed from the funds made available by the Department of Public Advocacy.*
- (4) An attorney under subsection (3) shall be compensated for his services with regard to the complexity of the issues, the time involved, and other relevant considerations. However, *no fee shall be paid in excess of the prevailing maximum fee per attorney paid by the Department of Public Advocacy for the type of representation provided, and no hourly rate shall be paid in excess of the prevailing hourly rate paid by the Department of Public Advocacy for the type of representation provided*~~he may be compensated at a rate no higher than thirty five dollars (\$35) an hour for time spent in court and no higher than twenty five dollars (\$25) an hour for time spent out of court subject in each case to a maximum total fee of one thousand two hundred fifty dollars (\$1,250) in case of a felony and five hundred dollars (\$500) in any other case, unless the court concerned finds that special circumstances warrant a higher total fee.~~

Section 5. KRS 31.185 is amended to read as follows:

- (1) Any defending attorney operating under the provisions of this chapter is entitled to use the same state facilities for the evaluation of evidence as are available to the attorney representing the Commonwealth. If he considers their use impractical, the court concerned may authorize the use of private facilities to be paid for on court order by the county.
- (2) The fiscal court of each county or legislative body of an urban-county government ~~{containing less than ten (10) Circuit Judges}~~ shall annually appropriate twelve and a half (\$0.125) cents per capita of the population of the county, as determined by the Council of Local Governments' most recent population statistics, to a special account to be administered by the Finance and Administration Cabinet to pay court orders entered against counties pursuant to subsection (1) of this section. The funds in this account shall not lapse and shall remain in the special account.
- (3) The Finance and Administration Cabinet shall pay all court orders entered pursuant to subsection (1) of this section from the special account until the funds in the account are depleted. If in any given year the special account including any funds from prior years is depleted and court orders entered against counties pursuant to subsection (1) of this section for that year or any prior year remain unpaid, the Finance and Administration Cabinet shall pay those orders from the Treasury in the same manner in which judgments against the Commonwealth and its agencies are paid.
- (4) Only court orders entered after July 15, 1994, shall be payable from the special account administered by the Finance and Administration Cabinet or from the Treasury as provided in subsections (2) and (3) of this section.
- ~~{(5) Each county with a judicial district containing ten (10) or more Circuit Judges shall be solely liable for any court order entered against it pursuant to subsection (1) of this section.}~~

Section 6. KRS 31.200 is amended to read as follows:

- (1) Subject to KRS 31.190, any direct expense, including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript that is necessarily incurred in representing a needy person under this chapter, is a charge against the county on behalf of which the service is performed; provided, however, that such a charge shall not exceed the established rate charged by the Commonwealth and its agencies.
- (2) Any direct expense including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript shall be paid from the special account established in KRS 31.185(2) and in accordance with the procedures provided in KRS 31.185(3).
- (3) If two (2) or more counties jointly establish an office for public advocacy, the expenses not otherwise allocable among the participating counties under subsection (1) shall be allocated, unless the counties otherwise agree, on the basis of population according to the most recent decennial census.

- (4) Expenses incurred in the representation of needy persons confined in a state correctional institution shall be *paid from the special account established in subsection (2) of Section 5 of this Act and in accordance with the procedures provided in subsection (3) of Section 5 of this Act* ~~borne by the state Department of Public Advocacy~~.

Section 7. KRS 31.240 is amended to read as follows:

In the area of relation of local programs to the state program the following are permitted:

- (1) Each county or counties in a district may compensate district advocates appointed pursuant to KRS 31.170, under their own employ at rates greater than the state district advocate but must pay from their own funds all amounts in excess of the state contribution.
- (2) Each county or counties in a district may adopt their own plan of aid to the indigent provided all plans in a district, viewed as a whole, are approved by the Department for Public Advocacy.
- (3) ~~Each county or counties providing for assigned counsel may compensate them at rates provided for in KRS 31.170; however, the state contribution to such compensation shall not be greater than is provided for by KRS 31.070.~~ The county or counties shall be obligated to pay and shall pay all amounts in excess of the state contribution. No county shall be required to pay the maximum amounts provided for in KRS 31.170 unless the amounts be approved by the circuit judge.

Approved April 10, 1998

CHAPTER 492

(HB 332)

AN ACT relating to the contracting out of government services.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 and Section 6 of this Act, unless the context requires otherwise:

- (1) *"Privatize" means to contract out in order to procure the services of a private vendor to provide a service that is similar to, and in lieu of, a service provided by state employees of the privatizing agency;*
- (2) *"Privatization contract" means an agreement or combination of a series of agreements by which a private vendor agrees to provide services that are substantially similar to, and in lieu of, services previously provided, in whole or in part, by at least ten (10) permanent, full-time, budgeted employees of the state agency. This term includes but is not limited to concession contracts. This term does not include personal service contracts as defined in KRS 45A.690, contracts entered into pursuant to KRS Chapter 176, 177, 178, 179, 180, or 181, Medicaid provider contracts, architect and engineering contracts entered into pursuant to KRS 45A.800 to 45A.835, price contracts, construction contracts, or memoranda of understanding or memoranda of agreements or program administration contracts with the Cabinet for Human Resources, including contracts for child support collections and enforcement with contracting officials as authorized by KRS 205.712; and*
- (3) *"Services" shall not include administration and support functions of government. "Administration and support functions" shall include, but not be limited to, construction contracts, bond counsel and bond underwriting services, architect and engineering services, price contracts, personal service contracts, and memoranda of understanding and memoranda of agreement.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon approval of the Finance and Administration Cabinet, a state agency may enter into a privatization contract.*
- (2) *Before a state agency recommends to the Finance and Administration Cabinet that it enter into a privatization contract, the state agency shall determine and set forth in writing:*
 - (a) *The necessity for the service and the intended goals of the service;*
 - (b) *Problems and inefficiencies existing with the current governmental operation of the service; and*

- (c) *Whether the service can efficiently be provided by the agency.*
- (3) *If the state agency determines that the service cannot efficiently be provided by the agency, the state agency shall be permitted to continue the normal contracting process for the service. However, if the state agency determines that the service can efficiently be provided by the agency and the state agency chooses to proceed with privatization, it shall set forth in writing to the Finance and Administration Cabinet:*
- (a) *The tangible benefits of privatizing the service;*
- (b) *Any state or federal legal restraints that may limit or prevent privatization of the government service;*
- (c) *The availability of multiple qualified and competitive private vendors;*
- (d) *1. A cost-benefit analysis comparison that shall include, but not be limited to, collection and analysis of the total assessible fixed and variable, direct and indirect, costs of:*
- a. The current governmental operation; and*
- b. The private vendor contract.*
- 2. The costs shall include, but not be limited to:*
- a. Facility and equipment maintenance;*
- b. Inflation-adjusted costs, where comparison to past years is being conducted;*
- c. Transition costs associated with shifting the service delivery from the government agency to a private vendor;*
- d. Costs of monitoring, evaluating, and enforcing the contract;*
- e. Personnel costs such as those providing for benefits, early retirements, retraining, and relocation in another position; and*
- f. A plan for resuming government operation of the service if the privatization effort fails.*
- (e) *A plan of assistance for all state employees who will be adversely affected by privatizing the service. The plan shall include at least:*
- 1. Efforts to place affected employees in vacant positions in another state agency and to retrain employees for another position in state government;*
- 2. Provisions in the contract, if feasible, for the hiring by the contractor of displaced employees at wages and benefits comparable to the wages and benefits paid to the state employees, subject to the provisions of Section 6 of this Act; and*
- 3. Prior notification to affected state employees the day the contract is signed, or three (3) months before the day the adverse effect will occur, whichever is earlier; and*
- (f) *A process for monitoring, evaluating, and enforcing a contract with a private vendor which shall include, but not be limited to:*
- 1. Development of a method for ongoing, comprehensive performance evaluation of the private vendor; and*
- 2. Establishment of performance criteria and standards to evaluate the private vendor.*
- (4) *All information required by subsections (2) and (3) of this section shall be submitted to the Finance and Administration Cabinet for its review and approval prior to proceeding with the contracting provisions of KRS Chapter 45A.*
- (5) *The state agency shall retain responsibility for ensuring the quality and reliability of the services.*
- (6) *All records in the possession of a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract unless exempt under another statute shall be public records, access to which shall be governed by KRS 61.870 to 61.884.*

- (7) *Any other statute to the contrary notwithstanding, all records prepared, owned, used, in the possession of, or retained by a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract shall be public records, access to which shall be governed by KRS 61.870 to 61.884.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *The Finance and Administration Cabinet shall develop an objective and systematic process for evaluating the information in subsections (2) and (3) of Section 2 of this Act for use in determining whether to approve privatization of a government service.*
- (2) *The process shall be adopted by administrative regulation promulgated by the Finance and Administration Cabinet in accordance with KRS Chapter 13A.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *After approval of a privatization contract by the Finance and Administration Cabinet and issuance and execution of the privatization contract, the contracting agency shall annually evaluate the performance of the contract and report its findings to the Governor, the Auditor of Public Accounts, and the Legislative Research Commission.*
- (2) *The state agency entering into the contract shall provide for an evaluation of the performance of any privatization contract awarded in excess of five hundred thousand dollars (\$500,000) annually. The review shall include but not be limited to determining whether the contractor is complying with all applicable statutory requirements and the provisions of the contract. The performance evaluation shall be forwarded to the Auditor of Public Accounts and the Legislative Research Commission. The evaluation shall be subject to review by the Auditor of Public Accounts, who shall report any findings to the Legislative Research Commission.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

The provision of Sections 1 to 5 and 6 of this Act shall not apply to privatization contracts awarded prior to the effective date of this Act, or any renewals thereof.

Section 6. KRS 11A.130 is amended to read as follows:

Nothing in this chapter shall be construed to prohibit an officer or public servant employed by an agency that is privatized from accepting employment from the person or business which is operating that agency *if the officer or public servant was not involved in making the decision to privatize or in developing the provisions of the privatization contract.*

Approved April 10, 1998

CHAPTER 493

(HB 330)

AN ACT relating to school safety and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that:

- (1) *Every student should have access to a safe, secure, and orderly school that is conducive to learning;*
- (2) *All schools and school districts must have plans, policies, and procedures dealing with measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior; and*
- (3) *State and local resources are needed to enlarge the capacities for research, effective programming, and program evaluation that lead to success in addressing safety and discipline within the schools.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Intervention services" means any preventive, developmental, corrective, supportive services or treatment provided to a student who is at risk of school failure, is at risk of participation in violent behavior or juvenile crime, or has been expelled from the school district. Services may include, but are not limited to, screening to identify students at risk for emotional disabilities and antisocial behavior; direct instruction in academic, social, problem solving, and conflict resolution skills; alternative educational programs; psychological services; identification and assessment of abilities; counseling services; medical services; day treatment; family services; work and community service programs.*
- (2) *"School resource officer" means a sworn law enforcement officer who has specialized training to work with youth at a school site. The school resource officer shall be employed through a contract between a local law enforcement agency and a school district.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety programs, research results, and new programs; and in collaboration with the Department of Education and others to provide technical assistance for safe schools.*
- (2) *To fulfill its mission, the Center for School Safety shall:*
- (a) *Establish a clearinghouse for information and materials concerning school violence prevention;*
 - (b) *Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;*
 - (c) *Analyze the data collected in compliance with Section 5 of this Act;*
 - (d) *Research and evaluate school safety programs so schools and communities are better able to address their specific needs;*
 - (e) *Administer a school safety grant program for local districts as directed by the General Assembly;*
 - (f) *Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;*
 - (g) *Prepare and disseminate information regarding best practices in creating safe and effective schools;*
 - (h) *Advise the Kentucky Board of Education on administrative policies and administrative regulations; and*
 - (i) *Provide an annual report by July 1 of each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.*
- (3) *The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:*
- (a) *The commissioner or a designee of the Department of Education;*
 - (b) *The commissioner or a designee of the Department of Juvenile Justice;*
 - (c) *The commissioner or a designee of the Department for Mental Health and Mental Retardation Services;*
 - (d) *The commissioner or a designee of the Department for Social Services;*
 - (e) *The secretary or a designee of the Education, Arts, and Humanities Cabinet;*
 - (f) *A juvenile court judge;*
 - (g) *A local school district board of education member;*
 - (h) *A local school administrator;*
 - (i) *A school council parent representative;*
 - (j) *A teacher;*

- (k) *A classified school employee; and*
- (l) *A superintendent of schools who is a member of the Kentucky Association of School Administrators.*

In appointing the board of education member, the school administrator, the school superintendent, the school council parent member, the teacher, and the classified employee, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, the Kentucky Education Association, and the Kentucky Education Support Personnel Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *Each nonstate-government employee member of the board of directors for the Center for School Safety shall serve a term of two (2) years and may be reappointed, but a member shall not serve more than two (2) consecutive terms.*
- (2) *The members who are nonstate-government employees shall be reimbursed for travel, meals, and lodging and expenses relating to official duties of the board from funds appropriated for this purpose.*
- (3) *The board of directors shall meet a minimum of four (4) times per year. The board of directors shall be attached to the office of the secretary of the Education, Arts, and Humanities Cabinet for administrative purposes.*
- (4) *The board of directors shall annually elect a chair and vice chair from the membership. The board may form committees as needed.*
- (5) *Using a request for proposal process, the board of directors shall select a public university to administer the Center for School Safety for a period of not less than four (4) years unless funds for the center are not appropriated, or the board determines that the university is negligent in carrying out its duties as specified in the request for proposal and contract. The initial request for proposals shall be issued not later than September 15, 1998. The board shall select a university no later than January 1, 1999. The university shall be the fiscal agent for the center and:*
 - (a) *Receive funds based on the approved budget by the board of directors and the General Assembly's appropriation for the center. The center shall operate within the fiscal policies of the university and in compliance with policies established by the board of directors per the request for proposal and contract; and*
 - (b) *Employ the staff of the center who shall have the retirement and employee benefits granted other similar university employees.*
- (6) *The board of directors shall annually approve:*
 - (a) *A work plan for the center;*
 - (b) *A budget for the center;*
 - (c) *Operating policies as needed; and*
 - (d) *Recommendations for grants, beginning in the 1999-2000 school year and subsequent years, to local school districts and schools to assist in the development of programs and individualized approaches to work with violent, disruptive, or academically at-risk students, and consistent with provisions of Section 6 of this Act.*
- (7) *The board of directors shall prepare a biennial budget request to support the Center for School Safety and to provide program funds for local school district grants.*
- (8) *The board shall develop model interagency agreements between local school districts and other local public agencies, including, among others, health departments, departments of social services, mental health agencies, and courts, in order to provide cooperative services and sharing of costs for services to students who are at risk of school failure, are at risk of participation in juvenile crime, or have been expelled from the school district.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.*
- (2) *The Kentucky Department of Education shall:*
 - (a) *Collaborate with the Center for School Safety in carrying out the center's mission; and*
 - (b) *Establish and maintain a statewide data collection system by which school districts shall report by sex, race, and grade level:*
 1. *All incidences of violence and assault against school employees and students; incidences of possession of guns or other deadly weapons on school property or at school functions; and incidences of the possession or use of alcohol, prescription drugs, or controlled substances on school property or at school functions;*
 2. *The number of arrests, the charges, and whether civil damages were pursued by the injured party;*
 3. *The number of suspensions, expulsions, and corporal punishments; and*
 4. *Data required during the assessment process under Section 6 of this Act.*

The department shall provide all data collected relating to this subsection to the Center for School Safety according to timelines established by the center.

SECTION 6. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *Each local school shall begin an assessment of school safety and student discipline during the 1998-1999 school year including a review of the following:*
 - (a) *Reports of school incidents relating to disruptive behaviors;*
 - (b) *The school's behavior and discipline codes for clarity and appropriate notice to students and parents;*
 - (c) *The school's hierarchy of responses to discipline problems and actual disciplinary outcomes;*
 - (d) *Training needs for instructional staff in classroom management, student learning styles, and other specialized training to enhance teachers' capacity to engage students and minimize disruptive behavior;*
 - (e) *The array of school services to students at risk of academic failure, dropping out, or truancy;*
 - (f) *The engagement of parents at the earliest stages of problem behavior;*
 - (g) *Training needs for students in anger reduction, conflict resolution, peer mediation, and other necessary skills;*
 - (h) *Training needs of parents;*
 - (i) *Existing school council policies relating to student discipline and student information;*
 - (j) *The school's physical environment;*
 - (k) *The school's student supervision plan;*
 - (l) *Existing components of the school improvement plan or consolidated plan that focus on school safety and at-risk students, and the effectiveness of the components; and*
 - (m) *Other data deemed relevant by the school council or school administration.*

A school that does not complete an assessment process shall not be eligible for funds under the state school safety grant program in 1999-2000 and subsequent years.

- (2) *By May 15, 1999, each local school district shall complete a district level assessment of district level data, resources, policies and procedures, and district-wide needs as identified from the individual school assessment process. The district shall engage local community agencies including law enforcement and the courts in the assessment process.*
- (3) *As a result of the district assessment and analysis of data, resources, and needs each board of education shall adopt a plan for immediate and long-term strategies to address school safety and discipline. The*

development of the plan shall involve at least one (1) representative from each school in the district as well as representatives from the community as a whole including representatives from the local juvenile delinquency prevention council, if a council exists in that community. The process of planning shall be determined locally depending to a large extent on the size and characteristics of the district.

- (4) *The district plan under subsection (3) of this section shall be the basis for any request for funds under the state school safety grant program for 1999-2000 and subsequent years. The district plan shall include the local code of acceptable behavior and discipline as required under Section 11 of this Act and a description of instructional placement options for threatening or violent students.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

Of the funds appropriated to support the school safety fund program in the biennial budget, twenty percent (20%) of the funds in 1998-99, and ten percent (10%) in 1999-2000, shall be used for the operation of the Center for School Safety and grants to be distributed by the Center to support exemplary programs in local school districts. The remainder of the appropriation shall be distributed to local school districts on a per pupil basis. The funds shall be used for the purpose of improving school safety and student discipline through alternative education programs and intervention services in compliance with Sections 6, 11, and 12 of this Act. School districts shall be responsible for documenting the purposes for which these funds were expended.

SECTION 8. A NEW SECTION OF KRS CHAPTER 605 IS CREATED TO READ AS FOLLOWS:

By August 1, 2000, the Department of Juvenile Justice shall provide, based on available general fund appropriations, a day treatment program, accessible to every school district in each judicial region of the state. The day treatment programs shall combine therapeutic and academic services.

Section 9. KRS 12.020 is amended to read as follows:

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

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

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

9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 - (o) ***Board of Directors for the Center for School Safety.***
 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.

- (f) Office of Legal Services.
- (g) Office of Communications and Community Affairs.
- 4. Transportation Cabinet:
 - (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
- 5. Cabinet for Economic Development:
 - (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
- 7. Cabinet for Human Resources:
 - (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.

- (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.

- (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.

- (m) Office of Development and Industry Relations.
- (n) Office of Workforce Analysis and Research.
- (o) Office for Administrative Services.
- (p) Office for Policy, Budget, and Personnel.
- (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 10. KRS 157.360 is amended to read as follows:

- (1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:
 - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. ***Funds generated under this paragraph may be used to pay a hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;***
 - (b) The number and types of exceptional children in the district as defined by KRS 157.200. No later than October 1, 1993, specific weights for each category of exceptionality shall be developed by the Department of Education and shall be used in the calculation of the add-on factor for exceptional children. Prior to the development of the necessary weights, the General Assembly shall determine the costs associated with the education of exceptional children based on the count of pupils with different exceptionalities, an appropriate pupil-teacher ratio, and total per-pupil costs; and
 - (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. No later than October 1, 1991, the Office of Education Accountability's Division of School Finance shall examine the components of the current system for allocating transportation funds, and recommend any needed changes to the General Assembly, the Governor, and the State Board for Elementary and Secondary Education. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.
- (3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year. No district shall receive an annual increase in state funds of less than eight percent (8%) for 1990-91 and five percent (5%) in 1991-92 or more than twenty-five percent (25%) in either year.
- (4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in

vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);
 2. Twenty-eight (28) in grade four (4);
 3. Twenty-nine (29) in grades five (5) and six (6);
 4. Thirty-one (31) in grades seven (7) to twelve (12);
- (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
- (c) The chief state school officer, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).
- (d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.
- (7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
- (8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.
- (9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.

- (10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).
- (11) (a) Instructional salaries for vocational agriculture classes shall be allotted for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Secondary Vocational Education in the Department of Education. Salary allotments for vocational agriculture teachers shall be computed by proportionately increasing the salary schedule allocation based on the regular one hundred eighty-five (185) day school year for teachers with comparable qualifications and experience. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
- (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.
- (c) For the 1990-91 and the 1991-92 school years, an add-on appropriation shall be made to local school districts which are operating secondary vocational education programs. The amount provided in the budget shall be allocated on a per pupil basis and shall be used to meet the higher per student cost of operating vocational education programs.
- (12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
- (b) Pursuant to administrative regulations of the Department of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education.
- (13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

Section 11. KRS 158.148 is amended to read as follows:

- (1) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, **and in collaboration with the Center for School Safety**, the Department of Education shall develop:
- (a) Statewide student discipline guidelines **to ensure safe schools**; and

- (b) Recommendations designed to *improve the learning environment, student achievement, and to* reduce the dropout rate in the state's public schools.
- (2) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, *the department, in collaboration with the Center for School Safety, shall identify successful* strategies currently being used~~[-successfully]~~ in programs in Kentucky and in other states *and shall incorporate those strategies*~~[be incorporated]~~ into the statewide guidelines and the recommendations to *improve the learning environment and to* reduce dropouts.
- (3) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles to guide local districts in developing their own discipline code *and school councils in the selection of discipline and classroom management techniques under Section 13 of this Act; and in the development of the district-wide safety plan*~~[-The local code shall be distributed to all students and parents in the district and shall be available for inspection].~~
- (4) *Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board.*
- (a) *The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.*
- (b) *The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.*
- (c) *The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.*
- (d) *A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents shall be provided copies of the code.*
- (5) The Department of Education *with assistance from the Center for School Safety* shall~~[-first]~~ provide technical assistance to those districts *requesting assistance with dropout prevention strategies*~~[reporting the greatest number of dropouts]~~. Reporting requirements shall be established by the Department of Education; however, reports shall be prepared in a manner that will provide data on successful strategies for dropout prevention.
- ~~(6)~~~~(5)~~ The Kentucky Board of Education shall establish criteria for the development of dropout prevention programs and award grants *based upon available appropriations from the General Assembly*~~[for up to twenty (20) school districts in which:~~
- ~~(a) The percentage of students dropping out of school is among the highest twenty five (25) districts in the state; and~~
- ~~(b) More than one hundred (100) students drop out of schools each year].~~ These grants shall be administered through contracts whereby school districts agree to provide dropout prevention services specified by the Kentucky Board of Education.~~[In addition, the Kentucky Board of Education shall have the authority to award up to twenty (20) grants to school districts having high dropout rates but fewer than one hundred (100) dropouts per year. The Kentucky Board of Education shall develop grant funding criteria based upon available appropriations.]~~

Section 12. KRS 158.150 is amended to read as follows:

- (1) All pupils admitted to the common schools shall comply with the lawful regulations for the government of the schools:
- (a) Willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property of students, the carrying or use of weapons or dangerous instruments, or other incorrigible bad

conduct on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school; and

- (b) Assault or battery or abuse of school personnel; stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities constitutes cause for suspension or expulsion from school.
- (2) Each local board of education shall adopt a policy requiring the expulsion from school for a period of not less than one (1) year *for* a student who is determined by the board to have brought a weapon to a school under ~~its~~ jurisdiction. ***The board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have possessed prescription drugs or controlled substances for the purpose of sale or distribution at a school under the board's jurisdiction, or to have physically assaulted or battered or abused educational personnel or other students at a school or school function under the board's jurisdiction.*** ~~of the local board of education, except that~~ The ~~local~~ board ~~of education~~ may modify the expulsion requirement for students on a case-by-case basis. A ~~local~~ board ~~of education~~ that has expelled a student from the student's regular school setting ~~shall~~ *may* provide ***or assure that*** educational services ***are provided*** to the student in an ***appropriate*** alternative program or setting, ***unless the board has made a determination, on the record, supported by clear and convincing evidence, that the expelled student poses a threat to the safety of other students or school staff and cannot be placed into a state-funded agency program. Other intervention services as indicated for each student may be provided by the board or by agreement with the appropriate state or community agency. A state agency that provides the service shall be responsible for the cost.*** In determining whether a student has brought a weapon to school, a local board of education shall use the definition of "unlawful possession of a weapon on school property" stated in KRS 527.070.
- (3) ***School administrators, teachers, or other school personnel may immediately remove or cause to be removed threatening or violent students from a classroom setting or from the district transportation system pending any further disciplinary action that may occur. Each board of education shall adopt a policy to assure the implementation of this section and to assure the safety of the students and staff.***
- (4) A pupil shall not be suspended from the common schools until after at least the following due process procedures have been provided:
- (a) The pupil has been given oral or written notice of the charge or charges against him which constitute cause for suspension;
 - (b) The pupil has been given an explanation of the evidence of the charge or charges if the pupil denies them; and
 - (c) The pupil has been given an opportunity to present his own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

- ~~(5)~~~~(4)~~ The superintendent, principal, assistant principal, or head teacher of any school may suspend a pupil but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the pupil. The board of education of any school district may expel any pupil for misconduct as defined in subsection (1) of this section, but the action shall not be taken until the parent, guardian, or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board. The decision of the board shall be final.
- ~~(6)~~~~(5)~~ (a) Suspension of exceptional children, as defined in KRS 157.200, for more than a total of ten (10) days during a school year shall constitute a change of educational placement. The admissions and release committee shall meet to review the placement and make a recommendation for continued placement or a change in placement and determine whether regular suspension or expulsion procedures apply. Additional evaluations shall be completed, if necessary.
- (b) If the admissions and release committee determines that an exceptional child's behavior is related to his disability, the child shall not be suspended any further or expelled ***unless the current placement could***

result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

- (7) *Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

When the principal has a reasonable belief that an act has occurred on school property or at a school-sponsored function involving assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, or damage to the property, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this section, "school property" means any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

Section 14. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:
- (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.
 - (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:
 1. Exclusively vocational-technical, special education, or preschool programs;
 2. Instructional programs operated in institutions or schools outside of the district; or
 3. Alternative schools designed to provide services to at-risk populations with unique needs.
 - (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.
 - (d) "Parent" means:
 1. A parent, stepparent, or foster parent of a student; or
 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:
- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.

- (b)
 - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.
 - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
 - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
 - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.
- (c)
 - 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
 - 2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.
- (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
 1. Determination of curriculum, including needs assessment and curriculum development;
 2. Assignment of all instructional and noninstructional staff time;
 3. Assignment of students to classes and programs within the school;
 4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
 5. Determination of use of school space during the school day;
 6. Planning and resolution of issues regarding instructional practices;
 7. Selection and implementation of discipline and classroom management techniques *as a part of a comprehensive school safety plan*, including responsibilities of the student, parent, teacher, counselor, and principal;
 8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
 9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.
- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
 - (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
 - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
 - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, *as well as the school safety plan and requests for funding from the Center for School Safety under Section 7 of this Act*;
 - (d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;
 - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
 - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
 - (g) Requirements for waiver of district policies;
 - (h) Requirements for record keeping by the school council; and
 - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as

determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.
- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
 - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
 - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
 - (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
 - (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 15. KRS 610.320 is amended to read as follows:

- (1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."
- (2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any

information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

- (3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative, *transportation*, and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.
- (4) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.
- (5) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.
- (6) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 16. KRS 610.340 is amended to read as follows:

- (1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, and to the extent necessary at the proceeding to victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause. Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (2) The provisions of this section shall not apply to public officers or employees engaged in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case.
- (3) The provisions of this section shall not apply to employees of the cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case.

- (4) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, **transportation**, and counseling personnel, to any teacher to whose class the student has been assigned for instruction, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.
- (5) No person, including school personnel, shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (6) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (7) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (8) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (9) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 17. KRS 610.345 is amended to read as follows:

- (1) When a child is adjudicated guilty of an offense which classifies him as a youthful offender under KRS Chapter 640, the court in which the matter was tried shall notify the principal of any public or private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of facts in the case.
- (2) When a child is adjudicated guilty of an offense which would classify him as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if committed by an adult, but which would not classify him as a youthful offender under KRS Chapter 640, the court in which the matter was tried shall notify **within five (5) days of the order** the principal of any public or private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of facts in the case.
- (3) ***Notice of adjudication to the school principal referenced in subsections (1) and (2) of this section shall be released by the principal to employees of the school having responsibility for classroom instruction of the child and may be released to other school personnel as described in subsection (4) of this section, but the information shall otherwise be confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. The notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of the child's student record.***
- (4) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to public or private elementary and secondary school administrative, **transportation**, and counseling personnel, and to any teacher to whose class the student has been assigned for instruction. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.
- ~~(5)~~ Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

Section 18. Whereas it is critical that the board of directors for the Center for School Safety be appointed by July 15, 1998, in order to select a university location for the Center for School Safety by January 1, 1999, an

emergency is declared to exist, and this Act takes effect upon its passage and approval of the Governor or upon its otherwise becoming law.

Approved April 10, 1998

CHAPTER 494

(HB 318)

AN ACT relating to carrying concealed deadly weapons.

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

Section 1. KRS 237.110 is amended to read as follows:

- (1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. ***The Department of State Police or the Administrative Office of the Courts shall conduct a record check, covering all offenses and conditions which are required under 18 U.S.C. sec. 922(g) and this section, in the manner provided by 18 U.S.C. sec. 922(s).*** Licenses shall be valid throughout the state for a period of three (3) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court.
- (2) The Department of State Police, ***following the record check required by subsection (1) of this section,*** shall issue a license if the applicant:
 - (a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;
 - (b) Is twenty-one (21) years of age or older;
 - (c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(g) or KRS 527.040;
 - (d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;
 - (e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;
 - (f) Demonstrates competence with a firearm by any one (1) of the following:
 1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of Fish and Game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;
 2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or approved by the Department of Criminal Justice Training;
 3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or

4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and de-certification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be deemed to have met the training requirement;

- (g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and
- (h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.
- (3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.
- (4) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars (\$60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, ~~or~~ County Employees Retirement System, **or other retirement system operated by or for a city, county, or urban-county in Kentucky** shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars (\$20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars (\$20) shall be sent to the Department of State Police with the application. Ten dollars (\$10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars (\$10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:
- (a) The name, address, place and date of birth, gender, and Social Security number of the applicant;
- (b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;
- (c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;
- (d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

- (e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.
- (5) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:
- (a) A completed application as described in subsection (4) of this section;
 - (b) A recent color photograph of the applicant, as prescribed by administrative regulation; and
 - (c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.
- (6) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (5) of this section, either:
- (a) Issue the license; or
 - (b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence.
- (7) The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.
- (8) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the district court. ***When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.***
- (9) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars (\$15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.
- (10) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter

403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

- (11) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. ***When a licensee makes application for a renewal of his or her license, neither the sheriff nor the Department of State Police shall require a surrender of the license until the new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.*** A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars (\$15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (4), (5), and (6) of this section.
- (12) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:
- (a) Any police station or sheriff's office;
 - (b) Any detention facility, prison, or jail;
 - (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;
 - (d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;
 - (e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;
 - (f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;
 - (g) An area of an airport to which access is controlled by the inspection of persons and property;
 - (h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose, ***unless the person carrying the concealed deadly weapon has a concealed deadly weapon license and is the pastor of the church or an officer of the church;*** or
 - (i) Any place where the carrying of firearms is prohibited by federal law.
- (13) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if

carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee. Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

- (14) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.
- (15) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.
- (16) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state ~~and whose state grants to Kentucky residents the right to carry a concealed deadly weapon in the state of the licensee without requiring a separate license to carry a concealed deadly weapon issued by that state.~~ may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.
- (b) *The Department of State Police shall, not later than thirty (30) days after the effective date of this amendment and not less than once every six (6) months thereafter, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon license or that will issue a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each six (6) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies* ~~[A person who holds a valid license issued by another state of the United States whose home state permits Kentucky residents to obtain a license to carry a concealed deadly weapon in that state may apply directly to the Department of State Police for a license to carry concealed deadly weapons in Kentucky. The Department of State Police shall take whatever steps are necessary to verify that the person applying has a valid license to carry a concealed deadly weapon issued by his home state].~~
- (17) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

CHAPTER 495**(HB 317)**

AN ACT relating to property tax.

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

Section 1. KRS 132.450 is amended to read as follows:

- (1) Each property valuation administrator shall assess at its fair cash value all property which it is his duty to assess except as provided in paragraph (c) of subsection (2) of this section. In the case of securities which are regularly bought and sold through stock exchanges, the price at which such property closed on the last regular business day preceding the assessment day shall be prima facie evidence of the fair cash value of such property. The property of one (1) person shall not be assessed willfully or intentionally at a lower or higher relative value than the same class of property of another, and any grossly discriminatory valuation shall be construed as an intentional discrimination. The property valuation administrator shall make every effort, through visits with the taxpayer, personal inspection of the property, from records, from his own knowledge, from information in property schedules, and from such other evidence as he may be able to obtain, to locate, identify, and assess property.
- (2)
 - (a) In determining the total area of land devoted to agricultural or horticultural use, there shall be included the area of all land under farm buildings, greenhouses and like structures, lakes, ponds, streams, irrigation ditches and similar facilities, and garden plots devoted to growth of products for on-farm personal consumption but there shall be excluded, land used in connection with dwelling houses including, but not limited to, lawns, drives, flower gardens, swimming pools or other areas devoted to family recreation. Where contiguous land in agricultural or horticultural use in one (1) ownership is located in more than one (1) county or taxing district, compliance with the minimum requirements shall be determined on the basis of the total area of such land and not the area of land which is located in the particular county or taxing district.
 - (b) Land devoted to agricultural or horticultural use, where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes qualifies for the agricultural or horticultural assessment until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification.
 - (c) When the use of a part of a tract of land which is assessed as agricultural or horticultural land is changed either by conveyance or other action of the owner, the right of the remaining land to be retained in the agricultural or horticultural assessment shall not be impaired provided it meets the minimum requirements, ***except the minimum ten (10) contiguous acre requirement shall not be applicable if any portion of the agricultural or horticultural land has been acquired for a public purpose as long as the remaining land continues to meet the other requirements of this section.***
 - (d) When in the opinion of the property valuation administrator any land has a value in excess of that for agricultural or horticultural use the property valuation administrator shall enter into the tax records the value of the property according to its fair cash value. When the property valuation administrator determines that the land meets the requirements for valuation as agricultural or horticultural land, the valuation for tax purposes shall be its agricultural or horticultural value.
- (3) When land which has been valued and taxed as agricultural land for five (5) or more consecutive years under the same ownership, fails to qualify for the classification through no other action on the part of the owner or owners other than ceasing to farm the land, the land shall retain its agricultural classification for assessment and taxation purposes. Classification as agricultural land shall expire upon change of use by the owner or owners or upon conveyance of the property to a person other than a surviving spouse.
- (4) If the property valuation administrator assesses any property, except stocks and bonds at the market value listed in recognized publications, at a greater value than that listed by the taxpayer or assesses unlisted property, the property valuation administrator shall serve notice on the taxpayer of such action. The notice shall be given by first-class mail or as provided in the Kentucky Rules of Civil Procedure.

- (5) Any taxpayer may designate on the property schedule any property which he does not consider to be subject to taxation, and it shall be the duty of the property valuation administrator to obtain and follow advice from the cabinet relative to the taxability of such property.

Section 2. KRS 132.380 is amended to read as follows:

- (1) Before any person's name shall appear before the voters on election day as a candidate for the office of property valuation administrator in any primary or general election, except as a candidate to succeed himself in office, or before he may be appointed property valuation administrator, except as an interim appointee as provided by KRS 132.375, he shall hold a certificate issued by the Revenue Cabinet, showing that he has been examined by it and that he is qualified for the office. All certificates issued shall expire one (1) year from the date of issuance, ***except for the certificates issued to successful candidates of the 1997 exam. Those certificates shall remain valid until after the November, 1998 election.*** The examinations shall be written and formulated so as to test fairly the ability and fitness of the applicant to serve as property valuation administrator. The Revenue Cabinet shall hold the examinations in at least one (1) place in each Supreme Court district during the month of ~~November~~~~October~~ of each year immediately preceding each year in which property valuation administrators are to be elected. The Revenue Cabinet shall advise each county attorney of the time and place of the examination, and the county attorney shall post a notice thereof in a conspicuous place in the courthouse two (2) weeks before the examination is given. Any person desiring to take an examination shall appear at the time and place designated.
- (2) If, after the giving of the examination, as provided in subsection (1), there is only one (1) person qualified to be a candidate in the county, the Revenue Cabinet shall hold a second examination prior to the filing date in each Supreme Court district where necessary. Applicants from only those counties having not more than one (1) person qualified shall be eligible to take the examination. Notice of the second examination shall be posted in the manner provided in subsection (1).
- (3) Whenever there is a vacancy in the office of property valuation administrator to be filled by appointment or by election, and there is not more than one (1) person holding a valid certificate and eligible for appointment or election, the Revenue Cabinet may hold a special examination for applicants seeking a certificate for the office. If, after the giving of a special examination, only one (1) person is qualified, the county judge/executive may request a second examination. Special examinations shall be held in the same manner as regular examinations.
- (4) Examinations shall be given and graded in accordance with rules of the cabinet published at the time of the examination. Within ten (10) days after the examination, a certificate of fitness and qualification to fill the office of property valuation administrator shall be issued by the Revenue Cabinet to each person passing the examination.
- (5) Examination records shall be preserved by the cabinet for twelve (12) months after the examination, and the record of any person who took the examination may be seen by him at the office of the Revenue Cabinet in Frankfort, Kentucky.

Section 3. KRS 132.385 is amended to read as follows:

- (1) The cabinet shall develop and administer a program for the purpose of providing education and training in the technical, legal, and administrative aspects of property tax administration for property valuation administrators, deputy property valuation administrators, and cabinet employees. Courses may be created and taught by cabinet personnel or the cabinet may adopt specific courses offered by appropriate professional organizations.
- (2) The cabinet shall develop and administer, in cooperation with the property valuation administrators, a certification program for property valuation administrators, deputy property valuation administrators, and cabinet employees. A professional designation, "certified Kentucky assessor" (CKA), shall be awarded to those individuals successfully meeting the standards established by this program. Minimum requirements shall include one hundred twenty (120) hours of classroom instruction, passage of subject matter examinations, and three (3) years of experience in Kentucky property tax administration. An advanced designation, "senior Kentucky assessor" (SKA), shall be awarded to those individuals successfully completing an additional ninety (90) hours of classroom instruction, passage of subject matter examinations, and an additional two (2) years of experience in Kentucky property tax administration. Correspondence course credit administered by the cabinet may be substituted for no more than thirty (30) hours of the one hundred twenty (120) hours required for the "certified Kentucky assessor" (CKA) designation, and for no more than fifteen (15) hours of the additional ninety (90) hours required for the "senior Kentucky assessor" (SKA) designation.

- (3) Any property valuation administrator awarded the certified Kentucky assessor designation shall receive a five percent (5%) salary increase effective the first day of the month following receipt of the designation. Any property valuation administrator awarded the senior Kentucky assessor designation shall receive an additional five percent (5%) salary increase effective the first day of the month following receipt of the designation. ~~Those property valuation administrators awarded the certified Kentucky assessor designation prior to August 1, 1994, shall receive the five percent (5%) salary increase effective August 1, 1994. Those property valuation administrators awarded the senior Kentucky assessor designation prior to August 1, 1994, shall receive an additional five percent (5%) salary increase effective August 1, 1994. The salary increases provided for in this subsection shall be funded only if sufficient surplus funds are available to fund the increases.~~

Approved April 10, 1998

CHAPTER 496

(HB 315)

AN ACT relating to health insurance, making an appropriation therefor, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;*
- (2) *"Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in Section 11 of this Act, with similar case characteristics for health benefit plans with the same or similar coverage.*
- (3) *"Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3).*
- (4) *"Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33).*
- (5) *"COBRA" means any of the following:*
 - (a) *26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;*
 - (b) *The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than Section 1169); or*
 - (c) *42 U.S.C. sec. 300bb;*
- (6) (a) *"Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:*
 1. *A group health plan;*
 2. *Health insurance coverage;*
 3. *Part A or Part B of Title XVIII of the Social Security Act;*
 4. *Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;*
 5. *Chapter 55 of Title 10, United States Code;*
 6. *A medical care program of the Indian Health Service or of a tribal organization;*
 7. *A state health benefits risk pool;*
 8. *A health plan offered under Chapter 89 of Title 5, United States Code;*
 9. *A public health plan, as defined in regulations; or*

10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)).

(b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (10) of this section.

(7) "Eligible individual" means an individual:

(a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;

(b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and does not have other health insurance coverage;

(c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in subsection (2)(a), (b), and (c) in Section 6 of this Act;

(d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and

(e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;

(8) "Employer-organized association" means any of the following:

(a) Any entity that was qualified by the commissioner as an eligible association prior to the effective date of this Act, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;

(b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or

(c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.

Except as provided in Sections 2, 3, and 4 of this Act, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;

(9) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;

(10) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:

(a) Coverage only for accident, or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics; or

- (h) *Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;*
 - (i) *Limited scope dental or vision benefits;*
 - (j) *Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;*
 - (k) *Such other similar, limited benefits as are specified in administrative regulations;*
 - (l) *Coverage only for a specified disease or illness;*
 - (m) *Hospital indemnity or other fixed indemnity insurance;*
 - (n) *Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;*
 - (o) *Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and*
 - (p) *Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan;*
- (11) *"Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);*
- (12) *"Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals;*
- (13) *"Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program;*
- (14) *"Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under Sections 15 to 23 of this Act;*
- (15) *"Guaranteed acceptance program qualified individual" means an individual who:*
- (a) *Is not an eligible individual;*
 - (b) *Is not eligible for or covered by other health benefit plan coverage;*
 - (c) *Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in subsection (3) of Section 18 of this Act;*
 - (d) *Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and*
 - (e) *Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:*
 - 1. *The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;*
 - 2. *The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or*
 - 3. *The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;*
- (16) *"Guaranteed acceptance plan supporting insurer" means either an insurer that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;*

- (17) *"Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;*
- (18) *"Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:*
- (a) *Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;*
 - (b) *Chiropractors licensed under KRS Chapter 312;*
 - (c) *Dentists licensed under KRS Chapter 313;*
 - (d) *Optometrists licensed under KRS Chapter 320;*
 - (e) *Physician assistants regulated under KRS Chapter 311;*
 - (f) *Nurse practitioners licensed under KRS Chapter 314; and*
 - (g) *Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A;*
- (19) (a) *"High-cost condition" means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the commissioner in accordance with Section 14 of this Act, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the commissioner under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.*
- (b) *The commissioner by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:*
- 1. *Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and*
 - 2. *The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the commissioner, the scoring scale for which shall be established by the commissioner.*
- (c) *The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, friedreich's ataxia, hemophilia, hodgkin's disease, huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and wilson's disease;*
- (20) *"Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;*
- (21) *"Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan;*

- (22) *"Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;*
- (23) *"Insurer-controlled" means that the commissioner has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;*
- (24) *"Large group" means:*
- (a) *An employer with fifty-one (51) or more employees; or*
 - (b) *An affiliated group with fifty-one (51) or more eligible members.*
- (25) *"Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;*
- (26) *"Market segment" means the portion of the market covering one (1) of the following:*
- (a) *Individual;*
 - (b) *Small group;*
 - (c) *Large group; or*
 - (d) *Association;*
- (27) *"Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;*
- (28) *"Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;*
- (29) *"Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;*
- (30) *"Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;*
- (31) *"Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;*
- (32) *"Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;*
- (33) *"Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;*
- (34) *"Small group" means:*
- (a) *A small employer with two (2) to fifty (50) employees; or*
 - (b) *An affiliated group or association with two (2) to fifty (50) eligible members; and*
- (35) *"Standard benefit plan" means the plan identified in Section 7 of this Act.*

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer that offers health benefit plan coverage in the small group, large group, or association market may not establish rules for eligibility of any individual to enroll under the terms of the plan based on any of the following health status-related factors in relation to the individual or the dependent of the individual:*
 - (a) *Health status;*
 - (b) *Medical condition, including both physical and mental illness;*
 - (c) *Claims experience;*
 - (d) *Receipt of health care;*
 - (e) *Medical history;*
 - (f) *Genetic information;*
 - (g) *Evidence of insurability, including conditions arising out of acts of domestic violence; and*
 - (h) *Disability.*
- (2) *An insurer that offers health benefit plan coverage in the small group, large group, or association market, shall not require any individual to pay a premium or contribution which is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or a dependent of the individual. Nothing in this subsection shall prevent the insurer from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.*
- (3) *Subject to subsections (4) to (7) of this section, each insurer that offers health benefit plan coverage in the small groups market shall accept every small employer that applies for coverage and shall accept for enrollment under this coverage every individual eligible for the coverage who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health benefit plan.*
 - (a) *Notwithstanding any other provision of this subsection, the insurer may establish group participation rules requiring a minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of those eligible for enrollment.*
 - (b) *The terms and participation rules of the group health benefit plan shall be uniformly applicable to small employers in the small group market.*
 - (c) *This subsection shall not apply to health benefit plan coverage offered by an insurer if the coverage is made available in the small group market only through one (1) or more bona fide associations.*
- (4) *In the case of an insurer that offers health benefit plan coverage in the small group market through a network plan, the insurer may:*
 - (a) *Limit the employers that may apply for coverage to those with individuals who live, work, or reside in the service area of the network plan; and*
 - (b) *Within the service area of the network plan, deny coverage to employers if the insurer has demonstrated to the commissioner that:*
 1. *The network plan will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees; and*
 2. *The insurer is applying this denial uniformly to all employers.*
- (5) *An insurer, upon denying health benefit plan coverage in any service area in accordance with subsection (4) of this section, shall not offer coverage in the small group market within the service area for a period of one hundred eighty (180) days after the date the coverage is denied.*
- (6) *An insurer may deny health benefit plan coverage in the small group market if the insurer has demonstrated to the commissioner that:*
 - (a) *The insurer does not have the financial reserves necessary to underwrite additional coverage; and*

- (b) *The insurer is applying this denial uniformly to all employers in the small group market.*
- (7) *An insurer, upon denying health benefit plan coverage in connection with group health plans in accordance with subsection (6) of this section shall not offer coverage in the small group market for a period of one hundred eighty (180) days after the date the coverage is denied or until the insurer has demonstrated to the commissioner that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.*
- (8) *A health benefit plan issued as an individual policy to individual employees or their dependents through or with the permission of a small employer shall be issued on a guaranteed-issue basis to all full-time employees and shall comply with the pre-existing condition provisions of Section 4 of this Act.*
- (9) (a) *In connection with the offering of any health benefit plan to a small employer, an insurer:*
1. *Shall make a reasonable disclosure to a small employer, as part of its solicitation and sales materials, of the availability of information described in paragraph (b) of this subsection; and*
 2. *Upon request of a small employer, provide the information described in paragraph (b) of this subsection.*
- (b) *Subject to paragraph (c) of this subsection, with respect to an insurer offering a health benefit plan to a small employer, information described in this subsection is information concerning:*
1. *The provisions of the coverage concerning the insurer's right to change premium rates and the factors that may affect changes in premium rates;*
 2. *The provisions of the health benefit plan relating to renewability of coverage;*
 3. *The provisions of the health benefit plan relating to any preexisting condition exclusion; and*
 4. *The benefits and premiums available under all health benefit plans for which the small employer is qualified.*
- (c) *Information described in paragraph (b) of this subsection shall be provided to a small employer in a manner determined to be understandable by the average small employer, and shall be sufficient to reasonably inform a small employer of his or her rights and obligations under the health benefit plan.*
- (d) *An insurer is not required under this section to disclose any information that is proprietary and trade secret information under applicable law.*

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each insurer that issues health benefit plans in the individual market shall be required to issue health benefit plans in the individual market on a guaranteed-issue basis as follows:

- (1) *An eligible individual shall be entitled to have coverage issued from the insurer under the standard health benefit plan or any other health benefit plan sold by the insurer in the individual market;*
- (2) *Except as provided in subsection (3) of this section, an individual who has been a resident of Kentucky for at least twelve (12) months shall be entitled to have coverage issued from the insurer under the standard health benefit plan or any other health benefit plan sold by the insurer in the individual market; and*
- (3) *Except as provided in subsection (4) of this section, if the individual is a guaranteed acceptance program qualified individual and the insurer is a guaranteed acceptance program participating insurer, then the individual shall be entitled to have coverage issued under either:*
 - (a) *The standard health benefit plan; or*
 - (b) *The insurer's two (2) health benefit plans, other than the standard health benefit plan, sold by it in the individual market in Kentucky, or in the applicable marketing or service area as may be prescribed by the commissioner by administrative regulation, with the largest annual premium volume; except that the insurer shall make all necessary adjustments to the health benefit plans sold so that they qualify as a guaranteed acceptance program plan and can be included in the guaranteed acceptance program risk adjustment process. During the period of July 1, 1998, to June 30, 1999, the*

guaranteed acceptance program participating insurer may designate upon approval of the commissioner any health benefit plans made generally available to, and actively marketed in, the individual market as this option. The insurer shall make all necessary adjustments to the designated health benefit plans so that they qualify as a guaranteed acceptance program plan and can be included in the guaranteed acceptance program risk adjustment process.

- (4) *If the insurer does not generally operate in the individual market and has elected under subsection (3)(a) of Section 17 of this Act to be a guaranteed acceptance program participating insurer without generally operating in the individual market, then an individual who is a guaranteed acceptance program qualified individual shall be entitled to have coverage issued from that insurer only under the standard health benefit plan.*
- (5) (a) *No insurer, who was not offering health benefit plans in Kentucky on January 1, 1998, shall be required to accept annually under this section individuals who, in the aggregate, would cause the insurer to have a total number of new insureds with high-cost conditions as defined in subsection (19) of Section 1 of this Act or which exceed an insurer's underwriting guidelines as approved by the commissioner under subsection (3)(b) of Section 18 of this Act per year that is more than one-half of one per cent (0.5%) of the total number of individuals insured by the insurer under individual health benefits plans issued or issued for delivery in the Commonwealth, calculated as of the immediately preceding thirty-first day of December.*
- (b) *The commissioner shall, by administrative regulation, establish equitable enrollment limits for the first twelve (12) months, and any remaining portion of the calendar year after the expiration of that twelve (12) month period, in which an insurer first begins doing business in the individual market. These limits shall be based on the insurer's quarterly enrollment in health benefit plans offered in the individual market in the Commonwealth.*
- (c) *An officer of the insurer shall certify to the department when it has met the enrollment limit established in this subsection. Upon providing this certification, the insurer shall be relieved of its guaranteed issue requirement under this section for the remainder of the calendar year.*
- (d) *If all insurers that are required to offer coverage on a guaranteed-issue basis meet the enrollment limit established in this subsection prior to the end of the calendar year, then all such insurers shall again accept individuals for guaranteed issue coverage, subject to the enrollment limit established in this subsection.*
- (e) *If certification of the enrollment limit would leave any county in the Commonwealth without an insurer to provide coverage in the individual market, the commissioner may require any insurer that meets the criteria in subsection (1) of Section 17 of this Act to continue to offer coverage in that county. The commissioner shall proportionally increase the enrollment limit under this subsection for all other insurers that do not meet the criteria of subsection (1) of Section 17 of this Act.*
- (6) *An insurer that elects to use the alternative underwriting mechanism under subsection (3) of Section 18 of this Act shall offer to those insureds who are subject to the alternative underwriting mechanism the standard plan and the two (2) plans offered by the insurer with the largest premium volume for the last calendar year.*
- (7) *For the purposes of this section and Section 7 of this Act, insurers whose activities in the individual market are limited to the renewal of health benefit plans issued prior to July 15, 1995, shall not be deemed to be doing business in the individual market.*
- (8) *Subsections (1) to (7) of this section shall not apply to a health benefit plan offered by an insurer if the coverage is made available in the individual market only through one (1) or more bona fide associations.*

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *All group health plans and insurers offering group health insurance coverage in the Commonwealth shall comply with the provisions of this section.*
- (2) *Subject to subsection (5) of this section, a group health plan, and a health insurance insurer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a pre-existing condition exclusion only if:*

- (a) *The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six (6) month period ending on the enrollment date;*
 - (b) *The exclusion extends for a period of not more than twelve (12) months, or eighteen (18) months in the case of a late enrollee, after the enrollment date; and*
 - (c) *The period of that pre-existing condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.*
- (3) *For purposes of this section:*
- (a) *1. "Pre-existing condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for that coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that date; and*
 - 2. Genetic information shall not be treated as a condition described in subparagraph 1. of this paragraph in the absence of a diagnosis of the condition related to this information;*
 - (b) *"Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment;*
 - (c) *"Late enrollee" means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during:*
 - 1. The first period in which the individual is eligible to enroll under the plan; or*
 - 2. A special enrollment period under subsection (7) of this section; and*
 - (d) *"Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.*
- (4) (a) *A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health plan, if, after the period and before the enrollment date, there was a sixty-three (63) day period during all of which the individual was not covered under any creditable coverage.*
- (b) *For purposes of paragraph (a) of this subsection and subsection (5)(d) of this section, any period that an individual is in a waiting period for any coverage under a group health plan or for group health insurance coverage or is in an affiliation period, as defined in subsection (8)(b) of this section, shall not be taken into account in determining the continuous period under paragraph (a) of this subsection.*
- (c) *1. Except as otherwise provided under paragraph (b) of this subsection, for purposes of applying subsection (2)(c) of this section, a group health plan, and a health insurance insurer offering group health insurance coverage, shall count a period of creditable coverage without regard to the specific benefits covered during the period.*
- 2. A group health plan, or a health insurance insurer offering group health insurance coverage, may elect to apply subsection (2)(c) of this section based on coverage of benefits within each of several classes or categories of benefits specified in regulations rather than as provided under paragraph (a) of this subsection. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health plan or insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within this class or category.*
- 3. In the case of an election with respect to a group health plan under paragraph (b) of this subsection, whether or not health insurance coverage is provided in connection with the plan, the plan shall:*
- a. Prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made this election; and*

- b. Include in these statements a description of the effect of this election.*
- (d) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (6) of this section or in such other manner as may be specified in administrative regulations.*
- (5) (a) Subject to paragraph (d) of this subsection, a group health plan, and a health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion in the case of an individual who, as of the last day of the thirty (30) day period beginning with the date of birth, is covered under creditable coverage.*
- (b) Subject to paragraph (d) of this subsection, a group health plan, and a health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion in the case of a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, as of the last day of the thirty (30) day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of the adoption or placement for adoption.*
- (c) A group health plan, and health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion relating to pregnancy as a pre-existing condition.*
- (d) Paragraphs (a) and (b) of this subsection shall no longer apply to an individual after the end of the first sixty-three (63) day period during all of which the individual was not covered under any creditable coverage.*
- (6) (a) 1. A group health plan, and a health insurance insurer offering group health insurance coverage, shall provide the certification described in subparagraph 2. of this subsection:*
- a. At the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision;*
- b. In the case of an individual becoming covered under that provision, at the time the individual ceases to be covered under the provision; and*
- c. On request on behalf of an individual made not later than twenty-four (24) months after the date of cessation of the coverage described in subdivision a. or b. of this subparagraph, whichever is later.*
- The certification under subdivision a. of this subparagraph may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.*
- 2. The certification described in this subparagraph is a written certification of:*
- a. The period of creditable coverage of the individual under the plan and the coverage, if any, under the COBRA continuation provision; and*
- b. The waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.*
- 3. To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance insurer offering the coverage provides for the certification in accordance with this paragraph.*
- (b) In the case of an election described in subsection (4)(c)2. of this section by a group health plan or health insurance insurer, if the plan or insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (a) of this subsection:*
- 1. Upon request of that plan or insurer, the entity that issued the certification provided by the individual shall promptly disclose to the requesting plan or insurer information on coverage of classes and categories of health benefits available under the entity's plan or coverage; and*
- 2. The entity may charge the requesting plan or insurer for the reasonable cost of disclosing this information.*

- (7) (a) *A group health plan, and a health insurance insurer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan, or a dependent of that employee if the dependent is eligible, but not enrolled, for coverage under these terms, to enroll for coverage under the terms of the plan if each of the following conditions is met:*
1. *The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent;*
 2. *The employee stated in writing at that time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or insurer, if applicable, required that statement at that time and provided the employee with notice of the requirement, and the consequences of the requirement, at that time;*
 3. *The employee's or dependent's coverage described in subparagraph 1. of this paragraph:*
 - a. *Was under a COBRA continuation provision and the coverage under that provision was exhausted; or*
 - b. *Was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage, including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment, or employer contributions toward the coverage were terminated; and*
 4. *Under the terms of the plan, the employee requests the enrollment not later than thirty (30) days after the date of exhaustion of coverage described in subparagraph 3.a. of this paragraph or termination of coverage or employer contribution described in subparagraph 3.b. of this paragraph.*
- (b) 1. *If:*
- a. *A group health plan makes coverage available with respect to a dependent of an individual;*
 - b. *The individual is a participant under the plan, or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period; and*
 - c. *A person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption;*
- the group health plan shall provide for a dependent special enrollment period described in subparagraph 2. of this paragraph during which the person or, if not otherwise enrolled, the individual, may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.*
2. *A dependent special enrollment period under this subparagraph shall be a period of not less than thirty (30) days and shall begin on the later of:*
 - a. *The date dependent coverage is made available; or*
 - b. *The date of the marriage, birth, or adoption or placement for adoption, as the case may be, described in subparagraph 1.c. of this paragraph.*
 3. *If an individual seeks to enroll a dependent during the first thirty (30) days of the dependent special enrollment period, the coverage of the dependent shall become effective:*
 - a. *In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;*
 - b. *In the case of a dependent's birth, as of the date of the birth; or*
 - c. *In the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.*

- (8) (a) *In the case of a group health plan that offers medical care through health insurance coverage offered by a health maintenance organization, the plan may provide for an affiliation period with respect to coverage through the organization only if:*
1. *No pre-existing condition exclusion is imposed with respect to coverage through the organization;*
 2. *The period is applied uniformly without regard to any health status-related factors; and*
 3. *The period does not exceed two (2) months, or three (3) months in the case of a late enrollee.*
- (b) 1. *For purposes of this section, the term "affiliation period" means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during this period and no premium shall be charged to the participant or beneficiary for any coverage during the period.*
2. *This period shall begin on the enrollment date.*
 3. *An affiliation period under a plan shall run concurrently with any waiting period under the plan.*
- (c) *A health maintenance organization described in paragraph (a) of this subsection may use alternative methods other than those described in that paragraph to address adverse selection as approved by the commissioner.*

SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A health insurer offering individual health benefit plan coverage in the individual market in the Commonwealth shall not impose any pre-existing conditions exclusions as to any eligible individual.*
- (2) *Each health insurer offering individual health benefit plan coverage in the individual market in the Commonwealth that chooses to impose a pre-existing conditions exclusion on individuals who do not meet the definition of eligible individual shall comply with the provisions of Section 4 of this Act, which establishes standards and requirements for pre-existing conditions exclusions for group health plans, including crediting previous coverage, and certification of coverage; except the period of creditable coverage shall only reduce the period of a pre-existing condition exclusion in a policy that has benefits substantially similar to the benefits provided in the creditable coverage. Pregnancy may be considered to be a pre-existing condition.*
- (3) *Genetic information shall not be treated as a pre-existing condition in the absence of a diagnosis of the condition related to the information.*

SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in this section, an insurer shall renew or continue in force a health benefit plan at the option of the insured.*
- (2) *An insurer may nonrenew or discontinue a health benefit plan based only on one (1) or more of the following:*
 - (a) *The insured has failed to pay premiums or contributions in accordance with the terms of the plan or the insurer has not received timely premium payments;*
 - (b) *The insured has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage;*
 - (c) *The insured has engaged in intentional and abusive noncompliance with material provisions of the health benefit plan;*
 - (d) *The insurer is ceasing to offer coverage in the individual or group market in accordance with subsection (3) of this section;*
 - (e) *In the case of an insurer that offers health benefit plans through a network plan, the individual no longer resides, lives, or works in the service area or in an area for which the insurer is authorized to do business, but only if the coverage is terminated under this paragraph uniformly without regard to*

any health status-related factor of covered individuals, or there is no longer any enrollee in connection with the group plan who resides, lives, or works in the service area of the insurer; or

- (f) *In the case of a health benefit plan that is made available only through one (1) or more bona fide associations, the membership of the individual or employer in the association on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.*
- (3) (a) *In any case in which an insurer decides to discontinue offering a particular type of health benefit plan, coverage of the type may be discontinued by the insurer upon approval by the commissioner only if:*
 - 1. *The insurer provides notice to each insured provided coverage of this type in the market of the discontinuation at least ninety (90) days prior to the date of the discontinuation of the coverage;*
 - 2. *The insurer offers, to each insured provided coverage of this type, the option to purchase any other health benefit plan currently of that type being offered by the insurer in that market; and*
 - 3. *In exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph 2. of this paragraph, the insurer acts uniformly without regard to any health status-related factor of enrolled insureds or insureds who may become eligible for coverage.*
- (b) 1. *Subject to paragraph (a)3. of this subsection, in any case in which an insurer elects to discontinue offering all health benefit plans in Kentucky, health benefit plans may be discontinued by the insurer only if:*
 - a. *The insurer provides notice to the commissioner and to each insured of the discontinuation at least one hundred eighty (180) days prior to the date of the expiration of the coverage; and*
 - b. *All health benefit plans issued or delivered for issuance in Kentucky are discontinued and coverage under the health benefit plans is not renewed.*
- 2. *In the case of a discontinuation under subparagraph 1. of this paragraph, the insurer may not provide for the issuance of any health benefit plans in Kentucky during the five (5) year period beginning on the date of the discontinuation of the last health benefit plan not so renewed.*
- (4) *At the time of coverage renewal, an insurer may modify, with approval of the commissioner, the health benefit plan for a policy form so long as the modification is consistent with this chapter and effective on a uniform basis among all individuals with that policy form.*
- (5) *In applying this section in the case of a health benefit plan that is made available by an insurer only through one (1) or more associations, a reference to an individual is deemed to include a reference to an association of which the individual is a member, and a reference to an employer member is deemed to include a reference to the employer.*

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets after June 30, 1998. As a condition of doing business in the individual or small group market in the Commonwealth, the health insurer shall offer the standard health benefit plan, but the extent to which the standard health benefit plan shall be offered on a guaranteed issue basis shall only be as provided in Sections 2 and 3 of this Act. Except as may be necessary to coordinate with changes in federal law, the commissioner shall not alter, amend, or replace the standard health benefit plan more frequently than annually. Initially, the standard health benefit plan shall be the standard high plan in effect on the effective date of this Act.*
- (2) *The standard health benefit plan shall be available in at least one (1) of these four (4) forms of coverage:*
 - (a) *A fee-for-service product type;*

- (b) A health maintenance organization type;*
 - (c) A point of service type; and*
 - (d) A preferred provider organization type.*
- (3) The standard health benefit plan shall be defined so that it meets the requirements of Section 18 of this Act for inclusion in calculating assessments and refunds under the guaranteed acceptance program.*
- (4) Any health insurer who elects to offer health insurance policies in the individual or small group markets in this state shall, as a condition of offering health benefit plans in this state after June 30, 1998, offer and issue the standard health benefit plan in the individual or small group markets in each and every form of coverage that the health insurer offers to sell.*
- (5) Nothing in this section shall be construed:*
 - (a) To require a health insurer to offer a standard health benefit plan in a form of coverage that the health insurer has not selected;*
 - (b) To prohibit a health insurer from offering other health benefit plans in the individual or small group markets in addition to the standard health benefit plan; or*
 - (c) To require that a standard health benefit plan have guaranteed issue, renewability, or pre-existing condition exclusion rights or provisions that are more generous to the applicant than the health insurer would be required to provide under Sections 2, 3, 4, 5, and 6 of this Act.*
- (6) Insurance agents licensed under this chapter who present for sale any health benefit plan in the individual or small group markets to a prospective applicant shall also inform that person of the existence of the standard benefit plan in the same form of coverages offered by the same insurer.*
- (7) (a) A benefits comparison shall be delivered to a prospective applicant for any health insurance coverage in the individual or small group markets at the time of initial solicitation through means that prominently direct the attention of the prospective applicant to the document and its purpose.*
 - 1. The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of a benefits comparison.*
 - 2. In the case of agent solicitations, an agent shall deliver the benefits comparison to the prospective applicant prior to the presentation of an application or enrollment form.*
 - 3. In the case of direct response solicitations, the benefits comparison shall be presented in conjunction with any application or enrollment form.*
 - (b) The benefits comparison given to a prospective applicant shall include:*
 - 1. A description of the principal benefits and coverage provided in the standard health benefit plan offered under this section, and the health benefit policy being offered to the prospective applicant;*
 - 2. A statement of the principal exclusions, reductions, and limitations contained in the standard health benefit plan offered under this section, and the health benefit plan being offered to the prospective applicant; and*
 - 3. A chart providing a direct comparison of the insurer's premium rate for the standard health benefit plan offered under this section, and the health benefit policy being offered to the prospective applicant.*
 - (c) At the time of the execution of an application for any health benefit plan, the prospective applicant shall sign a statement contained in or accompanying the application, which shall remain on file with the health insurer for five (5) years, indicating that the insured has been provided with and understands the benefits comparison required by this subsection.*
 - (d) As used in this subsection and in subsection (6) of this section, the term "prospective applicant" refers only to a natural person who is a resident of the Commonwealth and who is purchasing health insurance coverage in the individual market providing benefits to that person, that person's spouse, or that person's children. It does not include an employer or representative of an employer who is considering health insurance coverage that would provide benefits to employees and their families.*

- (8) *All health benefit plans shall cover hospice care at least equal to the Medicare benefits.*
- (9) *All health benefit plans shall coordinate benefits with other health benefit plans in accordance with the guidelines for coordination of benefits prescribed by the commissioner as provided in KRS 304.18-085.*
- (10) *Every health insurer of any kind, nonprofit hospital, medical-surgical, dental and health service corporation, health maintenance organization, or provider-sponsored health delivery network that issues or delivers an insurance policy in this state that directs or gives any incentives to insureds to obtain health care services from certain health care providers shall not imply or otherwise represent that a health care provider is a participant in or an affiliate of an approved or selected provider network unless the health care provider has agreed in writing to the representation or there is a written contract between the health care provider and the insurer or an agreement by the provider to abide by the terms for participation established by the insurer. This requirement to have written contracts shall apply whenever an insurer includes a health care provider as a part of a preferred provider network or otherwise selects, lists, or approves certain health care providers for use by the insurer's insureds. The obligation set forth in this section for an insurer to have written contracts with providers selected for use by the insurer shall not apply to emergency or out-of-area services.*
- (11) *A self-insured plan may select any third party administrator licensed under KRS 304.9-052 to adjust or settle claims for persons covered under the self-insured plan.*
- (12) *Any health insurer that fails to issue a premium rate quote to an individual within thirty (30) days of receiving a completed application request for the quote shall be required to issue coverage to that individual and shall not impose any pre-existing conditions exclusion on that individual with respect to the coverage. Each health insurer offering individual health insurance coverage in the individual market in the Commonwealth that refuses to issue a health benefit plan to an insured with a high-cost condition shall provide the individual with a denial letter within twenty (20) working days of the request for coverage. The letter shall include the name and title of the person making the decision, a statement setting forth the specific high-cost condition that is the basis for refusing to issue a policy, a description of the Guaranteed Acceptance Program, and the name and the telephone number of a contact person who can provide additional information about the Guaranteed Acceptance Program.*
- (13) *If a standard health benefit plan covers services that the plan's insureds lawfully obtain from health departments established under KRS Chapter 212, the health insurer shall pay the plan's established rate for those services to the health department.*
- (14) *No individually insured person shall be required to replace an individual policy with group coverage on becoming eligible for group coverage that is not provided by an employer. In a situation where a person holding individual coverage is offered or becomes eligible for group coverage not provided by an employer, the person holding the individual coverage shall have the option of remaining individually insured, as the policyholder may decide. This shall apply in any such situation that may arise through an association, an affiliated group, the Kentucky state employee health insurance plan, or any other entity.*

SECTION 8. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer that, on or after July 15, 1995, until the effective date of this Act, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky may apply to the commissioner on or after the effective date of this Act until January 1, 1999, for approval to reenter Kentucky and if the commissioner grants approval the insurer may engage in the health insurance business notwithstanding the provisions of KRS 304.17A-110(1)(d) as it existed on the date the insurer ceased doing business in Kentucky.

Section 9. KRS 304.17A-095 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan shall, before use thereof, file with the commissioner its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers, *shall submit a copy of the filing to the Attorney General*, and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the commissioner. The insurer may submit new filings from time to time as it deems proper, ~~except as provided in subsection (5) of this section~~.

- (2) (a) *A rate filing under this section may be used by the insurer on and after the date of filing with the commissioner prior to approval by the commissioner. A rate filing shall be approved or disapproved by the commissioner within sixty (60) days after the date of filing. Should sixty (60) days expire after the commissioner receives the filing before approval or disapproval of the filing, the filing shall be deemed approved. The commissioner may hold a hearing within sixty (60) days after receiving a filing containing a rate increase. Not less than thirty (30) days in advance of a hearing held under this section, the commissioner shall notify the Attorney General in writing of the hearing. The Attorney General may participate as a health insurance consumer intervenor and be considered a party to the hearing.*
- (b) *The commissioner shall hold a hearing upon written request, including the reasons for the request, by the Attorney General, provided the request is in accordance with subsection (3) of this section.*
- (c) *The commissioner shall hold a hearing, unless waived by the health insurer, before ordering a retroactive reduction of rates.*
- (d) *The hearing shall be a public hearing conducted in accordance with KRS Chapter 13B.*
- (e) *In the circumstances of a filing that has been deemed approved under paragraph (a) of this subsection, the commissioner shall have the authority to order a retroactive reduction of rates to a reasonable rate if after applying the factors in subsection (3) of this section the commissioner determines that the rates were unreasonable. If the commissioner seeks to order a retroactive reduction of rates and more than one (1) year has passed since the date of the filing, the commissioner shall consider the reasonableness of the rate over the entire period during which the filing has been in effect.* ~~Each filing under this section shall be on file for a waiting period of thirty (30) days before it becomes effective. The period may be extended by the commissioner for an additional period not to exceed thirty (30) days if the commissioner gives notice within the waiting period to the insurer that it needs the additional time for consideration of the filing. At the end of the thirty (30) day period, or any additional period if extended by the commissioner pursuant to this subsection, the filing shall be deemed approved unless prior thereto it has been disapproved by order of the commissioner or the commissioner has directed that a hearing be held.~~
- ~~(b) The commissioner may hold a hearing, without request by others, within thirty (30) days after receiving a filing under this subtitle, or during an additional thirty (30) day period, and shall issue an order approving or disapproving the filing within thirty (30) days following the conclusion of the hearing.~~
- ~~(c) If the filing contains an average premium rate increase which will result in a percentage increase over the insurer's average existing rates that is greater than the percentage change in the medical care consumer price index for all urban consumers for the South region as published by the federal Bureau of Labor Statistics, plus three percent (3%), since the last filing of the insurer for any of the same policies or contracts, the commissioner shall hold a hearing, without request by others, within thirty (30) days after receiving a filing under this subtitle, or during an additional thirty (30) day period, and shall issue an order approving or disapproving the filing within thirty (30) days following the conclusion of the hearing.~~
- (3) In approving or disapproving a filing under this section, the commissioner shall consider:
- (a) Whether the benefits provided are reasonable in relation to the premium or fee charged;
- (b) Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;
- (c) Previous premium rates or fees for the policies or contracts to which the filing applies;
- (d) The effect of the rate or rate increase on policyholders, enrollees, and subscribers;
- (e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory; and
- (f) *The effect on the rates of any assessment made under Section 21 of this Act; and*
- (g) Other factors as deemed relevant by the commissioner.
- (4) *The rates for each policyholder shall be guaranteed for twelve (12) months at the rate in effect on the date of issue or date of renewal* ~~[Not less than ten (10) days in advance of a hearing held under this section, the commissioner shall notify the Attorney General in writing of the hearing. The Attorney General shall participate as a health insurance consumer intervenor and be considered a party to the hearing].~~

- (5) ~~No insurer receiving the commissioner's approval of a filing under this section shall submit a new filing containing a rate or fee increase for any of the same policies or contracts until at least twelve (12) months have elapsed following the effective date of the approved increase.~~
- (6) At any time the commissioner, after a public hearing for which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund *or future premium credit* to policyholders, enrollees, and subscribers if the commissioner determines that ~~the rates or fees previously approved are in violation of this chapter~~ *benefits are no longer reasonable in relation to the premiums or fees charged*.
- (6) *Each insurer paying a risk assessment under Section 21 of this Act may include the amount of the assessment in establishing premium rates filed with the commissioner under this section. The insurer shall identify any assessment allocated.*
- (7) The commissioner may by administrative regulation prescribe any additional information *related to rates, fees, dues, and other charges as they relate to the factors set out in subsection (3) of this section that he or she* ~~deems~~ *deems necessary and* relevant to be included in the filings and the form of the filings required by this section.
- ~~(8) Because of the duties of the commissioner imposed under KRS 304.17A-090, the commissioner may, between July 15, 1996, and December 31, 1996, in addition to the thirty (30) day extension allowed under subsection (2) of this section, further extend the waiting period and the time for holding a hearing up to two (2) additional thirty (30) day periods upon thirty (30) days' written notice to the insurer of each extension that the additional periods are necessary due to proper fulfillment of the commissioner's duties under KRS 304.17A-090.~~

SECTION 10. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Premium rates for a health benefit plan issued or renewed to an individual, a small group, or an association on or after the effective date of this Act shall be subject to the following provisions:

- (1) *The premium rates charged during a rating period to an individual with similar case characteristics for the same coverage, or the rates that could be charged to that individual under the rating system for that class of business, shall not vary from the index rate by more than thirty-five percent (35%) of the index rate.*
- (2) *The percentage increase in the premium rate charged to an individual for a new rating period shall not exceed the sum of the following:*
 - (a) *The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;*
 - (b) *Any adjustment, not to exceed ten percent (10%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the individual and dependents as determined from the insurer's rate manual for the class of business; and*
 - (c) *Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the insurer's rate manual for the class of business.*
- (3) *Notwithstanding subsection (2) of this section, at renewal the insurer may replace modified community rates with rates determined in accordance with subsection (1) of this section.*
 - (b) *Within the limitations set out in subsections (1) and (2) of this section, the premium rate for health benefit plans issued to high-risk individuals under modified community rating who at the time of issue had a high-cost condition during the period from July 15, 1995, until the effective date of this Act for a new rating period:*
 1. *Shall not be increased by more than twenty-five percent (25%) on either of the first two (2) renewal dates after the effective date of this Act. The total increase shall not result in a rate that exceeds thirty-five percent (35%) of the index rate. Notwithstanding subsection (1) of this section, the program established under Section 15 of this Act shall reimburse the insurer for any premium loss incurred under this subsection to the extent that funds are available;*

2. *May be increased without restriction to the applicable rate as determined by the insurer's rate manual on the third renewal date after the effective date of this Act; and*
 3. *Shall be subject to subsection (2) of this section on the fourth renewal date after the effective date of this Act and thereafter.*
- (4) *The premium rates charged during a rating period to a small group or to an association member with similar case characteristics for the same coverage, or the rates that could be charged to that small group or that association member under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate.*
 - (5) *The percentage increase in the premium rate charged to a small group or to an association member for a new rating period shall not exceed the sum of the following:*
 - (a) *The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;*
 - (b) *Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the employee, association member, or dependents as determined from the insurer's rate manual for the class of business; and*
 - (c) *Any adjustment due to change in coverage or change in the case characteristics of the small group or association member as determined from the insurer's rate manual for the class of business.*
 - (6) *In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.*
 - (7) *Adjustments in rates for claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, health status, and duration of coverage shall not be charged to an individual group member or the member's dependents. Any adjustment shall be applied uniformly to the rates charged for all individuals and dependents of the small group.*
 - (8) *The commissioner may approve establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the additional class would enhance the efficiency and fairness for the applicable market segment.*
 - (a) *The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business in that market segment by more than ten percent (10%).*
 - (b) *An insurer may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative cost related to the following reasons:*
 1. *The insurer uses more than one (1) type of system for the marketing and sale of the health benefit plans; or*
 2. *The insurer has acquired a class of business from another insurer.*
 - (9) *For the purpose of this section, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize a restricted provider network if utilization of the restricted provider network results in substantial differences in claims costs.*
 - (10) *Notwithstanding any other provision of this section, an insurer shall not be required to utilize the experience of those individuals with high-cost conditions who enrolled in its plans between July 15, 1995 and the effective date of this Act to develop the insurer's index rate for its individual policies.*
 - (11) *Nothing in this section shall be construed to prevent an insurer from offering incentives to participate in a program of disease prevention or health improvement.*

SECTION 11. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section:*

- (a) *"Base premium rate" has the meaning provided in Section 1 of this Act;*
 - (b) *"Employer" means a person engaged in a trade or business who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year;*
 - (c) *"Employer-organized association" means any of the following:*
 - 1. *Any entity which was qualified by the commissioner as an eligible association prior to the effective date of this Act, and which has actively marketed a health insurance program to its members after September 8, 1996, and which is not insurer-controlled;*
 - 2. *An entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and which is not insurer-controlled; or*
 - 3. *Any entity which is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation;*
 - (d) *"Index rate" has the meaning provided in Section 1 of this Act.*
- (2) *Notwithstanding any other provision of this chapter, the amount or rate of premiums for an employer-organized association health plan may be determined, subject to the restrictions of subsection (3) of this section, based upon the experience or projected experience of the employer-organized associations whose employers obtain group coverage under the plan. Without the written consent of the employer-organized association filed with the commissioner, the index rate for the employer-organized association shall be calculated solely with respect to that employer-organized association and shall not be tied to, linked to, or otherwise adversely affected by any other index rate used by the issuing insurer.*
 - (3) *The following restrictions shall be applied in calculating the permissible amount or rate of premiums for an employer-organized health insurance plan:*
 - (a) *The premium rates charged during a rating period to members of the employer-organized association with similar characteristics for the same or similar coverage, or the premium rates that could be charged to a member of the employer-organized association under the rating system for that class of business, shall not vary from its own index rate by more than twenty-five percent (25%) of its own index rate.*
 - (b) *The percentage increase in the premium rate charged to an employer member of an employer-organized association for a new rating period shall not exceed the sum of the following:*
 - 1. *The percentage change in the new business premium rate for the employer-organized association measured from the first day of the prior rating period to the first day of the new rating period;*
 - 2. *Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating period of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the member as determined from the insurer's rate manual; and*
 - 3. *Any adjustment due to change in coverage or change in the case characteristics of the member as determined by the insurer's rate manual.*
 - (4) *In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.*
 - (5) *For the purpose of this section, a health insurance contract that utilizes a restricted provider network shall not be considered similar coverage to a health insurance contract that does not utilize a restricted provider network if utilization of the restricted provider network results in measurable differences in claims costs.*

SECTION 12. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Health Purchasing Alliance created under this subtitle shall not issue or renew any business after June 1, 1998. The commissioner shall take necessary and appropriate actions to terminate all activities of the alliance no later than June 30, 1999, and shall provide assistance to persons who are members of the alliance in obtaining health insurance coverage in the private market. KRS 304.17A-010 to 304.17A-070 shall become null and void on July 1, 1999.*
- (2) *No health benefit plans shall be issued, delivered, or renewed under the provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 on or after June 30, 1998. Health benefit plans in effect on the effective date of this Act shall be subject to the provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 until the end of the contract or policy period. The provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 shall become null and void on July 1, 1999.*

SECTION 13. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A health insurer shall not discriminate against any provider who is located within the geographic coverage area of the health benefit plan and who is willing to meet the terms and conditions for participation established by the health insurer, including the Kentucky State Medicaid program and Medicaid partnerships.

SECTION 14. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner may, by administrative regulation, add to the list of high-cost conditions provided in Section 1 of this Act other high-cost conditions based on diagnosis and severity. At the request of an insurer, the commissioner shall hold a hearing to determine whether or not a condition should be listed.

SECTION 15. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 15 to 23 of this Act shall be referred to as the Kentucky Guaranteed Acceptance Program.*
- (2) *There is hereby created and established the Kentucky Guaranteed Acceptance Program which is designed for the purpose of implementing an acceptable alternative mechanism within the meaning of 42 U.S.C. sec. 300gg-44(a)(1) so that Kentucky may preserve the flexibility over the regulation of health insurance coverage allowed by federal law.*
- (3) *Payment to providers of services under program plans shall not be discriminatory. Guaranteed acceptance program insurers shall reimburse providers at rates that are no less favorable than the rates paid to the comparable providers for services delivered to enrollees who do not have a high-cost condition.*
- (4) *All insurers, stop-loss carriers, and self-insured employer-controlled or bona fide associations, as a condition of doing business in Kentucky, shall participate in the Kentucky Guaranteed Acceptance Program either as a guaranteed acceptance program supporting insurer or a guaranteed acceptance program participating insurer.*
 - (a) *A guaranteed acceptance program insurer participates in the program by both issuing guaranteed acceptance program plans to guaranteed acceptance program qualified individuals in accordance with the provisions of this subtitle and by being subject to assessments and payments through the risk assessment process.*
 - (b) *A guaranteed acceptance program supporting insurer participates in the program only by being subject to assessments and payments through the program risk assessment process.*

SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 15 to 23 of this Act, unless the context requires otherwise:

- (1) *"Actual guaranteed acceptance program plan losses" means a dollar amount calculated by subtracting an insurer's guaranteed acceptance program plan claims from that insurer's guaranteed acceptance program plan premiums;*

- (2) *"Benefits" means amounts paid by an insurer to covered lives or to third parties for the benefit of covered lives. "Benefits" do not include an insurer's administrative costs, any assessments under the plan, allocated loss adjustment expenses, reserves, or other overhead costs;*
- (3) *"Guaranteed acceptance program plan claims" or "alternative underwriting mechanism losses" means the dollar amount of benefits actually paid by an insurer in a calendar year with respect to program plans or another claim measurement formula as the department may establish by administrative regulation to measure an insurer's costs, other than administrative costs, allocated loss adjustment expenses, reserves, or other overhead costs, with respect to a program plan;*
- (4) *"Guaranteed acceptance program plan premiums" means the dollar amount of premiums received by an insurer with respect to program plans;*
- (5) *"Guaranteed acceptance risk adjustment process" means the process of allocating guaranteed acceptance program plan losses provided for in Section 21 of this Act;*
- (6) *"Group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan or through any arrangement other than through the individual market, or through a federal health benefit plan or program;*
- (7) *"Health insurance stop-loss policy" means any policy of insurance that directly or indirectly protects, in whole or in part, an employer who self-insures health benefits covering any residents in Kentucky from the risk of paying benefits in excess of any specified amount;*
- (8) *"Market share" means a percentage calculated by dividing an insurer's health insurance coverage premiums in both the individual and group markets by the total amount of the health insurance coverage premiums in both the individual and group markets for all insurers;*
- (9) *"Other coverage" means coverage under any of the following:*
 - (a) *A group plan;*
 - (b) *Part A or Part B of Title XVIII of the Social Security Act, 42 U.S.C. sec. 1995c et seq.;*
 - (c) *A state plan under Title XIX of the Social Security Act, or any successor program;*
 - (d) *Continuation coverage under any COBRA continuation provisions as defined in 42 U.S.C. sec. 300gg-91(d)(4) or under a similar program under any state law; or*
 - (e) *Any other health insurance coverage which is not individual health insurance coverage;*
- (10) *"Premiums" means amounts paid to insurers to purchase health insurance coverage and includes all amounts paid however denominated, including, but not limited to, amounts indicated as being charged for administrative costs, allocated loss adjustment expenses, reserve or other overhead costs;*
- (11) *"Program" means the Kentucky Guaranteed Acceptance Program;*
- (12) *"Refund" means an amount to be paid to an insurer by the program;*
- (13) *"Stop-loss carrier" means any person providing health insurance stop-loss coverage;*
- (14) *"Stop-loss premiums" means amounts paid to purchase health insurance stop-loss coverage; and*
- (15) *"Total actual guaranteed acceptance program plan losses" means a dollar amount equal to the sum of the actual program plan losses of all insurers participating in the program.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Each insurer issuing health benefit plans in Kentucky and that had a market share of twenty-five percent (25%) or more for any calendar year shall be a program participating insurer for the following calendar year.*
- (2) *On or before July 1, 1998, each insurer issuing health benefit plans in Kentucky, other than the insurers required by subsection (1) of this section to be a program participating insurer, shall advise the commissioner in writing whether it will participate in the program as a program participating insurer or a program supporting insurer. After July 1, 1998, no insurer shall issue health benefit plans in Kentucky*

without first advising the commissioner in writing that it will participate in the program as a program participating insurer or a program supporting insurer. Any insurer issuing health benefit plans in Kentucky that fails to advise the commissioner of the nature of its participation in the program shall be deemed a program supporting insurer unless it is required by subsection (1) of this section to be a program participating insurer.

- (3) *An insurer who elects to be a program participating insurer may elect to participate under the following conditions:*
 - (a) *Network-based insurers may limit coverage to the benefit plans offered to persons residing in the geographic area covered by the providers network; and*
 - (b) *A group insurer may elect to be a program participating insurer without otherwise operating in the individual market.*
- (4) *The department shall publicize a monthly list of program participating insurers.*
- (5) *(a) The provisions of Sections 15 to 23 of this Act shall not apply to an insurer that provides coverage solely to Medicaid recipients, Medicare beneficiaries, or CHAMPUS insureds.*
 - (b) *Self-insured health benefit plans covering employees of institutions of higher education and self-insured plans covering elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts shall not be subject to the provisions of Sections 15 to 23 of this Act.*

SECTION 18. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A health benefit plan shall be considered a program plan and is eligible for inclusion in calculating assessments and refunds under the program risk adjustment process if it meets all of the following criteria:*
 - (a) *The health benefit plan was purchased by an individual to provide benefits for only one (1) or more of the following: the individual, the individual's spouse, or the individual's children. Health insurance coverage provided to an individual in the group market or otherwise in connection with a group health plan does not satisfy this criteria even if the individual, or the individual's spouse or parent, pays some or all of the cost of the coverage unless the coverage is offered in connection with a group health plan that has fewer than two (2) participants as current employees on the first day of the plan year;*
 - (b) *An individual entitled to benefits under the health benefit plan has been diagnosed with a high-cost condition on or before the effective date of the individual's coverage for coverage issued on a guarantee-issue basis after July 15, 1995;*
 - (c) *The health benefit plan imposes the maximum pre-existing condition exclusion permitted under Section 2 of this Act;*
 - (d) *The individual purchasing the health benefit plan is not eligible for or covered by other coverage; and*
 - (e) *The individual is not a state employee eligible for or covered by the state employee health insurance plan under KRS Chapter 18A.*
- (2) *Notwithstanding the provisions of subsection (1) of this section, if the total claims paid for the high-cost condition under a program plan for any three (3) consecutive years are less than the premiums paid under the program plan for those three (3) consecutive years, then the following shall occur:*
 - (a) *The policy shall not be considered to be a program plan thereafter until the first renewal of the policy after there are three (3) consecutive years in which the total claims paid under the policy have exceeded the total premiums paid for the policy and at the time of the renewal the policy also qualifies under subsection (1) as a program plan; and*
 - (b) *Within the last six (6) months of the third year, the insurer shall provide each person entitled to benefits under the policy who has a high-cost condition with a written notice of insurability. The notice shall state that the recipient may be able to purchase a health benefit plan other than a program plan and shall also state that neither the notice nor the individual's actions to purchase a health benefit plan other than a program plan shall affect the individual's eligibility for plan coverage. The notice shall be valid for six (6) months.*

- (3) (a) *There is established within the guaranteed acceptance program the alternative underwriting mechanism that a participating insurer may elect to use. An insurer that elects this mechanism shall use the underwriting criteria that the insurer has used for the past twelve (12) months for purposes of the program plan requirement in paragraph (b) of subsection (1) of this section for high risk individuals rather than using the criteria established in subsection (19) of Section 1 of this Act and Section 14 of this Act for high cost conditions;*
- (b) *An insurer that elects to use the alternative underwriting mechanism shall make written application to the commissioner. Before the insurer may implement the mechanism, the insurer shall obtain approval of the commissioner. Annually thereafter, the insurer shall obtain the commissioner's approval of the underwriting criteria of the insurer before the insurer may continue to use the alternative underwriting mechanism.*

SECTION 19. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

On the date the individual first becomes eligible for coverage under a guaranteed acceptance program plan the individual may be charged a premium of up to:

- (1) *One hundred fifty percent (150%) of the index rate charged to a person of identical or similar case characteristics who has not been diagnosed or treated with a high-cost condition if the individual in the immediate preceding sixty-three (63) day period, excluding any waiting or affiliation period, was not covered under any creditable coverage during the entire sixty-three (63) day period; or*
- (2) *The maximum as provided in Section 10 of this Act, if the individual in the immediate preceding sixty-three (63) day period, excluding any waiting or affiliation period, had creditable coverage during any part of the sixty-three (63) day period.*

SECTION 20. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this chapter, program plans shall contain cost containment features, which may include managed care and utilization management, to control the amount of high-cost policy losses without creating excessive adverse health care outcomes.

SECTION 21. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *For each calendar year that the program is operating, every insurer shall report to the department, in a form and at the time as the department by administrative regulation may specify, the following information for that year:*
- (a) *The insurer's total premiums in both the individual and group markets;*
- (b) *The number of program plans in force as of December 31;*
- (c) *The amount of the insurer's program plan premiums received during the calendar year covered by the report;*
- (d) *The amount of the insurer's program plan claims paid during the calendar year covered by the report;*
- (e) *The amount of the insurer's program plan losses; and*
- (f) *Other information as the department may, by administrative regulation, require to be reported to operate the program.*
- (2) *At the end of each calendar year, and based upon the reports filed under subsection (1) of this section, the department shall calculate and provide to each insurer who filed a report the following information relating to the calendar year:*
- (a) *The amount of each reporting insurer's market share;*
- (b) *The total amount of program plan premiums for all reporting insurers;*
- (c) *The total amount of program plan claims paid by all reporting insurers;*

- (d) *The amount of total actual program plan losses;*
- (e) *The amount of the insurer's assessment or refund; and*
- (f) *Other information as the department may elect to calculate and report.*

The department shall complete its calculation and provide each insurer the results of its calculation within forty-five (45) days after the reporting deadline.

- (3) *The department shall assess or refund to the insurers the amounts calculated and reported in subsection (2)(e) of this section.*
- (4) *The insurer, as a condition of conducting health insurance business in Kentucky, shall pay the amount calculated in subsection (2)(e) and assessed by the department in accordance with subsection (3) of this section.*
- (5) *The department shall assess stop-loss carriers in accordance with subsection (3)(c) of Section 22 of this Act. The stop-loss carrier, as a condition of doing health insurance business in Kentucky, shall pay the assessment provided in subsection (3)(c) of Section 22 of this Act .*
- (6) *The department may prepare quarterly estimated calculations for the purposes of allowing insurers who participate in the program to budget for their annual assessments and refunds.*
- (7) *The department shall conduct such examinations of insurers participating in the plan as is reasonably necessary to determine if the information provided by the insurers is accurate.*

SECTION 22. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall establish a risk adjustment process to be used in collecting and distributing funds from all insurers doing health insurance business in Kentucky for the purpose of allocating program plan losses among such insurers.*
- (2) *As part of the risk adjustment process, the department shall establish and maintain a program account. All funds in the program account shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the state accounting and reporting system (STARS) and its successors.*
- (3) *The program account shall be funded from the following sources:*
 - (a) *Appropriations from the General Assembly;*
 - (b) *All premium taxes collected under KRS Chapter 136 from any insurer, and any retaliatory taxes collected under KRS 304.3-270 from any insurer, for accident and health premiums that are in excess of the amount of the premium taxes and retaliatory taxes collected for the calendar year 1997;*
 - (c) *Annual assessments from each stop-loss carrier in an amount which is equal to two dollars (\$2) upon each one hundred dollars (\$100) of health insurance stop-loss premiums;*
 - (d) *An assessment for each calendar year, or the last six (6) month period of 1998, on the total amount of all health benefit plan premiums written during the prior assessment period and paid by all insurers who received any of the health benefit plan premiums on which the assessment is based. The first assessment shall be for the period from July 1, 1998, to December 31, 1998, shall be based on the amount of health benefit plan premiums written during this six (6) month period, and the total amount of the assessment against all insurers for this six (6) month period shall equal three million nine hundred thousand dollars (\$3,900,000). The percentage rate used to determine this six (6) month period assessment shall be the maximum percentage that may be used to determine the assessment in any subsequent calendar year. Assessments in any subsequent year shall be paid on or before the last day of that calendar year, and the first assessment shall be paid on or before December 31, 1998.*
 - (e) *Any special assessments under subsection 4(b) of this section;*
 - (f) *Gifts, grants, or other voluntary contributions; and*
 - (g) *Interest or other earnings on the investment of the monies held in the account.*

- (4) *After the end of each calendar year, the department shall calculate the amount of the total actual program plan losses incurred by all insurers for the calendar year. The first calculation shall be for the calendar year ended December 31, 1998.*
- (a) *If the amount of total actual program plan losses is less than the amount in the program account, each insurer shall be reimbursed up to the amount of its proportional share of program plan losses from the program account.*
- (b) *If the amount of total actual program plan losses is more than the amount in the program account, then the difference shall be considered a program account deficit, and there shall be a second assessment, in addition to the assessment under subsection 3(d) of this section, on all insurers who received any of the health benefit plan premiums on which the assessment under subsection 3(d) is based. The second assessment shall also be a percentage of the health benefit plan premiums except for the following limitations:*
1. *The percentage rate may not exceed the percentage rate used to determine the 1998-1999 assessment, and*
 2. *The total amount generated from the additional assessment may not exceed the lesser of the program account deficit or seven million eight hundred thousand dollars (\$7,800,000). If the second assessment fully eliminates the program account deficit, each insurer shall be reimbursed up to the amount of its proportional share of program plan losses from the program account. If the second assessment does not fully eliminate the program account deficit, each insurer shall be reimbursed up to its proportional share of program plan losses from the program account in the same proportion that the insurer's program plan losses bears to the total program plan losses of all insurers.*
- (c) *In no event shall the sum of the first assessment provided for in subsection (3)(d) of this section and the second assessment provided for in paragraph (b) of this subsection be greater than one percent (1%) of the total amount of all assessable health benefit plan premiums written during the prior assessment period.*
- (5) *With respect to an insurer who reasonably will be expected to both pay assessments and receive payments from the program account, the department shall calculate the net amount owed to or to be received from the program account, and the department shall only collect assessments or make payments from the program account based upon net amounts.*
- (6) *Insurers paying an assessment may include in any health insurance rate filing that amount of such assessments as provided in Section 21 of this Act.*
- (7) *Any surpluses remaining in the program account after completion of the risk adjustment process for a calendar year shall be maintained for use in the risk adjustment process for future calendar years and such funds shall not lapse. The General Fund appropriations to the program account shall not lapse.*
- (8) *Assessments on health benefit plan premiums that are required under this section shall not be applied to premiums received by an insurer for Medicaid recipients, Medicare beneficiaries, and CHAMPUS insureds.*
- (9) *Program plan losses attributable to plans issued to individuals who do not have a high-cost condition shall be reimbursed only after reimbursement is made for losses attributable to plans issued to individuals with a high-cost condition.*

SECTION 23. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning with the regular session of the General Assembly in the year 2000, sixty (60) days prior to that session and each subsequent regular session of the General Assembly, the commissioner shall submit a written report to the Legislative Research Commission on the operations of the program. The report shall contain an evaluation of the program, an evaluation of issues concerning individuals with high-cost conditions, and recommendations for establishing alternative means of providing health benefit plans for those individuals in addition to, or as an alternative to, the risk adjustment mechanism of the program. In order to determine the effectiveness of the program in providing access and affordable insurance to individuals with high-cost conditions and in readjusting the risks of providing health benefit plans to such individuals, the department shall determine:*

- (a) *The number of individuals with high-cost conditions;*
 - (b) *The number of program plans; and*
 - (c) *The reasons that any program plans are terminated.*
- (2) *Beginning no later than June 30, 1999, and annually thereafter, the Auditor of Public Accounts shall be responsible for an audit of the program, and the costs of the audit shall be born by the program. Within sixty (60) days of completion of the audit, the Auditor of Public Accounts shall submit a copy of the audit to the Legislative Research Commission and the department.*

SECTION 24. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Coverage of an individual who is not a state employee or a small group which on the effective date of this Act is covered under KRS 18A.2251 or KRS 18A.2281 shall not be renewed after the effective date of this Act.*
- (2) *The state employee health insurance fund established under KRS 18A.2281 shall be deemed an insurer as defined in Section 1 of this Act only for the coverage it provides to individuals not state employees or to small groups and only until such time as this coverage terminates in accordance with subsection (1) of this section.*
- (3) *The state employee health insurance fund established under KRS 18A.2281 shall be subject to assessments and reimbursements under Sections 15 to 23 of this Act only for the premium collected and the claims paid for individuals who are not state employees and the small groups which are covered by the fund.*
- (4) *Except as provided in this section, the state employee health insurance fund established under KRS 18A.2281 shall not be deemed an insurer for any other purpose in this chapter and, in no event, at any time more than twelve (12) months after the effective date of this Act shall it be deemed to be an insurer.*

SECTION 25. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 25 to 39 of this Act, unless the context requires otherwise:

- (1) *"Contract holder" means an employer or organization that purchases a contract for services;*
- (2) *"Covered person" means a person on whose behalf an insurer offering the plan is obligated to pay benefits or provide services under the health insurance policy;*
- (3) *"Emergency medical condition" means:*
 - (a) *A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:*
 - 1. *Placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;*
 - 2. *Serious impairment to bodily functions; or*
 - 3. *Serious dysfunction of any bodily organ or part; or*
 - (b) *With respect to a pregnant woman who is having contractions:*
 - 1. *A situation in which there is inadequate time to effect a safe transfer to another hospital before delivery; or*
 - 2. *A situation in which transfer may pose a threat to the health or safety of the woman or the unborn child;*
- (4) *"Enrollee" means a person who is enrolled in a managed health care plan;*
- (5) *"Grievance" means a written complaint submitted by or on behalf of an enrollee;*
- (6) *"Health insurance policy" means "health benefit plan" as defined in Section 1 of this Act;*
- (7) *"Insurer" has the meaning provided in Section 1 of this Act;*
- (8) *"Managed care plan" means a health insurance policy that integrates the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are*

selected to participate on the basis of explicit standards to furnish a comprehensive set of health care services and financial incentives for covered persons to use the participating providers and procedures provided for in the plan;

- (9) *"Participating health care provider" means a health care provider that has entered into an agreement with an insurer to provide health care services to an enrollee in its managed care plan;*
- (10) *"Quality assurance or improvement" means the ongoing evaluation by a managed care plan of the quality of health care services provided to its enrollees;*
- (11) *"Record" means any written, printed, or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to a patient; and*
- (12) *"Utilization management" means a system for reviewing the appropriate and efficient allocation of health care services under a health benefits plan according to specified guidelines, in order to recommend or determine whether, or to what extent, a health care service given or proposed to be given to a covered person should or will be reimbursed, covered, paid for, or otherwise provided under the plan. The system may include: preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory care procedures, and retrospective review.*

SECTION 26. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer shall disclose in writing to an enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health insurance contract, and shall promptly provide the enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

- (1) *The information required to be disclosed under this section shall include a description of:*
 - (a) *Covered services and benefits to which the enrollee or other covered person is entitled;*
 - (b) *Restrictions or limitations on covered services and benefits;*
 - (c) *Financial responsibility of the covered person, including copayments and deductibles;*
 - (d) *Prior authorization and any other review requirements with respect to accessing covered services;*
 - (e) *Where and in what manner covered services may be obtained;*
 - (f) *Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;*
 - (g) *The covered person's right to appeal and the procedure for initiating an appeal of a utilization management decision made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service;*
 - (h) *The procedure to initiate an appeal through the process under KRS 211.464(1)(g);*
 - (i) *Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider; and*
 - (j) *Other information as the commissioner shall require by administrative regulation.*
- (2) *The insurer shall file the information required under this section with the department.*

SECTION 27. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the disclosure requirements provided in Section 26 of this Act, an insurer that offers a managed care plan shall disclose to an enrollee, in writing, in a manner consistent with KRS 304.14-420 to 304.14-450, the following information at the time of enrollment and upon request:*

- (a) *A current participating provider directory providing information on a covered person's access to primary care health care providers, including available participating health care providers, by provider category or specialty and by county. The directory shall include the professional office address of each participating health care provider. The directory shall also provide information about participating hospitals and other providers. The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider;*
- (b) *General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and*
- (c) *The insurer's managed care plan's standard for customary waiting times for appointments for urgent and routine care.*

The insurer shall provide a prospective enrollee with information about the provider network, including hospital affiliations, and other information specified in this subsection, upon request.

- (2) *Upon request of a covered person, an insurer shall promptly inform the person:*
 - (a) *Whether a particular network provider is board certified; and*
 - (b) *Whether a particular network provider is currently accepting new patients.*
- (3) *Each insurer shall annually make available to its enrollees at its principal office and place of business:*
 - (a) *Its most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements; and*
 - (b) *A current description of its organizational structure and operation.*

SECTION 28. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A managed care plan shall arrange for a sufficient number and type of primary care providers and specialists throughout the plan's service area to meet the needs of enrollees. Each managed care plan shall demonstrate that it offers:*
 - (a) *An adequate number of accessible acute care hospital services, where available;*
 - (b) *An adequate number of accessible primary care providers, including family practice and general practice physicians, internists, obstetricians/gynecologists, and pediatricians, where available;*
 - (c) *An adequate number of accessible specialists and subspecialists, and when the specialist needed for a specific condition is not represented on the plan's list of participating specialists, enrollees have access to nonparticipating health care providers with prior plan approval;*
 - (d) *The availability of specialty services; and*
 - (e) *A provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence, to the extent those services are available.*
- (2) *A managed care plan shall provide telephone access to the plan during business hours to ensure plan approval of nonemergency care. A managed care plan shall provide adequate information to enrollees regarding access to urgent and emergency care.*
- (3) *A managed care plan shall establish reasonable standards for waiting times to obtain appointments, except as provided for emergency care.*
- (4) *A managed care plan shall cover emergency-room screening and stabilization without prior authorization as needed for conditions that reasonably appear to constitute an emergency medical condition, based on the patient's presenting symptoms. To promote continuity of care and optimal care by the treating physician, the emergency department should contact the patient's primary care physician as soon as possible.*

SECTION 29. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An enrollee shall have adequate choice among participating primary care providers in a managed care plan who are accessible and qualified.*

- (2) *A managed care plan shall permit enrollees to choose their own primary care provider from a list of health care providers within the plan. This list shall be updated as health care providers are added or removed and shall include a sufficient number of primary care providers who are accepting new enrollees.*
- (3) *Women shall be able to choose a qualified health care provider offered by a plan for the provision of covered care necessary to provide routine and preventive women's health care services.*
- (4) *A managed care plan shall provide an enrollee with access to a consultation with a participating health care provider for a second opinion.*

SECTION 30. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Insurers shall establish relevant, objective standards for initial consideration of providers and for providers to continue as a participating provider in the plan. Standards shall be reasonably related to services provided. Selection or participation standards based on the economics or capacity of a provider's practice shall be adjusted to account for case mix, severity of illness, patient age and other features that may account for higher-than- or lower-than-expected costs. All data profiling or other data analysis pertaining to participating providers shall be done in a manner which is valid and reasonable. Plans shall not use criteria that would allow an insurer to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher-than-average claims, losses, or health services utilization or that would exclude providers because they treat or specialize in treating populations presenting a risk of higher-than-average claims, losses, or health services utilization.*
- (2) *Each insurer shall establish mechanisms for soliciting and acting upon applications for provider participation in the plan in a fair and systematic manner. These mechanisms shall, at a minimum, include:*
 - (a) *Allowing all providers who desire to apply for participation in the plan an opportunity to apply at any time during the year or, where an insurer does not conduct open continuous provider enrollment, conducting a provider enrollment period at least annually with the date publicized to providers located in the geographic service area of the plan at least thirty (30) days in advance of the enrollment periods; and*
 - (b) *Making criteria for provider participation in the plan available to all applicants.*
- (3) *If a managed care plan terminates the participation of an enrollee's primary care provider, the plan shall provide notice to the enrollee and arrange for the enrollee's continuity of care with an approved primary care provider.*
- (4) *An insurer that offers a managed care plan shall establish a policy governing the removal of and withdrawal by health care providers from the provider network that includes the following:*
 - (a) *The insurer shall inform a participating health care provider of the insurer's removal and withdrawal policy at the time the insurer contracts with the health care provider to participate in the provider network, and when changed thereafter;*
 - (b) *If a participating health care provider's participation will be terminated or withdrawn prior to the date of the termination of the contract as a result of a professional review action, the insurer and participating health care provider shall comply with the standards in 42 U.S.C. sec. 11112; and*
 - (c) *If the insurer finds that a health care provider represents an imminent danger to an individual patient or to the public health, safety, or welfare, the medical director shall promptly notify the appropriate professional state licensing board.*

SECTION 31. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A managed care plan may not contract with a health care provider to limit the provider's disclosure to an enrollee, or to another person on behalf of an enrollee, of any information relating to the enrollee's medical condition or treatment options.*
- (2) *A health care provider shall not be penalized, or a health care provider's contract with a managed care plan terminated, because the provider discusses medically necessary or appropriate care with an enrollee or another person on behalf of an enrollee.*

- (a) *The health care provider may not be prohibited by the plan from discussing all treatment options with the enrollee.*
- (b) *Other information determined by the health care provider to be in the best interests of the enrollee may be disclosed by the provider to the enrollee, or to another person on behalf of an enrollee.*
- (3) (a) *A health care provider shall not be penalized for discussing financial incentives and financial arrangements between the provider and the insurer with an enrollee.*
- (b) *Upon request, a managed care plan shall inform its enrollees in writing of the type of financial arrangements between the plan and participating providers if those arrangements include an incentive or bonus.*

SECTION 32. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A managed care plan shall include a drug utilization review program, the primary emphasis of which shall be to enhance quality of care for enrollees by assuring appropriate drug therapy within the health care provider's legally authorized scope of practice, that includes the following:*
 - (a) *Retrospective review of prescription drugs furnished to enrollees;*
 - (b) *Education of health care providers and enrollees regarding the appropriate use of prescription drugs; and*
 - (c) *Ongoing periodic examination of data on outpatient prescription drugs to ensure quality therapeutic outcomes for enrollees.*
- (2) *The drug utilization review program shall utilize the following to effectuate the purposes of subsection (1) of this section:*
 - (a) *Relevant clinical criteria and standards for drug therapy;*
 - (b) *Nonproprietary criteria and standards developed and revised through input from participating health care providers;*
 - (c) *Intervention that focuses on improving therapeutic outcomes; and*
 - (d) *Measures to ensure the confidentiality of the relationship between an enrollee and a health care provider.*
- (3) *When, in the professional opinion of a provider with prescriptive authority, the provider determines that generic substitution of a pharmaceutical product is medically inappropriate, the provider shall prescribe the pharmaceutical product the provider determines medically appropriate with the indication "Do Not Substitute" and no substitution shall be made without the provider's approval.*

SECTION 33. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any insurer that limits coverage for any treatment, procedure, drug, or device shall define the limitations and fully disclose those limits in the health insurance policy or certificate coverage.*
- (2) (a) *Any insurer that denies coverage for a treatment, procedure, drug or device for an enrollee shall provide the enrollee with a denial letter that shall include:*
 - 1. *The name, license number, state of licensure, and title of the person making the decision;*
 - 2. *A statement setting forth the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;*
 - 3. *A description of other alternative treatment, services, or supplies covered by the plan, if any; and*
 - 4. *Instructions for initiating or complying with the plan's grievance or appeal procedure stating at a minimum whether the appeal must be in writing, any time limitations or schedules for filing appeals and the name and phone number of a contact person who can provide additional information.*

- (b) *The denial letter shall be provided within:*
1. *Two (2) regular working days of the submitted request where preauthorization for a treatment, procedure, drug, or device is involved;*
 2. *Twenty-four (24) hours of the submitted request where hospital preadmission review is sought;*
 3. *Twenty (20) working days of the receipt of requested medical information where the plan has initiated a retrospective review; and*
 4. *Twenty (20) working days of the initiation of the review process in all other instances.*

SECTION 34. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A managed care plan shall appoint a medical director who is a physician licensed to practice in the state in which he or she is employed, and who shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.*
- (2) *The medical director shall ensure that:*
 - (a) *Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service, because that service is not medically necessary, shall be made by a physician, except in the case of a health care service rendered by a chiropractor or optometrist, that decision shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky;*
 - (b) *A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;*
 - (c) *In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and whereby other participating providers have an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice;*
 - (d) *The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and*
 - (e) *In the case of a managed care plan, a covered person is permitted to choose or change a primary care provider from among participating providers in the provider network, and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the insurer, and subject to the ability of the specialist to accept new patients.*
- (3) *A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:*
 - (a) *An ongoing written, internal quality assurance or improvement program;*
 - (b) *Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;*
 - (c) *Performance and clinical outcomes-based criteria;*
 - (d) *A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;*
 - (e) *A plan for data gathering and assessment; and*
 - (f) *A peer review process.*
- (4) *Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.*

- (a) *The plan shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;*
 - (b) *The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements;*
 - (c) *The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history;*
 - (d) *A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.*
- (5) *A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.*

SECTION 35. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer that offers a managed care plan shall offer a benefit plan with out-of-network benefits to every contract holder that would allow a covered person to receive covered services from out-of-network health care providers without having to obtain a referral. The plan with out-of-network benefits may require that an enrollee pre-certify selected services and pay a higher deductible, copayment, coinsurance, excess charges and higher premium for the out-of-network benefit plan pursuant to limits established by administrative regulations promulgated by the department.*
- (2) *An insurer shall provide each enrollee in a plan whose employer group elects the benefit plan with out-of-network benefits, with the opportunity at the time of enrollment and during the annual open enrollment period, to enroll in the out-of-network option. The insurer and employer group shall provide written notice of the benefit plan with out-of-network benefits to each enrollee in a plan whose employer group elects the benefit plan with out-of-network benefits and shall include in that notice a detailed explanation of the financial costs to be incurred by an enrollee who selects the plan.*
- (3) *The requirement of this section shall not apply to an insurer contract which offers a managed care plan that provides health care services solely to Medicaid or Medicare recipients.*
- (4) *Managed care plans currently licensed and doing business in Kentucky that do not yet offer benefit plans with out-of-network benefits must develop and offer those plans within three hundred sixty-five (365) days of the effective date of this Act.*

SECTION 36. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

There is hereby recognized a patient's right of privacy in the content of a patient's record and communications between a patient and a health care provider with regard to mental health or chemical dependency.

- (1) *An insurer may request the provider to furnish the insurer only such limited information concerning the patient from a patient's record as is necessary for determining covered services and benefits, medical necessity, appropriateness, and quality of care for authorization or continuation of mental health and chemical dependency health services to be provided to the patient, or for payment for those services.*
- (2) *No third party to whom disclosure of patient records is made by a provider may redisclose or otherwise reveal the mental health and chemical dependency records of a patient, beyond the purpose for which the disclosure was made, without first obtaining the patient's specific written consent to the redisclosure.*

SECTION 37. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No insurance contract with a provider shall contain a most-favored-nation provision except where the commissioner determines that the market share of the insurer is nominal.*
- (2) *Nothing in this section shall be construed to prohibit a health insurer and a provider from negotiating payment rates and performance-based contract terms that would result in the health insurer receiving a rate*

that is as favorable, or more favorable, than the rates negotiated between a provider and other health insurance issuers.

SECTION 38. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall enforce the provisions of Sections 25 to 39 of this Act and shall adopt administrative regulations necessary to carry out the provisions of Sections 25 to 39 of this Act.

SECTION 39. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No health insurance contract or certificate subject to the provisions of this subtitle shall be delivered, issued, executed, or renewed on or after the date ninety (90) days after the effective date of this Act, unless it and the insurer meet the requirements of Sections 25 to 39 of this Act.

SECTION 40. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No employer-organized association shall in this state self-insure in order to provide health benefit plans for its members unless it holds a certificate of filing from the commissioner.*
- (2) *To qualify for a certificate of filing and to maintain a certificate of filing the employer-organized association shall comply with the provisions of Subtitle 48 of this chapter to the extent not in conflict with the expressed provisions of this section.*
- (3) *Each association that holds a certificate of filing from the commissioner shall be subject to the following:*
 - (a) *All assessments placed on insurers under Section 21 of this Act;*
 - (b) *All rating restrictions placed on employer-organized associations under Section 11 of this Act;*
 - (c) *All rate review requirements placed on insurers under this subtitle;*
 - (d) *All data collection requirements placed on insurers under this subtitle; and*
 - (e) *Provisions of Subtitle 12 of this chapter that apply to health insurers.*
- (4) *Each association that holds a certificate of filing from the commissioner shall notify its members that health benefit plans issued to its members through the association are not protected through the Kentucky Life and Health Insurance Guaranty Association.*
- (5) *Under the provisions of KRS 304.48-220, the commissioner may revoke the certificate of filing of any association. A violation of any provision of this section shall be deemed a violation of Subtitle 48 of this chapter for purposes of KRS 304.48-220.*

SECTION 41. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All insurers authorized to write health insurance in this state and employer-organized associations that self-insure shall transmit at least annually by March 30 to the commissioner the following information, in a format prescribed by the commissioner, on their insurance experience in this state for the preceding calendar year:

- (1) *Total premium by product type and market segment;*
- (2) *Total enrollment by product type and market segment;*
- (3) *Total cost of medical claims filed by product type and market segment;*
- (4) *Total amount of medical claims paid by the insurer by product type and market segment;*
- (5) *Total policies canceled by type and the aggregate reasons therefor; and*
- (6) *List of total health and medical services paid for, grouped by types of services and costs:*
 - (a) *Total cost per health and medical service per insured group per month:*
 1. *Cost paid by insurer;*
 2. *Cost paid by insured; and*

(b) Percentage of insured who received each service.

SECTION 42. A NEW SECTION OF KRS CHAPTER 6 IS CREATED TO READ AS FOLLOWS:

- (1) For purposes of this section, "mandated health benefit" means any requirement that any health benefit plan provide a specified benefit, include a specified coverage, pay, indemnify, or reimburse for a specified medical service, or impose or regulate provisions concerning specified health care providers.*
- (2) On and after the effective date of this Act, in the General Assembly, a sponsor of a bill and any member proposing an amendment to a bill that contains a mandated health benefit shall submit to the standing committee to which the bill has been referred a financial impact statement on health insurance coverage rates before final consideration by the committee.*
- (3) Upon request of a standing committee of the General Assembly, the commissioner of the Department of Insurance shall review any financial impact statement filed with the committee and report the results of the review to the committee.*

SECTION 43. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

There is created within the department a consumer protection and education division, which shall include an office of ombudsman.

Section 44. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer~~[as defined in KRS 304.17A-100]~~, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:*
 - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or*
 - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or*
 - (c) Encourage an employer to exclude an employee from coverage.*

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.*
- (3) It shall constitute an unfair trade practice for any insurer, insurance agent, or third-party administrator to refer an individual employee to the Kentucky guaranteed acceptance program or to arrange for an individual employee to apply to that plan, for the purpose of separating an employee from group health insurance coverage provided in connection with the individual's employment.*
- (4) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any insurer that fails to pay an assessment under Section 22 of this Act. As an alternative, the commissioner may levy a civil penalty on any member insurer that fails to pay the assessment when due. The civil penalty shall not exceed five percent (5%) of the unpaid assessment per month, but no civil penalty shall be less than one hundred dollars (\$100) per month.*
- (5) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by subsections (1) and (2) of this section.*

Section 45. KRS 304.14-130 is amended to read as follows:

- (1) The commissioner shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:*
 - (a) If it is in any respect in violation of, or does not comply with, this code.*

- (b) If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
- (c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in such size of type or manner of reproduction as to be substantially illegible.
- (d) If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.
- (e) ***As to an individual health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.***

(2) The insurer shall not use in this state any such form after disapproval or withdrawal of approval.

Section 46. KRS 304.18-050 is amended to read as follows:

~~{(1)—}Any contract of group health insurance may provide for the readjustment of the rate of premium based upon the experience thereunder.{~~

~~(2)—Notwithstanding any other provision of any subtitle of this chapter, any standard health benefit plan or contract of group health insurance issued to an eligible association shall not be required to determine the amount or rate of premium thereunder using a community rating methodology or a modified community rating methodology and may determine the amount or rate of premium based upon the experience or projected experience thereunder without restriction.~~

~~(3)—As used in this section, "eligible association" means an organization which meets all of the following criteria:~~

~~(a)—Was in existence on January 30, 1996;~~

~~(b)—Is either an association within the meaning of KRS 304.18-020(1)(b) or the trustees of a fund established by one (1) or more associations within the meaning of KRS 304.18-020(1)(c);~~

~~(c)—Does not deny membership in the organization on the basis of health status or claims experience;~~

~~(d)—Does not exclude members or employees of members or their dependents from eligibility under any standard health benefit plan or contract of group health insurance purchased by the organization on the basis of health status or claims experience; and~~

~~(e)—Complies with those provisions of Subtitle 17A of this chapter, if any, relating to the renewability or portability of health benefit plans, coverage of pre-existing conditions, and issuance on a guaranteed-issue basis but is not required to comply with any other provisions of Subtitle 17A of this chapter.~~

~~(4)—If an organization is otherwise qualified under the criteria of subsection (3) of this section but which, as of January 30, 1996, does not offer group health insurance to its members, the organization shall be prohibited from offering any group health insurance program unless, by September 1, 1996, it has applied for approval from the Department of Insurance pursuant to Subtitle 18 of this chapter and the applicable administrative regulations promulgated under that subtitle.~~

~~(5)—Eligible associations that purchase, put together, or assist in purchasing any standard health benefit plan or policy of group health insurance authorized or permitted under this section shall not be considered, for any purpose under this chapter, to be discriminating in their activities based on health status or historical or projected claims experience.~~

~~(6)—If a policy dividend is declared or a reduction in rate is made or continued for the first or any subsequent year of insurance under any policy of group health insurance issued prior to or after June 18, 1970, to any policyholder, the excess, if any, of the aggregate dividends or rate reductions under such policy and all other group insurance policies of the policyholder over the aggregate expenditure for insurance under such policies made from funds contributed by the policyholder, or by an employer or insured persons, or by a union or association to which the insured persons belong, including expenditures made in connection with administration of such policies, shall be applied by the policyholder for the sole benefit of insured employees or members.~~

~~{(7) Without limiting the general application of this section, the provisions of this section shall apply to any standard health benefit plan or contract of group health insurance issued to an eligible association and which is issued by a health maintenance organization holding a certificate of authority issued pursuant to Subtitle 38 of this chapter.}~~

Section 47. KRS 304.14-120 is amended to read as follows:

- (1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to ***any rates filed under Subtitle 17A of this chapter***, ~~standard health care benefit plans established under KRS 304.17A-160, or to~~ surety bonds, or to specially-rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.
- (2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.
- (3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.
- (4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.
- (5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.

Section 48. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) Subtitle 7 -- Investments;

- (7) Subtitle 12 -- Trade Practices and Frauds;
- (8) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- (9) Subtitle 17A -- Health Benefit Plans;
- (10) ~~Subtitle 18 -- KRS 304.18-050;~~
- ~~(11)~~ Subtitle 25 -- Continuity of Management;
- ~~(11)~~~~(12)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- ~~(12)~~~~(13)~~ Subtitle 37 -- Insurance Holding Company Systems; and
- ~~(13)~~~~(14)~~ Subtitle 99 -- Penalties.

~~The provisions of KRS 304.18-050 are hereby declared not to be in conflict with the expressed provisions of this subtitle.~~

Section 49. KRS 304.17A-080 is amended to read as follows:

- (1) There is hereby created and established a Health Insurance Advisory Council whose ~~duties~~~~[duty]~~ shall be to review and discuss with the commissioner any issues which impact the provision of health insurance in the state. The advisory council shall consist of seven (7) members: the commissioner plus six (6) persons appointed by the Governor with the advice of the commissioner to serve two (2) year terms. The commissioner shall serve as chair of the advisory council.
- (2) The six (6) persons appointed by the Governor with the advice of the commissioner shall be:
 - (a) Two (2) representatives of insurers currently offering health benefit plans in the state;
 - (b) Two (2) practicing health care providers; and
 - (c) Two (2) representatives of purchasers of health benefit plans.
- (3) ~~The council shall~~~~[At least quarterly, but not more often than six (6) times per year, the commissioner shall convene a meeting of the Health Insurance Advisory Council to review and discuss any of the following]:~~
 - (a) **Review and discuss** the design of the standard health benefit ~~plan~~~~[plans pursuant to KRS 304.17A-160];~~
 - (b) **Review and discuss** the rate-filing process for all health benefit plans;
 - ~~(c) [The definition of high risk conditions;~~
 - ~~(d)]~~ **Review and discuss** the administrative regulations concerning this subtitle to be promulgated by the department;~~[and]~~
 - ~~(d)~~~~(e)~~ **Make recommendations on high-cost conditions as provided in subsection (5) of this section; and**
 - (e) **Review and discuss** other issues at the request of the commissioner.
- (4) The advisory council shall be a budgetary unit of the department which shall pay all of the advisory council's necessary operating expenses and shall furnish all office space, personnel, equipment, supplies, and technical or administrative services required by the advisory council in the performance of the functions established in this section.
- (5) **No less than annually, the Health Insurance Advisory Council shall review the list of high-cost conditions established by the commissioner under Sections 1(19) and 14 of this Act and recommend changes to the commissioner. The commissioner may accept or reject any or all of the recommendations and may make whatever changes by administrative regulation the commissioner deems appropriate. The council, in making recommendations, and the commissioner, in making changes, shall consider, among other things, actual claims and losses on each diagnosis and advances in treatment of high-cost conditions.**
- (6) **For each calendar year that the Kentucky Guaranteed Acceptance Program is operating, every insurer shall report to the commissioner and the Health Insurance Advisory Council, in the form and at the time as the commissioner by administrative regulation may specify, information that the commissioner deems necessary for the council and commissioner to evaluate the list of high-cost conditions as required under**

~~*this section* [The Health Insurance Advisory Council created pursuant to this section may at any time review the standard health benefit plans and supplemental plans in effect on July 15, 1996, and may recommend to the commissioner changes to or replacements for any or all of those plans. The council may recommend additional standard health benefit plans and supplemental plans. The commissioner shall review the proposed plan, make whatever changes the commissioner deems necessary, and give final approval within thirty (30) days of receipt of the council's recommendation. The standard health benefit plans and supplemental plans shall become available for filing upon final approval of the commissioner].~~

Section 50. KRS 304.17A-145 is amended to read as follows:

- (1) A health benefit plan~~[, as defined in KRS 304.17A-100,]~~ issued or renewed on or after July 15, 1996, that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly-born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by Cesarean section.
- (2) The provisions of subsection (1) of this section shall not apply to a health benefit plan if the health benefit plan authorizes an initial postpartum home visit which would include the collection of an adequate sample for the hereditary and metabolic newborn screening, and if the attending physician, with the consent of the mother of the newly-born child, authorizes a shorter length of stay than that required of health benefit plans in subsection (1) of this section upon the physician's determination that the mother and newborn meet the criteria for medical stability in the most current version of "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Section 51. KRS 304.17A-170 is amended to read as follows:

As used in this section and KRS 304.17A-171, unless the context requires otherwise:

- (1) ~~[(a) —]"Health benefit plan" *has the meaning provided in Section 1 of this Act*[means any hospital or medical expense policy or certificate; nonprofit hospital, medical surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; and standard and supplemental health benefit plan as established in KRS 304.17A-160, which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky.~~
- ~~(b) — "Health benefit plan" does not include policies covering only accident, credit, dental, disability income, fixed indemnity, long term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self insurance or, upon approval by the Kentucky Health Policy Board, individual limited guaranteed renewable hospital or medical expense policies whose provisions and terms may not be changed by the insurer, which were issued prior to January 1, 1994, or conversion policies for group health policies existing on January 1, 1994, if the board determines that the individual limited guaranteed renewable expense policies and conversion policies provide benefits that are less than the benefits provided by the basic health benefit plan as defined by the board pursuant to KRS 304.17A-160].~~
- (2) "Primary chiropractic provider" means a chiropractor licensed pursuant to KRS Chapter 312 who has been selected by a person covered by a health benefit plan to provide chiropractic service and who agrees to provide within the statutory scope of their respective practices these services in accordance with the terms, conditions, reimbursement rates, and standards of quality as set forth within the specific health benefit plan.
- (3) "Participating chiropractic provider" means a primary chiropractic provider who has contracted with a health insurer to provide chiropractic services within the proper scope of practice to persons insured under the health benefit plan of the insurer.
- (4) "Chiropractic benefits" means those services that are provided by a primary chiropractic provider who is functioning within the statutory scope of practice.
- (5) "Gatekeeper system" means a system of administration used by any health benefit plan in which a primary care provider furnishes basic patient care and coordinates diagnostic testing, indicated treatment, and specialty referral for persons covered by the health benefit plan.
- (6) "Gatekeeper" means a covered person's primary care provider in a gatekeeper system.

- (7) "Health care insurer" means any entity, including but not limited to insurance companies, hospital and medical services corporations, health maintenance organizations, preferred provider organizations, and physician hospital organizations, that is authorized by the state of Kentucky to offer or provide health benefit plans, policies, subscriber contracts, or any other contracts of similar nature which indemnify or compensate health care providers for the provision of health care services.
- (8) "Covered persons" means any individual or family who is enrolled in a health benefit plan or policy from a health care insurer and on whose behalf the health care insurer is obligated to pay for or provide chiropractic services.
- (9) "Covered service" means those health care services including chiropractic services which the health care insurer is obligated to pay for or provide to covered persons under the health benefit plan or policy or pursuant to KRS 304.17-305 or 304.18-095.

Section 52. KRS 304.38-050 is amended to read as follows:

- (1) No health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, or the schedule of fees or other periodic charges to be paid by enrollees, until a copy of the form has been filed with and approved by the commissioner. Each form shall contain a complete and clear statement of:
- (a) The health care services to which the enrollee is entitled;
 - (b) Any limitations on the services, kind of services, benefits to be provided, including any deductible or copayment feature;
 - (c) Where and in what manner information is available as to how services may be obtained; and
 - (d) Any other provisions pertaining to the delivery of health care services.

Any schedule of fees or other periodic charges to be paid by enrollees submitted to and filed with the commissioner along with adequate supporting information to show that the charges or fees are not excessive, inadequate, or unfairly discriminatory.

- (2) At the expiration of sixty (60) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner, or a hearing has been scheduled by order of the commissioner. In the event that a hearing is held, the sixty (60) day waiting period shall begin anew after the close of the hearing. Approval of the form by the commissioner shall constitute a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional thirty (30) day period within which he may affirmatively approve or disapprove the form by giving notice to the insurer of the extension before expiration of the initial sixty (60) day period. At the expiration of the period as so extended, and in the absence of the prior affirmative approval or disapproval, the form shall be deemed approved. The commissioner may at any time withdraw the approval.
- (3) ***This section shall not apply to rate filings made under Subtitle 17A of this chapter.***

Section 53. KRS 216.2923 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may:
- (a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;
 - (b) Apply for and accept any funds, property, or services from any person or government agency;
 - (c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under KRS 216.2920 to 216.2929; and
 - (d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of KRS 216.2920 to 216.2929; however, unless permission is granted specifically by the secretary a third party hired by the secretary shall not release, publish, or otherwise use any information to which the third party has access under its contract.
- (2) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary shall:

- (a) Publish and make available information that relates to the health care financing and delivery system, the cost of workers' compensation health benefits, motor vehicle health insurance benefits, and health insurance premiums and benefits that is in the public interest;
 - (b) Periodically participate in or conduct analyses and studies that relate to:
 - 1. Health care costs;
 - 2. Health care quality and outcomes;
 - 3. Health care providers and health services;
 - 4. Health insurance costs; and
 - 5. The cost of health benefits covered by ~~motor vehicle insurance and~~ workers' compensation insurance;
 - (c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to KRS 216.2920 to 216.2929;
 - (d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of KRS 216.2920 to 216.2929; and
 - (e) Appoint a permanent advisory committee to define quality outcome measurements and to advise the cabinet on technical matters including proper interpretation of the data and the manner in which it should be published.
- (3) ~~All insurers and self insurers authorized to write motor vehicle, workers' compensation, or health insurance in this state shall transmit at least annually by March 30 to the Department of Insurance the following information on their insurance experience in this state for the preceding calendar year:~~
- ~~(a) Total premiums paid;~~
 - ~~(b) Total cost of claims filed and paid;~~
 - ~~(c) Total cost of health and medical claims paid for by motor vehicle insurance and by workers' compensation insurance;~~
 - ~~(d) Total policies canceled by type and the aggregate reasons therefor;~~
 - ~~(e) List of total health and medical services paid for, grouped by types of services and costs:

 - 1. Total cost per health and medical service per insured group per month;
 - a. Cost paid by insurer;
 - b. Cost paid by insured; and
 - 2. Percentage of insureds who received each service.~~
- ~~If the secretary finds it necessary for the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may require quarterly transmission to the cabinet of the information specified under paragraphs (a) to (e) of this subsection. Nothing in this subsection shall prohibit the cabinet from requesting nonidentifying specific claims data for the purpose of identifying expenditure trends for health and medical claims and developing approaches to cost containment.~~
- (4) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars (\$500) for each violation for knowingly failing to file a report as required. The amount of any fine imposed shall not be included in the allowed costs of a facility for Medicare or Medicaid reimbursement.

Section 54. KRS 304.17A-010 is amended to read as follows:

As used in KRS 304.17A-010 to 304.17A-070:

- (1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and is certified by the alliance pursuant to KRS 304.17A-070. The term includes any self-insured plan provided by the state employee benefit fund established under KRS 18A.2281.

- (2) "Alliance" means the Kentucky Health Purchasing Alliance created by KRS 304.17A-020.
- (3) "Alliance member" means both mandatory and voluntary alliance members.
- (4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.
- (5) "Commissioner" means the commissioner of the Kentucky Department of Insurance.
- (6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.
- (7) "Health purchasing alliance" means an agency attached for administrative purposes to the department but which operates independently of the department and that provides member purchasing services and detailed information to its members on comparative prices, usage, outcomes, quality, and enrollee satisfaction with accountable health plans and which was previously certified by the Kentucky Health Policy Board.
- (8) "Consumer" means an individual user of health care services.
- (9) "Department" means the Kentucky Department of Insurance.
- (10) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.
- (11) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
 - (a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;
 - (b) Chiropractors licensed pursuant to KRS Chapter 312;
 - (c) Dentists licensed pursuant to KRS Chapter 313;
 - (d) Optometrists licensed pursuant to KRS Chapter 320;
 - (e) Physician assistants regulated pursuant to KRS Chapter 311;
 - (f) Nurse practitioners licensed pursuant to KRS Chapter 314; and
 - (g) Other health care practitioners as determined by the department by administrative regulations promulgated pursuant to KRS Chapter 13A.
- (12) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; a provider-sponsored integrated health delivery network which complies with financial and other criteria established by the department to protect against financial insolvency and to assure capability of providing required services or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky.
- (13) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or standard and supplemental health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, or student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, and, upon approval by the department, individual limited guaranteed renewable hospital or medical expense policies whose provisions and terms may not be changed by the insurer, which were issued prior to January 1, 1994, and conversion policies for group health policies existing on January 1, 1994, if the department determines that the individual limited guaranteed renewable expense policies and conversion

policies provide benefits that are less than the benefits provided by the basic health benefit plan as defined by the department.

- (14) "Health status" means an assessment of an individual's mental and physical condition.
- (15) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:
- (a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;
 - (b) Contracts with selected health care providers;
 - (c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;
 - (d) Controlled access to and coordination of services by a case manager; and
 - (e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.
- (16) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans.
- (17) ~~[(a)]~~ "Mandatory alliance member" means:
1. ~~Any person for whom the Commonwealth provides health insurance pursuant to KRS 18A.225 to 18A.229;~~
 2. ~~Elected and salaried employees of local school districts;~~
 3. ~~Employees of local and district health departments;~~
 4. ~~Justices, judges, clerks, deputy clerks, and all other employees of the Judicial Department; and~~
 5. ~~Recipients under the Kentucky Medical Assistance Program under KRS Chapter 205, to the extent the basic benefit package offered by the alliance covers those mandatory Medicaid services required to be offered by federal law if the following conditions are met:~~
 - a. ~~The Cabinet for Human Resources determines enrolling Medicaid recipients in the alliance to be practicable; and~~
 - b. ~~Necessary waivers are obtained by the Cabinet for Human Resources from the Federal Health Care Financing Administration to permit enrolling Medicaid recipients in the alliance.~~
- ~~(b) With respect to subparagraphs 2. to 4. of paragraph (a) of this subsection, "mandatory alliance member" means only those positions or offices for which health care coverage is provided on July 15, 1994 or for which health care coverage is extended after July 15, 1994, and nothing in this subsection shall be construed to mandate provision of health care coverage for positions and offices within the scope of those subparagraphs if that coverage was not in effect on July 15, 1994.~~
- ~~(c) With respect to those persons listed in subparagraphs 2. to 4. of paragraph (a) of this subsection, alliance membership shall be mandatory effective January 1, 1996, except those persons covered under a health insurance contract in effect as of April 1, 1994, and which is still in effect as of January 1, 1996, shall not be required to be a member of the alliance until the termination date of the contract.~~
- ~~(18)]~~ "Medical outcomes" means a change in an individual's health status after the provision of health services.
- ~~(18)~~~~[(19)]~~ "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.
- ~~(19)~~~~[(20)]~~ "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals.
- ~~(20)~~~~[(21)]~~ "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.
- ~~(21)~~~~[(22)]~~ "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.

(22)~~(23)~~ "Voluntary alliance member" means:

- (a) An employer with fifty (50) employees or less who voluntarily chooses to participate in a health purchasing alliance except that any employer who provides health plan benefits for one employee shall provide health plan benefits for all employees, including part-time employees; or
- (b) An individual who voluntarily chooses to participate in a health purchasing alliance; or
- (c) An affiliated group or association consisting of fifty (50) individuals or less who voluntarily choose to participate in the health purchasing alliance as a group; or
- (d) Employees of state institutions of higher education; or
- (e) Elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts excluding school districts;
- (f) ***Any person for whom the Commonwealth provides health insurance under KRS 18A.225 to 18A.229; or***
- (g) ***Elected and salaried employees of local school districts; or***
- (h) ***Employees of local and district health departments; or***
- (i) ***Justice, judges, clerks, deputy clerk, and all other employees of the Judicial Department.***

Section 55. KRS 304.12-085 is amended to read as follows:

- (1) No person shall, whether acting for himself or another in connection with an insurance transaction, fail or refuse to issue or renew insurance to any person because of race, color, religion, national origin, or sex except that rates determined through valid actuarial tables shall not be violative of KRS Chapter 344.
- (2) ***In the case of benefits consisting of medical care provided under, offered by, or in connection with a group or individual health benefit plan, the plan or insurer may not deny, cancel, or refuse to renew the benefits or coverage, or vary the premiums, terms, or conditions for the benefits or coverage, for any participant or beneficiary under the plan:***
 - (a) ***On the basis of a genetic test, for which symptoms have not manifested; or***
 - (b) ***On the basis that the participant or beneficiary has requested or received genetic services.***
- (3) ***A group or individual health benefit plan or insurer offering health insurance in connection with a health benefit plan or an insurer offering a disability income plan may not request or require an applicant, participant, or beneficiary to disclose to the plan or insurer any genetic test about the participant, beneficiary, or applicant.***
- (4) ***A group or individual health benefit plan or insurer offering health insurance in connection with a health benefit plan may not disclose any genetic test about a participant or beneficiary without prior authorization by the participant. The authorization is required for each disclosure.***
- (5) ***For purposes of this section, unless the context requires otherwise:***
 - (a) ***"Health benefit plan" has the meaning given it in Section 1 of this Act; and***
 - (b) ***"Insurer" has the meaning given it in Section 1 of this Act.***

Section 56. KRS 304.38-080 is amended to read as follows:

- (1) Each enrollee residing in this state shall be entitled to evidence of health care services provided and the same shall be issued and delivered to him by the health maintenance organization, be it in the form of a contract, certificate, or other comparable document. Such evidence shall state clearly the total amount of payment for health care services and any indemnity or service benefits which the enrollee is obligated to pay with respect to such health care services.
- (2) Each health maintenance organization shall annually make available to its enrollees at its principal office and place of business:
 - (a) Its most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursement; and

(b) A current description of its organizational structure and operation.

~~{(3) After a health maintenance organization has been in operation for twenty four (24) months, it shall have an open enrollment period at least every year under which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment, except as may be otherwise determined and authorized by the commissioner. Such organization may apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unreasonable charges for enrollee coverage for health care service; which application the commissioner shall approve or deny within fifteen (15) days of the receipt thereof from such organization. }~~

Section 57. KRS 216B.250 is amended to read as follows:

- (1) For purposes of this section, "paying patient" means persons receiving health care services who pay directly for services rendered, patients with private health insurance or health maintenance organization coverage, persons receiving Medicaid or Medicaid benefits under Title XVIII and Title XIX of the Social Security Act and persons receiving veteran's health care benefits. "Paying patient" does not include medically indigent persons with no source of payment whatsoever.
- (2)
 - (a) When a copy of an itemized statement is requested by any paying patient, each health facility shall furnish to the patient within thirty (30) days of the patient's discharge or within fifteen (15) days of the patient's request, whichever is later, one (1) copy free of charge of the itemized statement of services rendered and charges incurred by the patient.
 - (b) ***A summary statement of services rendered and charges incurred by the patient shall be included with the invoice sent by a health facility to the patient. Each invoice shall indicate that an itemized statement may be obtained upon request. The Cabinet for Human Resources shall impose a civil fine of five hundred dollars (\$500) for each violation by a health care facility for failure to provide an itemized statement as required under KRS 216B.250.***
 - (c) The itemized statement shall be stamped "Kentucky Revised Statutes prohibit the use of this statement for insurance payment purposes where benefits have been assigned."
- (3) Each health facility shall post in a publicly visible place in their admission, outpatient areas and, where applicable, emergency areas that an itemized statement is available to any paying patient upon request.
- (4) The itemized statement rendered shall be the record maintained by the health facility that details the charges made for services rendered to patients and shall indicate whether an assignment of benefits has been obtained.
- (5) Each health facility shall designate and make available appropriate staff to provide, upon patient request, an explanation of charges listed in the itemized statement.
- (6) If a health facility knows of a discrepancy in the total charges as reported in an itemized statement and that which is reported to a third party payor, or at any time that a health facility becomes aware of such a discrepancy, the health facility shall provide the patient and third party payor with notification, an explanation and, if applicable, any reconciliation of the discrepancy in total charges.

Section 58. KRS 304.18-020 is amended to read as follows:

- (1) "Group health insurance" is hereby declared to be that form of health insurance covering groups of persons as defined in this section, with or without one (1) or more members of their families or one (1) or more of their dependents, or covering one (1) or more members of the families or one (1) or more dependents of such groups of persons, and issued upon the following basis:
 - (a) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer (except as to policies insuring only against aviation or transportation hazards). The term "employees" as used in this paragraph shall be deemed to include the officers, ***directors***, managers and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, ***directors***, managers and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract or otherwise. The term "employees" as used in this paragraph may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected

or appointed officers. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

- (b) Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used in this paragraph may include *directors of corporate members and* retired employees.
 - (c) Under a policy issued to the trustees of a fund established by two (2) or more employers in the same or related industry or by one (1) or more labor unions or by one (1) or more employers and one (1) or more labor unions or by an association as defined in paragraph (b), which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used in this paragraph may include the officers, *directors*, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used in this paragraph may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.
 - (d) Under a policy issued to a creditor insuring a group of debtors, as defined in KRS 304.16-040, and under the same conditions and limitations as specified in such section, but the amount in indemnity payable with respect to any person insured thereunder shall not at any time exceed the aggregate of the periodic scheduled unpaid installments.
 - (e) Under a policy issued to any other person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy.
 - (f) Under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group health policy or contract.
- (2) Any group health policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

SECTION 59. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Health benefit plans shall educate their insureds about the availability, location, and appropriate use of emergency and other medical services, cost-sharing provisions for emergency services, and the availability of care outside an emergency department.*
- (2) *Health benefit plans using a defined network of health care providers shall cover emergency department screening and stabilization services both in-network and out-of-network without prior authorization for use consistent with the prudent layperson standard.*
- (3) *Emergency department personnel shall contact a patient's primary care provider or health benefit plan, as appropriate, as quickly as possible to discuss follow-up and poststabilization care and promote continuity of care.*

Section 60. KRS 142.311 is amended to read as follows:

- (1) A tax is hereby imposed on pharmacies or any other provider, dispensing or delivering in a suitable container outpatient prescription drugs in this state, at the rate of twenty-five cents (\$0.25) per prescription for which any initial payment is received on or after July 15, 1994.
- (2) *The provisions of this section, and so much of KRS 142.303 and 142.307 that may impose a tax on prescription drugs, expire June 30, 1999.*

Section 61. The following KRS section is repealed:

304.17A-090 Commissioner's review of rates and charges filed between July 15, 1995, and July 15, 1996 -- Refunds -- Suspension of certificate of authority -- Notification of review.

Section 62. Effective July 1, 1999, the following KRS sections are repealed:

304.17A-010 Definitions for KRS 304.17A-010 to 304.17A-070.

304.17A-020 Kentucky Health Purchasing Alliance -- Regional advisory boards.

304.17A-030 Duties of the Kentucky Health Purchasing Alliance.

304.17A-040 Conditions of participation in the alliance.

304.17A-050 Duties of the Department of Insurance with respect to the alliance.

304.17A-060 Supervision of alliance by department relative to antitrust laws.

304.17A-070 Creation of accountable health plans -- Certification.

304.17A-100 Definitions for KRS 304.17A-100 to 304.17A-160 and KRS 304.18-023.

304.17A-110 Requirement of compliance with specified conditions regarding renewability and pre-existing conditions.

304.17A-120 Use of approved modified rating methodology required for issuance or renewal of plans -- Geographic rating areas -- Exemption -- Permitted deviation from index community rates.

304.17A-160 Standard health benefit plans -- Written agreement required before provider may be represented as participating.

304.17A-130 Risk adjustment process -- Authority for administrative regulations.

Section 63. KRS 141.010 is amended to read as follows:

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

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

- (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;~~and~~
 - (i)
 - 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 - 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred~~and~~ fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 - 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code; *and*
 - (j) ***Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section.***
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the

taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

- (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and
- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 64. To carry out the purposes of this Act, there is appropriated to the Kentucky Guaranteed Acceptance Program account out of the general fund in the State Treasury the sum of ten million dollars (\$10,000,000) for fiscal year 1997-1998.

Section 65. Whereas the competition in the health insurance market in Kentucky has diminished since the enactment of legislation in 1994 to the disadvantage of residents of the Commonwealth, and premium rates have increased, which has made coverage less affordable for some Kentuckians, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 10, 1998

CHAPTER 497

(HB 285)

AN ACT relating to emergency medical services.

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

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

- (1) *When it appears that a person whom a paramedic who has successfully completed training in determination of death has been called to attend is dead, the paramedic shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the paramedic or an emergency medical technician who has responded with or after the paramedic, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the paramedic may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead. If it is determined that death has occurred in accordance with the procedures of KRS 446.400 with regard to patients who have not been resuscitated, the paramedic may make the actual determination and pronouncement of death. This section shall not apply to patients who are in a hospital when apparent death occurs.*
- (2) *In the event that a paramedic determines that a person is dead, the paramedic shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.*
- (3) *Any paramedic course taught after the effective date of this section shall include a course of instruction on the determination of death and preservation of evidence as required by the Board of Medical Licensure by administrative regulation.*
- (4) *Any paramedic recertified within the two (2) years following the effective date of this Act shall successfully complete in-service training required by the Board of Medical Licensure by administrative regulation relating to determination of death and preservation of evidence. Any paramedic who does not successfully complete the required in-service training shall not be recertified.*
- (5) *Any paramedic from another jurisdiction desiring to become a paramedic in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection (4) of this section, and certification as a paramedic shall be denied if the required evidence is not shown.*
- (6) *The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person prior to the arrival of the paramedic by any person, for the purposes of this section and KRS 446.400, shall not be considered as artificial maintenance of respiration and circulation. The administration of advanced cardiac life support procedures by any person, other than a registered nurse rendering care pursuant to Section 2 of this Act, prior to the arrival of the paramedic shall preclude the determination of death by the paramedic, and the provisions of KRS 446.400 shall apply. However, nothing in this section shall preclude the supervising physician from directing the paramedic to cease resuscitative efforts under approved agency medical protocols.*
- (7) *The resuscitative efforts of a paramedic under the protocols authorized by this section shall not invoke the provisions of KRS 446.400.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

- (1) *When it appears that a person whom a registered nurse who has successfully completed training in determination of death has been called to attend is dead, the registered nurse shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the registered nurse or a paramedic or an emergency medical technician who has responded with or after the registered nurse, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the nurse may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead. If it is determined that death has occurred in accordance with the procedures of KRS 446.400 with regard to patients who have not been resuscitated, the registered nurse may make the actual determination and pronouncement of death. This section shall not apply to patients who are in a hospital when apparent death occurs.*
- (2) *In the event that a registered nurse determines that a person is dead, the registered nurse shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.*
- (3) *Any registered nursing course taught in pre-licensure programs after the effective date of this section shall include a course of instruction on the determination of death and preservation of evidence as required by the Board of Nursing by administrative regulation.*
- (4) *Any registered nurse within the two (2) years following the effective date of this Act shall successfully complete in-service training required by the Board of Nursing by administrative regulation relating to determination of death and preservation of evidence.*
- (5) *Any registered nurse from another jurisdiction desiring to become a registered nurse in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection (4) of this section.*
- (6) *The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person prior to the arrival of the registered nurse by any person, for the purposes of this section and KRS 446.400, shall not be considered as artificial maintenance of respiration and circulation. The administration of advanced cardiac life support procedures by any person, other than a paramedic rendering care pursuant to Section 1 of this Act, prior to the arrival of the registered nurse shall preclude the determination of death by the registered nurse, and the provisions of KRS 446.400 shall apply. However, nothing in this section shall preclude the supervising physician from directing the registered nurse to cease resuscitative efforts under approved agency medical protocols.*
- (7) *The resuscitative efforts of a nurse under protocols authorized by this section shall not invoke the provisions of KRS 446.400.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *The State Board of Medical Licensure shall have sole jurisdiction regarding any complaint relating to the medical supervision of an ambulance service or ambulance service personnel against a physician performing in the role of medical director for an ambulance service for basic or advanced life support services.*
- (2) *This section shall not preclude or limit the filing of civil litigation in a court of appropriate jurisdiction.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *The State Board of Nursing shall have sole jurisdiction regarding any complaint relating to the practice of a registered nurse practicing under the nurse's nursing license in the prehospital setting for an ambulance service providing basic or advanced life support services.*
- (2) *This section shall not preclude or limit the filing of civil litigation in a court of appropriate jurisdiction.*

Section 5. KRS 216B.410 is amended to read as follows:

- (1) *Each licensed ambulance provider and medical first response provider as defined in KRS 211.952(2) shall collect and provide to the cabinet run data and information required by the cabinet by administrative regulation.*
- (2) *The cabinet shall develop a run report form for the use of each class of ambulance provider and medical first response provider containing the data required in subsection (1) of this section. An ambulance*

provider or medical first response provider may utilize any run form it chooses in lieu of or in addition to the cabinet-developed run report form. However, the data captured on the run report form shall include at least that required by the administrative regulations promulgated pursuant to subsection (1) of this section.

- (3) *An ambulance provider or medical first response provider may report the required run report data and information by sending copies of the completed run report forms to the cabinet or by transmitting the required data and information to the cabinet in an electronic format. If the cabinet requires the use of a specific electronic format it shall provide a copy of the file layout requirements, in either written or electronic format, to the licensed ambulance provider or medical first response provider at no charge.*
- (4) *Each ambulance provider or medical first response provider shall submit its run reports or data summary reports in electronic format on the time schedule specified by the cabinet by administrative regulation.*
- (5) *The cabinet shall publish a comprehensive annual report reflecting the data collected, injury and illness data, treatment utilized, and other information deemed important by the cabinet. The annual report shall not include patient identifying information or any other information identifying a natural person. A copy of the comprehensive annual report shall be forwarded by the cabinet to the Kentucky Board of Medical Licensure.*
- (6) *Ambulance provider and medical first response provider run report forms and the information transmitted electronically to the cabinet shall be confidential. No person shall make an unauthorized release of information on an ambulance run report form or medical first response run report form. Only the patient or the patient's parent or legal guardian if the patient is a minor, or the patient's legal guardian or person with proper power of attorney if the patient is under legal disability as being incompetent or mentally ill, or a court of competent jurisdiction may authorize the release of information on a patient's run report form or the inspection or copying of the run report form. Any authorization for the release of information or for inspection or copying of a run report form shall be in writing.*
- (7) *If a medical first response provider or ambulance provider does not use a paper form but collects patient data through electronic means, it shall have the means of providing a written run report that includes all required data elements to the medical care facility. A copy of the medical first response form or a summary of the run data and patient information shall be made available to the ambulance service that transports the patient. A copy of the ambulance run report form shall be made available to any medical care facility to which a patient is transported and shall be included in the patient's medical record by that facility. If a patient is not transported to a medical facility, the copy of the run report form that is to be given to the transporting ambulance provider or medical care facility shall be given to the patient or to the patient's parent or legal guardian. If the ambulance provider, medical facility, patient, or patient's legal guardian refuses delivery of their run report form or is unavailable to receive the form, that copy of the form shall be returned to the medical first response provider or ambulance provider and destroyed.*
- (8) ~~All conforming ambulance services, but no nonconforming ambulance services,~~ shall be required to keep adequate reports and records to be maintained at the ambulance base headquarters, and to be available for periodic review as deemed necessary by the board. Required records and reports are as follows:
 - ~~{(1) Two (2) copies of the Kentucky emergency medical service ambulance run report form, one (1) copy to be kept in the files of the ambulance services and one (1) copy to be submitted to the hospital to which the patient is transported and maintained in the hospital's files, or ambulance run report information compiled and disseminated by electronic means approved by the Cabinet for Human Resources;~~
 - ~~(2) (a)~~ Employee records, including a resume of each employee's training and experience and evidence of current certification; and
 - ~~(b) (3)~~ Health records of all drivers and attendants including records of all illnesses or accidents occurring while on duty.

Approved April 10, 1998

CHAPTER 498

(HB 282)

AN ACT relating to petroleum underground storage tanks.

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

Section 1. KRS 224.60-110 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky finds and declares that:

- (1) Significant quantities of petroleum and petroleum products are being stored in petroleum storage tanks in the state to meet the needs of its citizens and to foster economic growth and development and the overall quality of life in the state;
- (2) Spills, leaks, discharges, and other releases into the environment from petroleum storage tanks, however, have occurred, are occurring, or will occur, and such releases may pose a threat to public health and safety and the environment;
- (3) Adequate financial resources must be readily available to provide a means for investigation and cleanup of contamination without delay;
- (4) In recent years, petroleum storage tank owners or operators have been unable to obtain affordable pollution liability insurance coverage to pay for corrective action measures;
- (5) It is in the best interests of the state to protect public health and safety and the environment by creating a fund for corrective action measures for releases into the environment from petroleum storage tanks;
- (6) Commercial insurers may increase the availability and affordability of pollution liability insurance coverage for petroleum storage tanks if a comprehensive and efficient financial responsibility program for tanks is established;
- (7) An efficient program of financial responsibility should include corrective action requirements that encourage petroleum storage tank owners or operators to take corrective action measures in the first instance;
- (8) An efficient program of financial responsibility for petroleum storage tanks should minimize disputes over the causation of and responsibility for releases into the environment from petroleum storage tanks;
- (9) *An efficient program of financial responsibility should protect petroleum storage tank owners and operators from fraudulent claims against the fund to insure the fund's financial viability and should authorize the vigorous pursuit of fraudulent claims;*
- (10) It is necessary and essential that the state use all practical means to control or eliminate pollution hazards posed by leaking petroleum storage tanks; and
- ~~(11)~~~~(10)~~ It is the intent of the General Assembly that a state fund be created to assist petroleum storage tank owners or operators in complying with the federal financial responsibility requirements promulgated under federal regulations and to assist petroleum storage tank owners or operators in cleaning up contamination caused by a release.

Section 2. KRS 224.60-115 is amended to read as follows:

As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;
- (2) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- ~~(4)~~ ~~"Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;~~
- ~~(5)~~ "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;

- (5)~~(6)~~ "Dealer" means a person required to be licensed as a gasoline or special fuels dealer as defined in KRS 138.210(2);
- (6)~~(7)~~ "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- (7)~~(8)~~ "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- (8)~~(9)~~ "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- (9)~~(10)~~ "Fund" means the petroleum storage tank environmental assurance fund established pursuant to KRS 224.60-140;
- (10)~~(11)~~ "Gasoline" means gasoline as defined in KRS 138.210(4);
- (11)~~(12)~~ "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, *kerosene*, or any grade of gasohol, that is typically used in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based substance typically used in the operation of a motor vehicle, including used motor vehicle lubricants and oils;
- (12)~~(13)~~ "Occurrence" means a release, or releases, of an accidental nature, requiring corrective action, from a petroleum storage tank or tanks located at the same facility, due to continuous or repeated exposure to conditions. An additional release or releases at the same facility in which the area requiring remedial action is separate from a previous remediation area or areas shall be considered a separate occurrence;
- (13) **"Office" means the Office of Petroleum Storage Tank Environmental Assurance Fund;**
- (14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, the state, a municipality, commission, or political subdivision of the state. The term includes a consortium, a joint venture, the United States government, or a commercial entity;
- (15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels, lubricants, and used oil;
- (16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-100, which contains petroleum or petroleum products but, for the purpose of participation or eligibility for the fund, shall only include tanks containing motor fuels and shall not include petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;
- (17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;
- (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;
- (19) "Received" means the same as defined in KRS 138.210(5);
- (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;
- (21) "Special fuels" means special fuels as defined in KRS 138.210(4); and
- (22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

Section 3. KRS 224.60-120 is amended to read as follows:

- (1) Each petroleum storage tank owner or operator shall establish and maintain evidence of financial responsibility, as provided for in this section, for taking corrective action and for compensating third parties for bodily injury and property damage.
 - (a) For petroleum storage tank owners or operators of eleven (11) or more tanks, the level of financial responsibility to be established and maintained shall be **twelve thousand five hundred dollars (\$12,500)**~~twenty-five thousand dollars (\$25,000)~~ per occurrence for taking corrective action and **twelve thousand five hundred dollars (\$12,500)**~~twenty-five thousand dollars (\$25,000)~~ per occurrence for compensating third parties for bodily injury and property damage.
 - (b) For petroleum storage tank owners or operators of six (6) to ten (10) tanks who have not been issued a closure letter from the cabinet, the level of financial responsibility to be established and maintained shall be **two thousand five hundred dollars (\$2,500)**~~five thousand dollars (\$5,000)~~ per occurrence for taking corrective action and **two thousand five hundred dollars (\$2,500)**~~five thousand (\$5,000) dollars~~ per occurrence for compensating third parties for bodily injury and property damage.
 - (c) For petroleum storage tank owners or operators of five (5) or less tanks who have not been issued a closure letter from the cabinet, the level of financial responsibility to be established and maintained shall be **five hundred dollars (\$500)**~~one thousand dollars (\$1,000)~~ per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage.
- (2) Evidence of financial responsibility may be established by any combination of the following:
 - (a) Commercial or private insurance, including risk retention groups;
 - (b) Qualification as a self-insurer;
 - (c) A guarantee, surety bond, or letter of credit; or
 - (d) Any other reasonable and economically practicable means in a form acceptable to the **office**~~commission~~.
- (3) To qualify as a self-insurer the petroleum storage tank owner or operator shall demonstrate a net worth in excess of the amounts specified in subsection (1) of this section. "Net worth" shall mean the monetary value of assets that remain after deducting liabilities. "Assets" shall mean all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
- (4) The total liability of any guarantor under KRS 224.60-105 to 224.60-160 is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the petroleum storage tank owner or operator pursuant to this section. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to a petroleum storage tank owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. "Guarantor" shall mean any person, other than the petroleum storage tank owner or operator, who provides evidence of financial responsibility for a petroleum storage tank owner or operator pursuant to this section.
- (5) It is the intent of the General Assembly that the fund established pursuant to KRS 224.60-140, combined with the financial responsibility required by this section, may be used by petroleum storage tank owners or operators to demonstrate their compliance with any financial responsibility requirements promulgated under federal regulations.
- (6) The **office**~~commission~~ shall promulgate administrative regulations to implement this section. In promulgating administrative regulations, the **office**~~commission~~ shall not restrain or limit the use of any of the means of establishing financial responsibility specified in this section. **The administrative regulations may allow a twenty-five percent (25%) reduction in the level of financial responsibility set in subsection (1) of this section for the timely completion of corrective action.**

Section 4. KRS 224.60-130 is amended to read as follows:

- (1) **There is created within the Public Protection and Regulation Cabinet, Office of the Secretary, the Office of Petroleum Storage Tank Environmental Assurance Fund**~~The commission shall be created within sixty (60) days from April 9, 1990.~~
- (2) The **Office of Petroleum Storage Tank Environmental Assurance Fund**~~commission~~ shall:

- (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the ~~office~~~~commission~~ may distinguish between types, classes, and ages of petroleum storage tanks. The ~~office~~~~commission~~ ~~may~~~~shall~~ establish a range of amounts to be paid from the fund, ***or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs***, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. ***The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. The criteria for certification of laboratories shall be established no later than January 1, 1999. After April 1, 1999, owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation.*** Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the ~~office~~~~commission~~ for reimbursement from the fund for the performance of corrective action. At a minimum, the ~~office~~~~commission~~ shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the ~~office~~~~commission~~ shall obligate funds necessary to meet these requirements;
- (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the fund and receive reimbursement from the fund. The ~~office~~~~commission~~ may establish eligibility criteria based upon the financial ability of the petroleum storage tank owner or operator. ***To insure cost effectiveness, the office shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund.*** In promulgating administrative regulations to carry out this section, the ~~office~~~~commission~~ may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal government for petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The amount to be maintained in this account shall be established by the ~~office~~~~commission~~. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the ~~office~~~~commission~~;
- (d) Establish a small operator assistance account within the fund which may be used by the ~~office~~~~commission~~ to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. This account shall not be used to compensate third parties for bodily injury and property damage. The ~~office~~~~commission~~ shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the ~~office~~~~commission~~ shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the ~~office~~~~commission~~ regarding the payment of claims from the fund in accordance with KRS Chapter 13B;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;

- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform an actuarial study, no less than every two (2) years, that recommends to the ~~office~~[~~commission~~] an actuarially sound entry level to the fund prior to two (2) years from April 9, 1990. The ~~office~~[~~commission~~] shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, ~~and~~ the procurement of legal services, **and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator;**
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the ~~office~~[~~commission~~] may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks; ~~and~~
- (k) ***Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;***
- (l) ***Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The office may collect soil or water samples or require storage tank owners or operators to split samples with the office for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the office to collect or split samples shall make the facility ineligible for fund participation; and***
- (m) ***Have, after April 1, 1999, assurance fund auditors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the office schedule an assurance fund auditor to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an auditor fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the assurance fund no later than ten (10) days prior to the proposed date that an auditor is not available on the proposed date, in which event a representative of the assurance fund shall contact the operator and schedule a new date. If no auditor is present at the rescheduled date, the removal may then proceed without penalty***~~[Be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes].~~

~~{(3) The commission shall hold at least four (4) regular meetings each calendar year at a place and time to be fixed by the commission. The commission shall also meet at the request of the chairman of the commission or upon a written request of three (3) members of the commission. Six (6) members constitute a quorum, and a quorum may act for the commission in all matters.}~~

~~(3){(4)}~~ The ~~office~~[~~commission~~] may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.

~~(4){(5)}~~ The ~~office~~[~~commission~~] may sue and be sued in its own name.

Section 5. KRS 224.60-140 is amended to read as follows:

- (1) There is hereby created the petroleum storage tank environmental assurance fund. The fund shall be maintained as a separate and distinct interest-bearing account. All of the following amounts shall be deposited in the fund:

- (a) Any interest earned upon money deposited in the fund;
 - (b) Money appropriated by the General Assembly for deposit in the fund;
 - (c) Any money recovered by the fund pursuant to this section; and
 - (d) Any money collected in the form of penalties levied pursuant to KRS 224.60-155.
- (2) Money in the fund may be used by the ~~office~~~~commission~~ for the following purposes:
- (a) To reimburse petroleum storage tank owners or operators for the costs, expenses, and other obligations incurred for corrective action as the result of a release into the environment from a petroleum storage tank. ***Reimbursement shall be limited to only those costs, expenses, and other obligations incurred to comply with corrective action requirements established by the cabinet. Additional costs related to compliance with a local program operating under KRS 224.60-105(4) shall be neither reimbursable by the fund nor imposed on the owner or operator. Reimbursement shall not include the costs related to the removal, or actions incidental to the removal, of a tank system except as authorized under Section 4(2)(j) of this Act;***
 - (b) For payment of or reimbursement for third-party claims for bodily injury and property damage which are asserted against a petroleum storage tank owner or operator as a result of a release into the environment from a petroleum storage tank;
 - (c) To pay the reasonable costs incurred by the ~~office~~~~commission~~ in administering the fund;
 - (d) Payment to the cabinet of the costs of implementing the tank registration required by KRS 224.60-142; and
 - (e) To operate the small operators' assistance account pursuant to KRS 224.60-130(2)(d), ~~and~~ the small operators' tank removal account pursuant to KRS 224.60-130(2)(j), ***to perform or contract for the performance of financial audits conducted under Section 4(2)(k) of this Act, and to employ sufficient assurance fund auditors to carry out the provisions of Section 4 of this Act and to set forth their duties.***
- (3) The use of the fund shall not exceed one million dollars (\$1,000,000) per occurrence for corrective action and one million dollars (\$1,000,000) per occurrence for compensating third parties for bodily injury and property damage.
- (4) Money in the fund may be used by the cabinet for costs incurred by the cabinet for corrective action taken pursuant to KRS 224.60-135(2) and (4).
- (5) The fund shall be used to guarantee payment of reasonable costs and expenses to a contractor performing corrective action under contract with a petroleum storage tank owner or operator subject to entry level amounts payable by the petroleum storage tank owner or operator. Money in the fund shall be obligated to secure the guarantee.
- (6) A petroleum storage tank owner or operator may apply to the ~~office~~~~commission~~ for reimbursement from the fund of costs to perform corrective action, except that the petroleum storage tank owner or operator shall be responsible for and shall not be reimbursed for an amount equal to the entry level into the fund as set pursuant to administrative regulation of the ~~office~~~~commission~~.
- (7) The ~~office~~~~commission~~ or its designated agent shall issue all decisions made on claims filed pursuant to this section in writing, with notification to all appropriate parties, within ninety (90) days after submission of the claim, unless all parties to the claim agree in writing to an extension of time.
- (8) Except as provided in subsection (9), any costs incurred and payable from the fund for corrective action taken pursuant to KRS 224.60-135(2) shall be recovered by the ~~office~~~~commission~~ from the petroleum storage tank owner or operator which released the petroleum or petroleum products into the environment.
- (9) The liability of a petroleum storage tank owner or operator subject to a cost recovery under this section shall not exceed an amount equal to the entry level into the fund, the ~~office's~~~~commission's~~ cost incurred in the cost recovery, and any penalties applied in accordance with KRS 224.60-155. This amount shall include any expenditures made by the petroleum storage tank owner or operator for the release into the environment from the petroleum storage tank that is the subject of the cost of recovery.

- (10) The amount of costs determined pursuant to ~~subsections~~~~subsection~~ (8) **and (18)** of this section shall be recoverable in a civil action. This subsection does not deprive a party of any defense the party may have.
- (11) Money recovered by the ~~office~~~~commission~~ pursuant to this section shall be deposited in the fund.
- (12) Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures recoverable pursuant to this section.
- (13) (a) Any party found liable for any costs or expenditures recoverable under this section who establishes that only a portion of those costs or expenditures are attributable to their actions, shall pay only for that portion.
- (b) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection (12) of this section, the court shall apportion those costs or expenditures, to the extent practicable according to equitable principles among the defendants.
- (c) The fund shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under paragraphs (a) and (b) of this subsection.
- (14) (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for costs recoverable under this section. This subsection shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under KRS 224.60-105 to 224.60-160.
- (b) The entry of judgment against any party to the action shall not bar any future action by the fund against any other person who is later discovered to be potentially liable for costs paid from the fund.
- (c) Payment of any claim by the fund pursuant to KRS 224.60-105 to 224.60-160 shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the release.
- (15) This section shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.
- (16) The cabinet shall attempt, to the maximum extent practicable, to secure or obtain funds that may be available for corrective actions under federal laws. However, nothing in this subsection shall prevent the cabinet from expending any funds available under KRS 224.60-105 to 224.60-160 if such federal funds are determined to be unavailable.
- (17) The fund shall not be used for corrective action, reimbursement, or third-party liability resulting from releases from petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel oil tanks used exclusively for storage of fuel used for the purposes of powering locomotives.
- (18) ***Any person who knowingly makes a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be responsible for and shall not be reimbursed for any amounts incurred based upon the false statement, representation, or certification. Any costs incurred and paid from the fund which are based on a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be recovered by the fund administrators from the person who asserted the false statement, representation, or certification.***

Section 6. KRS 224.60-142 is amended to read as follows:

To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, ~~2000~~~~1998~~.

Section 7. KRS 224.60-137 is amended to read as follows:

- (1) The ~~office~~~~commission~~ shall have a study performed to identify appropriate standards for corrective action for a release into the environment from a petroleum storage tank. The study shall address, but not be limited to, standards for levels of petroleum contamination, including lead, requiring corrective action to adequately protect human health, safety, and the environment consistent with accepted scientific and technical principles and federal law. The standards shall take into account distances to environmentally sensitive features, including

surface waters, wetlands, nature preserves, protected ecological areas, springs and wells used for domestic water supply, and well head protection areas. The ~~office~~~~commission~~ shall contract with a person or persons to perform the study qualified in the areas of engineering, hydrogeology, geology, toxicology, epidemiology, biology, public health, chemistry, and risk assessment. The ~~office~~~~commission~~ shall provide for the October 18, 1993 study performed by the University of Kentucky to be completed within one hundred twenty (120) days of April 11, 1994, to comply with the requirements of this subsection.

- (2) The ~~office~~~~commission~~ shall contract with the University of Kentucky, or another person or persons having the qualifications established in subsection (1) of this section, to recommend revisions or amendments to the study based upon new information or changes in federal law, and to review and comment to the ~~office~~~~commission~~ upon the consistency with the completed study of administrative regulations proposed by the cabinet pursuant to subsection (3) of this section. The person contracted with to recommend revisions or amendments to the study shall identify in writing any inconsistencies of the draft administrative regulations required by subsection (4) of this section with the completed study. The cabinet shall comment to the ~~office~~~~commission~~ on the completed study report and any proposed revisions or amendments to the study. The ~~office~~~~commission~~ shall approve the completed study report and any revisions or amendments to the study.
- (3) The cabinet shall, by administrative regulation, establish standards for corrective action for a release into the environment from a petroleum storage tank. The administrative regulations shall adequately protect human health, safety and the environment, and shall incorporate the study performed for the ~~office~~~~commission~~, except as necessary to comply with federal law or as provided in subsection (4) of this section.
- (4) Within ninety (90) days of the receipt of the completed study report the cabinet shall prepare draft administrative regulations for submission to and review by the person performing the study. The comments required pursuant to subsection (2) of this section shall be filed with the ~~office~~~~commission~~ and the cabinet within sixty (60) days of receipt of the draft administrative regulations by the ~~office~~~~commission~~. If any inconsistencies are identified, the person conducting the review and the cabinet shall confer to resolve the inconsistencies, and report to the ~~office~~~~commission~~ within sixty (60) days. If the person conducting the review and the cabinet are unable to resolve the inconsistencies, the cabinet and the ~~office~~~~commission~~ shall appoint an independent peer review group to resolve the inconsistencies and recommend amendments to the draft administrative regulations within sixty (60) days of appointment. The peer review group shall be appointed by agreement of the cabinet and the ~~office~~~~commission~~. The cabinet shall amend the draft administrative regulations to incorporate the amendments recommended by the peer review group and file the administrative regulations with the Legislative Research Commission within sixty (60) days of receipt. The administrative regulations shall be promulgated pursuant to the provisions of KRS Chapter 13A.
- (5) Notwithstanding any provisions of law or KRS Chapter 13A to the contrary, the emergency administrative regulations filed by the cabinet in February 1994 shall remain in effect until the administrative regulations required by subsection (3) of this section are adopted and effective pursuant to the provisions of KRS 13A.330.

Section 8. KRS 224.60-145 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.
- (2) All deductions detailed in KRS 138.240(2), gasoline and special fuels sold for agricultural purposes, and special fuels sold exclusively to heat a personal residence are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.
- (3) The fee shall be reported and paid to the Revenue Cabinet at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.
- (4) The petroleum environmental assurance fee shall be set at a rate up to but not to exceed one and four-tenths cent (\$.014) for each gallon.
- (5) The ~~office~~~~commission~~ shall review the unobligated fund balance at least quarterly and report to the Revenue Cabinet the rate of the fee to be applied for the next quarter.
- (6) All provisions of law related to the Revenue Cabinet's administration and enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Revenue Cabinet by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.

- (7) The Revenue Cabinet shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).

Section 9. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.

- (j) Kentucky State Corrections Commission.
- (k) Commission on Correction and Community Service.
- 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
- 3. Natural Resources and Environmental Protection Cabinet:
 - (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
- 4. Transportation Cabinet:
 - (a) Department of Highways.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.

- (k) Office of Environmental Affairs.
- 5. Cabinet for Economic Development:
 - (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
 - (m) *Office of Petroleum Storage Tank Environmental Assurance Fund.***
- 7. Cabinet for Human Resources:
 - (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.
 - (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
- 8. Finance and Administration Cabinet:
 - (a) Office of Legal and Legislative Services.

- (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor Management Relations.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:

- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
 - 2. Department of Personnel.
 - 3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
 - 4. Department of Local Government.
 - 5. Kentucky Commission on Human Rights.

6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 10. The following KRS section is repealed:

224.60-125 Petroleum Storage Tank Environmental Assurance Fund Commission.

Section 11. Executive Order 96-485, as modified and superseded by Executive Order 96-591, dated May 13, 1996, is confirmed to the extent that it is not otherwise confirmed by this Act.

Approved April 10, 1998

CHAPTER 499

(HB 280)

AN ACT relating to skills training investment credits for workforce training.

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context requires otherwise:

- (1) *"Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the authority to receive skills training investment credits in accordance with Sections 1 to 4 of this Act.*
- (2) *"Approved costs" means:*
 - (a) *Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;*
 - (b) *Administrative fees charged by educational institutions in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company and specifically approved by the Bluegrass State Skills Corporation;*
 - (c) *The cost of supplies, materials, and equipment used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;*
 - (d) *The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;*
 - (e) *Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and*
 - (f) *All other costs of a nature comparable to those described in this subsection.*
- (3) *"Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation created by KRS 154.12-205.*
- (4) *"Commonwealth" means the Commonwealth of Kentucky.*
- (5) *"Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent institution within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level.*
- (6) *"Employee" means any person:*
 - (a) *Who is currently a permanent full-time employee of the qualified company; and*

- (b) *Who has been employed by the qualified company for the last twelve (12) calendar months immediately preceding the filing of the application for skills training investment credits by the qualified company.*

For purposes of this subsection, a "full-time employee" means an employee who has been employed by the qualified company for a minimum of thirty-five (35) hours per week for more than two hundred fifty (250) work days during the most recently ended calendar year and is subject to the tax imposed by KRS 141.020.

- (7) *"Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company.*
- (8) *"Preliminarily approved company" means a qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program, which has received preliminary approval from the authority under Section 3 of this Act to receive a certain maximum amount of skills training investment credits.*
- (9) *"Qualified company" means any person, corporation, limited liability company, partnership, limited partnership, registered limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock company, professional service corporation, or any other legal entity through which business is conducted that has been actively engaged in any of the following qualified activities within the Commonwealth for not less than three (3) consecutive years: manufacturing, including the processing, assembling, production or warehousing of any property; processing of agricultural and forestry products; telecommunications; health care; product research and engineering; tool and die and machine technology; mining; tourism and operation of facilities to be used in the entertainment, recreation and convention industry; and transportation in support of manufacturing. Notwithstanding the provisions of this subsection, any company whose primary purpose is the sale of goods at retail shall not constitute a qualified company.*
- (10) *"Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment, including, but not limited to, technical and interpersonal skills training, and training that is designed to enhance the computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas or who risk displacement because their skill deficiencies inhibit their training potential for new technology.*
- (11) *"Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, as provided in subsection (1) of Section 2 of this Act.*

SECTION 2. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The Bluegrass State Skills Corporation may, in accordance with Sections 1 to 4 of this Act, award a credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 to an approved company. The amount of the skills training investment credit awarded by the Bluegrass State Skills Corporation shall be an amount equal to fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed five hundred dollars (\$500) per employee and, in the aggregate, not to exceed one hundred thousand dollars (\$100,000) for each approved company per biennium. The Bluegrass State Skills Corporation shall only approve one (1) application per biennium for each qualified company.*
- (2) *The skills training investment credit shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042. The skill training investment credits allowed under Sections 1 to 4 of this Act shall only be used by the approved company that has been awarded the credits in accordance with Sections 1 to 4 of this Act. The skills training investment credits provided for in this section shall be in addition to all other tax credits granted under the laws of the Commonwealth.*
- (3) *The skills training investment credits may be carried forward for three (3) successive fiscal years of the approved company if the amount allowable as credits exceeds the income tax liability of the approved company in that tax year; however, thereafter, if the amount allowable as credits exceeds the income tax liability of the approved company, the excess credits shall not be refundable or carried forward to any other fiscal year of the approved company for which a tax return of the approved company is to be filed.*

- (4) *A qualified company shall not be entitled to receive the skills training investment credits if the qualified company requires that the employee reimburse the employer or otherwise pay for any costs or expenses incurred in connection with the occupational upgrade training or skills upgrade training.*
- (5) *To the extent that any expenditures of a qualified company constitute approved costs and are the basis for the skills training investment credits under Sections 1 to 4 of this Act, these expenditures shall not be eligible as the basis for grants-in-aid under Bluegrass State Skills Corporation provisions in KRS 154.12-204 to 154.12-208 or the Local Government Economic Development Program under the provisions of KRS 42.4588 to 42.4595.*
- (6) *Priority consideration for preliminary approval under Section 3 of this Act shall be given to qualified companies that the Bluegrass State Skills Corporation determines to be high performance companies. A minimum of thirty percent (30%) of the total skills training investment credits authorized by the Bluegrass State Skills Corporation during any fiscal year shall be awarded to qualified companies that have been designated as high performance companies by the Bluegrass State Skills Corporation. The Bluegrass State Skills Corporation shall establish guidelines and standards for the designation of high performance companies.*
- (7) *Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the Bluegrass State Skills Corporation the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed, and the amount of any skills training investment credits taken pursuant to Sections 1 to 4 of this Act.*

SECTION 3. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The Bluegrass State Skills Corporation shall establish guidelines and standards, for approving skills training investment credits for occupational upgrade training and skills upgrade training. The guidelines and standards may include, but are not limited to: required hours of classroom instruction; required courses; certification of teachers or instructors, whether independent contractors or employees of a qualified company; certification of providers; progressive levels of instruction; and standardized measures of employee evaluation to determine successful completion of a course of study.*
- (2) *To apply for skills training investment credits under Sections 1 to 4 of this Act, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of occupational upgrade training or skills upgrade training. The application submitted by the qualified company shall contain information the Bluegrass State Skills Corporation requires, including, but not limited to:*
 - (a) *A proposal for a program of occupational upgrade training or skills upgrade training;*
 - (b) *A description of each component of the proposed training program and the number of employee training hours requested;*
 - (c) *An itemized statement of all anticipated costs and expenses of the training program, including a breakdown of the costs and expenses associated with employee wages, equipment, personnel, facilities, and materials; and*
 - (d) *Auditing procedures and reporting methods for the submission of information and data to the Bluegrass State Skills Corporation.*
- (3) *After a review of applications for skills training investment credits, the Bluegrass State Skills Corporation may designate the qualified company as a preliminarily approved company and preliminarily approve the amount of skills training investment credits that the qualified company shall be eligible to receive. The maximum amount of skills training investment credits preliminarily approved for all qualified companies by the Bluegrass State Skills Corporation for fiscal year 1998-1999 and fiscal year 1999-2000 shall not exceed one million dollars (\$1,000,000) and shall not exceed two million five hundred thousand dollars (\$2,500,000) for each fiscal year thereafter. Skills training investment credits shall be allocated to qualified companies in the same order preliminary approval is granted by the Bluegrass State Skills Corporation. Skills training investment credits that remain unallocated by the Bluegrass State Skills Corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.*
- (4) *The preliminarily approved company shall complete all programs of occupational upgrade training or skills upgrade training within one (1) year from the date of the preliminary approval of the skills training*

investment credits by the Bluegrass State Skills Corporation and shall certify the completion of these programs to the Bluegrass State Skills Corporation.

- (5) *The preliminarily approved company shall maintain in its employment the employees receiving occupational upgrade or skills upgrade training for a minimum of ninety (90) days following the completion of the program of occupational upgrade training or skills upgrade training and shall certify to the Bluegrass State Skills Corporation the number of employees who remained in the employment of the preliminarily approved company for the full ninety (90) day period.*
- (6) *If a qualified company concludes its training program within the prescribed one (1) year and receives the required certifications described in subsections (4) and (5) of this section, then the Bluegrass State Skills Corporation shall adopt a final authorizing resolution, approving the amount of skills training investment credits awarded to the preliminarily approved company in accordance with Sections 1 to 4 of this Act. The adoption of a final authorizing resolution shall be contingent upon the Bluegrass State Skills Corporation's approval of documentation submitted by the preliminarily approved company supporting all incurred approved costs. If one (1) or more of the employees of the preliminarily approved company failed to continue in the employment of the company for ninety (90) days following the completion of the prescribed one (1) year, then the amount of the skills training investment credits preliminarily approved for a qualified company shall be reduced on a pro rata basis for each employee who failed to continue employment with the preliminarily approved company through the ninety (90) day period. The final amount of the skills training investment credits awarded to the approved company shall not exceed the amount of skills training investment credits that the approved company was preliminarily approved for by the Bluegrass State Skills Corporation prior to commencement of the training program.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 4 of this Act may be cited as the "Skills Training Investment Credit Act."

SECTION 5. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
 - (a) *"Approved company" has the same meaning as set forth in Section 1 of this Act; and*
 - (b) *"Skills training investment credit" has the same meaning as set forth in Section 1 of this Act.*
- (2) *An approved company shall determine the income tax credit as provided in this section.*
- (3)
 - (a) *An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11), or taxable net income as defined by KRS 141.010(14);*
 - (b) *The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under subsection (6) of Section 3 of this Act shall be applied against the amount of the tax computed under paragraph (a) of this subsection; and*
 - (c) *The skills training investment credit payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under subsection (6) of Section 3 of this Act.*
- (4)
 - (a) *Notwithstanding any other provisions of this chapter, an approved company which is an S-corporation, partnership, limited liability partnership, or trust shall be subject to income tax on the net income attributable to the approved company's operations at the rates provided in KRS 141.020(2);*
 - (b) *The amount of the skills training investment credit shall be the same as the amount of the tax computed in this section or, upon the annual election of the approved company, in lieu of the skills training investment credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this subsection shall be in satisfaction of the tax liability of the shareholders, partners, or beneficiaries of the S-corporation, partnership, limited liability partnership, or trust, and shall be paid on behalf of the shareholders, partners, or beneficiaries;*

- (c) *The skills training investment credit or estimated payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under subsection (6) of Section 3 of this Act;*
 - (d) *If the tax computed in this section exceeds the credit, the excess shall be paid by the S-corporation, partnership, limited liability partnership, or trust at the times provided by KRS 141.160 for filing the returns; and*
 - (e) *Any estimated tax payment made by the S-corporation, partnership, limited liability partnership, or trust in satisfaction of the tax liability of shareholders, partners, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, or beneficiary.*
- (5) *Notwithstanding any other provisions of this chapter, the net income subject to tax, the skills training investment credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, limited liability partnership, or trust.*
 - (6) *Any limited liability company that is treated as a corporation for federal tax purposes shall determine the skills training investment credit as provided in subsection (3) of this section.*
 - (7) *Any limited liability company which is treated as a partnership for federal tax purposes shall determine the skills training investment credit as provided in subsection (4) of this section.*
 - (8) *The Revenue Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A and require the filing of forms designed by the Revenue Cabinet to reflect the intent of Sections 1 to 4 of this Act and the allowable skills training investment credits that an approved company may retain under Sections 1 to 4 of this Act.*

Section 6. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual credits permitted by KRS 141.020(3);
 - (b) The economic development credits computed under KRS 141.347, 141.400, 141.403, ~~and~~ 141.407, *and Section 3 of this Act;*
 - (c) The health insurance credit permitted by KRS 141.062;
 - (d) The tax paid to other states credit permitted by KRS 141.070;
 - (e) The credit for hiring the unemployed permitted by KRS 141.065;
 - (f) The recycling or composting equipment credit permitted by KRS 141.390;
 - (g) The Commonwealth Venture Fund credit permitted by KRS 154.20-340;
 - (h) The low income credit permitted by KRS 141.066; and
 - (i) The household and dependent care credit permitted by KRS 141.067.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual withholding tax credit permitted by KRS 141.350; and
 - (b) The individual estimated tax payment credit permitted by KRS 141.305.
- (3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:
 - (a) The economic development credits computed under KRS 141.347, 141.400, 141.403, ~~and~~ 141.407, *and Section 3 of this Act;*
 - (b) The health insurance credit permitted by KRS 141.062;
 - (c) The unemployment credit permitted by KRS 141.065;
 - (d) The recycling or composting equipment credit permitted by KRS 141.390;

- (e) The coal conversion credit permitted by KRS 141.041;
 - (f) The enterprise zone credit permitted by KRS 154.45-090; and
 - (g) The Commonwealth Venture Fund credit permitted by KRS 154.20-340.
- (4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

Approved April 10, 1998

CHAPTER 500

(HB 266)

AN ACT relating to utility gross receipts taxes.

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

Section 1. KRS 160.613 is amended to read as follows:

- (1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the county, of telephonic and telegraphic communications services, electric power, water, and natural, artificial, and mixed gas. "Gross receipts" includes all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of the above utilities, except that "gross receipts" shall not include amounts received for furnishing energy or energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production, and shall not include amounts received for furnishing any of the above utilities which are to be resold.
- (2) In the event that any user of *telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas* purchases the *telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas* directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax under the provisions of subsection (1) of this section, then the consumer, if such tax has been levied in his district, shall be liable for the tax and shall pay directly to the county finance officer, in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all *telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas* received by the tax rate levied under the provisions of this section.
- (3) Gross cost shall *mean the total cost of the telephonic and telegraphic communications, electrical power, water, and natural, artificial, or mixed gas including the cost of the tangible personal property and any services associated with obtaining the telecommunication and telegraphic services or tangible personal property, such as gas, electricity, and water, regardless from whom purchased* ~~that the consumer shall pay taxes on the same base as that on which a seller who comes within the provisions of subsection (1) of this section is paying~~.

Approved April 10, 1998

CHAPTER 501

(HB 230)

AN ACT relating to payroll deductions

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

Section 1. KRS 65.158 is amended to read as follows:

Any city or urban-county government which makes deductions from the pay of its employees for any cause other than taxes shall, upon the *written request of at least thirty percent (30%) of all employees* ~~petition of a majority of the employees~~ within a department or division, deduct ~~the~~ amount from the pay of an employee as he may note on

a signed payroll notification card or voucher, for the purposes of employee benefits, insurance, community projects, or union dues. No deduction shall be made pursuant to this section from the pay of any employee who does not sign a payroll notification card or voucher. Upon ~~these~~^{such} deductions, the city or urban-county government shall, within thirty (30) days, pay to the elected representative or designated recipient for the employees of ~~the~~^{such} department or division the total amount of the deductions minus the actual cost to the city or urban-county government of processing ~~the~~^{such} deductions.

Approved April 10, 1998

CHAPTER 502

(HB 200)

AN ACT relating to consumer protection.

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

Section 1. KRS 367.990 is amended to read as follows:

- (1) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties.
- (2) In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, ***or where the defendant's conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the trier of fact determines that the defendant knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public.***
- (3) Any person with actual notice that an investigation has begun or is about to begin pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys, or falsifies documentary material is guilty of a Class A misdemeanor.
- (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240 or 367.250, intentionally falsifies or withholds documents, records, or pertinent materials that are not privileged, shall be subject to a fine as provided in subsection (3) of this section.
- (5) The Circuit Court of any county in which any plan described in KRS 367.350 is proposed, operated, or promoted may grant an injunction without bond, upon complaint filed by the Attorney General to enjoin the further operation thereof, and the Attorney General may ask for and the court may assess civil penalties against the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000) which shall be for the benefit of the Commonwealth of Kentucky.
- (6) Any person, business, or corporation who knowingly violates the provisions of KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense each time a magazine is mailed into the state; but it shall be considered only one (1) offense for any quantity of the same issue of a magazine mailed into Kentucky.
- (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty of a Class A misdemeanor.
- (8) In addition to the penalties contained in this section, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth a civil penalty of not more than the greater of five thousand dollars (\$5,000) or two hundred dollars (\$200) per day for each and every violation of KRS 367.175.
- (9) Any person who shall willfully and intentionally violate any provision of KRS 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- (10) (a) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.665 shall forfeit and pay to the Commonwealth a penalty of not more than five thousand dollars (\$5,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain

jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties;

- (b) The Attorney General may, upon petition to a court having jurisdiction under KRS 367.190, recover on behalf of the Commonwealth from any person found to have willfully committed an act declared unlawful by KRS 367.667 a penalty of not more than two thousand dollars (\$2,000) per violation; and
 - (c) Any person who knowingly violates any provision of KRS 367.652, 367.653, 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false or incorrect information to the Attorney General in filing statements or reports required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per violation to be collected in the name of the Commonwealth upon action of the Attorney General.
 - (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the Commonwealth upon action by the Attorney General.
 - (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or 367.816 shall be guilty of a Class C felony.
 - (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violations of KRS 367.801 to 367.819.
 - (15) A violation of KRS 367.474 to 367.478 and KRS 367.482 is a Class C felony. Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violators of KRS 367.474 to 367.478 and KRS 367.482.
 - (16) Any person who violates KRS 367.310 shall be guilty of a violation.
 - (17) Any person, partnership, or corporation who violates the provisions of KRS 367.850 shall be guilty of a Class A misdemeanor.
 - (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony.
 - (19) Any person who negotiates a contract of membership on behalf of a club without having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty of a Class D felony.
 - (20) Any person or corporation who operates or attempts to operate a health spa in violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
 - (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
(b) The appropriate Commonwealth's attorney shall have authority to prosecute felony violations of KRS 367.832.
 - (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be guilty of a violation. Either the Attorney General or the appropriate county health department may prosecute violators of KRS 367.855 or 367.857.
(b) The provisions of this subsection shall not apply to any retail establishment if the wholesaler, distributor, or processor fails to comply with the provisions of KRS 367.857.

Approved April 10, 1998

CHAPTER 503**(HB 187)**

AN ACT relating to hospital employees.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *All employees of a hospital who are licensed, registered, certified, or otherwise regulated under the laws of the Commonwealth shall wear a badge or other insignia indicating the person is a licensed, registered, certified or otherwise regulated health care provider, provided the badge or insignia does not violate sterile procedures.*
- (2) *No hospital licensed under the provisions of this chapter shall prohibit a person licensed, registered, certified, or otherwise regulated under the laws of the Commonwealth from wearing a badge or other insignia, provided the badge or insignia does not violate sterile procedures. No other information shall appear on the badge unless approved by the hospital chief executive officer, facility manager, or designee.*
- (3) *No hospital licensed under the provisions of this chapter shall demote, dismiss, suspend, or otherwise penalize any employee for reporting a violation of subsection (1) of this section to the cabinet.*

Section 2. KRS 216B.990 is amended to read as follows:

- (1) Any person who, in willful violation of this chapter, operates a health facility without first obtaining a license or continues to operate a health facility after a final decision suspending or revoking a license, shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.
- (2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars (\$500) for each violation.
- (3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.
- (6) Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars (\$100) per day for failure to post required notices and one hundred dollars (\$100) per instance for willfully failing to provide an itemized statement within the required time frames.
- (7) Any boarding home which does not register as required by KRS 216B.305, shall be fined one hundred dollars (\$100) and ten dollars (\$10) per day thereafter until they have registered.
- (8) *Any hospital acting by or through its agents or employees that violates any provision of Section 1 of this Act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.*

Approved April 10, 1998

CHAPTER 504**(HB 160)**

AN ACT relating to the establishment of a study commission to study the benefits and effects of complementary and alternative medicine.

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

Section 1. The Legislative Research Commission is directed to establish a commission to study the benefits and effects of complementary and alternative medicine, nonconventional medical treatment, acupuncture, and naturopathy. The members of the study commission shall include the deans of the Commonwealth's three (3) medical schools or their designees, three (3) representatives of schools of nonconventional medicine, naturopathy, and acupuncture, representatives of the Kentucky State Board of Chiropractic Examiners, the Kentucky State Board of Medical Licensure, the Kentucky Nurses Association, the Kentucky Hospital Association, the Kentucky Medical Association, the Kentucky Osteopathic Medical Association, the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, the Kentucky Pharmacists Association, and the Division of Consumer Protection of the Office of the Attorney General, and a member of the Coalition for Natural Health. The study commission shall consider reports and findings provided by the National Institute of Health, the American Chiropractic Association, and the American Medical Association on their respective studies of these issues. The study commission shall report any findings and recommendations to the year 2000 Regular Session of the General Assembly.

Section 2. If during the two (2) year study period, any alternative medical treatment under review by the study commission is found to be safe and effective, the alternative medical treatment may be referred to the Kentucky Board of Medical Licensure or the Kentucky State Board of Chiropractic Examiners, as appropriate for consideration for possible approval as part of the practice of medicine or chiropractic.

Approved April 10, 1998

CHAPTER 505

(HB 128)

AN ACT relating to charitable health care services.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act:

- (1) *"Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by this state or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in primary care and performing no invasive or surgical procedures.*
- (2) *"Regularly practice" means to practice for more than sixty (60) days within any ninety (90) day period.*
- (3) *"Sponsoring organization" means any organization, with an established relationship with a practicing entity, that organizes or arranges for the voluntary provision of health care services in the state.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any provision of law to the contrary, no additional license or certificate otherwise required under the provisions of KRS Chapters 211, 216, 311, 312, 313, or 314 shall be necessary for the voluntary provision of health care services by any person who:*
 - (a) *Is a charitable health care provider as defined in Section 1 of this Act; or*
 - (b) *Does not regularly practice in the Commonwealth.*
- (2) *No person whose license or certificate is suspended or revoked under disciplinary proceedings in any jurisdiction, nor any person who renders services outside of the scope of practice authorized by his or her licensure or certification, or exception to license or certification shall be allowed to participate with any sponsoring organization as a charitable health care provider.*
- (3) *Before providing charitable health care services in this state, a charitable health care provider or sponsoring organization shall register with the Cabinet for Human Resources by submitting a registration fee of fifty dollars (\$50) and filing a registration form that shall contain the following information:*
 - (a) *The name, address, and phone number of the charitable health care provider;*

- (b) *Written and verifiable documentation of a current Kentucky license, including, if applicable, a license granted to an individual under a reciprocal agreement with another state or country;*
 - (c) *The name, principal office address, phone number, and principal officer of any sponsoring organization;*
 - (d) *The dates, locations, types of services, and intended recipients of any charitable health care services to be performed in the state;*
 - (e) *Information as to any medical malpractice insurance procured under Section 6 of this Act or otherwise; and*
 - (f) *Other information as the cabinet may require by administrative regulation.*
- (4) *The cabinet shall provide, upon request of the charitable health care provider or sponsoring organization, any information available as to declared emergencies, underserved populations, and lack of access to health care in the state that will assist the charitable health care provider or sponsoring organization in the provision of these services.*
 - (5) *Boards of health created under KRS Chapter 212 may submit requests for charitable health care providers in their jurisdictions to be listed in any information provided.*
 - (6) *Each sponsoring organization shall maintain a list of health care providers associated with its provision of charitable health care services. For each health care provider, the sponsoring organization shall maintain a copy of a current license, certificate, or statement of exemption from licensure or certification and shall require each health care provider to attest in writing that his or her license or certificate is not suspended or revoked under disciplinary proceedings in any jurisdiction. The sponsoring organization shall maintain its records of charitable health care providers for at least five (5) years after the provision of charitable health care services, including actual dates, types of services, and recipients of charitable health care services, and shall furnish these records upon the request of the Cabinet for Human Resources. Compliance with this section shall be prima facie evidence that the sponsoring organization has exercised due care in selecting charitable health care providers.*
 - (7) *The cabinet may revoke the registration of any charitable health care provider or sponsoring organization for failure to comply with the provisions of Sections 1 to 5 of this Act, in accordance with the provisions of KRS Chapter 13B.*
 - (8) *The cabinet shall report to the General Assembly the name and location of individuals registered with the cabinet as charitable health care providers, by October 1 of each year.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

With regard to a person who provides charitable health care services under Section 2 of this Act, the provisions of KRS Chapters 211, 216, 311, 312, 313, or 314 shall not apply with respect to itinerant providers, licensing, or certification, and all requirements regarding display of a license or certification shall be satisfied by the presentation for inspection, upon request, of a photocopy of the applicable license, certificate, or statement of exemption from the state, territory, district or possession of the United States in which the provider is licensed, certified, or exempt.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth finds that access to high-quality health care services is a concern of all persons; that access to such services is limited for some residents of the Commonwealth, particularly those residing in remote rural areas or inner cities; that physicians and other health care providers have traditionally worked to assure access to health care services; and that many health care providers from the Commonwealth and other states are willing to volunteer their services to address the health care needs of Kentuckians who may otherwise not be able to obtain such services. Therefore, it is the purpose of Sections 1 to 5 of this Act to encourage and facilitate the charitable provision of health care services within the Commonwealth.

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 5 of this Act may be cited as the Kentucky Charitable Health Care Services Act.

Section 6. KRS 304.40-075 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:

- (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed *or certified* by the Commonwealth, *or under a comparable provision of law of another state, territory, district, or possession of the United States*, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in general practice medicine and performing no invasive or surgical procedures;
 - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
 - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3) (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund *not to exceed the sum of twenty thousand dollars (\$20,000) and from the registration fees collected by the Cabinet for Human Resources under subsection (3) of Section 2 of this Act* upon written application for payment of the premium by the health care provider wishing to offer charitable services.
- (b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
- 1. Name and address of the charitable health care provider;
 - 2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;
 - 3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;~~and~~
 - 4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed; *and*
 - 5. *A copy of the registration filed with the Cabinet for Human Resources under Section 2 of this Act.*
- (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance, and that meet the terms for eligibility established pursuant to this section.
- (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
- (6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is

made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.

- (7) *The Cabinet for Human Resources shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.*
- (8) *The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section, to a charitable health care provider who has not registered with the Cabinet for Human Resources under Section 2 of this Act.*

Approved April 10, 1998

CHAPTER 506

(HB 127)

AN ACT relating to special districts.

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

Section 1. KRS 65.065 is amended to read as follows:

- (1) The governing body of each district shall annually prepare a budget, and, as appropriate, shall classify budget units in the same fashion as county budgets are classified *in accordance with* ~~pursuant to~~ KRS 68.240(2) to (5). The state local finance officer shall prepare standard budget forms for district use, and shall furnish them to county clerks for distribution to district officers. *No moneys shall be expended from any funds or any sources, except in accordance with the budget which has been filed with the fiscal court to be available for public inspection. No budget of a district shall become effective until filed with the fiscal court of the county in which the district is located for submission to the Department for Local Government. For those districts with multicounty jurisdictions, the district shall file a copy with each of the fiscal courts within the jurisdiction of the district for their review. If the budget is not filed with the fiscal court by June 1 of each year, the fiscal court shall immediately notify the county attorney. The county attorney shall then notify the governing board of the special district of the noncompliance and then proceed with any steps necessary to prevent the expenditure of funds by the special district until the district is in compliance.*
- (2) The governing body of each district which for the year in question receives from all sources or expends for all purposes less than *four hundred* ~~fifty~~ thousand dollars ~~(\$400,000)~~ ~~(\$50,000)~~ shall annually prepare a financial statement, except that once every four (4) years the district's governing body shall provide for the performance of an audit as provided in subsection ~~(4)~~ ~~(5)~~ of this section.
- ~~(3) The governing body of each district which for the year in question receives from all sources or expends for all purposes fifty thousand dollars (\$50,000) or more but less than five hundred thousand dollars (\$500,000) shall annually prepare a financial statement and shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform a review of the financial statement, except that once every four (4) years, the district's governing body shall provide for the performance of an audit as provided in subsection (5) of this section.~~
- ~~(4)~~ The governing body of each district which for the year in question receives from all sources or expends for all purposes *four* ~~five~~ hundred thousand dollars ~~(\$400,000)~~ ~~(\$500,000)~~ or more shall provide for the performance of an annual audit as provided in subsection ~~(4)~~ ~~(5)~~ of this section.
- ~~(4)~~ ~~(5)~~ To provide for the performance of an audit, the governing body of a district shall employ an independent certified public accountant, or contract with the Auditor of Public Accounts to perform an audit of the funds in the district budget. The audit shall conform to:
 - (a) Generally-accepted governmental auditing standards, which means those standards for audits of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States; and
 - (b) Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts. A unit of government furnishing funds directly to a district may require additional audits at its own expense. *Upon request, the State Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit.* If a district is required by law to audit its funds more often than is required by this section, it shall

perform those audits and may submit them in lieu of the requirements of this section, if the audits meet the requirements of this subsection.

(5)~~(6)~~ The provisions of *subsection*~~[subsections]~~ (2) ~~and (3)~~ of this section shall not apply to any district that is required by law to annually submit a financial report to an agency of state government. The districts shall annually submit a copy of their financial report to the county judge/executive and to the state local finance officer and once every four (4) years provide for the performance of an audit as provided in subsection (4)~~(5)~~ of this section.

(6)~~(7)~~ Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with ~~the~~~~[such]~~ provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 2. KRS 65.070 is amended to read as follows:

(1) By the first day of ~~July~~~~[May]~~ of each year, *before a district budget takes effect, and after the uniform financial information report required by KRS 65.900 to 65.920 is submitted to the Department of Local Government*~~[when the uniform financial information report is required by KRS 65.900 to 65.920 to be submitted to the Department of Local Government]~~, a district shall:

(a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:

1. The name of the district;
2. A map or general description of its service area;
3. The statutory authority under which it was created; and
4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;

(b) *Submit for review*~~[File]~~ a copy of the district budget, financial statement if prepared, and audit when performed, with the *fiscal court*~~[county judge/executive]~~ of each county with territory in the district; and

(c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement which includes the location of supporting documents, or the location of district financial records which may be examined by the public.

(2) The Department of Local Government shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.

(3) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Approved April 10, 1998

CHAPTER 507

(HB 121)

AN ACT relating to the release of liens.

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

Section 1. KRS 382.365 is amended to read as follows:

- (1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.
- (2) A proceeding may be filed *by any owner of real property or any party acquiring an interest in the real property* in *District or* Circuit Court against a lienholder that violates subsection (1) of this section. A proceeding filed under this section shall be given precedence over other matters pending before the court.
- (3) Upon proof *to the court*~~[of satisfaction]~~ of the lien being *satisfied*~~[introduced]~~, the court *shall*~~[may]~~ enter a judgment releasing the lien. *The judgment may be with costs including a reasonable attorney's fee. The lienholder may be liable to the owner of the real property in the amount of one hundred dollars (\$100) per day, for each day that the lienholder fails to release a lien after the entry of a judgment by the court.*
- (4) A lienholder that violates subsection (1) of this section *may*~~[shall also]~~ be liable to the owner of the real property for *one hundred dollars (\$100). A lienholder that fails to release a satisfied real estate lien within forty-five (45) days from the date of satisfaction may be liable to the owner of the real property for an additional four hundred dollars (\$400), for a total of five hundred dollars (\$500). The lienholder may also be liable for*~~[fifty dollars (\$50) and]~~ any actual expense including a reasonable attorney's fee incurred by the owner in securing the release of real property by such violation.~~[The judgment shall be with costs including reasonable attorneys' fees.]~~
- (5)~~(4)~~ The former holder of a lien on real property shall send by regular mail a copy of the lien release to the property owner at his last known address within seven (7) days of the release. A former lienholder that violates this subsection shall be liable to the owner of the real property for fifty dollars (\$50) and any actual expense incurred by the owner in obtaining documentation of the lien release.
- (6) *For the purposes of this section, "date of satisfaction" means that date of receipt by a holder of a lien on real property of a sum of money in the form of a certified check, cashier's check, wired transferred funds, or other form of payment satisfactory to the lienholder that is sufficient to pay the principal, interest, and other costs owing on the obligation that is secured by the lien on the property.*
- (7) *The provisions of this section shall not apply when a lienholder is deceased and the estate of the lienholder has not been settled.*

Approved April 10, 1998

CHAPTER 508

(HB 90)

AN ACT relating to assault of sport officials.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of assault of a sports official when he intentionally causes physical injury to a sports official:*
 - (a) *Who was performing sports official duties at the time the physical injury was perpetrated; or*
 - (b) *If the physical injury occurs while the sports official is arriving at or departing from the athletic facility at which the athletic event occurred.*
- (2) *For the purposes of this section, "sports official" means an individual who serves as a referee, umpire, linesman, or in a similar capacity that may be known by another title, and who is duly registered as or is a member of a national, state, regional, or local organization engaged, in part, in providing education and training to sports officials.*
- (3) *A person who is guilty of assault of a sports official shall, for a first offense, be guilty of a Class A misdemeanor, unless the defendant assembles with five (5) or more persons for the purpose of assaulting a sports official, in which case it is a Class D felony.*
- (4) *A person who is guilty of assault of a sport official shall, for a second or subsequent offense, be guilty of a Class D felony.*

Approved April 10, 1998

CHAPTER 509**(HB 65)**

AN ACT relating to revenue and taxation.

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

Section 1. KRS 68.180 is amended to read as follows:

- (1) The fiscal court of each county having a population of three hundred thousand (300,000) or more~~[-]~~ may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, shall be imposed at a percentage rate or rates not to exceed one and one-fourth percent (1.25%) of (a) salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county, and (b) the net profits of businesses, trades, professions, or occupations from activities conducted in the county. License fees imposed for regulatory purposes shall not be subject to such limitations as to form and amount. No public service company that pays an ad valorem tax shall be required to pay a license tax, and no license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association, whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, **or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections**, or in other cases where the county is prohibited by law from imposing a license tax.
- (2) The provisions and limitations of subsection (1) shall not apply to the license fees authorized by KRS 160.482 to 160.488.

Section 2. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more~~[-]~~ may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
 - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
 - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
 - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.

In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:

1. For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and
2. For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.

Licenses imposed for regulatory purposes are not subject to such limitations as to form and amount. No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust

company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license tax.

- (2) No ~~such~~ license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, ***or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.***
- (3) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee.
- (4) The provisions of subsection (3) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee.

Section 3. KRS 91.200 is amended to read as follows:

- (1) The board of aldermen of every city of the first class, in addition to levying ad valorem taxes, may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession and the using, holding, or exhibiting of any animal, article, or other thing. License fees on a business, trade, occupation, or profession for revenue purposes may be imposed at a percentage rate not to exceed those hereinafter set forth on (a) salaries, wages, commissions and other compensations earned by every person within the city for work done and services performed or rendered in the city~~;~~ (all of such being hereinafter collectively referred to as "wages"), and (b) the net profits of all businesses, professions, or occupations from activities conducted in the city (hereinafter collectively referred to as "net profits"). Licenses imposed for regulatory purposes shall not be subject to such limitations as to form and amount. No company that pays an ad valorem tax and a franchise tax is required to pay a license tax and no license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company or combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky national guard for active duty training, unit training assemblies, and annual field training, ***or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections,*** or in any other case where the city is prohibited by statute from imposing a license tax.
- (2) The rate fixed on both "wages" and "net profits" shall be one and one-fourth percent (1 1/4%).
- (3) License fees or taxes shall be collected by the commissioners of the sinking fund. The proceeds from the taxes shall be paid to the secretary and treasurer of the sinking fund until income from all sources of the sinking fund is sufficient to pay the cost of administration and the interest charges for the current fiscal year of the sinking fund in addition to a sum sufficient to amortize the outstanding principal indebtedness of the city on a yearly basis in accordance with regularly used amortization tables.
- (4) Revenue remaining after meeting the foregoing requirements shall be transferred to the city. Such revenues shall be credited to the general fund of the city as received and may be expended for general purposes or for capital improvements.
- (5) The term "capital improvements" as used in this section is limited to additions or improvements of a substantial and permanent nature and services rendered in connection therewith, and includes but is not limited to (a) the purchase of rights of way for highways, expressways, and the widening of existing streets, (b) the purchase of lands for park, recreational, and other governmental facilities and for public off-street parking facilities, (c) the purchase, construction, reconstruction, renovation, or remodeling of municipal buildings, and facilities, (d) the replacement of machinery, wires, pipes, structural members or fixtures, and other essential portions of municipal buildings, (e) the initial equipment of any newly~~ly~~acquired facility wherein any essential governmental function of the municipality may be located or carried on, (f) the purchase and installation of traffic control devices and fire alarm equipment, (g) the reconstruction and resurfacing, but not routine maintenance, of streets and other public ways, (h) the acquisition of motorized equipment purchased as additions to, but not replacements for, existing equipment, and~~ly~~ (i) engineering and other costs incurred by the city in connection with the construction of public improvements financed under a special assessment plan.

- (6) Ad valorem taxes for the benefit of the sinking fund shall not be levied unless the income of the sinking fund is otherwise insufficient to meet such requirements.
- (7) Licenses shall be issued and enforced on terms and conditions as prescribed by ordinance.

Section 4. KRS 92.281 is amended to read as follows:

- (1) Cities of all classes are authorized to levy and collect any and all taxes provided for in Section 181 of the Constitution of the Commonwealth of Kentucky, and to use the revenue therefrom for such purposes as may be provided by the legislative body of the city.
- (2) Nothing in this section shall be construed to repeal, amend, or affect in any way the provisions of KRS 243.070.
- (3) This section shall not in any wise repeal, amend, affect, or apply to any existing statute exempting property from local taxation or fixing a special rate on proper classification or imposing a state tax which is declared to be in lieu of all local taxation, nor shall it be construed to authorize a city to require any company that pays both an ad valorem tax and a franchise tax to pay a license tax.
- (4) This section shall also be subject to the provisions of KRS 91.200 in cities of the first class having a sinking fund and commissioners of a sinking fund.
- (5) License fees on businesses, trades, occupations, or professions may not be imposed by a city of the sixth class at a percentage rate on salaries, wages, commissions, or other compensation earned by persons for work done or services performed within said city of the sixth class nor the net profits of businesses, professions, or occupations from activities conducted in said city of the sixth class.
- (6) ***License fees or occupational taxes may not be imposed against or collected on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.***

Section 5. KRS 92.300 is amended to read as follows:

- (1) The legislative body of any city of the second to sixth class may by ordinance exempt manufacturing establishments from city taxation for a period not exceeding five (5) years as an inducement to their location in the city. In cities of the third class, two-thirds (2/3) of the members of the city legislative body must concur for this purpose.
- (2) No city of the second to sixth class or urban-county government may impose or collect any license tax upon any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training, ***or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.***
- (3) Unpaid volunteer members of fire companies in cities of the fourth class shall be exempt from city poll taxes so long as they remain active members.

Section 6. KRS 160.483 is amended to read as follows:

The license fees imposed under KRS 160.482 to 160.488 on businesses, trades, occupations, and professions shall be at a single, uniform percentage rate not to exceed one-half of one percent (0.5%) of (a) salaries, wages, and commissions, and other compensations earned by persons within the county for work done and services performed or rendered in the county, and (b) the net profits of all businesses, trades, occupations, and professions, for activities conducted in the county. The license fees, once imposed, shall continue from year to year until changed as prescribed in KRS 160.484. No public service company which pays an ad valorem tax is required to pay a license fee hereunder. No license fee shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, ***or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.*** No license tax shall be collected from any individual who is not a resident of the county of the tax-levying authority imposing the tax.

Section 7. KRS 160.605 is amended to read as follows:

There is hereby authorized the levy of an occupational license tax for schools on salaries, wages, commissions, and other compensation of individuals for work done and services performed or rendered in a county and on the net profits of all businesses, professions, or occupations from activities conducted in a county. No public service company which pays an ad valorem tax is required to pay an occupational license tax for schools. No occupational license tax for schools shall be imposed upon or collected from any insurance company, bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, *or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special election.*

Section 8. KRS 141.010 is amended to read as follows:

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

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by

a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;~~and~~

- (i) 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 - 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 - 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code; *and*
- (j) ***Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections.***

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
- (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
- (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
- (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of

race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and
- (d) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 9. KRS 132.095 is amended to read as follows:

- (1) ~~[Effective on or after January 1, 1986,] Personal property [of nonresidents of the state in their original package or fungible goods in bulk, belonging to a nonresident of the state,] shipped into this state and placed in a [public] warehouse *or distribution center* for the purpose of *further shipment* [transshipment] to an out-of-state [or within the state] destination *shall* [and so designated on the original bill of lading, or personal property of residents of the state in their original package and fungible goods in bulk, belonging to a resident of the state, placed in a public warehouse for the purpose of transshipment to an out-of-state destination and so designated on the original bill of lading, shall, while so in the original package, or as fungible goods in bulk, in such warehouse,] be subject to an annual ad valorem tax to the state equal to one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of the fair cash value of *the* [such] personal property. [No portion of a premises owned or leased by a consignor or consignee, or a subsidiary of a consignor or consignee, shall be deemed to be a public warehouse within the meaning of this section despite any licensing as such.]~~
- (2) *Any county, urban-county, charter county, city, fire district, or other taxing district may exempt from ad valorem tax or reduce the tax rate on personal property held in a distribution center pending shipment to an out-of-state destination and taxed under subsection (1) of this section* [No other tax shall be assessed by the state or any county, city or other taxing district on such personal property, or against the owner with respect thereto, while such property is in the original package, or as fungible goods in bulk in such warehouse].

- (3) *Personal property held in a distribution center shall be deemed to be held for shipment to an out-of-state destination if the owner can reasonably demonstrate that the personal property will be shipped out of state within the next six (6) months.*

Section 10. The provisions of Sections 1 to 8 of this Act apply to tax years beginning after December 31, 1997.

Approved April 10, 1998

CHAPTER 510

(HB 52)

AN ACT relating to law enforcement and fire protection.

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

Section 1. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

- (1) "Local unit of government" means any city or county, ~~or any~~ combination of cities and counties, *state or public university, or county sheriff's office* of the Commonwealth.
- (2) "Police officer" means a full-time member of a lawfully organized police department of county or city government, *sheriff, or full-time deputy sheriff, including those providing court security, appointed pursuant to KRS 70.030, or state or public university police officer* who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any *sheriff who earns the maximum constitutional salary for his office, any special* ~~elect~~ ~~ed~~ ~~officer, sheriff,~~ deputy sheriff *appointed pursuant to KRS 70.045, any* constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
- (3) "Council" means the Kentucky Law Enforcement Council.
- (4) *"Validated job task analysis" means the core job description which describes the minimum entry level requirements, qualifications, and training requirements for peace officers in the Commonwealth which is based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.*

Section 2. KRS 15.440 is amended to read as follows:

Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:

- (1) Employs one (1) or more police officers;
- (2) Pays every police officer *at least the* ~~at~~ minimum *federal wage* ~~(annual salary of four thousand three hundred fifty dollars (\$4,350))~~;
- (3) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972, *and for all sheriffs appointed or elected on or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed after the effective date of this Act*; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection, *and that all sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to the effective date of this Act shall be deemed to have met the requirements of this subsection*;
- (4) Requires all police officers employed on or after July 1, 1972, *and all sheriffs appointed or elected on or after the effective date of this Act, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998* to successfully complete a basic training course of at least four hundred (400) hours' duration within one year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council. *All sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998 shall be deemed to have met the*

requirements of this subsection. The council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than four hundred (400) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis [~~notwithstanding the authority of any department or administrative agency of state government to promulgate administrative regulations, no such department or administrative agency may, by administrative action, increase the minimum number of hours for a basic training course specified in this subsection~~];

- (5) Requires all police officers, whether originally employed before or after July 1, 1972, *and all sheriffs appointed or elected before, on, or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed before, on, or after the effective date of this Act*, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council;
- (6) Requires compliance with all provisions of law applicable to local police, *state or public university police, or sheriffs and their deputies*, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;
- (7) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, *state or public university police department, or sheriff's office*, issued by the Justice Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;
- (8) Provided, however, that no local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department, *state or public university police department, or sheriff's office* actually begins and continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department, *state or public university police department, or sheriff's office* has substantially complied with subsections (6) and (7) of this section.

Section 3. KRS 15.460 is amended to read as follows:

- (1) Beginning *the effective date of this Act* [~~July 1, 1982~~], an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ~~seven~~ *five* hundred ~~fifty~~ dollars ~~(\$2,750)~~ *(\$2,500)* for each qualified police officer it employs, *and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified police officer it employs*, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.
- (2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.
- (3)
 - (a) *Each qualified sheriff who receives the maximum salary allowed by Section 246 of the Constitution of Kentucky and KRS 64.527 shall not receive the supplement.*
 - (b) *Each qualified sheriff who does not receive the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527, exclusive of the expense allowance provided by KRS 70.170, shall upon final settlement with the fiscal court pursuant to KRS 134.310, receive that portion of the supplement that will not cause his compensation to exceed the maximum salary.*
 - (c) *Each qualified sheriff who seeks to participate in the fund shall forward a copy of the final settlement prepared pursuant to KRS 134.310 to the fund. The fund shall be reimbursed by the sheriff if an audit of the final settlement conducted pursuant to KRS 134.310 reflects that the sheriff*

received all or a portion of the supplement in violation of this section. A sheriff who fails to provide a copy of the final settlement to the fund or to reimburse the fund after correction by audit, if required, shall not be qualified to participate in the fund for a period of two (2) years.

- (d) *Each qualified deputy sheriff shall receive the supplement from the sheriff if the sheriff administers his own budget or from the county treasurer if the sheriff pools his fees. The failure of a sheriff to comply with the provisions of this section shall not affect the qualification of his deputies for participation in the fund.*

Section 4. KRS 95A.250 is amended to read as follows:

- (1) Beginning July 1, 1982, an eligible local government shall be entitled to receive annually a supplement of two thousand ~~seven~~^{five} hundred ~~fifty~~ dollars ~~(\$2,750)~~~~(\$2,500)~~ for each qualified professional firefighter it employs, **and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified professional firefighter it employs**, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan, or to a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954 as amended, provided that the employer's contribution on the supplement to any of these plans shall not exceed that amount which is required of employers under the County Employees Retirement System pursuant to KRS Chapter 78, to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.
- (2) Each qualified professional firefighter, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by that local government the supplement which his qualifications brought to the local government. The supplement paid each qualified firefighter shall be in addition to his regular salary.

Section 5. KRS 95A.262 is amended to read as follows:

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Human Resources, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.
- (2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot ~~six~~^{five} thousand ~~five hundred~~ dollars ~~(\$6,500)~~~~(\$5,000)~~ annually to each qualifying department, **and beginning on July 1 of 1999, the commission shall allot seven thousand five hundred dollars (\$7,500) annually to each qualifying department**. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a

plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to *purchase* workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.
- (4) Applications for funding low-interest loans and firefighters training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.
- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:
 - (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
 - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
 - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
 - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
 - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

- (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and
 - (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.
 - (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
 - (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
 - (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
 - (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 6. KRS 42.190 is amended to read as follows:

- (1) On June 1, 1982, and then on or before the first day of each December, March, June, and September thereafter, the cabinet shall request in writing of the administrator of the Firefighters Foundation Program fund, which is established by KRS 95A.220, and of the administrator of the Law Enforcement Foundation Program fund, which is established by KRS 15.430, cost projections of their respective funds for the next quarter. Based on these projections, the cabinet shall determine the proportionate share of total insurance premium surcharge proceeds, prescribed in KRS 136.392, to accrue to each fund.
- (2) On or before the first day of each quarter, the cabinet shall certify to the State Treasurer a distribution schedule describing the proportionate share of total insurance premium surcharge proceeds accruing to each fund during such quarter, and the State Treasurer shall pay into each fund's trust and agency account its proportionate share of all deposited tax moneys as set forth and in the manner as prescribed in KRS 136.392.
- (3) Moneys deposited in the Firefighters Foundation Program fund's trust and agency account, and in the Law Enforcement Foundation Program fund's trust and agency account, shall be invested by the state in accordance with state investment practices, and all earnings from such investments shall accrue to, and be paid into the respective account from which such investments are made. All moneys remaining on deposit at the close of the state's fiscal year in the Firefighters Foundation Program fund's trust and agency account and all earnings from investments made from moneys in this account in excess of ~~three{one}~~ million dollars (~~\$3,000,000~~){(\$1,000,000)}, beginning with fiscal year 1994-95, **through June 30, 1999**, shall lapse, except that moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. All moneys remaining on deposit at the close of the state's fiscal year in the Law Enforcement Foundation Program fund's trust and agency account, and all earnings from investments made from moneys in this account, in excess of ~~three{one}~~

million dollars ~~(\$3,000,000)~~~~(\$1,000,000)~~, beginning with fiscal year 1994-95, **through June 30, 1999**, shall lapse. **On and after July 1, 1999, moneys in these accounts shall not lapse.**

- (4) The cabinet shall provide monthly financial reports to the administrator of the Firefighters Foundation Program fund and the administrator of the Law Enforcement Foundation Program fund respecting the amount of funds received and on deposit in each fund and the amount of earnings accruing to each fund from their investment.

Section 7. KRS 15.430 is amended to read as follows:

- (1) There is hereby established the Law Enforcement Foundation Program fund consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. Any other funds, gifts, or grants made available to the state for distribution to local units of government in accordance with the provisions of KRS 15.410 to 15.510 also shall be made a part of this fund.
- (2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account, but, beginning with fiscal year 1994-95, **through June 30, 1999**, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. **On and after July 1, 1999, moneys in this account shall not lapse.**

Section 8. KRS 95A.220 is amended to read as follows:

- (1) There is established the "Firefighters Foundation Program Fund" consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds and earnings on the investments of those proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. The fund may also receive any other funds, gifts or grants made available to the state for distribution to local governments and volunteer fire departments in accordance with the provisions of KRS 95A.200 to 95A.300 and KRS 95A.262.
- (2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account. Beginning with the fiscal year 1994-95, **through June 30, 1999**, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. **On and after July 1, 1999, moneys in this account shall not lapse.**

Section 9. KRS 136.392 is amended to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the commissioner of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Revenue Cabinet, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Revenue Cabinet all premium surcharge moneys collected on a calendar year basis on or before the twentieth (20th) day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund (KRS 95A.220 and 95A.262) and the Law Enforcement Foundation Program fund (KRS 15.430).
- (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the secretary of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law

Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the secretary of revenue to calculate an appropriate rate, the secretary for the Public Protection and Regulation Cabinet and the secretary for the Justice Cabinet shall certify to the secretary of revenue, no later than January 1, of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the secretary of revenue shall advise the commissioner of insurance of the new rate and the commissioner shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.

- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, ***through June 30, 1999***, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. ***On and after July 1, 1999, moneys in this account shall not lapse.*** Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, ***through June 30, 1999***, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. ***On and after July 1, 1999, moneys in this account shall not lapse.***
- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.

SECTION 10. A NEW SECTION OF KRS 70.260 TO 70.273 IS CREATED TO READ AS FOLLOWS:

- (1) ***When a county creates a deputy sheriff merit board, the board shall issue, and publish within forty-eight (48) hours after their adoption, rules that are not inconsistent with the provisions of KRS 70.260 to 70.273. The board shall provide a certified copy of the rules to:***
- (a) ***The sheriff of the county who shall additionally post a copy in a conspicuous place in the main office and in any branch offices where deputies are regularly assigned to work from;***
 - (b) ***The county judge/executive of the county; and***
 - (c) ***The legislative body of the county.***
- (2) ***The board shall, at a minimum, adopt a body of rules that addresses the following subjects:***
- (a) ***For deputy sheriffs:***
 1. ***Qualifications for initial and continued employment, which shall at a minimum include: citizenship, age, physical, mental, and educational requirements;***
 2. ***Grounds for temporary appointments;***
 3. ***Advancement requirements. Deputy sheriffs shall be employed for at least three (3) full years before being eligible for the rank of sergeant;***
 4. ***Factors that shall, or may, result in demotion, the procedures for determining whether or not to demote a deputy, and the procedures for executing a demotion;***
 5. ***Factors that shall, or may, result in fining, probation, suspension, or removal; and***

6. *Administrative procedures for the deputies in the office such as transfer, layoff, and reinstatement.*
- (b) *For the general administration of the board itself:*
 1. *Organizational structure and conduct of meetings;*
 2. *Procedure and conduct of public hearings as a result of the board's actions; and*
 3. *Implementation and execution of written and oral examinations, and physical tests of fitness for appointment and promotion of deputies.*
- (3) *The subsequent issuance of additional rules, or of the repeal or amendment of existing rules shall follow the provisions indicated in subsection (1) of this section.*

SECTION 11. A NEW SECTION OF KRS 70.260 TO 70.273 IS CREATED TO READ AS FOLLOWS:

- (1) *Deputy sheriff merit boards shall employ a chief examiner who shall operate under the board's sole supervision.*
- (2) *The board shall only employ a person for this position who is qualified and experienced in the field of testing.*
- (3) *The examiner shall design, administer, and evaluate all written tests the board requires applicants for promotion to take for consideration for promotion. Each applicant for promotion shall be given an oral and written examination to determine the applicant's qualification for promotion.*
- (4) *The examiner shall select a panel of three (3) persons to conduct the oral portion of the exam battery. The panel shall be selected from an agency other than the local sheriff's office, and the panel members shall be of at least the same rank to which the applicant aspires and of the same field.*
- (5) *Unless the sheriff certifies that the applicant is not physically fit for promotion, physical fitness shall be presumed.*
- (6) (a) *The composite score of the examination battery shall be calculated as follows:*
 1. *Sixty-five percent (65%) for the written examination; and*
 2. *Thirty-five percent (35%) for the oral examination.*
- (b) *An applicant shall receive one (1) seniority point to be added to the composite score for each full year over three (3) full years of service. No applicant shall receive more than ten (10) seniority points. No applicant shall receive a seniority point for serving less than a full year.*
- (7) *Testing and scoring methods shall not depart from, or be inconsistent with, those set out in this section.*
- (8) *The chief examiner shall deliver the final scores of the applicants for promotion, in a manner that will ensure complete privacy and confidentiality of the applicants and their scores, directly to the chair of the board. The chief examiner shall not release this information to anyone but the chair of the board.*
- (9) *Notice of the date, time, and place of examinations shall be given no later than ninety (90) days before the examination date.*
- (10) *Promotions shall be filled by the sheriff from a list of no more than three (3) of the candidates who obtained the highest combined scores on the written and oral examination, including any seniority points, and are physically fit to serve in the new capacity.*

Approved April 10, 1998

CHAPTER 511

(HB 49)

AN ACT relating to construction within floodplains.

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

Section 1. (1) Whereas, recent flooding in counties containing a city of the first class has caused great concern about future development within the floodplain areas of those counties in addition to concerns about existing drainage and storm water capacities in those areas, there shall be created a legislative task force to study these and other related issues during the 1998 - 1999 interim.

- (2) The membership of the task force shall be as follows:
 - (a) Four (4) legislative members representing counties with a city of the first class. Of these, there shall be two (2) members from each of the respective legislative chambers, with each representing a different political party;
 - (b) The mayor of each city of the first class or his designee;
 - (c) The county judge/executive of each county containing a city of the first class or his designee;
 - (d) One (1) member representing an organized league of cities in each county containing a city of the first class to be appointed by the Governor;
 - (e) One (1) member representing the planning commission representative of each city of the first class and their county to be appointed by the Governor;
 - (f) One (1) member representing the United States Army Corps of Engineers;
 - (g) One (1) member representing commercial business interests in a county containing a city of the first class to be appointed by the Governor;
 - (h) One (1) member representing the building and construction industry in a county containing a city of the first class to be appointed by the Governor;
 - (i) One (1) member representing the largest commercial airport in a county containing a city of the first class to be appointed by the Governor;
 - (j) One (1) member representing environmental concerns in a county containing a city of the first class to be appointed by the Governor;
 - (k) One (1) member representing a metropolitan sewer district in a county containing a city of the first class; and
 - (l) Five (5) members appointed from a group representing a consortium of community leadership associations within each county containing a city of the first class to be appointed by the Governor.
- (3) The task force shall begin its activities no later than August 1, 1998, and shall report its findings and recommendations to the Legislative Research Commission and the members of the Kentucky General Assembly no later than September 1, 1999.
- (4) The chair and vice chair of the task force shall be selected from among the legislative members by the Speaker of the House of Representatives and the President of the Senate.
- (5) Task force members other than members of the General Assembly shall be reimbursed for necessary expenses for travel to meetings outside of each county containing a city of the first class. The members of the General Assembly shall be paid their regular per diem allotment and necessary travel expenses for their attendance the same as for regular interim committee meetings.
- (6) Staff services to be utilized in completing this study are estimated to cost thirty thousand dollars (\$30,000). These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

In counties with cities of the first class and cities within those counties, a permit to rebuild a commercial business on property contiguous to a river, and a permit to rebuild single-family dwellings on properties contiguous to a river, shall be issued if the construction plans meet the requirements of any local floodplain ordinance.

Approved April 10, 1998

CHAPTER 512**(HB 510)**

AN ACT relating to dangerous wildlife.

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

Section 1. KRS 150.010 is amended to read as follows:

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

- (1) "Angling" means the taking or attempting to take fish by hook and line in hand, rod in hand, jugging, setline, or sport fishing trotline;
- (2) "Buy" includes offering to buy, acquiring, or possessing through purchase, barter, exchange, or trade;
- (3) "Commercial trotline" means a line to which are attached more than fifty (50) single or multibarbed baited hooks, which shall not be placed closer than eighteen (18) inches;
- (4) "Commission" means the Department of Fish and Wildlife Resources Commission;
- (5) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;
- (6) "Daylight hours" means the period from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset;
- (7) "Device" means any article, instrument, or equipment of whatever nature or kind which may be used to take wild animals, wild birds, or fishes;
- (8) "Department" means the Department of Fish and Wildlife Resources;
- (9) "Fishing" means to take or attempt to take in any manner, whether the fisherman has fish in possession or not;
- (10) "Gigging" means the taking of fish by spearing or impaling on any pronged or barbed instrument attached to the end of any rigid object;
- (11) "Grabbing" means the taking of fish, frogs, or turtles directly by hand or with the aid of a handled hook;
- (12) "Hunting" means to take or attempt to take in any manner, whether the hunter has game in possession or not;
- (13) "Identification tag" means a marker made of specified material upon which a name and address or number is placed and attached to unattended gear to designate ownership or responsible operator;
- (14) "Impounded waters" means any public waters backed up behind a dam and includes all water upstream from the dam to the first riffle or shoal;
- (15) "Jugging" means a means of fishing by which a single baited line is attached to any floating object;
- (16) "License" means any document issued by the department authorizing its holder to perform acts authorized by the license and includes any other form of authorization in addition to or in lieu of an actual document which may be authorized by the department by administrative regulation;
- (17) "Migratory shore or upland game birds" means all species of migratory game birds except waterfowl;
- (18) "Minnows" means all fish under six (6) inches in length, except basses, either largemouth, smallmouth or Kentucky; rock bass or goggle-eye; trout; crappie; walleye; sauger; pike; members of the striped bass family; and muskellunge;
- (19) "Navigable waters" means any waters within this state under lock and dam;
- (20) "Nonresident" means a person who has not established a permanent domicile in this state and has not resided in this state for thirty (30) days immediately prior to his application for a license;
- (21) "Permit" means any document issued by the department authorizing its holder to perform acts authorized by the permit and includes tags which shall be affixed to wildlife or devices as evidence of holding a permit and includes any other form of authorization in addition to or in lieu of an actual document authorized by the department by administrative regulation;

- (22) "Possess" means the act of having or taking into control;
- (23) "Prescribed by the department" means established by an administrative regulation;
- (24) "Processed wildlife" means any wildlife specimen or parts thereof that have been rendered into a permanently preserved state;
- (25) "Protected wildlife" means *all wildlife except those species declared unprotected by administrative regulations promulgated by the department*~~{any wildlife for which an open or closed season for taking has been designated}~~;
- (26) "Public roadway" includes rural roads, highways, bridges, bridge approaches, city streets, viaducts, and bridges which are normally traveled by the general public and are under the jurisdiction of a state, federal, county, or municipal agency.
- (27) "Public waters" means all waters within the state flowing in a natural stream channel or impounded on a natural stream;
- (28) "Raw fur" means a hide, fur, or pelt of a fur-bearing animal which has not been processed. Skinning, stretching, oiling, or coloring of the pelt of the animal shall not be considered processing;
- (29) "Administrative regulation" means a written regulation promulgated, pursuant to KRS Chapter 13A, by the commissioner with the approval of the commission;
- (30) "Resident" means any person who has established permanent domicile and legal residence and has resided in this state for thirty (30) days immediately prior to his application for a license. All other persons shall be classed as nonresidents, except students enrolled for at least six (6) months in an educational institution as full-time students and military personnel of the United States who are under permanent assignment, shall be classified as residents while so enrolled or assigned in this state;
- (31) "Resist" means to point a gun at, leave the scene, intimidate or attempt to intimidate in any manner, or further interfere in any manner with any officer in the discharge of his duties;
- (32) "Rough fish" means all species of fishes other than those species designated by administrative regulation as sport fishes;
- (33) "Sell" includes offering to sell, having or possessing for sale, barter, exchange, or trade;
- (34) "Setline" means a line to which is attached one (1) single or multibarbed hook. This line may be attached to a tree limb, tree trunk, bank pole, or other stationary object, on the bank of a stream or impoundment;
- (35) "Snagging" means the taking of fish or other aquatic animals through the use of a hand-held pole and attached line with single or multiple fish hooks in which the fish is hooked by a rapid drawing motion rather than enticement by bait;
- (36) "Sports fishing trotline" means a line to which are attached no more than fifty (50) single or multibarbed baited hooks which shall not be placed closer together than eighteen (18) inches.
- (37) "Take" includes pursue, shoot, hunt, wound, catch, kill, trap, snare, or capture wildlife in any way and any lesser act designed to lure, attract, or entice for these purposes; and to place, set, aim, or use any device, animal, substance, or agency which may reasonably be expected to accomplish these acts; or to attempt to do these acts or to assist any other person in the doing of or the attempt to do these acts;
- (38) "Tenant" means any resident sharecropper, lessee, or any other person actually engaged in work upon a farm or lands and residing in a dwelling on the farms or lands including noncontiguous lands, but shall not include any other employee or tenant unless actually residing on the property and engaged or employed as above mentioned;
- (39) "Transport" means to carry, move, or ship wildlife from one place to another;
- (40) "Waterfowl" means all species of wild ducks, geese, swans, mergansers, and coots; and
- (41) "Wildlife" means any normally undomesticated animal, alive or dead, including without limitations any wild mammal, bird, fish, reptile, amphibian, or other terrestrial or aquatic life, whether or not possessed in controlled environment, bred, hatched, or born in captivity and including any part, product, egg, or offspring thereof, protected or unprotected by this chapter.

Section 2. KRS 150.280 is amended to read as follows:

- (1) *Except as provided by administrative regulation, a ~~No~~ person shall not propagate or hold protected wildlife without obtaining a permit to do so from the department ~~[within ten (10) days after the wildlife is acquired].~~ The ~~department shall promulgate administrative~~ ~~[commissioner shall make and publish]~~ regulations governing all such activity *and prescribing permit fees.* ~~[The application for a permit shall be in writing, addressed to the commissioner, signed by the applicant, and shall describe the land or waters owned or leased to be used and shall contain such other facts as may be required by the commissioner. The commissioner may issue a permit, which shall continue in force for a term fixed by the commissioner, unless sooner revoked by the commissioner for cause, upon payment of a permit fee and fees for tagging which shall be fixed by the commissioner. A fish and game club which enters into an agreement with the department to operate such a farm, in cooperation with the department, for the purpose of carrying out the department's program may, with the approval of the commissioner, be issued a permit without the payment of any fee.]~~ Any permit issued pursuant to this section may be revoked ~~[by the commissioner at any time]~~ for a violation by the holder thereof of any of the laws of Kentucky or of any *administrative* regulation of the department.*
- (2) *The department shall by administrative regulation identify species of wildlife potentially damaging to native ecosystems and shall prohibit the transporting or holding of these wildlife.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A county, city, urban-county, or charter county government may regulate or prohibit the holding of wildlife that have been identified by the Department of Fish and Wildlife Resources as inherently dangerous to human health and safety.*
- (2) *The department has declared the following species of wildlife to be inherently dangerous to human health and safety and shall establish procedures for denying or issuing a transportation permit for said wildlife:*
- (a) *African buffalo (Syncerus caffer);*
 - (b) *Hippopotamus (Hippopotamus amphibius);*
 - (c) *Hyenas (family Hyaenidae), all species except aardwolves (Proteles Cristatus);*
 - (d) *Old world badger (Meles meles);*
 - (e) *Lions, jaguars, leopards, or tigers (Genus Panthera);*
 - (f) *Clouded leopard (Neofelis nebulosa);*
 - (g) *Cheetah (Acinonyx jubatus);*
 - (h) *Elephants (family Elephantidae);*
 - (i) *Rhinoceroses (family Rhinocerotidae);*
 - (j) *Gorillas (Family Pongidae);*
 - (k) *Baboons, drills, or mandrills (Genus Papio);*
 - (l) *Gelada baboon (Theropithecus gelada);*
 - (m) *Gavials (Family Gavialidae);*
 - (n) *Crocodiles (Family Crocodylidae);*
 - (o) *Alligators or caimans (Family Alligatoridae);*
 - (p) *Sea snakes (Family Hydrophidae);*
 - (q) *Cobras or coral snakes (Family Elapidae);*
 - (r) *Adders or vipers (Family Viperæ);*
 - (s) *Venomous rear-fanged species (Family Colubridae);*
 - (t) *Gila monsters or beaded lizards (Family Helodermatidae);*
 - (u) *Komodo dragon (Varanus komodoensis);*
 - (v) *Wolverine (Gulo gulo);*

- (w) *Bears (Family Ursidae);*
- (x) *Wolf or wolf hybrids of over twenty-five percent (25%) wolf; or*
- (y) *Cougar or mountain lion (Felis concolor).*

Approved April 13, 1998

CHAPTER 513

(HB 511)

AN ACT relating to the board of directors for a community college.

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

Section 1. KRS 164.600 is amended to read as follows:

- (1) *As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.*
- (2) There shall be a board of directors for each community college under the Kentucky Community and Technical College System, except as provided in KRS 165.160. Each board of directors shall:
 - (a) Recommend one (1) candidate for the community college president from three (3) candidates provided by the president of the Kentucky Community and Technical College System. The president shall have the authority to make the final appointment and shall not be bound by the recommendation from the board of directors;
 - (b) Evaluate the community college president and advise the chancellor of his or her performance. The president has final authority for the appointment and termination of the community college president;
 - (c) Approve budget requests for recommendation to the Kentucky Community and Technical College System;
 - (d) Adopt and amend an annual operating budget and submit it to the board of regents of the Kentucky Community and Technical College System for approval as to the compliance with its guidelines;
 - (e) Approve and implement a strategic plan that is developed in coordination with local employers, civic leaders, campus constituents, and other postsecondary institutions in the region and that is consistent with the strategic agenda of the General Assembly.
- ~~(3)(2)~~ The president of each community college shall have full authority and discretion regarding the use and management of the budget approved by the board of regents for the Kentucky Community and Technical College System under KRS 164.350.
- ~~(4)(3)~~ Each board of directors shall consist of nine (9) members, seven (7) of whom shall be appointed by the Governor for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The other two (2) board members shall be one (1) member of the teaching faculty and one (1) member of the student body. An appointed member's term shall be six (6) years.
- ~~(5)(4)~~ The faculty member shall be on the teaching or research faculty of the community college. He shall be elected by secret ballot of all full-time faculty members of the community college. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the boards if they cease to be members of the teaching staff of the community college. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original election.
- ~~(6)(5)~~ The student member shall be the president of the student body of the community college. If the president of the student body is not a full-time student who maintains permanent residency in the Commonwealth of Kentucky, a special election shall be held to select a full-time student who does maintain permanent residency in this Commonwealth as the student member.
- ~~(7)(6)~~ The members of the board of directors shall receive no compensation for their services, but shall be paid for their actual and necessary expenses.

- (8)~~(7)~~ *No citizen member of the board of directors shall be a relative of any employee of the community college under its jurisdiction. A person who is a member of the board at the effective date of this Act who is a relative of an employee of the community college may finish out the appointed term of office but the member may not be reappointed.*
- (9) The board of regents of the Kentucky Community and Technical College System may extend this type of local governance authority to each postsecondary technical institution under its control, subject to review and approval by the Council on Postsecondary Education.

Approved April 13, 1998

CHAPTER 514

(HB 519)

AN ACT relating to students.

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

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

The General Assembly declares that all students of the Commonwealth have a right to an appropriate and quality education in the public schools and the right to achieve the capacities under KRS 158.645. The General Assembly challenges all school personnel to take the necessary action to help each individual student complete elementary and secondary school with the capacities to transition successfully to adult life.

SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly declares that parents play a critical role in the education of their students. Parents have a major responsibility to assist in the education of their students and deserve respect and meaningful involvement in the decision-making process related to the students' education.*
- (2) *Each exceptional student as defined in KRS 157.200 shall have an individual education plan that shall serve as the centerpiece of the student's educational career and the communication vehicle between the parents and school personnel. The plan shall enable the parents and school personnel to decide the student's educational needs, the services needed to achieve those needs, and the anticipated results. The plan shall be used as a document to monitor the student's progress. School personnel shall provide the parents with reports of the progress toward the student's annual goals at least as often as report cards go to nondisabled students.*
- (3) *The Kentucky Board of Education shall promulgate administrative regulations establishing procedures for the development and monitoring of individual education plans that are in compliance with the Federal Individuals with Disabilities Education Act, as amended. These administrative regulations shall be written in clear, easily understood language that is free of education jargon.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Education shall promulgate administrative regulations to establish the criteria for the Kentucky Special Education Mentor Program that shall be implemented by July 1, 1999. The designation of "Kentucky Special Education Mentor" shall be given to the state's most outstanding and highly skilled persons who are certified to teach or administer special education and who are willing to accept assignments in districts whose special education programs are found to be noncompliant with state or federal requirements. The assignments shall require the mentor to:*
 - (a) *Work in a district or school on a full-time or part-time basis for a designated period of time to assist the staff with creating and implementing its special education improvement plan as required in Section (5) of this Act. The mentor shall have the authority to review and amend decisions previously made by the district or school staff. If a highly skilled educator under KRS 158.782 is assigned to the same site as the mentor, they shall share responsibilities under policy of the Department of Education;*

- (b) *Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance with exceptional students and other students at risk of school failure;*
 - (c) *Evaluate and make recommendations on the retention, dismissal, or transfer of certified staff in a noncompliant district or school;*
 - (d) *Recommend up to ten (10) additional work days annually to be paid for by the Department of Education for personnel in affected schools who work with exceptional students for planning, working with parents and guardians, curriculum development, or other activities that will help the district or school meet the goals of its improvement plan; and*
 - (e) *Complete an intensive training program, provided by the Department of Education and approved by the Kentucky Board of Education, prior to being assigned to assist a district's or school's staff with creating and implementing its district or school improvement plan. The training program shall include but not be limited to instruction in the methods of personnel evaluation, district or school organization, curriculum, and assessment. The training shall be made available to local district personnel on a cost recovery basis.*
- (2) *The Kentucky Special Education Mentor Program criteria shall include:*
- (a) *A selection process that shall allow for self nomination, provide for a broad spectrum of instructional positions, and generate statewide representation. Nominations of qualified special educators who have retired since July 1, 1994 shall be considered. Special education professionals and representatives of various advocacy and constituent groups shall be included in the development of the selection process and the review of applicants;*
 - (b) *Each recipient shall receive a monetary award of two hundred fifty dollars (\$250) when selected and shall also be paid in accordance with his or her current salary for other program requirements requiring additional days of employment under subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Special Education Mentor Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky Special Education Mentor when that person is assigned to a noncompliant school or district;*
 - (c) *The Kentucky Special Education Mentor assigned to a noncompliant district or school shall receive a salary supplement of thirty-five percent (35%) of their base annual salary for each year of service in that capacity. Retired mentors shall be paid for their rank and experience on the district's salary schedule plus the salary supplement. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If the assigned school achieves the threshold level in the next biennial review, the mentor shall receive his or her portion of the reward due to the entire staff calculated on his or her base salary regardless of decisions made by the school staff under KRS 158.6455;*
 - (d) *The Kentucky Special Education Mentor shall be granted professional leave under KRS 161.770 for up to two (2) years if determined by the state board to be necessary. Kentucky Special Education Mentors shall not lose any employee benefits as a result of their special assignments to a school or district; and*
 - (e) *A Kentucky Special Education Mentor shall not be assigned to a school or to a district assignment in the district in which the educator is employed.*

Section 4. KRS 156.095 is amended to read as follows:

- (1) The Kentucky Board of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator. The manner of appointment, qualifications, and duties of the professional development coordinator shall be as established by Kentucky Board of Education regulations.
- (3) The Kentucky Board of Education shall provide an annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment; instruction in methods to involve both teachers and administrators in actively planning, delivering, and evaluating programs; presenting options for meeting

professional development needs, especially through individualized programs; and identification of resources needed for quality, motivational professional development programs.

- (4) The Kentucky Board of Education shall provide for a series of state sponsored, professional development programs for certified personnel throughout the Commonwealth. Professional development shall focus on the following areas during the 1990-91 and 1991-92 school years:
- (a) The Kentucky Education Reform Act of 1990;
 - (b) School-based decision making;
 - (c) Performance-based student assessment;
 - (d) Nongraded primary programs;
 - (e) Research-based instructional practices;
 - (f) Instructional uses of technology; and
 - (g) Effective awareness and sensitivity training so teachers can motivate and nurture students of diverse cultures.
- (5) *During the 1998-1999 and 1999-2000 school years, the Department of Education shall conduct an intensive statewide professional development program to address the characteristics and instructional needs of exceptional students and students at risk of school failure. The professional development shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with exceptional students and students at risk of school failure. The professional development for instructional personnel shall be designed to provide and enhance skills of personnel to:*
- (a) *Improve the academic achievement of exceptional students and students at risk of school failure;*
 - (b) *Significantly reduce the dropout rate of all students; and*
 - (c) *Prepare all students for a successful transition to adult life.*
- (6) The Department of Education shall provide professional development activities at times and locations which are convenient for school personnel. During the 1990-91 and 1991-92 school years, school districts shall use the four (4) days designated for professional development in KRS 158.070 to acquire skills and knowledge in the areas listed in subsection (4) of this section. The master professional development plan shall reflect the districts' choices from the required areas for the 1990-91 and 1991-92 school years. A district's master professional development plan which has been developed in conjunction with the district improvement plan pursuant to KRS 158.685, shall be exempt from the requirements of this subsection.
- ~~(7)(6)~~ Local school districts with an enrollment of twenty thousand (20,000) or more students shall be exempt from the requirements of this section if they meet the standards for professional development established by the Kentucky Board of Education.

Section 5. KRS 157.200 is amended to read as follows:

- (1) "Exceptional children and youth" means persons under twenty-one (21) years of age who differ in one (1) or more respects from average or normal children in physical, mental, learning, emotional, or social characteristics and abilities to such a degree that they need special educational programs or services for them to benefit from the regular or usual facilities or educational programs of the public schools in the districts in which they reside. The Department of Education, through administrative regulations promulgated by the Kentucky Board of Education, shall interpret the statutory definitions of exceptionality. An exceptionality is any trait so defined in this section by administrative regulations of the Kentucky Board of Education. Requirements of average daily attendance for exceptional classes shall be regulated by statute, or in the absence of direction by administrative regulations promulgated by the Kentucky Board of Education. Categories of exceptionalities included within, but not limited by, this definition are as follows:
- (a) "Physically disabled or orthopedically impaired" means a severe orthopedic impairment which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes.

- (b) "Other health impaired" means limited strength, vitality or alertness, due to a chronic or acute health problem which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. Chronic health problems may include, but are not be limited to, a heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy, rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes, attention deficit disorder, attention deficit hyperactive disorder, or acquired immune deficiency syndrome.
- (c) "Communication disorder or speech or language impaired" means a disorder in language, articulation, voice, or fluency, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education.
- (d) "Hearing impairment" means a physiological hearing loss:
 - 1. Ranging from mild to profound, which is either permanent or fluctuating, and of such a degree that the pupil is impaired in the processing of linguistic information via the auditory channel either with or without amplification; or
 - 2. That adversely affects educational performance so that specially designed instruction is required for the child or youth to benefit from education.

The term shall include both deaf and hard of hearing children.

- (e) "Mental disability" means a deficit or delay in intellectual and adaptive behavior functioning, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education, and which is typically manifested during the developmental period.
- (f) "Specific learning disability" means a disorder in one (1) or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem which is the direct result of:
 - 1. A hearing impairment;
 - 2. Visual, physical, mental, or emotional-behavioral disabilities; or
 - 3. Environmental, cultural, or economic differences.
- (g) "Emotional-behavioral disability" means a condition characterized by behavioral excess or deficit which significantly interferes with a pupil's interpersonal relationships or learning process to the extent that it adversely affects educational performance so that specially designed instruction is required in order for the pupil to benefit from education.
- (h) "Multiple disability" means a combination of two (2) or more disabilities resulting in significant learning, developmental, or behavioral and emotional problems, which adversely affects educational performance and, therefore, requires specially designed instruction in order for the pupil to benefit from education. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition.
- (i) "Deaf-blind" means auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that the pupil cannot be appropriately educated in special education programs designed solely for pupils with hearing impairments, visual impairments, or severe disabilities, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.
- (j) "Visually disabled" means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.
- (k) "Developmental delay" means a significant discrepancy between a child's current level of performance in basic skills such as cognition, language or communication, self-help, social-emotional, or fine or

gross motor, and the expected level of performance for that age. The term shall be used only with children ages three (3) through **eight (8)**~~five (5)~~.

- (l) "Traumatic brain injury" means an acquired impairment to the neurological system resulting from an insult to the brain which adversely affects educational performance and causes temporary or permanent and partial or complete loss of:
1. Cognitive functioning;
 2. Physical ability; or
 3. Communication or social-behavioral interaction.

The term does not include a brain injury that is congenital or degenerative, or a brain injury induced by birth trauma.

- (m) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance. Characteristics of autism include:
1. Irregularity and impairment in communication;
 2. Engagement in repetitive activity and stereotyped movement;
 3. Resistance to environmental change or change in daily routine; and
 4. Unusual responses to sensory experience.

The term does not include children with characteristics of an emotional-behavioral disability.

- (n) "Gifted and talented student" means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts.
- (2) "Special education" means specially designed instruction to meet the unique needs of an exceptional child or youth.
- (3) "Special educational facilities" means physical facilities designed or adapted to meet the needs of exceptional children and youth, and approved according to regulations promulgated by the Kentucky Board of Education.
- (4) "Related services" means such developmental, corrective, and other supportive services as are required to assist an exceptional child or youth to benefit from special education, and may include, but are not limited to, psychological services, physical and occupational therapy, identification and assessment of disabilities, counseling services, and medical services for diagnostic or evaluation purposes.
- (5) "Transition services" means a coordinated set of activities for a pupil designed within an outcome-oriented process, that promotes movement from school to post-school activities. The term includes:
- (a) Postsecondary education;
 - (b) Vocational training; and
 - (c) Integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests, and shall include instruction, community experience, the development of employment, and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Section 6. KRS 157.224 is amended to read as follows:

- (1) The Commonwealth of Kentucky is committed to providing a comprehensive educational program for its exceptional children and youth. The Department of Education coordinates, directs, and monitors that program. State direction and implementation of a statewide **special**~~exceptional~~ education program is manifested in the biennial appropriation of funds to assure a quality educational opportunity for exceptional children and youth in existing, locally operated,~~exceptional~~ classrooms.

- (2) All county and independent boards of education shall operate special education programs pursuant to an **annual** application which has been approved by the Kentucky Department of Education pursuant to standards set out in **administrative** regulations **promulgated by** ~~of~~ the Kentucky Board of Education. If any county or independent board of education fails to operate and implement special education programs in accordance with **the standards** ~~(that application)~~, the application of the county or independent board of education for funding pursuant to KRS 157.360 may be considered insufficient **and the add-on funds generated under that statute may be withheld by the Kentucky Board of Education until the program is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended. The add-on funds shall not be withheld until the district has had the benefit of intense assistance from the Department of Education, a Kentucky Special Education Mentor under the provisions of Section 3 of this Act or other assistance approved by the department for at least two (2) years.** The superintendent of each local school district shall certify its enrollment of exceptional children and youth to the Department of Education. The department shall audit student enrollment and monitor local district compliance in accordance with Kentucky Board of Education administrative regulations.
- (3) **The Kentucky Board of Education administrative regulations shall set forth the data local school districts shall submit in their annual applications and reports. The data shall be reported in the same format as data submitted to the Department of Education for all other students and shall include, but not be limited to:**
- (a) **The number of students who are suspended, expelled, and quit school annually;**
 - (b) **The success of students placed in various classroom settings including, but not limited to, regular classrooms, resource rooms, self-contained classrooms, and vocational programs as measured by the state assessment program; and**
 - (c) **Information about students' successful transition to adult life.**
- (4) **Local school districts and schools found to be noncompliant with state board administrative regulations shall develop an improvement plan that shall be submitted to the Department of Education for approval. Local school districts shall use specialized resources in the development of the plan which may include universities, regional resource centers, professional organizations, and constituent advocacy groups.**
- (5) **There is hereby created a Special Education Trust Fund to receive the funds withheld under subsection (2) of this section and interest accrued from the funds invested. The funds and interest shall not lapse, but shall be returned to the district when it is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended.**
- (6) All administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. The provisions of KRS Chapter 13B notwithstanding, the decision of the hearing officer in hearings under this section shall be the final order and shall be rendered within the time limit specified in 34 C.F.R. 300.512(a).

Section 7. KRS 159.140 is amended to read as follows:

The director of pupil personnel shall:

- (1) Devote his entire time to the duties of his office;
- (2) Enforce the compulsory attendance and census laws in the attendance district he serves;
- (3) Acquaint the school with the home conditions of the **student** ~~(child)~~, and the home with the work and advantages of the school;
- (4) Ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes;
- (5) Secure the enrollment in school of all **students** ~~(children)~~ who should be enrolled and keep all enrolled **students** ~~(children)~~ in reasonably regular attendance;
- (6) Visit the homes of **students** ~~(children)~~ who are absent from school or who are reported to be in need of books, clothing, or parental care;
- (7) **Provide for the interviewing of students and the parents of those students who quit school to determine the reasons for the decision. The interviews shall be conducted in a location that is nonthreatening for the students and parents and according to procedures and interview questions established by an administrative**

regulation promulgated by the Kentucky Board of Education. The questions shall be designed to provide data that can be used for local district and statewide research and decision-making. Data shall be reported annually to the local board of education and the Department of Education.

- (8) Report to the superintendent of schools in the district in which the ~~student~~^{child} resides the number and cost of books and school supplies needed by any ~~student~~^{child} whose parent, guardian, or custodian does not have sufficient income to furnish the child with the necessary books and school supplies;
- ~~(9)~~⁽⁸⁾ Keep the records and make the reports that are required by law, by regulation of the Kentucky Board of Education, and by the superintendent and board of education.

Section 8. KRS 161.048 is amended to read as follows:

- (1) There is hereby established an alternative certification program. The Educational Professional Standards Board shall promulgate administrative regulations establishing standards for local district training programs and the approval and evaluation process for these programs. A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:
- (a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.
 - (b) Pass written tests designated by the Education Professional Standards Board for:
 1. General knowledge;
 2. Communication skills; and
 3. Knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the subject field or five (5) years of experience in the subject field as approved by the Education Professional Standards Board.
 - (c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.
- (2) Upon meeting the participation requirements as established in subsection (1) of this section, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.
- (3) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.
- (4) Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive alternative certification for teaching at the secondary level:
- (a) A master's degree or doctoral degree in the academic subject area for which certification is sought;
 - (b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic subject area for which certification is sought in a regionally- or nationally-accredited institution of higher education; and
 - (c) Successful completion of the teacher internship requirement imposed under KRS 161.030.
- (5) *Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:*
- (a) *An out-of-state license to teach exceptional students;*

- (b) *A bachelor's or master's degree in the certification area or closely related area for which certification is sought; and*
- (c) *Successful completion of the teacher internship requirement required under KRS 161.030.*

Section 9. The Office of Education Accountability is directed to conduct a review of the state and federal paperwork requirements for local school districts, supervisors, and teachers as they provide education programs for students with disabilities and make recommendations for reducing the time involved. This review shall include the extent to which technology is, or could be used, to reduce the burden of the requirements. The review shall be completed and recommendations made to the Interim Joint Committee on Education no later than October, 1998.

Approved April 13, 1998

CHAPTER 515

(HB 532)

AN ACT relating to teachers' retirement and declaring an emergency.

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

Section 1. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and
- (b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state and including any federally-funded time-limited employee. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287. *It shall also include a person who is a present or future recipient of a retirement allowance from the Teachers' Retirement System of Kentucky who either satisfies the requirements of KRS 161.525, 161.620, and 161.675, or who is board certified including a beneficiary of a retired member who is receiving a retirement allowance from the Teachers' Retirement System of Kentucky.*
- (2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the insurance or health maintenance organization coverage is provided or made available shall annually be given an option to elect either standard insurance coverage or coverage by a health maintenance organization; if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has

been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either insurance or health maintenance organization coverage may be made available for state employees, except that the procuring of each is permissive.

- (3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.
- (4) The premiums may be paid by the policyholder:
 - (a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or
 - (c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other insurance coverage shall be paid by the employee.
- (5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer.
- (6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.
- (7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.
- (8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.
- (9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.

- (10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.
- (12) The commissioner of personnel shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the commissioner or his designee regarding the state health insurance program for state employees. The commissioner shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The commissioner shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.
- (13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.

Section 2. KRS 161.220 is amended to read as follows:

As used in KRS 161.230 to 161.716 and KRS 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the chief state school officer, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any regular or special teacher, or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
 - (a) Local boards of education;
 - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities, ~~and the Kentucky Community and Technical College System and any community colleges or technical institutions established under its control~~;
 - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
 - (d) The State Department of Education, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
 - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
 - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective

association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

- (g) The Department for Adult Education and Literacy;
 - (h) The Department for Technical Education;
 - (i) The Office of General Counsel within the Office of the Secretary of the Cabinet for Workforce Development;
 - (j) The Office for Policy, Budget, and Personnel within the Office of the Secretary of the Cabinet for Workforce Development;
 - (k) The Office for Administrative Services within the Office of the Secretary of the Cabinet for Workforce Development;
 - (l) The Department of Vocational Rehabilitation;
 - (m) The Kentucky Educational Collaborative for State Agency Children;
 - (n) The Governor's Scholars Program; ~~and~~
 - (o) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;
 - (p) ***Employees of the Workforce Development Cabinet who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the Workforce Development Cabinet, shall be members of the Teachers' Retirement System; and***
 - (q) ***Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the Workforce Development Cabinet, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620.***
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
 - (6) "New teacher" means any member not a present teacher;
 - (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
 - (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
 - (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up employee contributions pursuant to KRS 161.540(2), or the average

of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up employee contributions. ***Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit.*** However, if any of the five (5) ***or three (3)*** highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

- (a) The member's actual salary; or
- (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for employees of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

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

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. ***Annual compensation shall not include the salary supplement received by a member under KRS 158.782 on or after July 1, 1996.*** The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Age of entrance" means the age attained at the last birthday of any member at the time of the establishment of the retirement system, if the member was a member subject to membership in the system at that time. Otherwise it means the age attained as of July 1 of the fiscal year in which he first becomes a member of the retirement system. Any birthday occurring on February 29 shall be considered as occurring on February 28;
- (13) "Regular interest" means interest at three percent (3%) per annum;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up employee contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. ***A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;***
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up employee contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year; and
- (21) "Regular teacher, supervisor, or administrator," when used to determine eligibility for membership in the retirement system, means a professional employee holding a position which requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a daily or weekly basis.

Section 3. KRS 161.310 is amended to read as follows:

- (1) The board of trustees shall from time to time promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business.
- (2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.
- (3) ***All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments. This subsection shall not apply to retirement incentive plans adopted by local boards of education prior to December 31, 1997, and to those employees of local school districts who retired on or before July 1, 1998.***

Section 4. KRS 161.340 is amended to read as follows:

- (1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.
- (2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.
- (3) The board shall contract for actuarial, auditing, medical, investment counseling, and other professional or technical services as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 56, 57, and 45A, and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.
- (4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.
- (5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.
- (6) ***Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.***

Section 5. KRS 161.420 is amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

- (1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

- (2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;
- (3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities, survivor benefits, and death benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520, 161.525, and 161.655;
- (4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520, 161.525, and 161.655. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund, and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;
- (5) The medical insurance fund shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675. One and five tenths percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. One-half (1/2) of this amount shall derive from member contributions and one-half (1/2) from a state appropriation. ***The board of trustees may allocate up to a maximum of one and sixty-five hundredths percent (1.65%) of the three and twenty-five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550.*** All claims for benefits under KRS 161.675 shall be paid from this fund. Any amounts not required to meet current costs shall be maintained as a reserve for these benefits; and
- (6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept ***and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership***, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year.
- (7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of section 403(b) of the Internal Revenue Code by ***a retired***~~any~~ member of the Teachers' Retirement System ***with accounts that existed on or after July 1, 1996***~~, or the employer of the member, or both~~. The contributions shall not be picked up as provided in KRS 161.540(2).~~The contributions shall be invested as provided in KRS 161.430.~~ Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program.

Section 6. KRS 161.500 is amended to read as follows:

- (1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed

in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

- (2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.
- (3) ***Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.***

Section 7. KRS 161.545 is amended to read as follows:

- (1) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees. ~~[-A member may also obtain credit for part time service performed prior to becoming a member upon payment of the amount determined for the member's contribution and an amount actuarially determined equal to the increased liability of the Teachers' Retirement System, if the service was at least half (1/2) time and occurred in the two (2) years preceding the individual's becoming a member of the retirement system.]~~ Members placed on leave of absence may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).
- (2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence since July 1, 1964, for reasons of health, child rearing, or to improve their educational qualifications, and did not qualify at the time of the leave of absence to make contributions to the retirement system for the leave of absence as provided in subsection (1) of this section, may obtain credit for the leave of absence under the following conditions:
 - (a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence; and
 - (b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.
 - (c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.
- (3) Active contributing members who had breaks in their participation in the retirement system for reasons of health or for the purpose of obtaining Rank I status, a master's degree in education, or a doctorate degree in education and did not qualify at the time of the absence to obtain credit for the absence, may qualify to obtain credit for the absence under the following conditions:
 - (a) The period of a qualified absence shall be substantiated and verified in a manner required by the board of trustees;
 - (b) The member shall receive credit for no more than two (2) years of service under the provisions of this subsection;
 - (c) The member shall contribute the required percentage based on the salary received the year immediately preceding the qualified absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the absence, and by depositing an amount equal to this total in the state accumulation fund; and
 - (d) Credit for service obtained under this subsection shall be purchased prior to July 1, 1997.
- (4) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

Section 8. KRS 161.550 is amended to read as follows:

Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the retirement system a permanent amount equal to that contributed by its employees who are members of the retirement system plus an additional three and one-fourths percent (3.25%) of the total of salaries of its employees who are members of the retirement system to discharge the system's unfunded obligations with interest assumed by the state *and to provide funding to the medical insurance fund as provided under KRS 161.420(5)*. Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.507(4); 161.515; 161.545; 161.620(1), (3), (5), (6), and (7); and 161.553. In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.

Section 9. KRS 161.553 is amended to read as follows:

- (1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in subsections (1)(a), ~~and~~ (1)(b), *and (1)(c)* of this section are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, ~~2000~~~~1998~~:

(a) Cost of Living Allowance	<i>1998-1999</i>	Each Succeeding Fiscal Year
	[1996-1997]	
[1982-1984	\$809,100	\$809,100 through 1997-98]
1986-1988	\$4,465,400	\$4,465,400 through 2000-2001
		and
		\$2,331,300 in 2001-2002
1988-1990	\$5,761,700	\$5,761,700 through 2002-2003
		and
		\$2,972,700 in 2003-2004
1990-1992	\$4,901,700	\$4,901,700 through 2004-2005
		and
		\$2,486,800 in 2005-2006
1992-1994	\$2,229,400	\$2,229,400 through 2006-2007
		and
		\$1,125,700 in 2007-2008
1994-1996	\$6,142,000	\$6,142,000 through <i>2010-2011</i>
		[2011-2012]

	1996-1998	\$4,459,000	\$4,459,000 through 2010-2011
		[\$2,257,700]	\$2,257,700 in 1997-98
			and
			\$5,163,600 through 2012-2013]
	1998-2000	\$7,395,300	\$15,333,900 through 2012-2013
			and
			\$7,938,600 through 2013-2014
(b)	Minimum Value	1998-1999	Each Succeeding Fiscal Year
	Annuities	[1996-1997]	
	1986-1988	\$1,227,000	\$1,227,000 through 2000-2001
			and
			\$1,020,400 in 2001-2002
	1988-1990	\$1,718,200	\$1,718,200 through 2002-2003
			and
			\$879,500 in 2003-2004
	1990-1992	\$2,246,900	\$2,246,900 through 2004-2005
			and
			\$1,232,100 in 2005-2006
	1992-1994	\$2,217,700	\$2,217,700 through 2006-2007
	1994-1996	\$2,126,000	\$2,126,000 through 2008-2009
			[2009-2010]
(c)	Sick Leave Allowance	1998-1999	Each Succeeding Fiscal Year
		\$3,657,000	\$7,828,000 in 1999-2000
			\$7,828,000 through 2012-2013

and

\$4,171,000 through 2013-2014

- (2) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	\$34,689,893
1990-1992	\$68,107,473
1992-1994	\$15,749,976

Section 10. KRS 161.597 is amended to read as follows:

- (1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.
- (2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.
- (3) To qualify for installment payments, the member contribution plus interest of eight percent (8%) per annum shall exceed one thousand dollars (\$1000).
- (4) A member may select the service credit to be purchased by installment payments and that service credit shall be purchased before any other credit may be purchased by installment payments.
- (5) Installment payments shall be at least fifty dollars (\$50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months.
- (6) Installment payments shall be made on a monthly basis by payroll deduction *or electronic fund transfer* and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560.
- (7) A member may elect to terminate payroll deductions at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may make personal installment payments. Termination of employment in a covered position shall terminate *installment payments* ~~payroll deductions~~. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive service credit on a pro rata basis for the total amount of contributions made by installment payments. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.
- (8) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

Section 11. KRS 161.605 is amended to read as follows:

- (1) Retired members may perform substitute teaching in the public schools for the equivalent of one hundred (100) days in any one (1) school year and receive compensation based on a standard salary schedule adopted by a district for all substitute teachers without reduction in retirement annuities.
- (2) A retired member may be employed as a part-time or temporary teacher in the public schools for a period not to exceed the equivalent of one hundred (100) days in any one (1) school year.
- (3) Retired members may be employed part-time or temporarily in a nonteaching capacity in the public schools and receive compensation for this employment without reduction in retirement annuities, except that retired members may not be employed in excess of a one hundred (100) day period in any one (1) school year in the same position from which they retired, or a position substantially similar to the one from which they retired, or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are

also subject to the one hundred (100) day limitation in this subsection. The board of trustees shall determine if employment in a nonteaching position qualifies for an exemption under this subsection.

- (4) Members retired from *an agency*~~[a university]~~ listed in KRS 161.220(4)(b) may be employed in a part-time teaching capacity by one (1) of the universities *participating in the Teachers' Retirement System*, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year.
- (5) Calculation of the number of days for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service.
- (6) When a retired member returns to employment as a part-time teacher or in a nonteaching capacity as provided in subsections (2), (3), and (4) of this section, the employer shall *contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for nonuniversity and university members*~~[withhold and remit regular retirement contributions. These contributions shall be maintained in a separate account by the retirement system and shall not be used to increase the annuity of the retiree. Upon request of the retired member at the close of a fiscal year, the retirement system shall return the retiree's contribution with regular interest on funds held beyond one (1) year, but the retired member shall have no claim on any contributions made by the state or employer or to contributions made to the medical insurance fund. Upon death of the retired member, the retirement system shall pay to the retired member's estate or designated beneficiary the amount that would have been refunded to the retired member].~~

Section 12. KRS 161.620 is amended to read as follows:

- (1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:
 - (a) For retirements effective July 1, ~~1998~~~~[1984]~~, and thereafter, the annual allowance for each year of service *shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university*~~[performed prior to January 1, 1984, shall be two percent (2%) of the final average salary].~~ *The annual retirement allowance for each year of service performed at state colleges or universities that participate in the Teachers' Retirement System shall be two percent (2%) of the final average salary.* Actuarial discounts due to age or service credit at retirement may be applied as provided in this section; *and*
 - ~~(b) [For retirements effective January 1, 1984, and thereafter, the annual allowance shall be determined as set out in subsection (1)(a) of this section, except that the allowance for service performed after January 1, 1984, shall be valued at the annual rate of two and one-half percent (2.5%) of the final average salary for all members not employed by a state university or college. For purposes of implementing the change in the value of a year of service, the board of trustees shall establish, by administrative regulation, the value of services performed during the 1983-84 fiscal year, but in no case shall the value of service performed during the 1983-84 fiscal year exceed two and one-quarter percent (2.25%); and~~
 - ~~(c) [The retirement allowance of a member at retirement shall not exceed the member's last annual compensation or the member's final average salary, whichever is the greater amount.~~
- (2) Effective July 1, 1990, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option who has been retired at least ten (10) months shall be increased in the amount of one and one-half percent (1.5%).
- (3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than *three hundred*~~[two hundred sixty]~~ dollars ~~(\$300)~~~~(\$260)~~ effective July 1, ~~1998~~~~[1994]~~, *and not less than three hundred ten dollars (\$310) effective July 1, 1999*, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection.~~[The increases provided for in this subsection shall not be implemented unless funding is provided in the 1994-96 biennium budget appropriation.]~~

- (4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.
- (5) Effective July 1, ~~1998~~~~[1996]~~, the monthly allowance of each member retired *for at least one (1) year*~~[on or before July 1, 1995]~~, and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed *one and one-half*~~[three]~~ percent (~~1.5%~~~~[(3%)]~~) of the monthly allowance in effect the previous month~~[where the monthly allowance is less than eight hundred thirty four dollars (\$834) and in an amount not to exceed one percent (1%) of the monthly allowance in effect the previous month where the monthly allowance is eight hundred thirty four dollars (\$834) or more based on an assumed maximum monthly allowance of one thousand two hundred fifty dollars (\$1,250)]~~. The level of increase provided for in this subsection shall be determined by the funding provided in the ~~1998-2000~~~~[1996-98]~~ biennium budget appropriation.
- (6) Effective July 1, ~~1999~~~~[1997]~~, the monthly allowance of each member retired *for at least one (1) year*~~[on or before July 1, 1996]~~, and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed *one and one-half*~~[three]~~ percent (~~1.5%~~~~[(3%)]~~) of the monthly allowance in effect the previous month~~[where the monthly allowance is less than eight hundred thirty four dollars (\$834)]~~. The level of increase provided for in this subsection shall be determined by the funding provided in the ~~1998-2000~~~~[1996-98]~~ biennium budget appropriation.
- (7) Effective July 1, 1990, monthly payments of two hundred dollars (\$200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.
- (8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code as enacted in 1988.
- (9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

Section 13. KRS 161.640 is amended to read as follows:

- (1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year, shall be no earlier than July 1 next following the end of such fiscal year.
- (2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.
- (3) *All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All annuity and survivor monthly allowance payments shall be made by electronic fund transfer by December 31, 1998.*

Section 14. KRS 161.655 is amended to read as follows:

- (1) *Effective July 1, 1998*, upon the death of a member retired for service or disability, a death benefit of ~~three~~~~[two]~~ thousand~~[and eight hundred]~~ dollars (~~\$3,000~~~~[(2,800)]~~) shall be paid to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Upon the death of an active contributing member, a death benefit of two thousand dollars (\$2,000) shall be paid to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Application for the death benefit shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the payment of death benefits under this section.

- (2) Suit or civil action shall not be required for the collection of the death benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the death benefit.

Section 15. KRS 161.675 is amended to read as follows:

- (1) (a) The board of trustees ~~shall [is empowered to]~~ enter into contracts with insurance carriers **or other health care providers** for the purpose of providing a ~~broad~~ program of hospital and medical insurance coverage to members **who are age sixty-five (65) or older and** retired for service ~~or disability~~. Coverage may be extended to the spouses and minor children of retired members, provided the member began participating in the Teachers' Retirement System prior to July 1, 1978. Coverage may also be extended to spouses and to minor children of members in active contributing status who are deceased prior to retirement if the surviving spouse is eligible to receive the member's retirement benefit as provided in KRS 161.525 and elects to receive those retirement benefits].
- (b) ***The board of trustees may enter into contracts with insurance carriers or other health providers for the purpose of providing a broad program of hospital and medical insurance coverage to members below age sixty-five (65) who are retired for service or disability and to the surviving spouse of deceased members who are eligible to receive the member's retirement benefits as provided in KRS 161.525.***
- (c) The board of trustees may offer, on a cost basis, coverage of spouses ~~and/or~~ dependents not eligible for regular coverage.
- (2) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage to meet the changing needs of the annuitants and when necessary to contain the expenses of the insurance program within the funds available to finance the insurance program. The contracts and administrative regulations shall provide for, but not be limited to, hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. A retiree whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years creditable Kentucky service in the Teachers' Retirement System or of combined service in the Kentucky Employees Retirement System, of which at least two (2) years was creditable service under KRS 161.510 and 161.607(2), to qualify for the coverage. The board of trustees shall offer coverage to the disabled child of a retired member regardless of the disabled child's age if the retired member pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (3) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to **active and retired** state employees **and active teachers**, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.
- (4) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system.
- (5) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient.

SECTION 16. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The

member shall pay the full actuarial cost of the service credit as determined by the Teachers' Retirement System. The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597.

Section 17. Whereas, retirement annuity adjustments are implemented at the beginning of the fiscal year, an emergency is declared to exist, and the provisions of this Act shall become effective July 1, 1998.

Approved April 13, 1998

CHAPTER 516

(HB 539)

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

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

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

The Adjutant General may purchase liability insurance for the protection of members of the Kentucky National Guard called to state active duty by the Governor under KRS 38.030 to protect them for acts, omissions, and claims arising while on state active duty, and while not otherwise covered by existing state government programs that provide medical coverage or protection for acts, omissions, or claims to members of the Kentucky National Guard while on state active duty. To provide coverage not provided by existing state government programs, the Adjutant General may purchase the type and amount of liability coverage deemed appropriate to best serve the interests of the Kentucky National Guard and its members.

Approved April 13, 1998

CHAPTER 517

(HB 544)

AN ACT relating to the judicial branch.

WHEREAS, a variety of Kentucky courts currently decide such matters as dissolution of marriage, spousal maintenance, child support, adoption, termination of parental rights, establishment of paternity, domestic violence, and juvenile offenses; and

WHEREAS, these decisions drastically affect Kentucky families; and

WHEREAS, dividing family jurisdiction among multiple courts increases the time and expense involved in resolving these often volatile cases and creates inordinate delay between intake and final resolution; and

WHEREAS, establishment of a court devoted exclusively to and specializing in complexities of family law whereby assignment of all related cases to a single judge enhances the quality of service received by families, promotes continuity of judicial decision making, and encourages development of expertise in the management and resolution of family law cases;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

(1) *Eight (8) Family Court Pilot Projects are created in the following Supreme Court districts designated by the Chief Justice:*

- (a) *District 1, McCracken County;*
- (b) *District 2, Warren County;*
- (c) *District 3, Pulaski, Rockcastle, and Lincoln Counties;*
- (d) *District 5, Franklin County and Madison and Clark Counties;*

- (e) *District 6, Boone and Gallatin Counties; and*
 - (f) *District 7, Floyd County and Pike County.*
- (2) *The Supreme Court has certified the need for a total of nine (9) additional Circuit Court judgeships: one (1) each in Warren, Pike, and Franklin Counties, one (1) in Breckinridge, Grayson, and Meade Counties, one (1) in Pulaski, Rockcastle, and Lincoln Counties, one (1) in Madison and Clark Counties, one (1) in Green, Marion, Taylor, and Washington Counties, one (1) in Bourbon, Scott, and Woodford Counties and one (1) in Boone and Gallatin Counties.*
 - (3) *The Supreme Court has certified the need for a total of three (3) additional District Court judgeships, one (1) each in Floyd County and McCracken County and one (1) in Barren and Metcalfe Counties.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

- (1) *A Chief Judge of Family Court shall be designated by the Chief Justice at each site identified in subsection (1) of Section 1 of this Act. When a Family Court has a single Family Court Judge, that Judge shall be designated Chief Judge. Each Family Court shall establish a Family Court Council to assist in developing and implementing each new site. The Council shall be multidisciplinary in nature and chaired by the Chief Judge of the Family Court. Each Council shall recommend local rules of Family Court. Pursuant to Supreme Court Rule 1.040(3)(a), local rules shall be written, approved by the Chief Justice, and filed with the Supreme Court Clerk.*
- (2) *The Administrative Office of the Courts shall employ a statewide Family Court Coordinator to assist Family Courts with:*
 - (a) *Resource needs;*
 - (b) *Standardization of policies;*
 - (c) *Practices and procedures;*
 - (d) *Training;*
 - (e) *Automation;*
 - (f) *Data compilation and analysis;*
 - (g) *Budgetary needs; and*
 - (h) *Coordination of Family Court sites with community and outside agencies.*
- (3) *Family Court jurisdiction shall include, but not be limited to, cases involving:*
 - (a) *Domestic or family issues or dissolution of marriage;*
 - (b) *Child custody;*
 - (c) *Visitation;*
 - (d) *Support and equitable distribution;*
 - (e) *Adoption and termination of parental rights;*
 - (f) *Domestic violence, including emergency protective orders;*
 - (g) *Noncriminal juvenile matters, including juvenile mental inquests and self-consent abortions;*
 - (h) *Paternity and URESA matters;*
 - (i) *Dependency, abuse, or neglect; and*
 - (j) *Status offenses, including truancy, unmanageable children, and runaways.*
- (4) *Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court and the Circuit Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.*

Section 3. KRS 23A.040 is amended to read as follows:

The following judicial circuits are entitled to two (2) judges and shall have two (2) numbered divisions of the Circuit Court:

- (1) Second Judicial Circuit.
- (2) Third Judicial Circuit.
- (3) Sixth Judicial Circuit.
- ~~(4) Eighth Judicial Circuit.~~
- ~~(5) Ninth Judicial Circuit.~~
- (5) ***Eleventh Judicial Circuit.***
- (6) ***Fourteenth Judicial Circuit.***
- ~~(7) Sixteenth Judicial Circuit.~~
- ~~(8) Seventeenth Judicial Circuit.~~
- ~~(8) Twenty-fifth Judicial Circuit.~~
- (9) Twenty-seventh Judicial Circuit.
- ~~(10) Twenty-eighth Judicial Circuit.~~
- ~~(10) Thirty-first Judicial Circuit.~~
- ~~(11) Thirty-second Judicial Circuit.~~
- ~~(12) Thirty-fourth Judicial Circuit.~~
- ~~(13) Forty-sixth~~~~Thirty-fifth~~ Judicial Circuit.
- ~~(14) Fifty-fourth~~~~Forty-eighth~~ Judicial Circuit.

SECTION 4. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

The following judicial circuits are entitled to three (3) Circuit Judges and shall have three (3) numbered divisions of the Circuit Court:

- (1) ***Eighth Judicial Circuit.***
- (2) ***Twenty-fifth Judicial Circuit.***
- (3) ***Twenty-eighth Judicial Circuit.***
- (4) ***Thirty-fifth Judicial Circuit.***
- (5) ***Forty-eighth Judicial Circuit.***

Section 5. KRS 24A.010 is amended to read as follows:

- (1) The District Court is a court of limited jurisdiction; it has original jurisdiction in all matters specified in KRS 24A.110 to 24A.130.
- (2) The District Court may be authorized by law to adjudicate the actions or decisions of local administrative agencies, special districts, or boards. Such adjudication shall not constitute an appeal but an original action.
- (3) The District Court has no appellate jurisdiction.
- (4) The District Court is a court of record.
- (5) The District Court is a court of continuous session. Sessions of the District Court may be scheduled at such times, including nights, weekends, and holidays, and at such locations, as may be convenient, subject to the direction of the Supreme Court by rule or order.
- (6) ***Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to the Family Court,***

notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 6. KRS 24A.120 is amended to read as follows:

- (1) District Court shall have exclusive jurisdiction in:
- (a)~~(1)~~ Civil cases in which the amount in controversy does not exceed four thousand dollars (\$4,000), exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court;
 - (b)~~(2)~~ Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and
 - (c)~~(3)~~ Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.
- (2) *Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to the Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.*

Section 7. KRS 24A.050 is amended to read as follows:

The following judicial districts are entitled to two (2) District Judges and shall have two (2) numbered divisions of the District Court:

- (1)~~(1)~~ ~~Second Judicial District.~~
- ~~(2)~~ Third Judicial District.
- (2)~~(3)~~ Fourth Judicial District.
- (3)~~(4)~~ Ninth Judicial District.
- (4)~~(5)~~ Eleventh Judicial District.
- (5)~~(6)~~ Twelfth Judicial District.
- (6)~~(7)~~ Thirteenth Judicial District.
- (7)~~(8)~~ Fourteenth Judicial District.
- (8)~~(9)~~ Fifteenth Judicial District.
- (9)~~(10)~~ Eighteenth Judicial District.
- (10)~~(11)~~ Twenty-first Judicial District.
- (11)~~(12)~~ Twenty-fourth Judicial District.
- (12)~~(13)~~ Twenty-seventh Judicial District.
- (13)~~(14)~~ Twenty-eighth Judicial District.
- (14)~~(15)~~ Twenty-ninth Judicial District.
- (15) ***Thirty-first Judicial District.***
- (16) Thirty-second Judicial District.
- (17) Thirty-fourth Judicial District.
- (18) Thirty-fifth Judicial District.

(19) Thirty-eighth Judicial District.

(20) Fortieth Judicial District.

(21) Forty-first Judicial District.

(22) *Forty-third Judicial District.*

~~(23)(22)~~ Forty-sixth Judicial District.

~~(24)(23)~~ Forty-eighth Judicial District.

~~(25)(24)~~ Fiftieth Judicial District.

~~(26)(25)~~ Fifty-first Judicial District.

~~(27)(26)~~ Fifty-third Judicial District.

~~(28)(27)~~ Fifty-fourth Judicial District.

~~(29)(28)~~ Fifty-fifth Judicial District.

~~(30)(29)~~ Fifty-sixth Judicial District.

Section 8. KRS 24A.060 is amended to read as follows:

The following judicial districts are entitled to three (3) District Judges and shall have three (3) numbered divisions of the District Court:

(1) ***Second Judicial District***

(2) Sixth Judicial District.

~~(3)(2)~~ Eighth Judicial District.

~~(4)(3)~~ Seventeenth Judicial District.

~~(5)(4)~~ Twenty-fifth Judicial District.

Section 9. KRS 389A.010 is amended to read as follows:

(1) Notwithstanding any other statutory limitation of the jurisdiction of the District Court:

(a) Any trustee, guardian, conservator, or personal representative (hereinafter "fiduciary"), not otherwise possessing a power of sale, may move the District Court of the county in which the fiduciary has qualified for an order granting the fiduciary the power to sell or mortgage any real estate or any interest therein possessed by his ward, decedent, or trust; and

(b) The District Court may enter an order granting the fiduciary the power to sell or mortgage any real estate or any interest therein possessed by the ward, decedent or trust.

(2) The motion shall include an adequate description of the property, a summary of the grounds for the motion, and a request that the bond of the fiduciary be increased in an adequate amount in accordance with KRS 395.130.

(3) Unless waived in writing, written notice of the hearing with a copy of the motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action upon all persons who have a vested or contingent interest in the property interest sought to be sold. Where the property interest sought to be sold belongs to a person under legal disability, service of notice and defense shall be governed by Civil Rules 4.04(3) and 17.03.

(a) In the case where the subject of the action is the property interest of a person under legal disability, unless waived in writing, written notice by certified mail, return receipt requested shall be given to all known adult next of kin of:

1. The nature and pendency of the action; and

2. Not less than thirty (30) days' notice of the time, date and location of the hearing on the motion. At or before the hearing, the fiduciary or his attorney shall file an affidavit on personal knowledge showing compliance with this paragraph and attaching a copy of the notice given and the original of all receipts returned.

(b) All such persons shall have standing to present evidence and to be heard at the hearing.

- (4) An aggrieved party may no later than thirty (30) days from the date of the order, institute an adversary proceeding in Circuit Court pursuant to **subsection (1)(b) of Section 6 of this Act**~~[KRS 24A.120(2)]~~ in respect to any order affecting the right of the fiduciary to sell or mortgage. Pending the entry of a final order and expiration of the time for an appeal therefrom, neither the fiduciary nor the owner of any vested interest shall make any conveyance or mortgage of the real estate and any attempt to do so shall be null and void.
- (5) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 10. KRS 391.035 is amended to read as follows:

- (1) Whenever real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in such will, proceedings may be had in the District Court to determine the persons entitled to such property.
- (2) (a) If an estate is in process of administration the executor, administrator or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or in the event the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;
- (b) The motion shall set forth all of the facts known to movant relating to the matter, including the names, ages and addresses of all persons who are or may be entitled to share in such property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value;
- (c) The motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action and shall set forth the place and time (which shall not be less than twenty (20) days from the date of service) when the motion will come on for hearing.
- (3) Upon the hearing on the motion any person claiming an interest in the property may introduce proof in support of his claim and the court may entertain the admission of any other relevant evidence to aid the court in determining the persons entitled to share in the property.
- (4) After hearing all the evidence the court shall enter judgment in which the names, ages and addresses of the persons entitled to share in the property are set forth and the proportionate interest of each.
- (5) In a case where some or all of the property is real estate located in this state a certified copy of the judgment shall be recorded in the office of the appropriate county clerk in lieu of the affidavit required by KRS 382.120.
- (6) Any party may at any time prior to judgment institute an adversary proceeding in Circuit Court pursuant to **subsection (1)(b) of Section 6 of this Act**~~[KRS 24A.120(2)]~~.
- (7) Any aggrieved party may no later than thirty (30) days from the date of the judgment, institute an adversary proceeding in Circuit Court pursuant to **subsection (1)(b) of Section 6 of this Act**~~[KRS 24A.120(2)]~~.
- (8) Any unknown defendants before the court by constructive service alone shall be entitled to the protection afforded by Civil Rule 4.11.
- (9) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 11. KRS 395.617 is amended to read as follows:

- (1) A fiduciary may, prior to filing a periodic or final settlement and prior to a distribution of assets, file with the court a proposed settlement. The proposed settlement shall be set for hearing and notice given as for any other settlement except that beneficiaries of the estate, other than nonresiduary legatees who have received and receipted for their legacies, shall also receive notice from the fiduciary by certified mail, return receipt requested, at least twenty (20) days prior to the hearing date. The proposed settlement shall set forth all assets and disbursements previously made; shall indicate assets on hand and anticipated to be received subsequent to the date of the proposed settlement and prior to the filing of the periodic or final settlement; and shall further indicate the manner in which the remaining and anticipated assets are proposed to be distributed. The proposal may set forth which assets are to be distributed in kind and to whom and which assets may be liquidated for

distribution of cash or for payment of debts, costs of administration, or pecuniary legacies. The proposal may also indicate claims proposed to be allowed or disallowed, in whole or in part, and may also indicate fees and commissions proposed to be paid to the fiduciary and his attorney. The inclusion of evidence and vouchers to accompany the proposal shall not be necessary unless required by the court upon exceptions filed. At the hearing, if no exceptions are filed, the proposal, if made according to law, shall be approved. If exceptions are filed, other evidence besides that reported may be heard, and the court shall, upon the whole case, reject, confirm, alter, or amend the proposal. Following the entry of an order of approval or of an order of amendment, the fiduciary shall disburse the assets in accordance therewith. Following the distribution, the fiduciary shall file a settlement accompanied by evidence and vouchers showing that distribution was effected in conformity with the court order. If it appears to the court that the distribution was in conformity, the court shall confirm the settlement and, if the settlement is final, discharge the fiduciary and his surety without further hearing or notice to any person.

- (2) An aggrieved party may, no later than thirty (30) days from the entry of the order upon the proposed settlement, institute an adversary proceeding in Circuit Court pursuant to *subsection (1)(b) of Section 6 of this Act* ~~[KRS 24A.120(2)]~~.

Section 12. Unless otherwise noted in this section, the effective date of this Act is September 1, 1998. Subsections (5), (6), and (13) of Section 3 of this Act take effect January 1, 1999. The amendment removing the Eighth Judicial Circuit the Twenty-fifth Judicial Circuit, the Twenty-eighth Judicial Circuit and the Forty-eighth Judicial Circuit from former subsections (4), (8), (10), and (15) of Section 3 of this Act, subsections (1), (2), (3), and (5) of Section 4 of this Act, the amendment removing the Second Judicial District from former subsection (1) of Section 7 of this Act, and subsection (1) of Section 8 of this Act shall all take effect September 1, 1999. Subsection (22) of Section 7 of this Act takes effect January 1, 2000.

Approved April 13, 1998

CHAPTER 518

(HB 550)

AN ACT relating to the issuance of alcoholic beverage licenses and declaring an emergency.

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

Section 1. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

- (1) Distiller's license, per annum **\$2,500.00**~~[\$1,500.00]~~
- (2) Rectifier's license, per annum **\$2,500.00**~~[\$1,500.00]~~
- (3) Blender's license, per annum **\$2,500.00**~~[\$1,500.00]~~
- (4) Vintner's license, per annum **\$1,000.00**~~[\$ 500.00]~~
- (5) Small winery license, per annum **\$100.00**~~[\$ 25.00]~~
 - (a) Small winery off-premises retail license, per annum \$25.00
- (6) Wholesaler's license, per annum **\$2,000.00**~~[\$1,500.00]~~
- (7) Retail package license, per annum:
 - (a) In counties containing cities of the first class **\$800.00**~~[\$ 600.00]~~
 - (b) In counties containing cities of the second class **\$700.00**~~[\$ 500.00]~~
 - (c) In counties containing cities of the third class **\$600.00**~~[\$ 400.00]~~
 - (d) In counties containing cities of the fourth class **\$500.00**~~[\$ 300.00]~~
 - (e) In all other counties **\$400.00**~~[\$ 200.00]~~
- (8) Retail drink license, *motel drink license, restaurant drink license, or supplemental bar license*, per annum:

- (a) In counties containing cities of the first class ~~\$1,000.00~~ \$ 800.00
- (b) In counties containing cities of the second class ~~\$700.00~~ \$ 500.00
- (c) In counties containing cities of the third class ~~\$600.00~~ \$ 400.00
- (d) In counties containing cities of the fourth class ~~\$500.00~~ \$ 300.00
- (9) Transporter's license, per annum ~~\$100.00~~ \$ 25.00
- (10) Dining car license, per annum ~~\$100.00~~ \$ 50.00
- (11) Special nonbeverage alcohol vendor's license, per annum ~~\$50.00~~ \$ 25.00
- (12) Special industrial alcohol license, per annum ~~\$50.00~~ \$ 25.00
- (13) Special nonindustrial alcohol license, per annum ~~\$50.00~~ \$ 25.00
- (14) Special agent's or solicitor's license, per annum ~~\$25.00~~ \$ 20.00
- (15) Special storage or warehouse license *and bottling house storage license*,
per annum ~~\$500.00~~ \$ 100.00
- (16) Special temporary *liquor* license, per *event* ~~\$100.00~~
~~month or part of month, one sixth (1/6) of the fees enumerated in subsection (7).]~~
- (17) Special private club license, per annum ~~\$300.00~~ \$ 150.00
- (18) Special Sunday retail drink license, *per annum* ~~\$500.00~~ \$ 300.00
- (19) Nonresident, special agent or solicitor's license, per annum ~~\$100.00~~ \$ 20.00
- (20) Transport permit, nonresident license, per annum ~~\$100.00~~ \$ 25.00
- (21) Through transporter's license, per annum ~~\$100.00~~ \$ 25.00
- (22) Freight forwarder's license, per annum ~~\$100.00~~ \$ 25.00
- (23) ~~Supplemental bar license:~~
 - ~~(a) In counties containing cities of the first class \$ 800.00~~
 - ~~(b) In counties containing cities of the second class \$ 500.00~~
 - ~~(c) In counties containing cities of the third class \$ 400.00~~
- (24) Restaurant wine license, per annum ~~\$500.00~~
 - ~~(a) New applicants \$ 300.00~~
 - ~~(b) Renewals \$ 200.00~~
- (24)(25) Farm winery license, per annum ~~\$100.00~~ \$ 25.00
 - (a) Farm winery, *off-premises* retail outlet license, *per annum* ~~\$25.00~~ \$ 5.00
- (25)(26) Special temporary wine license, *per event* ~~\$50.00~~ \$ 25.00
- (26)(27) Caterer's license, per annum ~~\$800.00~~ \$ 400.00
- (27)(28) Souvenir retail liquor license, per annum \$500.00
- (28)(29) Special temporary distilled spirits and wine
auction license, *per event* \$100.00
- (29) *Airport drink license, per annum* ~~\$1,000.00~~
- (30) *Convention center or convention hotel complex*
license, per annum ~~\$5,000.00~~
- (31) *Extended hours, supplemental license, per annum* ~~\$2,000.00~~

- (32) *Horse race track license, per annum* \$2,000.00
- (33) *Air or rail system license, per annum* \$2,000.00
- (34) *Riverboat license, per annum* \$1,000.00
- (35) *Bottling house license, per annum* \$1,000.00
- (36) *Hotel in-room license, per annum* \$200.00
- (37) *Bonded warehouse license, per annum* \$1,000.00
- (38) *Air transporter liquor license, per annum* \$500.00
- (39) *Replacement or duplicate license* \$25.00
- (40) ~~Such~~ Other special ~~licenses~~ ~~license as~~ the board ~~finds~~ ~~may find~~ necessary for the proper regulation and control of the traffic in distilled spirits and wine and ~~provides~~ ~~may provide~~ for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), and (39). The application fee shall be applied to the licensing fee if the application is issued, and shall be retained by the department if the license is denied.

Section 2. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the administrator of the malt beverages unit, the fees for which shall be:

- (1) Brewer's license, per annum \$2,500.00~~[\$1,500.00]~~
- (2) Microbrewery license, per annum \$500.00~~[\$ 250.00]~~
- (3) Distributor's license, per annum \$500.00~~[\$ 200.00]~~
- (4) *Malt beverage retail*~~Retailer's~~ license, per annum:
 - (a) New applicants \$200.00
 - (b) Renewals \$150.00~~[\$ 75.00]~~
- (5) Dining car license, per annum \$200.00~~[\$ 100.00]~~
- (6) Transporter's license, per annum \$100.00~~[\$ 25.00]~~
- (7) Special temporary license, per event \$50.00~~[\$ 12.50]~~
- (8) Special off-premises *retail* storage license, per annum \$100.00~~[\$ 25.00]~~
- (9) Distributor's storage, per annum \$250.00~~[\$ 50.00]~~
- (10) Special beer transporter's license, per annum \$100.00~~[\$ 25.00]~~
- (11) *Brew-on-premises license, per annum* \$500.00
- (12) *Out-of-state brewer license, per annum* \$1,500.00
- (13) *Malt beverage warehouse license, per annum* \$1,000.00
- (14) *Replacement or duplicate license, per annum* \$25.00
- (15) ~~Such~~ Other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, ~~as~~ ~~which may be~~ provided for by *administrative regulations promulgated*~~regulation and adopted~~ by the state board.

Applicants for special licenses provided for under the authority granted in subsection (15)~~(11)~~ may be exempt from so much of the provisions of subsection (1)(e)~~(3)~~ of KRS 243.100 *set out in administrative regulations promulgated by*~~and paragraph (e) of subsection (1) of KRS 244.090 as~~ the board ~~by regulation prescribes~~. *A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application for a license*

under this section except for subsections (6), (7), (10), and (14). The application fee shall be applied to the licensing fee when the application is issued, or retained by the department if the license is denied.

Section 3. KRS 243.025 is amended to read as follows:

~~All~~~~Twenty five percent (25%)~~ of the fees paid into the State Treasury for licenses *issued under Sections 1 and 2 of this Act*~~permitting the sale of distilled spirits and wine at retail by the package and by the drink and restaurant wine licenses~~ shall be credited to a revolving trust and agency account, as provided in KRS 45.253, for the Department of Alcoholic Beverage Control. These moneys shall be used solely for the administration and enforcement of KRS Chapters 241, 242, 243, and 244. The moneys in the account shall not lapse at the close of the fiscal year.

Section 4. KRS 243.060 is amended to read as follows:

(1) The fiscal court of each county in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of trafficking in alcoholic beverages. ~~These~~~~Only such~~ licenses may be issued *by the county administrator*~~as correspond, in their provisions and the business authorized, to distilled spirits and wine retail package licenses, distilled spirits and wine retail drink licenses, restaurant wine licenses and malt beverage retailers' licenses~~. The license fees shall not exceed *the following*:

(a) *Retail package licenses, per annum:*

- 1. *In counties containing cities of the first class* \$1,200.00
- 2. *In counties containing cities of the second class* \$1,000.00
- 3. *In counties containing cities of the third class* \$800.00
- 4. *In counties containing cities of the fourth class* \$600.00
- 5. *In all other counties* \$400.00

(b) *Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:*

- 1. *In counties containing cities of the first class* \$1,600.00
- 2. *In counties containing cities of the second class* \$1,000.00
- 3. *In counties containing cities of the third class* \$800.00
- 4. *In counties containing cities of the fourth class* \$600.00

(c) *Special temporary liquor license, per event:*

- 1. *In counties containing cities of the first class* \$266.66
- 2. *In counties containing cities of the second class* \$166.66
- 3. *In counties containing cities of the third class* \$133.34
- 4. *In counties containing cities of the fourth class* \$100.00

(d) *Restaurant wine license, per annum:*

- 1. *New applicants* \$600.00
- 2. *Applicants for renewal* \$400.00

(e) *Special temporary wine license, per event* \$50.00

(f) *Special private club license, per annum* \$300.00

(g) *Special Sunday retail drink license, per annum* \$300.00

(h) *Retail malt beverage license, per annum:*

- 1. *New applicants* \$400.00
- 2. *Applicants for renewal* \$150.00

(i) *Special temporary malt beverage license, per event* \$25.00

~~{twice the amount of the fees imposed in KRS 243.030 and 243.040 for such licenses except that the fee for a Sunday distilled spirits and wine retail drink license shall not exceed three hundred dollars (\$300).}~~

- (2) Any amount paid to any city within the county as a license fee for the same privilege for the same year may be credited against the county license fee.
- (3) If any part of this section is held invalid, all of this section and of KRS 243.600 shall also be considered invalid.

Section 5. KRS 243.070 is amended to read as follows:

The city legislative body of any city in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of manufacturing and trafficking in alcoholic beverages. *The licenses may only be issued by the city administrator, and the fee shall not exceed the following:*

- (1) *Distilled spirit licenses as set forth in Section 1 of this Act:*
 - (a) *Distiller's license, per annum* \$500.00
 - (b) *Rectifier's license, per annum* \$3,000.00
 - (c) *Blender's license, per annum* \$3,000.00
 - (d) *Wholesaler's distilled spirits and wine license, per annum* \$3,000.00
 - (e) *Distilled spirits and wine retail package license, per annum:*
 - 1. *In counties containing cities of the first class* \$1,200.00
 - 2. *In counties containing cities of the second class* \$1,000.00
 - 3. *In counties containing cities of the third class* \$800.00
 - 4. *In counties containing cities of the fourth class* \$600.00
 - 5. *In all other counties* \$400.00
- (2) *Distilled spirits and wine retail drink license, motel drink license, airport drink license, restaurant drink license, or supplemental bar license, per annum:*
 - (a) *In counties containing cities of the first class* \$1,600.00
 - (b) *In counties containing cities of the second class* \$1,000.00
 - (c) *In counties containing cities of the third class* \$800.00
 - (d) *In counties containing cities of the fourth class* \$600.00
- (3) *Distilled spirits and wine special temporary liquor license, per event:*
 - (a) *In counties containing cities of the first class* \$266.66
 - (b) *In counties containing cities of the second class* \$166.66
 - (c) *In counties containing cities of the third class* \$133.33
 - (d) *In counties containing cities of the fourth class* \$100.00
- (4) *Special temporary wine license, per event* \$50.00
- (5) *Distilled spirits and wine special temporary auction license, per event* \$200.00
- (6) *Special private club license, per annum* \$300.00
- (7) *Distilled spirits and wine special Sunday retail drink license, per annum* \$300.00
- (8) *Extended hours supplemental license, per annum* \$2,000.00
- (9) *Nonresident special agent or solicitor's license, per annum* \$40.00
- (10) *Restaurant wine license, per annum:*

(a)	<i>New applicants</i>	\$600.00
(b)	<i>Applicants for renewal</i>	\$400.00
(11)	<i>Caterer's license, per annum</i>	\$800.00
(12)	<i>Riverboat license, per annum</i>	\$1,200.00
(13)	<i>Horse race track license, per annum</i>	\$2,000.00
(14)	<i>Convention center or convention hotel complex license, per annum</i>	\$2,000.00
(15)	<i>Bottling house distilled spirits license or wine storage license, per annum</i>	\$1,000.00
(16)	<i>Souvenir retail liquor license, per annum</i>	\$1,000.00
(17)	<i>Malt beverage licenses as follows:</i>	
(a)	<i>Brewer's license, per annum</i>	\$500.00
(b)	<i>Microbrewery license, per annum</i>	\$500.00
(c)	<i>Malt beverage distributor's license, per annum</i>	\$400.00
(d)	<i>Retail malt beverage license, per annum</i>	\$200.00
(e)	<i>Special temporary retail malt beverage license, per event</i>	\$25.00
(f)	<i>Malt beverage brew-on-premises license, per annum</i>	\$100.00

~~{Only such licenses may be issued as correspond, in their provisions and the business authorized, to the licenses provided for in subsections (1), (2), (3), (6), (7), (8), (16), (17), (18), (19), (23), (24), (26), (27), (28), and (30) of KRS 243.030 and subsections (1), (2), (3), (4), (7), and (11) of KRS 243.040. The fees imposed shall not exceed twice the amount of the fees imposed in KRS 243.030 and 243.040 for such licenses, except that the fee for a Sunday distilled spirits and wine retail drink license shall not exceed three hundred dollars (\$300), the fee for a malt beverage retailer's license shall not exceed two hundred dollars (\$200), the fee for a brewer's license shall not exceed five hundred dollars (\$500), and the fee for a distiller's license shall not exceed five hundred dollars (\$500).}~~

Section 6. KRS 243.090 is amended to read as follows:

- (1) All licenses issued *by the department, except special event or temporary licenses, shall be valid for a period of no more than a year. All licenses shall expire on June 30 of each year until the licensee is notified by the department that a renewal system with staggered dates has been implemented. The department shall promulgate administrative regulations establishing the year-round system for renewal of licenses. The system shall be designed to distribute the workload as uniformly as possible within the offices of the local administrators and the department*~~{under KRS 243.020 to 243.670 shall expire on June 30 of each year. The renewal by the department of the certificate or permit of any alcoholic beverage licensee shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor}.~~
- (2) When any person applies for a *new* license authorized to be issued under KRS 243.020 to 243.670,~~{after July 1 of any year,}~~ he shall be charged, *if the license is issued, the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed*~~{, if the license is issued, an amount equal to as many twelfths of the annual license fee as there are calendar months, including the month in which the license is granted, until the following July 1, except that no license shall be issued for a shorter period than six (6) months}.~~ No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.
- (3) *The renewal by the department of the certificate or permit of any alcoholic beverage license shall not be construed to waive or condone any violation that occurred prior to the renewal and shall not prevent subsequent proceedings against the licensee.*

Section 7. KRS 243.035 is amended to read as follows:

In addition to the licenses prescribed by KRS 243.030, a bottling house license may be issued by the administrator of the Distilled Spirits Unit, *upon payment of* the fee *set forth in Section 1 of this Act* ~~for which shall be five hundred dollars (\$500) per annum~~. The license may be issued only to persons who are authorized under this chapter to store or warehouse distilled spirits or wine. The bottling house license shall authorize the licensee to bottle distilled spirits on the premises designated in the license. The holder of a bottling house license may also hold a special storage or warehouse license.

Section 8. KRS 243.036 is amended to read as follows:

- (1) A special temporary distilled spirits and wine auction license may be issued to a charitable organization, upon the payment of ~~the~~ fee *set forth in Section 1 of this Act* ~~one hundred dollars (\$100)~~ and upon satisfaction of the requirements prescribed by administrative regulation promulgated by the department.
- (2) A special temporary distilled spirits and wine auction license shall authorize the charitable organization to:
 - (a) Purchase, transport, receive, possess, store, sell, and deliver distilled spirits and wine to be sold at auction in the manner prescribed by administrative regulation promulgated by the department;
 - (b) Obtain distilled spirits and wine from distillers, rectifiers, vintners, wholesalers, distributors, retailers, or any other person, by gift or donation, for the purpose of charity auctions in the manner prescribed by administrative regulation promulgated by the department; and
 - (c) Receive payment for distilled spirits and wine sold at auctions in the manner prescribed by administrative regulation promulgated by the department.
- (3) Each distilled spirits and wine auction conducted by a charitable organization shall be subject to all restrictions and limitations contained in KRS Chapters 241 to 244 and the administrative regulations issued *under those chapters* ~~pursuant thereto~~, and shall be authorized only on the days and only during the hours that the sale of alcoholic beverages is otherwise authorized in the county or municipality.
- (4) The location at which the distilled spirits and wine are auctioned *under* ~~pursuant to~~ this section shall not constitute a public place for the purpose of KRS Chapter 222. Distilled spirits and wine auctions may be conducted on licensed or unlicensed premises. The charitable organization possessing a special temporary distilled spirits and wine auction license shall post a copy of the license at the location of the auction. During this period not more than one (1) auction shall be held.
- (5) ~~A~~ ~~No~~ special temporary distilled spirits and wine auction license shall *not* be issued for any period longer than thirty (30) days. During this period not more than one (1) auction shall be held.
- (6) Notwithstanding any other provision of KRS Chapters 241 to 244, a distiller, rectifier, vintner, wholesaler, distributor, or retailer may donate, give away, or deliver any of its products to a charitable organization possessing a special temporary distilled spirits and wine auction license *under* ~~pursuant to~~ this section.
- (7) All restrictions and prohibitions applying to a distilled spirits and wine retail package and distilled spirits and wine by the drink license, not inconsistent with this section, shall apply to a special temporary distilled spirits and wine auction license.

Section 9. KRS 243.055 is amended to read as follows:

- (1) As used in this section, the following definitions shall apply:
 - (a) "Hotel" means any hotel, motel, inn, or other establishment which offers overnight accommodations to the public for hire;
 - (b) "In-room service" means the delivery of alcoholic beverages in unbroken packages by an employee of the hotel to a registered guest's room when the alcoholic beverages have been ordered by a guest and when the guest shall be billed for the cost of the alcoholic beverages at the time of delivery, with all sales of the alcoholic beverages being completed upon delivery; and, additionally, the provision of a cabinet or other facility located in a hotel guest's room which contains alcoholic beverages and which is provided upon written request of the guest and which is accessible by lock and key or remote control device only to the guest, with the sale of the alcoholic beverages contained therein being final at the time requested, except for a credit which may be given to the guest for any unused portion. The licensee may stock a cabinet or other facility located in a hotel guest's room pursuant to this section, with fifty (50) milliliter containers of distilled spirits.

(2) The department may issue a hotel in-room service license to any hotel which is licensed to sell distilled spirits, wine, and malt beverages upon the payment of ~~the [a] fee set forth in Section 1 of this Act [one hundred dollars (\$100)].~~ The license shall authorize the licensee to sell distilled spirits, wine, and malt beverages by in-room service. The sale of alcoholic beverages by in-room service shall be subject to all restrictions and limitations contained in KRS Chapters 241 to 244, and the administrative regulations issued *under those chapters* ~~[pursuant thereto]~~, and shall be authorized only on the days and only during the hours as the sale of alcoholic beverages is otherwise authorized in the county or municipality. All alcoholic beverages sold pursuant to this section shall be considered by the drink sales and shall be subject to all state and local taxes imposed on alcoholic beverages and shall be purchased from a licensed wholesaler and distributor.

Section 10. Whereas additional moneys are needed to provide the Department of Alcoholic Beverage Control the resources to effectively finance the reorganization of the Department as directed under Executive Order 97-26, dated January 7, 1997, and to provide for the training and hiring of personnel in the newly created Division of Support Services Administration, Office of Legal Services, Enforcement Division, and Field Offices, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 13, 1998

CHAPTER 519

(HB 551)

AN ACT authorizing the payment of certain claims against the state which have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which claims were chargeable and declaring an emergency.

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

Section 1. (1) There is appropriated out of the general fund in the State Treasury for the purpose of compensating persons and companies named below for claims which have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, the amounts listed below:

- 1. AR Head Neck Center\$458.25
200 Medical Center Drive, #2N
Hazard, Kentucky 41701-9422
- 2. Newberry, Hargrove, Rambicure, PSC.....\$1,848.81
2800 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507-1743
- 3. Joy Ogles.....\$1,084.33
13 Huntington Drive
Clarksville, Tennessee 37043-5824
- 4. Jonny Vermillion\$2,937.29
P.O. Box 686
Hazard, Kentucky 41701
- 5. Seiller and Handmaker, LLP.....\$805.97
Attorneys at Law
2200 Meidinger Tower
Louisville, Kentucky 40202

6.	Office of the Pike County Attorney.....\$40,252.40 P.O. Box 231 Pikeville, Kentucky 41501		
7.	Advanced Clinical Technologies.....\$840.00 410 South First Street, Suite 219 Louisville, Kentucky 40202		
8.	BellSouth.....\$54.06 P.O. Box 33009 Charlotte, North Carolina 28243-0001		
9.	Nobrega Prescription Center.....\$36.64 DBA Battson Drug 233 East Main Street Morehead, Kentucky 40351		
10.	Hurstbourne Business Park Partnership\$1,790.33 136 St. Matthews Avenue Louisville, Kentucky 40207		
11.	City of Radcliff.....\$15,233.00 P.O. Drawer 519 Radcliff, Kentucky 40159-0519		
12.	BellSouth Telecommunications, Inc.....\$1,698.12 Payment Remittance Office 125 Perimeter Center West, Room 190 Atlanta, Georgia 30346		
13.	Charlie Wilkins.....\$2,625.00 864 Wildlife Lodge Road LaCenter, Kentucky 42056		
14.	Treasurer, Clark County Board of Education.....\$22,872.21 Lexington Avenue Winchester, Kentucky 40391	1600	West
15.	Integrated Systems Solutions Corporation.....\$5,549.51 455 Park Place Lexington, Kentucky 40511-1856		
16.	Jefferson County Treasurer.....\$150,500.00 Jefferson County Youth Center 720 West Jefferson Street Louisville, Kentucky 40202-2717		
17.	Brown, Todd, and Heyburn, PLLC.....\$64,457.14 3200 Providian Center 400 West Market Street		

- Louisville, Kentucky 40202-3363

18. Weber and Rose.....\$5,269.48

2700 Providian Center

400 West Market Street

Louisville, Kentucky 40202-3364
- 19. W. David Shearer, Jr.....\$879.50

Suite 812, Marion E. Taylor Building

312 South Forth Avenue

Louisville, Kentucky 40202-3083
- 20. Brown, Todd, and Heyburn, PLLC.....\$4,129.02

3200 Providian Center

400 West Market Street

Louisville, Kentucky 40202-3363
- 21. Wyatt, Tarrant, and Combs.....\$13,643.42

Citizens Plaza

500 West Jefferson Street

Louisville, Kentucky 40202
- 22. David L. Holton II.....\$4,240.00

7210 Dixie Highway

Louisville, Kentucky 40258
- 23. RiverValley Behavioral Health Hospital.....\$7,484.00

P.O. Box 1637

Owensboro, Kentucky 42302-1637
- 24. Glenda S. Ockerman.....\$4,123.84

1662 Chrissie Lane

Maysville, Kentucky 41056-9162
- 25. Paul L. Whalen.....\$1,654.38

113 Ridgeway Avenue

P.O. Box 22

Fort Thomas, Kentucky 41075
- 26. Terry Gray, President.....\$1,908.98

T.A.G. Resource Recovery

18038 Radworthy Drive, Suite 110

Houston, Texas 77084
- 27. Child Protection, Inc.....\$125.00

869 Broadway Avenue

Bowling Green, Kentucky 42101
- 28. Wolnitzek,Rowekamp,Bender,andBonar,P.S.C.....\$7,005.98

P.O. Box 352
 Covington, Kentucky 41012-0352

29. Janice K. Lawrence.....\$338.92
 4014 Gingerwood Drive
 Louisville, Kentucky 40220

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or their representatives, and the firms listed, but not presented for payments within a period of five (5) years from the date of issuance of such checks as required by KRS 41.370 and 413.120.

	<u>Payee</u>	<u>Treasury Fee</u>	<u>Check Fee</u>	
1.	Check #402961 dated July 31, 1962 John Lawrence Jones, Jr. Kenneth V. Anderson, Jr. 2320 Broadway Paducah, Kentucky 42001 (totals)	\$500.00	\$25.00	\$475.00
2.	Check #A5,802,429 dated January 1, 1973 Estate of Nova Bertram Spann c/o G. George Bertram, Attorney at Law P.O. Box 327 Monticello, Kentucky 42633 (totals)	\$45.00	\$25.00	\$20.00
3.	Check #M0,503,817 dated September 20, 1974 Midway Drug Midway, Kentucky 40347 (totals)	\$145.78	\$25.00	\$120.78
4.	Check #P9,115,090 dated July 30, 1981 Edna F. Phillips 621 Beaumont Avenue Lexington, Kentucky 40502 (totals)	\$239.00	\$25.00	\$214.00
5.	Check #T,0385,818 dated April 12, 1982 Michael L. Schmidt 186 Winters Lane Cold Spring, Kentucky			

	41076 (totals)	\$33.85	\$25.00	\$8.85
6.	Check #T1,485,575 dated June 8, 1983	\$109.65	\$25.00	\$84.65
7.	Check #E0,437,156 dated July 1991 Helen Sanders 836 Sanders Lane Reynolds Station, Kentucky	<u>\$48.00</u>	<u>\$25.00</u>	<u>\$23.00</u>
	42368 (totals)	\$157.65	\$50.00	\$107.65
8.	Check #T2,371,952 dated June 26, 1984 Maurice E. and Barbara Woods 5510 Tealeaf Court Louisville, Kentucky			
	40291 (totals)	\$148.28	\$25.00	\$123.28
9.	Check #P3,001,039 dated August 23, 1984 E.T. Lorenzo 5220 Buckner Drive Huber Heights, Ohio			
	45424-6133 (totals)	\$138.60	\$25.00	\$113.60
10.	Check #G0,166,115 dated December 17, 1984 Darrell Mullins and U,L,H,P, and Company Account Number 5540-2034-02-4 380 Spillman Lane Dry Ridge, Kentucky			
	41035 (totals)	\$150.00	\$25.00	\$125.00
11.	Check #G0,261,931 date January 17,1985 Treasurer, City of Pineville P.O. Box 688 Pineville, Kentucky			
	40977 (totals)	\$3,135.35	\$25.00	\$3,110.35
12.	Check #T3,162,770 dated May 21, 1985 Teri Eisenmenger 7804 Canonero Way			

	Louisville, Kentucky			
	40291 (totals)	\$177.00	\$25.00	\$152.00
13.	Check #T3,312,703			
	dated September 5, 1985			
	Walter M. and Nellie Whelan			
	3017 Hayfield Drive			
	Louisville, Kentucky			
	40205 (totals)	\$64.41	\$25.00	\$39.41
14.	Check #T4,196,823			
	dated July 8, 1986			
	David M. Gardner			
	3935 Harmony Grove Road			
	Hopkinsville, Kentucky			
	42240 (totals)	\$43.95	\$25.00	\$18.95
15.	Check #G1,561,022			
	dated August 5, 1986			
	J. Sharps Crislip			
	1350 West Broadway			
	Mayfield, Kentucky			
	42066 (totals)	\$150.00	\$25.00	\$125.00
16.	Check #G1,600,492			
	dated August 20, 1986			
	Mountain Supply Company			
	General Delivery			
	Grays Knob, Kentucky			
	40829 (totals)	\$1,562.80	\$25.00	\$1,537.80
17.	Check #A9,209,617			
	dated March 2, 1987			
	Linda Bates			
	7620 North Highway 1247			
	Science Hill, Kentucky			
	42553 (totals)	\$140.00	\$25.00	\$115.00
18.	Check #G2,603,758			
	dated September 9, 1987			
	Debbie's Hair Design			
	c/o Debbie Denniston			
	P.O. Box 323			
	Campton, Kentucky			

	41301	(totals)	\$471.52	\$25.00	\$446.52
19.	Check #G3,090,130 dated February 19,1988 Pattie Caldwell Farmer P.O. Box 71 Wallins Creek, Kentucky				
	40873	(totals)	\$50.00	\$25.00	\$25.00
20.	Check #T5,701,670 dated May 24, 1988 Jack B. and Wilma Richardson 312 Ragan Avenue Henderson, Kentucky				
	42420	(totals)	\$4,010.00	\$25.00	\$3,985.00
21.	Check #G3,440,529 dated July 12, 1988 American Association of School Administrators 1801 North Moore Street Arlington, Virginia				
	22209	(totals)	\$1,700.00	\$25.00	\$1,675.00
22.	Check #T6,015,936 dated July 25, 1988 John C. White 4003 Madia Drive Somerset, Kentucky				
	42503	(totals)	\$2,154.92	\$25.00	\$2,129.92
23.	Check #G3,715,813 dated October 25, 1988 Foreign Auto Salvage, Inc. 1980 Highland Pike Fort Wright, Kentucky				
	41017	(totals)	\$420.93	\$25.00	\$395.93
24.	Check #T6,367,696 dated April 13 1989 Criag T. Mattingly 2033 Thomerson Park Road Austin, Kentucky				
	42123	(totals)	\$71.71	\$25.00	\$46.71
25.	Check #G4,326,869				

	dated May 30, 1989			
	Jimmy O. Kelly			
	630 Gravelly Road			
	Kingsport, Tennessee			
	37660 (totals)	\$208.00	\$25.00	\$183.00
26.	Check #G5,508,211			
	dated May 24, 1990			
	Stephen G. Nanny			
	P.O. Box 182			
	Murray, Kentucky			
	42071 (totals)	\$500.00	\$25.00	\$475.00
27.	Check #T7,667,831			
	dated July 9, 1990			
	Laith M. Ross			
	536 McCubbing Drive			
	Lexington, Kentucky			
	40503 (totals)	\$67.00	\$25.00	\$42.00
28.	Check #G6,048,304			
	dated November 5, 1990			
	Gray G. Eldridge			
	P.O. Box 787			
	Morehead, Kentucky			
	40351 (totals)	\$228.46	\$25.00	\$203.46
29.	Check #A2,397,203			
	dated December 1, 1990			
	John J. Schuler III			
	3805 Sunrise Way			
	Louisville, Kentucky			
	40220 (totals)	\$162.00	\$25.00	\$137.00
30.	Check #T7900905			
	dated March 11, 1991	\$780.44	\$25.00	\$755.44
31.	Check #T7900906			
	dated March 11, 1991	<u>\$30.01</u>	<u>\$25.00</u>	<u>\$5.01</u>
	Mountain Metal Company			
	P.O. Box 131			
	Railroad Avenue			
	Prestonsburg, Kentucky			
	41668 (totals)	\$810.45	\$50.00	\$760.45

- | | | | | |
|-----|--|-----------------|----------------|-----------------|
| 32. | Check #T8124351
dated May 3, 1991
Mark A. Smith
906 South Lincoln Boulevard #3
Hodgenville, Kentucky | | | |
| | 42748 (totals) | \$75.69 | \$25.00 | \$50.69 |
| 33. | Check #T8525287
dated July 10, 1991
John F. Taylor
301C Bainbridge Drive
Lexington, Kentucky | | | |
| | 40509 (totals) | \$121.00 | \$25.00 | \$96.00 |
| 34. | Check #G7806742
dated January 24, 1992
Pine Mountain Contracting and Refrigeration Lines
c/o Fred G. Roark, Certified Public Account
57 Northwood Drive
Pikeville, Kentucky | | | |
| | 41501 (totals) | \$850.00 | \$25.00 | \$825.00 |
| 35. | Check #T9445677
dated July 2, 1992 | \$265.00 | \$25.00 | \$240.00 |
| 36. | Check #T9604791
dated July 2, 1992 | \$256.00 | \$25.00 | \$231.00 |
| 37. | Check #T9604792
dated July 2, 1992 | <u>\$427.00</u> | <u>\$25.00</u> | <u>\$402.00</u> |
| | Thomas H. and L. Owen, Jr.
230 Valley Road
Grand Rivers, Kentucky | | | |
| | 42045 (totals) | \$948.00 | \$75.00 | \$873.00 |
| 38. | Check #M5,175,841
dated September 22, 1992
Harold Kincaid
P.O. Box 618
Beattyville, Kentucky | | | |
| | 41311 (totals) | \$47.20 | \$25.00 | \$22.20 |
| 39. | Check #T0068181
dated April 2, 1993
Jeffery Lewis | | | |

	2933 Chestnut Road			
	Whitehouse, Kentucky			
	41269 (totals)	\$389.00	\$25.00	\$364.00
40.	Check #T8111953			
	dated May 3, 1991			
	Thomas R. Allen			
	1325 Vim Drive			
	Louisville, Kentucky			
	40213 (totals)	\$257.00	\$25.00	\$232.00
41.	Check #349198			
	dated February 26, 1962			
	John W. Shean, P.O.A.			
	630 Kewanna Drive			
	Jeffersonville, Indiana			
	47130 (totals)	\$500.00	\$25.00	\$475.00

Section 2. The Finance and Administration Cabinet and the State Treasurer are authorized to pay the following listed claims from the following funds:

(1) The Kentucky Retirement Systems is authorized to make payment from their retirement fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the amounts listed below:

		<u>Payee</u>	<u>Treasury Fee</u>	<u>Check Fee</u>
1.	Check #R1,785,912			
	dated December 6, 1983			
	Estate of Nova Bertram Spann			
	c/o G. George Bertram, Attorney at Law			
	P.O. Box 327			
	Monticello, Kentucky			
	42633 (totals)	\$2,500.00	\$25.00	\$2,475.00

(2) The Workforce Development Cabinet is authorized to make payment from their Unemployment Compensation Fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the amounts listed below:

		<u>Amount</u>
1.	Check #U4328901	
	dated July 11, 1975	
	Virginia D. Pate-Shelton	
	4797 Highway 54	
	Owensburg, Kentucky	
	42301 (totals)	\$148.00
2.	Check #U1,780,615	

dated August 4, 1987	\$63.00
3. Check #U1,780,616	
dated August 4, 1987	<u>\$252.00</u>
J. Wheeler, Jr.	
320 Spalding Lane	
Cox's Creek, Kentucky	
40013 (totals)	\$315.00

Section 3. Whereas the person and companies named above have furnished in good faith the services, supplies, and materials enumerated, and the Commonwealth has received the same, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 13, 1998

CHAPTER 520

(HB 554)

AN ACT relating to the awarding of public contracts.

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

Section 1. KRS 45A.485 is amended to read as follows:

- (1) Any state contract awarded under KRS Chapter 45A, 175, 176, 177, or 180 after July 15, 1994, shall require the contractor **and all subcontractors performing work under the contract** to:
 - (a) Reveal any final determination of a violation by **their respective company**~~[the contractor]~~ within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor **or subcontractor**, and
 - (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor **or subcontractor** for the duration of the contract.
- (2) A contractor's failure to reveal a final determination of a violation **by the contractor** of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's:
 - (a) Cancellation of the contract; and
 - (b) Disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.
- (3) **A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's disqualification of the subcontractor from eligibility for future state contracts for a period of two (2) years.**

Section 2. KRS 45A.343 is amended to read as follows:

- (1) Any local public agency may adopt the provisions of KRS 45A.345 to 45A.460. No other statutes governing purchasing shall apply to a local public agency upon adoption of these provisions.
- (2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor **and all subcontractors performing work under the contract** to:
 - (a) Reveal any final determination of a violation by the contractor **or subcontractor** within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor **or subcontractor**; and

- (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor *or subcontractor* for the duration of the contract.
- (3) A contractor's failure to reveal a final determination of a violation *by the contractor* of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's:
 - (a) Cancellation of the contract; and
 - (b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.
- (4) *A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's disqualification of the subcontractor from eligibility for future contracts for a period of two (2) years.*

Approved April 13, 1998

CHAPTER 521

(HB 560)

AN ACT relating to telecommunications.

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

Section 1. KRS 65.750 is amended to read as follows:

As used in *this section* to KRS~~[-65.755 and]~~ 65.760:~~[-]~~

- (1) "911 emergency telephone service" means a telephone service which provides the user of the public telephone system the ability to reach local emergency service agencies on a twenty-four (24) hour basis, by dialing the digits 9-1-1. Such a service is capable, at minimum, of transmitting requests for law enforcement, firefighting, and emergency medical and ambulance services to a public safety agency or other provider that provides the requested service at the place where the call originates. A 911 emergency telephone service may also provide for other emergency services;
- (2) *"Automatic number identification (ANI)" means a feature that allows for the automatic display of the ten (10) digit number, or equivalent, used to place a 911 call;*
- (3) *"Automatic location identification (ALI)" means a feature by which the name and address associated with the calling party's telephone number is made available to a PSAP;*
- (4) *"Automatic location identification data management system (ALI/DBS)" means a system of manual procedures and computer programs used to create, store, and update the data required for ALI in support of enhanced 911;*
- (5) *"Dispersed private telephone system (DPTS)" means a multiline, shared tenant system or PBX used for the purpose of reselling telephone service to residential customers and whose connection to a telephone network is capable of carrying emergency calls from more than one (1) specific location within a structure or structures but does not mean a multiline, shared tenant system or PBX owned and operated by a state agency or used in providing service within a hotel or motel;*
- (6) *"Fully enhanced 911 emergency telephone service" means a telephone network feature that selectively routes calls placed to the national 911 emergency number to the proper public service answering points (PSAPs) and provides the PSAP with a voice connection and ANI and ALI information;*
- (7) *"Private branch exchange (PBX)" means a privately owned switch system that connects calls to a telephone company;*
- (8) *"Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies;*

- (9) *"Service supplier" means a person or entity that administers, maintains, and operates the ALI/DBS and may include telephone companies that provide local exchange telephone service to a telephone subscriber; and*
- (10) *"Station identification number (SIN)" means a number that a DPTS uses to identify a specific station on the switch.*

SECTION 2. A NEW SECTION OF KRS 65.750 TO 65.760 IS CREATED TO READ AS FOLLOWS:

- (1) *Any DPTS located in an area that has adopted enhanced 911 emergency service shall within three (3) years of the date of its adoption, or if already adopted within three (3) years after the effective date of this Act, be able to:*
- (a) *Operate effectively within an enhanced 911 system;*
 - (b) *Transmit a SIN for the station that directly dials the emergency number 911 to the service supplier; and*
 - (c) *Provide the service supplier with the following system information that shall be updated within five (5) business days if changes occur within the system:*
 1. *Number of incoming trunk connections to the enhanced 911 system; and*
 2. *SIN, sublocation, such as floor or apartment number, if applicable, and street address of each station that may originate an emergency call.*
- (2) *In areas where fully enhanced 911 service has been implemented, the service supplier shall, at a minimum, make the verified ANI and ALI provided by the DPTS available to a PSAP for a fully enhanced 911 call.*
- (3) *In areas where fully enhanced 911 service has been implemented, the service supplier shall maintain the confidentiality and privacy of all information contained in the ALI/DBS, including any information that identifies telephone calls made from extensions on DPTS, except when the release of the information is ordered by a court of competent jurisdiction.*
- (4) *In areas where enhanced 911 service has been implemented, an employee of a PSAP shall not retrieve or disclose ALI information except in response to a 911 call or for the purpose of maintaining the ALI database, unless ordered by a court of competent jurisdiction.*

SECTION 3. A NEW SECTION OF KRS 65.750 TO 65.760 IS CREATED TO READ AS FOLLOWS:

- (1) *Any owner, employee, or agent of a DPTS that knowingly or wantonly violates the provisions of subsection (2) of Section 2 of this Act shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or imprisoned in the county jail for not more than ninety (90) days, or both. Each day the violation continues shall be considered a separate offense .*
- (2) *Any owner, employee, or agent of a DPTS or a service supplier that violates the provisions of subsection (3) of Section 2 of this Act shall be subject to the following penalties:*
- (a) *For a first offense, a Class A misdemeanor; and*
 - (b) *For a second and subsequent offense, a Class D felony.*

Section 4. KRS 65.760 is amended to read as follows:

- (1) Any city, county, or urban-county government may establish 911 emergency telephone service upon approval of the governing body of the city, county, or urban-county government, and may adopt regulations concerning the provision of this service by ordinance.
- (2) Any city, county, or urban-county government, or any combination thereof, may with the approval of their governing bodies enter into an interlocal cooperation agreement creating a joint 911 emergency telephone service.
- (3) The funds required by a city, county, or urban-county government to establish and operate 911 emergency telephone service, or to participate in joint service with other local governments, may be obtained through the levy of any special tax, license, or fee not in conflict with the Constitution and statutes of this state. The special tax, license, or fee may include a *subscriber charge for 911 emergency telephone service that shall be levied on an individual exchange-line basis, limited to a maximum of twenty-five (25) exchange lines per account*

per government entity. Any private commercial telephone service or owner of a dispersed private telephone system (DPTS) that provides local and 911 emergency service to subscribers for compensation shall collect and remit the subscriber charge to the local government on the same basis as the primary local exchange carrier, except that this requirement shall not apply to a state agency that currently maintains an independent 911 system with its own public safety answering point ~~to be collected from local exchange telephone subscribers in the area to be served by 911 service on an individual exchange line basis limited to a maximum of twenty five (25) exchange lines per account~~. All revenues from a tax or fee expressly levied to fund 911 emergency services shall be expended solely for *the establishment, operation, and maintenance of a 911 emergency communications system; this may include expenditures to train communications personnel and to inform the public of the availability and proper use of 911 service* ~~for this purpose~~.

- (4) The governing body may apply for and accept federal moneys, and may accept contributions and donations from any source for the purpose of funding 911 emergency telephone service.
- (5) ~~(4)~~ Nothing in this section shall preclude other means of establishing or funding a 911 emergency telephone service within any local area or exchange, nor require the operation of such service by any local government.

Section 5. There is hereby established the DPTS/911 Task Force to study the issue of whether owners or operators of a dispersed system should be required to locate their telephone extensions in order to operate effectively within an enhanced 911 emergency service. The task force in its study shall determine the cost, under a range of common conditions, of purchasing or upgrading the equipment and services necessary to transmit the full 10-digit identifying number to a service supplier. The task force shall report its findings together with specific legislative recommendations, if applicable, to the Legislative Research Commission and to the interim committee with jurisdiction over matters concerning telecommunications services no later than August 1, 1999.

Section 6. The task force shall consist of no more than fifteen (15) members appointed by the Legislative Research Commission on or before July 1, 1998. Members shall include at least four (4) members of the General Assembly and nonlegislative members representative of business, emergency services, communications providers, industry, and other stakeholders in the issue. The Legislative Research Commission shall appoint the chair or co-chairs of the task force, who shall be members of the General Assembly.

Section 7. Staff services to be utilized in completing this study are estimated to cost \$20,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 13, 1998

CHAPTER 522

(HB 565)

AN ACT relating to alcoholic beverages.

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

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

The board may compel obedience to its lawful orders by injunction or other proper proceedings in Franklin Circuit Court or any other court of competent jurisdiction and the proceedings shall have priority over all pending cases.

Section 2. KRS 241.060 is amended to read as follows:

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

- (1) To promulgate reasonable administrative regulations governing *procedures* ~~the procedure~~ relative to *the* applications for and revocations of licenses, ~~and relative to all other matters over which the board has jurisdiction, and for~~ the supervision and control of *the use*, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, *and all other matters over which the board has jurisdiction*. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;
- (2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the board may make

reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions ~~or of~~ subdivisions;

- (3) To hold hearings ~~to be conducted~~ in accordance with the provisions of KRS Chapter 13B. The department may pay witnesses the per diem and mileage provided in KRS 421.015;
- (4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;
- (5) **To destroy evidence in the department's possession after all administrative and judicial proceedings are conducted;**
- (6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;
- ~~(7)(6)~~ **To be required, if violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises within the knowledge of the owner, or was committed or permitted in or upon premises owned by a licensee, to prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed if a violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises which the owner knew of or should have known of, or was committed or permitted in or on the premises owned by the licensee;**
- ~~(8)(7)~~ To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license; and
- ~~(9)(8)~~ To promulgate administrative regulations and to provide forms that may be necessary to regulate the alcoholic beverage industry and to make KRS 244.380 to 244.470 effective.

Section 3. KRS 241.190 is amended to read as follows:

The functions of each city administrator shall be the same with respect to city licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a city administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the board ~~[. No regulation of a city administrator shall become effective until it has been approved by the board].~~

Section 4. KRS 241.200 is amended to read as follows:

Appeals from the orders of each city administrator may be taken to the board, by filing with the board within **thirty (30)** ~~ten (10)~~ days a certified copy of the orders of the city administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the city administrator shall be governed by KRS 243.550 to 243.590.

Section 5. KRS 241.250 is amended to read as follows:

The functions of each urban-county administrator shall be the same with respect to urban-county licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by an urban-county administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the board ~~[. No regulation of an urban-county administrator shall become effective until it has been approved by the board].~~

Section 6. KRS 241.260 is amended to read as follows:

Appeals from the orders of each urban-county administrator may be taken to the board by filing with the board within **thirty (30)** ~~ten (10)~~ days a certified copy of the orders of the urban-county administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the urban-county administrator shall be governed by KRS 243.550 to 243.590.

Section 7. KRS 243.100 is amended to read as follows:

A natural ~~[No]~~ person shall **not** become a licensee under KRS 243.020 to 243.670 **if he or she** ~~[who]~~:

- (1) (a) Has been convicted of any felony **until five (5) years have passed from the date of conviction, release from custody or incarceration, parole, or termination of probation, whichever is later** ~~[or]~~

- ~~misdemeanor directly or indirectly attributable to the use of alcoholic beverages, within two (2) years preceding the application};~~
- (b) *Has been convicted of any misdemeanor described under KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 in the two (2) years immediately preceding the application;*
- (c) *Has been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the two (2) years immediately preceding the application;*
- (d)~~(2)~~ Is under the age of twenty-one (21) years;
- (e) *Has had any license issued under this statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two (2) years from the date of the revocation or conviction; or*
- (f)~~(3)~~ Is not a citizen of the United States and has not had an actual, bona fide residence in this state for at least one (1) year before the date on which his *or her* application for a license is made. This subsection shall not apply to applicants for manufacturers' licenses, to applicants that are corporations authorized to do business in this state, or to persons licensed on March 7, 1938.~~;~~
- (2) ~~(4)~~ ~~Is~~ A partnership, *limited partnership, limited liability company*, or corporation *shall not be licensed if:*
- (a) ~~;~~ ~~unless~~ Each member of the partnership or each of the directors, principal officers, or managers *does not qualify under subsection (1)(a), (b), (c), and (d) of this section*~~of the corporation has not been convicted of any misdemeanor or felony directly attributable to the use of alcoholic beverages, is twenty one (21) years of age or more and is a citizen of the United States};~~
- (b)~~(5)~~ *It has had any license issued under this statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two (2) years from the date of the revocation or conviction; or*
- (c)~~(6)~~ *It is a partnership or corporation, if any member of the partnership or any director, manager, or principal officer of the corporation has had any license issued under any statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of the later of two (2) years from the date of the revocation or two (2) years from the date of conviction.*
- (3) *The provisions of subsection (1)(a) and (b) shall apply to anyone applying for a new license under this chapter after July 15, 1998, but shall not apply to those who renew a license that was originally issued prior to July 15, 1998, or an application for a supplemental license where the original license was issued prior to July 15, 1998.*

Section 8. KRS 243.250 is amended to read as follows:

A distilled spirits and wine retail drink license shall authorize the licensee to purchase, receive, possess, and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises. ~~The~~~~Such a~~ licensee shall purchase distilled spirits and wine only from licensed wholesalers and unless he *or she* also holds a retail package license he *or she* shall not buy or possess distilled spirits *or wine* in containers~~of a capacity~~ smaller than ~~two~~~~seven~~ hundred~~fifty~~ (200)~~(750)~~ milliliters. A licensee may purchase wine~~, but wine may be bought~~ in containers not smaller than one hundred (100) milliliters if the wine does not exceed fourteen percent (14%) alcohol by volume and the retail drink license is held by a restaurant or private club which receives a minimum of ~~fifty~~~~forty~~ percent (50%)~~(40%)~~ of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables. A licensee may buy mixed drinks~~, and mixed drinks may be bought~~ in containers of a capacity not smaller than three hundred fifty-five (355) milliliters, if the mixed drinks contain a substantial proportion of carbonated water. A retail drink license shall not authorize the licensee to sell~~sale of~~ distilled spirits or wine by the package.

Section 9. KRS 243.360 is amended to read as follows:

- (1) *Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a nonbeverage alcohol license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall, before applying for a license*

under KRS 243.030 and 243.040, advertise by publication under KRS 424.130(1)(b) his or her intention to apply for a license.

- (2) *The notice shall conform in all material respects to the following requirements:*
- (a) *The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;*
 - (b) *The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and*
 - (c) *The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing the Department of Alcoholic Beverages, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication."*
- (3) *A license shall not be issued until the thirty (30) day period in which a protest is permissible has expired. Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board*~~[Every person, except an applicant for renewal of the same license for the same premises, or an applicant for a special agent's or solicitor's license, an industrial alcohol license, a nonindustrial alcohol license, a bonded warehouse license, a freight forwarding license, a storage warehouse license or a temporary drink license shall, before applying for any license under KRS 243.030 or 243.040, advertise by publication pursuant to KRS Chapter 424 his intention to apply. The advertisement shall state the name and address of the applicant if he is an individual, the names and addresses of the members of partnership if the applicant is a partnership, as well as the name of the business and its address, or, if the applicant is a corporation, the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself, the location of the premises for which the license is sought, and the type of license to be applied for.~~
- ~~(2) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.~~
- ~~(3) The board shall not consider protests received more than thirty seven (37) days after an application for a license under KRS 243.030 is filed; nor shall it consider protests received more than seventeen (17) days after an application for a license under KRS 243.040 is filed; provided, however, that this subsection shall not apply to a church or a school which has not received actual notice as required by KRS 243.220].~~

Section 10. KRS 243.390 is amended to read as follows:

- (1) In addition to~~such~~ other information as the board may by *administrative* regulation require, every application for a license under KRS 243.020 to 243.670 shall contain the following information, given under oath:
- (a) The name, age, *Social Security number*, address,~~and~~ residence, *and citizenship* of each applicant~~and, if there is more than one (1) and they are partners, the partnership name and address, and the facts as to their citizenship];~~
 - (b) *If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;*
 - (c) The name, *age, Social Security number,*~~and~~ address, *residence, and citizenship* of each person interested~~[or to become interested]~~ in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, *limited partnership company, or limited liability company*, the *name, age, Social Security number, address, and residence*~~[names, addresses and ages]~~ of each officer, director, *member, partner*, and managerial employee and the ~~facts as to their~~ citizenship *of each*, and the state under the laws of which the corporate applicant is incorporated *or organized*. The department may require the names of all the stockholders *and the percentage of stock held by each;*
 - ~~(d)[(e)]~~ The premises to be licensed, stating the street and number, if the premises *has*~~have~~ a street number, and otherwise such a description *that*~~as~~ will reasonably indicate the location of the premises~~;~~

The applicant shall also state the nature of his interest in the premises, and the name, age and address of any other person, either as principal or associate, who is interested with the applicant, either in the premises or in the business to be licensed, and the facts as to his citizenship];

(e)~~(d)~~ A statement that neither the applicant nor any other person referred to in this section has been convicted of; any misdemeanor directly or indirectly attributable to ~~the use, manufacture, sale of or traffic in~~ alcoholic beverages; *any violation of KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 within the two (2) years immediately preceding the application;* ~~or~~ any felony, within *five (5)*~~two (2)~~ years *from the later of the date of parole or the date of conviction; or providing false information to the department* preceding the application; and that *the applicant or any other person referred to in this section*~~he~~ has not had any license that has been issued to him under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application; and

(f)~~(e)~~ A statement that the applicant will in good faith abide by every *state and local* statute, *regulation*, and ordinance relating to the manufacture, sale, *use of*, and *trafficking in*~~transportation of~~ alcoholic beverages ~~that may be in force in the location at which he seeks to do business, as well as all regulations of the board, and, if the applicant seeks to do business in a locality where local regulations are in effect, all regulations of the local alcoholic beverage control authority~~.

- (2) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the board within ten (10) days after the change.
- (3) In giving any notice, or taking any action in reference to a license, the board may rely upon the information furnished in the application or in the supplemental statement connected with the application. ~~This~~~~Such~~ information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.

Section 11. KRS 243.430 is amended to read as follows:

- (1) *The state administrator may reject any application for a license issued under KRS 243.030 and 243.040 if the application is incomplete or the correct fee has not been remitted with the application. In rejecting an application, the state administrator shall provide a written statement of the deficiencies contained in the application*~~[If the state administrator approves the application he shall issue the proper license]~~.
- (2) *A license for which public notice under Section 9 of this Act is required*~~[No retail drink, retail package, or special private club license]~~ shall *not* be issued in less than *thirty (30)*~~ten (10)~~ days *from the date the application is substantially complete, except the renewal of the license may be issued upon receipt of all necessary information by the state administrator with jurisdiction over the license*~~[or delivered in less than fifteen (15) days from the time the application and remittances were received by the state administrator; except that a retail package, retail drink, or special private club license shall not be issued to an applicant who has not held a license during the same or preceding license period, or for a premises for which a license has not been issued during the same or preceding license period, in less than twenty (20) days or delivered in less than thirty (30) days from the time the application and remittances were received by the state administrator]~~. All remaining licenses provided for in KRS 243.030 shall be issued ~~at any time~~ when, in the sound discretion of the distilled spirits administrator, all of the information necessary has been obtained.

Section 12. KRS 243.480 is amended to read as follows:

- (1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his *or her* discretion ~~as the case may be,~~ order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of the days of any suspension period, a sum as follows: Distillers, rectifiers, vintners, brewers, and blenders, one thousand dollars (\$1,000) per day; wholesale liquor licensees, four hundred dollars (\$400) per day; wholesale beer licensees, four hundred dollars (\$400) per day; *retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink*~~[any license which by its terms authorize the sale of liquor by the drink]~~, fifty dollars (\$50) per day; *and*~~[retail package liquor licensees, fifty dollars (\$50) per day; retail beer licensees, twenty five dollars (\$25) per day;]~~ all remaining licensees, *fifty*~~ten~~ dollars *(\$50)*~~(\$10)~~ per day.

- (2) Payments in lieu of suspension collected by the Alcoholic Beverage Control Board shall be deposited in the State Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.
- (3) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in *KRS Chapter 13B* [243.550 to 243.590].

Section 13. KRS 243.500 is amended to read as follows:

Any license issued under KRS 243.020 to 243.670 ~~may~~**must** be revoked or suspended for the following causes:

- (1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the *licensed* premises ~~licensed~~.
- (2) Making any false, material statements in an application for a license *or supplemental license*.
- (3) Violation of the provisions of KRS 243.670.
- (4) **Conviction of the** ~~If, within a period of two (2) consecutive years, any~~ licensee or any of his clerks, servants, agents, or employees **of**:
 - (a) ~~shall have been convicted of~~ Two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 244 or any act *regulating* ~~heretofore or hereafter in effect relating to the regulation of~~ the manufacture, sale, and transportation of alcoholic beverages ~~or if,~~ within **two (2) consecutive years**; ~~such period, any licensee or any of his clerks, servants, agents, or employees shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of intoxicating liquors, or of one (1) such felony and one (1) such misdemeanor~~
 - (b) **Two (2) misdemeanors directly or indirectly attributable to the use of intoxicating liquors within two (2) consecutive years; or**
 - (c) **Any felony.**
- (5) ~~Willful and deliberate~~ Failure or default of a licensee to pay an excise tax or any part **of the tax** ~~thereof,~~ or any penalties imposed by or under the provisions of any statutes, ordinances, or acts of Congress relative to taxation, or for a violation of any administrative regulations *promulgated by* ~~of~~ the Revenue Cabinet made in pursuance thereof.
- (6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or granted under any act of Congress relative to the regulation of the manufacture, sale, and transportation of alcoholic beverages. Any license issued under KRS 243.020 to 243.670 ~~shall~~**must** be revoked or suspended ~~if~~**in the case of sale of alcoholic beverages by** the licensee ***sells the alcoholic beverages*** at a price in excess of the price set by federal or state regulations.
- (7) Setting up, conducting, operating, or keeping, on the licensed premises, any gambling game, device, machine, ~~or~~ contrivance, ~~or~~ lottery, ~~or~~ gift enterprise, ~~or~~ handbook, or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook, or facility. This section shall not apply to contests in which eligibility to participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.
- (8) Conviction of the licensee, his agents, servants, or employees for:
 - (a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances;
 - (b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances; **or**
 - (c) **Knowingly receiving stolen property upon the licensed premises.**

Section 14. KRS 243.540 is amended to read as follows:

- (1) *If a license issued under KRS 243.020 to 243.670 is revoked, voluntarily surrendered, or subject to disposition by a court, or is not renewed by the licensee, or if an act of God requires the relocation or closure of the licensee's business the licensee's inventory shall be disposed of in accordance with the requirements set out in this section* ~~When a license issued under KRS 243.020 to 243.670 has been revoked the former licensee may, under the supervision of the state administrator, dispose of and transfer his stock of alcoholic beverages to a licensee, but such a disposition of stock on hand shall not be delayed longer than ninety (90) days in the case of distillers, rectifiers or vintners, longer than thirty (30) days in the case of wholesalers or distributors nor longer than twenty (20) days in the case of retailers.~~
- (2) *If a license issued by the department has been revoked, the former licensee may, under the supervision of the state administrator, dispose of and transfer his or her stock to another licensee if the disposition is completed within ninety (90) days and the licensee is a distiller, rectifier, vintner, or brewer. The disposition shall be completed within thirty (30) days if the licensee is a wholesaler or distributor or within twenty (20) days if the licensee is a retailer.*
- (3) *If a retail licensee in good standing with the department voluntarily ceases to operate his or her business, the following requirements shall apply to the disposition of the licensee's inventory:*
- (a) *If the premises is still open to the public and the licensee has not yet surrendered the license, the licensee shall sell alcoholic beverages only to the public and shall not sell below costs;*
- (b) *If a licensee has terminated his or her business and has surrendered his or her license to the department, he or she shall submit a written request for approval from the state administrator within ten (10) days in advance of the sale to dispose of the licensee's remaining inventory. The request shall identify the retailer who is purchasing the inventory, the proposed date of the sale, and the quantity, types, and brands of alcohol to be sold; and*
- (c) *If a licensee has more than one (1) licensed retail premises and closes one (1) or more retail premises and seeks to transfer his or her inventory to another licensed retail premises he or she owns, he or she shall submit a request in writing to the state administrator at least ten (10) days before the inventory is transferred. The request shall identify the premises to which the alcohol is being transferred, the proposed date of the transfer, and the quantity, types, and brands of alcohol to be sold.*
- (4) *If a retail licensee files for bankruptcy or is directed by a court to dispose of inventory to satisfy a lien or judgment, the inventory may be sold only to a retail alcoholic beverage licensee. The bankrupt licensee or the licensee subject to the court order shall notify the department of the sale and shall attach a copy of the court order or the judgment directing the sale and a list of the quantity, types, and brands of alcohol to be sold. Any licensee who purchases the inventory shall notify the department within five (5) days after the transfer of the specific inventory sold* ~~Transfers under subsection (1) shall not be deemed violations of the provisions of KRS 243.120, 243.160, 243.250 or 243.300.~~

Section 15. KRS 243.630 is amended to read as follows:

- (1) *For purpose of this section, "transfer" means:*
- (a) *The transfer to a new person or entity of ten percent (10%) or more ownership interest in any license issued under KRS 243.020 to 243.670; or*
- (b) *The transfer in bulk, and not in the ordinary course of business, of a major part of the fixtures, materials, supplies, merchandise, or other inventory of a licensee's business.*
- (2) ~~Any~~ *license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall not be transferable or assignable to any other person or to any other premises or to any other part of the building containing the licensed premises, unless a transfer or assignment is authorized by the state administrator in the exercise of his sound discretion under KRS 243.640 or 243.650. For the purposes of this section each railroad dining car shall be deemed premises to be separately licensed.*
- (3) *A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the department, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the state administrator. The state administrator shall grant approval if the person acquiring the interest meets the qualifications for a new applicant.*
- (4) *Any acquisition of interest in a license without prior authorization shall be void.*

- (5) *All applications for approval of a transfer shall be made in writing to the state administrator having jurisdiction over the license.*
- (6) *Applications for approval of a transfer shall be made under oath or affirmation, shall be signed by both the transferor and the transferee, and shall contain such other information as the department may prescribe.*
- (7) *The appropriate state administrator shall grant or deny the application within sixty (60) days of the date the application is substantially complete or on a later date that is mutually acceptable to the administrator and the transferee, but it shall not be acted upon before the end of the public protest period outlined in Section 9 of this Act.*
- (8) *No licensee or other person seeking to acquire an interest in an existing license shall transfer control or assume control of any licensed premises by agreement or otherwise.*
- (9) *A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.*
- (10) *A licensee shall not transfer his or her license or any interest he or she has in the license if the licensee owes a debt on the inventory to a wholesaler responsible for the collection and payment of the tax imposed under KRS 243.884.*
- (11) *A licensee shall not transfer his or her license or any interest in the license if the licensee owes the Commonwealth of Kentucky for taxes as defined in subsection (5) of Section 13 of this Act. A transfer shall not take place until the department is notified by the Kentucky Revenue Cabinet that the licensee's indebtedness has been paid or resolved to the cabinet's satisfaction. This section shall not prohibit a transfer of a license or an interest in a license by a trustee in bankruptcy if all other requirements of this section are met.*

Section 16. KRS 244.040 is amended to read as follows:

- (1) ~~A~~~~No~~ brewer or distributor shall **not** sell ~~any~~ alcoholic beverages to any person in this state for any consideration except for cash paid at or before the time of delivery.

For purposes of this section, "cash" includes the sale of malt beverages by electronic transfers if the following conditions are met:

- (a) *The use of electronic transfers shall be voluntary and shall be agreed to by the affected brewer, distributor, and retailer;*
 - (b) *The brewer shall not pay or credit back in any way to the distributor any share of the cost that is attributable to the electronic transfer;*
 - (c) *The distributor shall not pay or credit back in any way to the retailer any share of the cost that is attributable to the electronic fund transfer;*
 - (d) *The transfer of funds shall be initiated by the brewer or the distributor;*
 - (e) *The distributor may debit the retailer's bank account for the exact amount due based on the amount of alcoholic beverages delivered;*
 - (f) *Electronic fund transfers that are rejected or denied at the time of sale for any reason shall be treated in the same manner as checks drawn on insufficient funds; and*
 - (g) *Each participating retail licensee and each distributor maintain accurate records of all electronic fund transfers in accordance with department statutes and administrative regulations.*
- (2) ~~A~~~~No~~ brewer or distributor shall **not** furnish or deliver any **returnable** bottled malt beverage without collecting a minimum container charge or deposit of sixty cents (\$0.60) per case of twenty-four (24) twelve-ounce bottles or ~~its~~~~the~~ equivalent ~~thereof~~ in the same manner that the price of the malt beverage is collected.
 - (3) This section shall not prohibit a licensee from crediting to a purchaser the actual prices charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by the purchaser for containers or as a deposit on containers when the title is retained by the vendor, if the containers or packages have been returned to the brewer or distributor.

- (4) No right of action shall exist to collect any claim for credit extended contrary to this section.
- (5) This section shall not apply to sales by wholesalers or distributors to licensees that are private clubs or voluntary associations.

Section 17. KRS 244.080 is amended to read as follows:

~~A [No]~~ retail licensee shall **not** sell, give away, or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away, or delivered to:

- (1) A minor, except that in any prosecution for selling alcoholic beverages to a minor it **shall be [is]** an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his **or her** age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he **or she** was of legal age to purchase alcoholic beverages. ~~This [Such]~~ evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.
- (2) A person actually or apparently under the influence of alcoholic beverages.
- (3) **Anyone known to the seller or server to be** an habitual drunkard or any person **known to the seller or server to have been** convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period.
- (4) Anyone known to the seller **or server** to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or **anyone known to the seller or server to have been convicted of** a felony.

Section 18. KRS 244.085 is amended to read as follows:

- (1) As used in KRS 244.083 and this section: "Premises" **has the meaning it is given in KRS 241.010 and also** means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (2) ~~A [No]~~ person under 21 years of age shall **not** enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (3) ~~A [No]~~ person under 21 years of age shall **not** possess for his or her own use, or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (4) ~~A [No]~~ person under 21 years of age shall **not** misrepresent his or her age for the purpose of inducing any licensee, or **the licensee's agent, servant, or [other]** employee ~~[of any licensee]~~, to sell or serve any alcoholic beverages to **the underage [such]** person.
- (5) ~~A [No]~~ person under 21 years of age shall **not** use, or attempt to use any false, fraudulent, or altered identification card, ~~[or]~~ paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.
- (6) **Except as provided in Sections 19 and 20 of this Act, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:**
 - (a) **The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, distillery or brewery or winery tour, establishment where prebooked concerts with advance ticket sales are held, or any facility in which there is maintained in inventory on the premises for sale at retail no less than five thousand dollars (\$5000) of food, groceries, and related products valued at cost. For purposes of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts;**
 - (b) **All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises; or**
 - (c) **Written approval has been granted by the department to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including, but not**

limited to, weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state administrator shall approve or deny the request in writing.

- (7) *Except as provided in subsection (6) of this section, a licensee or his or her agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.*
- (8) *Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.*

Section 19. KRS 244.087 is amended to read as follows:

Persons at least eighteen (18) years of age may stock, arrange displays, accept payment for, and sack malt beverages by the package, under the supervision of *a person twenty (20) years of age or older*~~an adult. Delivery of malt beverages away from the parking area of the licensed business premises shall not be performed by anyone under the age of twenty (20) years.~~

Section 20. KRS 244.090 is amended to read as follows:

- (1) A~~No~~ person holding any license under KRS 243.020 to 243.670 shall **not** knowingly employ in connection with his *or her* business, any person who:
- (a) Has been~~twice~~ convicted of any felony~~, misdemeanor or offense or one (1) felony and one (1) misdemeanor directly or indirectly attributable to the use of intoxicating liquors,~~ within the last two (2) years. *The provisions of this paragraph shall apply to any new applicant for a license issued under this chapter after July 15, 1998, but shall not apply to renewals of licenses that were originally issued prior to July 15, 1998, or supplemental licenses related to an original license if the original license was issued prior to July 15, 1998;*
 - (b) *Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;*
 - (c) Is under the age of twenty (20) years, *unless the person is employed:*~~except;~~
 1. In a bottling house or room of a licensed distiller, vintner,~~or~~ brewer, or rectifier;
 2. In an office of a wholesaler or manufacturer *that is* maintained in a building separate from the warehouses or factory or as provided in KRS 244.087; or
 3. In any of the following establishments, if *the* employment is in a capacity that does not involve the sale or serving of alcoholic beverages:
 - a. A restaurant that derives at least ~~fifty~~~~thirty five~~ percent (50%)~~(35%)~~ of its gross sales from the sale of food *for consumption on the licensed premises*; or
 - b. Any other establishment with alcoholic beverage sales not exceeding fifty percent (50%) of its gross sales.~~;~~
 - ~~(e) Is not a citizen of the United States; or~~
 - (d) Within two (2) years prior to the date of his employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale, or transportation of alcoholic beverages revoked for cause.
- (2) Violation of this section shall subject both employer and employee to penalties provided in this chapter, and shall be cause for revocation of license.

Section 21. KRS 244.290 is amended to read as follows:

- (1) A~~No~~ premises *that is licensed to sell*~~for which there has been granted a license for the sale of~~ distilled spirits or wine at retail shall **not** be permitted to remain open~~for any purpose between midnight and 8 a.m., or~~

at any time during the twenty four (24) hours of a Sunday, or] during the hours the polls are open on any regular or primary election day *unless the licensee provides a separate locked department in which all stock of distilled spirits and wine are kept during the hours the polls are open*[-, provided, that if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and said department is kept locked during the times mentioned above, he shall be deemed to have complied with this section; except that the city council, board of aldermen, or other municipal legislative body of cities of the first, second, third, or fourth class in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance duly enacted, to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries, and except further that the fiscal court of each county in which cities of the first, second, third, or fourth class are located shall have the exclusive right and power to establish the hours and times in which distilled spirits and wine may be sold over that portion of the county which lies without the corporate limits of such cities, except any portion in which distilled spirits and wine are prohibited from being sold. Provided, however, that no distilled spirits or wine may be sold in any portion of the counties containing cities of the first, second, third, or fourth class during the twenty four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in KRS 243.050 and subsections (2), (4), and (6) of this section, and that no distilled spirits or wine may be sold on any primary or regular election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours which the licensee is prohibited from selling same].

- (2) In any county containing a city of the first or second class in which the sale of distilled spirits and wine *by the drink* is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS *Chapter 242*.~~[242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"~~]
- (3) *Except as provided in Section 26 of this Act, a premise for which there has been granted a license for the sale of distilled spirits or wine at retail shall not remain open for any purposes between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday, unless:*
- (a) *The licensee provides a separate locked department in which all stocks of distilled spirits and wine are kept during those times; or*
 - (b) *The legislative body of a city of the first, second, third, or fourth class, or the fiscal court of a county containing a city of the first, second, third, or fourth class, has otherwise established the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries.*
- ~~(4)~~~~(3)~~ In any county containing a city of the first or second class *or any city located therein* in which the sale of distilled spirits and wine~~[- by the drink]~~ is permitted *under KRS Chapter 242, the legislative body of the city or county may, by ordinance, permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the designated closing hour of that locality at hotels, motels, or restaurants which:*
- (a) *Have dining facilities with a minimum seating capacity of one hundred (100) people at tables; and*
 - (b) *Receive at least fifty percent (50%) or more of their gross annual income from the dining facilities from the sale of food*~~[on Sunday as provided in subsections (2) and (4) of this section, holders of distilled spirits and wine retail drink licenses may apply to the administrator of the distilled spirits unit for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license].~~
- ~~(5)~~~~(4)~~ In any county containing a city of the first~~[- or second]~~ class or in any city located therein in which *the* sale of distilled spirits and wine is permitted under KRS Chapter 242, *the distilled spirits administrator may issue a license to holders of a distilled spirits and wine retail drink quota license or a special private club license which permits the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the prevailing time for that locality*~~[respective legislative body of such city or fiscal court, of such areas, shall have the power by duly enacted ordinance, to permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until a closing hour to be established by the legislative body of the area concerned, by hotels, motels, and restaurants which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of their gross annual income from their dining facilities by the sale of food].~~

- ~~{(5) (a) Any hotel, motel, restaurant operation, convention center, or commercial airport which sells liquor on Sunday shall pay each of its employees wages at a rate of not less than the minimum wage as set forth in KRS 337.275(1), the provisions of KRS 337.275(2) and KRS 337.010(2)(a)6. notwithstanding.~~
- ~~(b) No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum wage as required under KRS 337.275(1). Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.}~~
- (6) Any city of the fourth class or county containing a city of the fourth class which has enacted a comprehensive, regulatory ordinance relating to the licensing and operation of hotels, motels, inns, or restaurants for the sale of alcoholic beverages by the drink ~~under~~~~{as provided in} KRS 242.185(1), may also regulate and provide~~~~{by ordinance}~~ for the *limited*~~{special}~~ sale of distilled spirits and wine by the drink *on Sundays if*:
- (a) *The limited Sunday drink*~~{as authorized by subsections (2) and (4) of this section. Such special}~~ licenses ~~are~~~~{shall only be}~~ issued *only* to those hotels, motels, inns, or restaurants authorized to sell alcoholic beverages by the drink ~~under~~~~{as provided in} KRS 242.185(3); and~~
- (b) ~~The~~~~{}~~ holders of distilled spirits and wine retail drink licenses *have applied*~~{may apply}~~ to the state administrator *and meet all other legal requirements for obtaining a limited Sunday liquor by the drink license*~~{of the distilled spirits unit for the special retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license}.~~

Section 22. KRS 244.295 is amended to read as follows:

- (1) In any county containing an urban-county government, ~~a~~~~{no}~~ premises *that*~~{for which there}~~ has been granted a license for the sale of distilled spirits or wine at retail shall *not* be permitted to remain open for any purpose between midnight and ~~6~~~~{8}~~ a.m., or at any time during the twenty-four (24) hours of a Sunday, or during the hours the polls are open on any regular ~~or~~~~{}~~ primary~~{, school or special}~~ election day *unless the*~~{, provided, that if a}~~ licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and ~~the~~~~{said}~~ department is kept locked during the time mentioned above. *The licensee*~~{, he}~~ shall be deemed to have complied with this section; except that the legislative body of an urban-county government in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance~~{duly enacted}~~, to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries. Provided, however,~~{ that no}~~ distilled spirits or wine may *not* be sold in any portion of a county containing an urban-county government during the twenty-four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in subsections (2) and (3) of this section, and~~{ that no}~~ distilled spirits or wine may *not* be sold on any election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours in which the licensee is prohibited from selling same.
- (2) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS 242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"
- (3) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the legislative body of such urban-county government may by resolution or ordinance submit to the electorate a proposal to permit the sale of distilled spirits and wine by the drink, on Sunday from 1 p.m. until a closing hour specified in the proposal, by hotels, motels, convention centers, *convention hotel complexes*, restaurants, *racetracks*, and commercial airports which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of gross annual income from dining facilities by the sale of food. The proposal to be submitted to the electorate shall be so framed that any voter who wishes to vote in favor of ~~the~~~~{such}~~ limited Sunday sales of distilled spirits and wine by the drink may signify his approval by voting "yes" and any voter who wishes to vote against ~~the~~~~{such}~~ limited Sunday sales of distilled spirits and wine by the drink may do so by voting "no." ~~The~~~~{said}~~ election shall be held on a date stipulated by the legislative body and the cost of the election shall be borne by the urban-county government. The proposal shall be published pursuant to KRS Chapter 424 and shall also be

advertised by written or printed handbills posted at not less than five (5) conspicuous places in each precinct of the county for two (2) weeks before the election. The general election laws, including penalties for violations, shall apply to the election, except where those laws are inconsistent with the provisions of this section. ~~The~~~~Any such~~ proposal submitted to the electorate shall be effective immediately if a majority of those voting on the proposal shall vote "yes."

- (4) In any county containing an urban-county government in which the sale of distilled spirits and wine by the drink is permitted on Sunday as provided in subsections (2) and (3) of this section, holders of distilled spirits and wine retail drink licenses may apply to the administrator of the distilled spirits unit for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license.

Section 23. KRS 244.360 is amended to read as follows:

All alcoholic beverage retailers~~Each retailer of distilled spirits or wine by the package~~ shall have printed on the front window of the licensed premises the name of the licensee together with the inscription: "Kentucky Retail Package Liquor License No." in uniform letters not less than three (3)~~and one half (3 1/2)~~ inches in height.

Section 24. KRS 244.480 is amended to read as follows:

- (1) Except as provided in subsection (3) **of this section**~~(2)~~, no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of **midnight**~~7 p.m.~~ and 6 a.m. on any **other**~~week~~ day~~except Saturday, when the hours of deliveries shall be between 6 a.m. and midnight~~.
- (2) **Except as provided in subsection (3) of this section**, no retailer shall sell, give away, or deliver any malt beverages between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday or during the hours the polls are open on a primary or regular election day.
- ~~(3)~~~~(2)~~ The legislative body of a city of the first, second, third, or fourth class **or of a county containing a city of the first, second, third, or fourth class** in which traffic in malt beverages is permitted by KRS Chapter 242, shall have the exclusive power~~, subject to subsection (3), by ordinance,~~ to establish the times in which malt beverages may be sold within its jurisdictional boundaries, **including Sunday sales if the hours so fixed**~~. The fiscal court of each county in which a city of the first, second, third, or fourth class is located shall have the exclusive power, subject to subsection (3), to establish the times in which malt beverages may be sold in that portion of the county which lies without the corporate limits of such a city, except any portion in which malt beverages are prohibited by KRS Chapter 242 from being sold.~~
- ~~(3) Notwithstanding subsections (1) and (2):~~
- (a) ~~{The hours so fixed by the legislative body of a city of the first, second, or third class, and by fiscal courts,}~~ Shall not prohibit the sale, gift, or delivery of any malt beverages between 6 a.m. and midnight during **any day, except Sunday**~~week days~~; and
- (b) **Prohibit the sale of**~~No~~ malt beverages~~shall be sold~~ on any primary or regular election day **during the hours**~~while~~ the polls are~~still~~ open.

Section 25. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the administrator of the malt beverages unit, the fees for which shall be:

- | | |
|---|------------|
| (1) Brewer's license, per annum | \$1,500.00 |
| (2) Microbrewery license, per annum | \$ 250.00 |
| (3) Distributor's license, per annum | \$ 200.00 |
| (4) Retailer's license per annum: | |
| (a) New applicants | \$ 200.00 |
| (b) Renewals | \$ 75.00 |
| (5) Dining car license, per annum | \$ 100.00 |
| (6) Transporter's license, per annum | \$ 25.00 |
| (7) Special temporary license, per month or part of month | \$ 12.50 |

- (8) Special off-premises storage license, per annum \$ 25.00
- (9) Distributor's storage, per annum \$ 50.00
- (10) Special beer transporter's license, per annum \$ 25.00
- (11) Such other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, which may be provided for by regulation and adopted by the state board.

Applicants for special licenses provided for under the authority granted in subsection (11) may be exempt from so much of the provisions of subsection (1)(f)(3) of KRS 243.100 and paragraph (c) of subsection (1) of KRS 244.090 as the board by regulation prescribes.

Section 26. KRS 243.050 is amended to read as follows:

- (1) The department may issue a railroad system license to a railroad company upon the payment of ***the required*** fee of one thousand dollars (\$1,000). This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.
- (2) The department may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of ***the required*** fee of \$1,000. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually for a fee of \$1,000. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly-scheduled or charter flights of the licensee, ~~in~~ into and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application.
- (3) The department may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of ***the required fee*** of \$100. This license may be renewed annually for a fee of \$100. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly-scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.
- (4) ***The department may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license is required, where applicable. An applicant for the license shall meet the qualifications of KRS 243.055 and an extended supplement license under subsection (5) of this section may be issued. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class, if the original license was issued prior to July 15, 1998.***
- (5) Where it is determined by the department to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the department may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, and at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually. Upon application by the holder of a retail alcoholic beverage license at a convention center, ***convention hotel complex***, horse race track, or commercial airport as provided above, the department may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be ***established***, ~~one thousand dollars (\$1,000) per year~~ and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The department may, by ***administrative*** regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention ~~center~~ business, the horse racing industry, and

passengers at large commercial airports~~]. Provided, however, that no provision of this subsection shall apply to any portion of a county containing an urban county government].~~

Section 27. KRS 241.140 is amended to read as follows:

The functions of each county administrator shall be the same, with respect to local licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a county administrator may be less stringent than statutes relative to alcoholic beverage control or than the regulations of the board.~~]. No regulation of a county administrator shall become effective until it has been approved by the board.]~~ If any city appoints its own administrator *under* ~~[as provided for in]~~ KRS 241.170, the county administrator in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of that city, *unless the department determines that the city does not have an adequate police force of its own or under KRS 70.540, 70.150, 70.160, and 70.170.*

Section 28. The following KRS section is repealed:

243.635 "Transfer" defined -- Transfer of license under specified circumstances prohibited.

Approved April 13, 1998

CHAPTER 523

(HB 582)

AN ACT relating to the unauthorized switching of a customer's telecommunications provider.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Telecommunications provider" or "provider" means a person that provides one (1) or more telecommunications services for compensation, and its successors in interest by way of acquisition or merger, and includes a provider of regulated and unregulated intrastate services offered to customers for the transmission of two-way, interactive communications. "Telecommunications provider" or "provider" does not include a provider of commercial mobile radio services as defined in 47 U.S.C. sec. 332(d)(1).*

(b) *"Letter of agency" means a written statement that authorizes a change of the customer's telecommunications provider and bears the customer's signature.*

(2) *A customer of a telecommunications provider shall not be switched to another provider without the customer's letter of agency or the electronically recorded authorization of the customer, indicating that the customer knowingly approved the specific details of the switch. The requirement of a written or electronically recorded authorization shall not apply if the customer initiates a call to the customer's local telephone service provider to request that his long-distance provider be changed. When a customer's service is changed, the new provider shall maintain for one (1) year a record of nonpublic customer-specific information that establishes that the customer authorized the change. In any dispute, the burden of proof to show that the customer knowingly authorized the change shall be on the provider that claims to have obtained customer authorization for the switch.*

(3) *If a letter of agency is combined with an inducement, or with information on a subject other than the change of a customer's telecommunications provider, whether or not the letter of agency can be easily severed from the rest of the document, then the language whereby a person authorizes service from the provider shall be printed in a type size as large or larger than the largest type used in the document that includes the letter of agency.*

(4) *If a telecommunications provider initiates a switch of provider that the customer has not authorized under this section, that provider, upon request by the customer, shall reverse the change within five (5) business days.*

(5) *The customer subjected to a change that is not verified consistent with this section or administrative regulations promulgated under this section is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change that are in excess of the*

amount the customer would have paid had the service not been changed, if the customer contacts the customer's local exchange carrier, the customer's previous provider of intrastate service, or the telecommunications provider that initiated an unauthorized change in service within one hundred eighty (180) days after receipt of the customer's first bill containing charges by the telecommunications provider that initiated the unauthorized change. A telecommunications provider that has initiated an unauthorized customer change shall:

- (a) Pay all charges associated with returning the customer to the customer's original telecommunications provider;*
- (b) Return to the customer any amount paid to the provider by the customer or on the customer's behalf in excess of the amount the customer would have paid had the service not been changed; and*
- (c) Upon request, provide all billing records to the original provider from which the customer was changed to enable the original provider to comply with this section.*

The telecommunications provider that initiated the unauthorized change is responsible for any payment to access providers or to an underlying carrier where applicable. Failure of the customer to provide timely notice will relieve the telecommunications provider that initiated the unauthorized change of any obligations under this subsection.

- (6) If the commission finds that a provider has willfully or repeatedly violated this section or an administrative regulation promulgated under it, the commission shall order the provider to take corrective action as necessary. The commission may impose a penalty on the violator as specified in KRS 278.990 (1), except that the maximum civil penalty to be assessed for each violation of this section shall be ten thousand dollars (\$10,000). The commission also may, if consistent with the public interest, suspend, restrict, or revoke any certificate or registration of the telecommunications provider, thereby denying the provider the authorization to provide telecommunications service in the Commonwealth.*
- (7) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the policies of this section.*

Approved April 13, 1998

CHAPTER 524

(HB 583)

AN ACT relating to child care facility licensure.

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

Section 1. KRS 199.640 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, or maintain any child-caring facility or child-placing agency without having a license to do so issued by the cabinet.
- (2) Licenses issued to the agency or facility shall be valid for a period of one (1) year from date of issue unless revoked by the cabinet provided that each licensed facility or agency shall be visited and inspected by a person authorized by the cabinet at least once each year and a complete report of such visit or inspection be filed with the cabinet. Each license issued shall specify the type of care or service the licensee is authorized to perform. Each initial application for a license shall be accompanied by a fee of one hundred dollars (\$100) and shall, except for provisional licenses, be renewable annually upon expiration and reapplication when accompanied by a fee of fifty dollars (\$50). The fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of said account shall lapse to the general fund at the end of each biennium.
- (3) The secretary may adopt administrative regulations establishing standards of care and service for child-caring facilities and child-placing agencies relating to the sanitary and hygienic conditions, the accommodations available for each child, the diet provided, the safety of the child from fire and other accidents and hazards, and such other factors as may be necessary to promote the welfare of children cared for or placed by such agencies and facilities; provided, however, any administrative regulations adopted pursuant to KRS Chapter 13A to govern services provided by church-related privately operated child-caring agencies or facilities shall not

prohibit the use of reasonable corporal physical discipline which complies with the provisions of KRS 503.110(1), including the use of spanking or paddling, as a means of punishment, discipline or behavior modification, **and shall prohibit the employment of persons convicted of any sexual offense with any child-caring facility or child-placing agency.**

- (4) Each agency or facility licensed under this section shall keep a record containing:
 - (a) The names, ages, present, and former residences of all children received;
 - (b) The names, residence, and occupation so far as is known, of the parents;
 - (c) The dates of the reception, placing out for adoption or foster care, together with the names, occupation, and residence of the persons with whom the child is placed;
 - (d) The date and cause of termination of its custody of each child; and
 - (e) A brief history of each child until he shall have reached the age of eighteen (18) years or shall have been adopted or discharged according to the law.
- (5) Parents are received or boarded in a family rehabilitation home pursuant to a written agreement between home and parent.
- (6) All records regarding children or facts learned about children and their parents and relatives by any licensed agency or facility shall be deemed confidential in the same manner and subject to the same provisions as similar records of the cabinet. The information thus obtained shall not be published or be open for public inspection except to authorized employees of the cabinet or of such licensed agency or facility in performance of their duties.

Section 2. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any day-care center or home without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for the day-care center and procedures for enforcement of penalties; **provided, however, any administrative regulations promulgated pursuant to KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense.**
- (3) If the day-care center does not meet the standards prescribed for licensing by the secretary, a provisional license may be issued and remain in effect for a period of six (6) months.
- (4) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars (\$50) and shall, excepting provisional licenses, be renewable annually upon expiration and reapplication when accompanied by a fee of twenty-five dollars (\$25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.
- (5) No day-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (6) **Upon request of any person the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the operator. Identifying information regarding children and their families shall remain confidential.**
- (7) **The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the day-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the day-care center upon the parent's, custodian's, guardian's, or other interested person's request.**
- (8) All fees collected under the provisions of KRS 199.892 to 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for

the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.

- ~~(9)(7)~~ Any advertisement for child-care services shall include the address of where the service is being provided.
- ~~(10)(8)~~ All inspections of licensed and unlicensed day-care centers by the Cabinet for Human Resources shall be unannounced.
- ~~(11)(9)~~ All employees and owners of a day-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:
- (a) Basic health, safety, and sanitation;
 - (b) Recognizing and reporting child abuse; and
 - (c) Developmentally appropriate child-care practice.
- ~~(12)(10)~~ All employees and owners of a day-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- ~~(13)(11)~~ The cabinet shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection ~~(11)(9)~~ of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection ~~(11)(9)~~ of this section.
- ~~(14)(12)~~ Child day-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.
- (15) *Directors of child day-care centers shall not have been found by the cabinet or a court to have abused or neglected a child.***

Section 3. KRS 199.898 is amended to read as follows:

- (1) All children receiving child-care services in a day-care center licensed pursuant to KRS 199.896, a family child-care home certified pursuant to KRS 199.8982, or from a provider or program receiving public funds shall have the following rights:
- (a) The right to be free from physical or mental abuse;
 - (b) The right not to be subjected to abusive language or abusive punishment; and
 - (c) The right to be in the care of adults who shall meet their health, safety, and developmental needs.
- (2) Parents, custodians, or guardians of children specified in subsection (1) of this section shall have the following rights:
- (a) The right to have access to their children at all times the child is in care and access to the provider caring for their children during normal hours of provider operation and whenever the children are in the care of the provider;
 - (b) The right to be provided with information about child-care regulatory standards, if applicable; where to direct questions about regulatory standards; and how to file a complaint;
 - (c) The right to file a complaint against a child-care provider without any retribution against the parent, custodian, guardian, or child;~~and~~
 - (d) ***The right to obtain information from the cabinet regarding any type of licensure denial, suspension, or revocation of an operator, and cabinet reports that have found abuse or neglect by any child-care provider or any employee of a child care provider. Identifying information regarding children and their families shall remain confidential;***

- (e) ***The right to obtain information from the cabinet regarding the inspections and plans of correction of the day-care center, the family child-care home, or the provider or program receiving public funds within the past year; and***
 - (f) The right to review and discuss with the provider any state reports and deficiencies revealed by such reports.
- (3) The child-care provider who is licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 shall post these rights in a prominent place and shall provide a copy of these rights to the parent, custodian, or guardian of the child at the time of the child's enrollment in the program.

Section 4. KRS 199.8982 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Cabinet" means the Cabinet for Human Resources;
 - (b) "Department" means the Department for Social Services; and
 - (c) "Family child-care home" means a private home which provides full or part-time care day or night for six (6) or fewer children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the provider.
- (2) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall ***not have been found by the cabinet or a court to have abused or neglected a child, and shall*** meet the following minimum requirements:
1. Submit two (2) written character references;
 2. Provide a written statement from a physician that the applicant is in good health;
 3. Submit to a criminal record check as provided by KRS 17.165;
 4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
 5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and
 6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
 - a. Basic health, safety, and sanitation;
 - b. Recognizing and reporting child abuse; and
 - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) ***Upon request of any person the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.***

- (e) *The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.*
- (f) The cabinet shall promulgate administrative regulations *in accordance with KRS Chapter 13A* which establish standards for the issuance, monitoring, *release of information under Sections 2, 3, and 4 of this Act*, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home; *provided, however, any administrative regulations promulgated in accordance with KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense.* A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:
1. Certification requirements and procedures;
 2. Information about available child-care training; and
 3. Child-care food sponsoring organizations.
- (3) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- (4) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.

Approved April 13, 1998

CHAPTER 525

(HB 608)

AN ACT relating to the certification of fee-based pastoral counselors.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

The purpose of Sections 1 to 12 and 13 of this Act is to protect the public safety and welfare by providing for the certification and regulation of persons engaged in the practice of fee-based pastoral counseling. As such, it is not the intent of Sections 1 to 12 and 13 of this Act to advance or inhibit religion, to in any way affect the performance of ordinary duties or functions of the clergy, or to foster excessive government entanglement with religion.

SECTION 2. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context requires otherwise:

- (1) *"Board" means the Kentucky Board of Certification of Fee-Based Pastoral Counselors;*
- (2) *"Certified fee-based pastoral counselor" or "certificate holder" means an ordained minister or the denominational equivalent who:*
 - (a) *Has completed a Master's of Divinity and an advanced degree program in pastoral counseling, or an equivalent course of study approved by the board, from an accredited seminary or other accredited educational institution;*
 - (b) *Is certified by the board; and*

- (c) *Receives fees or other compensation for the practice of pastoral counseling.*
- (3) *"Fee-based pastoral counseling" means the practice of pastoral counseling at an advanced level, equivalent to the standards of practice set by the American Association of Pastoral Counselors for the "fellow" level, that involves integrating spiritual resources with insights from the behavioral sciences, in exchange for a fee or other compensation.*
- (4) *"Ordained minister or the denominational equivalent" means a person who has been called, elected, or otherwise authorized by a church, synagogue, denomination, or faith group through ordination, consecration, or equivalent means, to exercise within and on the behalf of the denomination or faith group specific religious leadership and service that furthers its purpose and mission.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

The Kentucky Board of Certification of Fee-Based Pastoral Counselors is hereby created.

- (1) *The board shall be composed of five (5) members who shall be appointed by the Governor to serve four (4) year terms.*
- (a) *Four (4) members shall be certified fee-based pastoral counselors actively engaged in the practice or teaching of pastoral counseling.*
- (b) *One (1) member shall be a citizen at large who is not associated with, or financially interested in, the practice or business of fee-based pastoral counseling.*
- (2) *All reappointments to the board and vacancies on the board shall be filled by the Governor from a list of three (3) nominees for each vacancy, submitted by the executive committee of the Kentucky Association of Pastoral Counselors. In selecting the three (3) nominees to be submitted to the Governor, the executive committee shall consider all nominations, including self-nominations, from all fee-based pastoral counselors certified under the provisions of Sections 1 to 12 of this Act.*
- (3) *No member shall serve more than two (2) consecutive terms.*
- (4) *The chair of the board may not serve more than two (2) years.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

The board shall meet at least twice a year, in the spring and the fall. The board shall elect a chair at the fall meeting who shall serve a one (1) year term. The board shall:

- (1) *Approve or deny applications for certification submitted according to the provisions of Sections 1 to 12 of this Act;*
- (2) *Approve the examination required of applicants for certification, provide for the administration and grading of the examination, and provide for other matters relating to certification in the profession of fee-based pastoral counseling as promulgated in administrative regulations;*
- (3) *Review the credentials of certificate holders to determine eligibility for certification renewal, including payment of fees authorized in Section 6 of this Act;*
- (4) *Certify those fee-based pastoral counseling applicants who satisfy the requirements of Sections 1 to 12 of this Act, including payment of fees authorized in Section 5 of this Act;*
- (5) *Adopt a code of ethics for certified fee-based pastoral counselors by promulgation of administrative regulations;*
- (6) *Promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purposes of Sections 1 to 12 of this Act;*
- (7) *Contract with the Division of Occupations and Professions within the Finance and Administration Cabinet for the provision of administrative services;*
- (8) *Investigate suspected violations of Sections 1 to 12 of this Act;*
- (9) *Institute and maintain actions to restrain or enjoin persons who violate the certification provisions of Sections 1 to 12 of this Act; and*

- (10) *Submit an annual report to the Governor and to the Legislative Research Commission by January 1 of each year, listing all hearings conducted by the board, any decisions rendered, and a current roster of all certified fee-based pastoral counselors.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

An applicant for certification as a fee-based pastoral counselor shall:

- (1) *Pay the board an initial fee for certification that shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A;*
- (2) *Be at least twenty-one (21) years of age;*
- (3) *Reside or be employed in the Commonwealth of Kentucky;*
- (4) *Have completed a Master's of Divinity degree or its equivalent with a minimum of ninety (90) hours from a seminary accredited by the Association of Theological Schools or an equivalent course of study as defined by the board by promulgation of administrative regulations;*
- (5) *Have completed each of the following:*
 - (a) *At least one thousand three hundred seventy-five (1,375) hours in the practice of supervised pastoral counseling acceptable to the board, subsequent to being granted a master's degree; and*
 - (b) *A minimum of two hundred fifty (250) hours of clinical supervision acceptable to the board;*
- (6) *Be an ordained minister or the denominational equivalent, as determined by the applicant's denomination or faith group, and have been endorsed by that denomination or faith group to function as a fee-based pastoral counselor;*
- (7) *Hold an advanced degree or its equivalent beyond the Master's of Divinity degree with special concentration in the theory and practice of pastoral counseling and which requires at least one (1) year of academic work beyond the first professional degree; and*
- (8) *If the applicant has not received certification before July 1, 1999, pass a written examination approved by the board.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

- (1) *Certification issued under Section 4 of this Act shall be renewed every three (3) years upon:*
 - (a) *Payment of a renewal fee established by the board and promulgated by administrative regulation in accordance with KRS Chapter 13A, but not to exceed three hundred dollars (\$300); and*
 - (b) *Documentation of twenty (20) hours of continuing education completed since the date of last renewal or original issue, whichever is later.*
- (2) *Any certificate not renewed within three (3) months of its renewal date shall expire. The board may reinstate the certificate upon payment of the renewal fee and meeting the continuing education requirement set forth in subparagraph (b) of subsection (1) of this section within one (1) year after the renewal date.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of Sections 1 to 12 of this Act shall not apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including, but not limited to, physicians, social workers, psychologists, nurses, marriage and family therapists, art therapists, or students within accredited training programs of these professions. Nothing in Sections 1 to 12 of this Act shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which these persons hold themselves out to the public.*
- (2) *No person shall use the title "certified fee-based pastoral counselor" or hold himself or herself out as a certified fee-based pastoral counselor, unless certified by the board.*
- (3) *Nothing in Sections 1 to 12 of this Act shall be construed to alter, amend, or interfere with the practice of employment counseling, job placement counseling, or school counseling.*

- (4) *Nothing in Sections 1 to 12 of this Act shall be construed as regulating or limiting the ministry or services of a minister, including pastoral care and counseling, otherwise authorized by a church, denomination, or faith group to perform the ordinary duties or functions of the clergy.*
- (5) *Nothing in Sections 1 to 12 of this Act shall be construed to apply to the activities and services of a student or trainee in pastoral counseling who is pursuing a program of studies in pastoral counseling at an accredited institution of higher learning if the activities are performed under supervision and constitute a part of the supervised program of study, and if the person is designated a pastoral counseling intern or student in training.*
- (6) *The provisions of Sections 1 to 12 of this Act shall not apply to Christian Science practitioners.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

If the board finds any applicant or certificate holder whom it regulates under Sections 1 to 12 of this Act has violated the provisions of Sections 1 to 12 of this Act, or any administrative regulation promulgated under the authority granted to the board, the board may issue an order imposing one (1) or more of the following penalties:

- (1) *Denial of an application for certification, either temporarily or permanently;*
- (2) *Revocation of a certificate or an application for certification, either temporarily or permanently;*
- (3) *Imposition of an administrative fine not to exceed one thousand dollars (\$1,000);*
- (4) *Imposition of a requirement for supervision of the applicant or certificate holder;*
- (5) *Restriction of the certificate holder's ability to supervise others; and*
- (6) *Issuance of a reprimand.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

Any person or organization, including the board upon its own volition, may file with the board a written complaint alleging violation of any provision of Sections 1 to 12 of this Act. The board shall cause the complaint to be investigated.

- (1) *If the investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before refusing to renew, revoking, reprimanding, imposing probation or an administrative fine, or any combination of actions regarding any certificate holder.*
- (2) *After denying an application for certification under Sections 1 to 12 of this Act, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.*
- (3) *The board may reconsider, modify, or reverse its decision on any disciplinary action.*
- (4) *Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

A person whose certificate has been revoked may apply for reinstatement no earlier than one (1) year from the date of revocation, in accordance with the procedures established by the board by administrative regulation under KRS Chapter 13A.

SECTION 11. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

Members of the board and its agents shall be immune from personal liability in any action, civil or criminal, which is based upon any official act or acts performed reasonably and in good faith by the board member, agent, or employee.

SECTION 12. A NEW SECTION OF KRS CHAPTER 335 IS CREATED TO READ AS FOLLOWS:

The Board of Certification of Fee-Based Pastoral Counselors fund is hereby created in the State Treasury. All funds received by the board under the provisions of Sections 1 to 12 of this Act shall be deposited with the State Treasurer for credit to the board fund. The fund shall be invested as all other state funds are invested, and income from investment of the fund shall be credited to the fund. The balance remaining in the fund at the end of any fiscal year shall not lapse to the general fund. The money in the board fund shall be appropriated to the board and shall be used for the purpose of carrying out the provisions of Sections 1 to 12 of this Act.

Section 13. KRE 506 is amended to read as follows:

- (a) Definitions. As used in this rule:
- (1) A "counselor" includes:
 - (A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;
 - (B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;
 - (C) A certified professional art therapist who is engaged to conduct art therapy pursuant to KRS 309.130 to 309.1399;
 - (D) A certified marriage and family therapist as defined in KRS 335.300 who is engaged to conduct marriage and family therapy pursuant to KRS 335.300 to 335.399;
 - (E) A certified professional counselor as defined in KRS 335.500;
 - (F) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team pursuant to KRS 42.660 to 42.680;~~and~~
 - (G) A victim advocate as defined in KRS 421.570 except a victim advocate who is employed by a Commonwealth's attorney pursuant to KRS 15.760 or a county attorney pursuant to KRS 69.350; *and*
 - (H) A certified fee-based pastoral counselor as defined in Section 1 of this Act who is engaged to conduct fee-based pastoral counseling pursuant to Sections 1 to 12 of this Act.**
 - (2) A "client" is a person who consults or is interviewed or assisted by a counselor for the purpose of obtaining professional or crisis response services from the counselor.
 - (3) A communication is "confidential" if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.
- (b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.
- (c) Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person's employer) may claim the privilege in the absence of the client, but only on behalf of the client.
- (d) Exceptions. There is no privilege under this rule for any relevant communication:
- (1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.
 - (2) If the judge finds:
 - (A) That the substance of the communication is relevant to an essential issue in the case;
 - (B) That there are no available alternate means to obtain the substantial equivalent of the communication; and
 - (C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

Section 14. The original four (4) fee-based pastoral counselor members of the board created in Section 2 of this Act shall be appointed upon the effective date of this Act by the Governor from a list of eight (8) nominees submitted by

the board of directors of the Kentucky Association of Pastoral Counselors. Each of these four initial appointees shall possess the qualifications for certification as a fee-based pastoral counselor and shall be deemed certified under the provisions of Sections 1 to 11 of this Act immediately upon being appointed to the board.

- (a) The initial appointments shall be for the following terms:
 - 1. One (1) member and the citizen-at-large member to terms of four (4) years;
 - 2. Two (2) members to terms of three (3) years; and
 - 3. One (1) member to a term of two (2) years.
- (b) Thereafter, each member of the board shall serve for a term of four (4) years.

Approved April 13, 1998

CHAPTER 526

(HB 612)

AN ACT relating to highway signage.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context requires otherwise:

- (1) *"Historical site" means a cultural or educational site that is officially listed in the National Register of Historical Sites;*
- (2) *"Fully controlled access highway" means a limited access highway, an interstate highway, and a parkway;*
- (3) *"Limited supplemental guide sign" means an official highway guide sign that is erected by the Department of Highways to give directions, furnish advance notice, show mileage or exit indicators, and indicate access to historical sites or to scenic, cultural, and recreational tourist areas or attractions and that conforms to the design standards and requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD);*
- (4) *"Post-interchange guide sign" means an official highway sign that may be used in conjunction with a limited supplemental guide sign and lists the name of a tourist area or attraction or an historical site and the distance from an interstate to a tourist area or attraction or an historical site. A post-interchange guide sign shall conform to the design standards and requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD);*
- (5) *"Rural area" means an area that does not have sufficient population to be designated as an urban area;*
- (6) *"Tourist area or attraction" means a cultural, recreational, or entertainment facility or an area of natural phenomenon or scenic beauty that is suited for outdoor recreation or that receives a major portion of its income or visitors during the normal business season from motorists not residing in the immediate area of the tourist area or attraction. "Tourist area or attraction" does not include any of the following:*
 - (a) *Lodging facilities; or*
 - (b) *Facilities that are primarily devoted to the retail sale of goods, unless the goods are created by individuals at the tourist area or attraction or if the sale of goods is incidental to the tourist area or attraction;*
- (7) *"City" means an area with a population of one hundred thousand (100,000) or more designated by the United States Department of Commerce, Bureau of the Census.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

- (1) *No later than February 1, 1999, the commissioner of the Department of Highways shall establish standards, procedures, and forms for the making and approval of applications for a limited supplemental guide sign by the promulgation of administrative regulations in accordance with KRS Chapter 13A.*

- (2) *The criteria for the approval of a limited supplemental guide sign application for an historical site or for a tourist area or attraction shall be based upon average annual attendance and distance from a fully controlled access highway interchange.*
- (3) *At a fully controlled access highway interchange in a rural area, the standards for approval shall be the lesser of:*
 - (a) *Tourist areas and attractions that have an average annual attendance of ten thousand (10,000) visitors and are located within fifty (50) miles of a fully controlled access highway;*
 - (b) *Tourist areas and attractions that are located within fifty (50) miles of a fully controlled access interchange and have an annual visitation equal to or greater than the average annual daily traffic count of the fully controlled access highway at the interchange from which the attraction is served.*
- (4) *At a fully controlled access highway interchange in a city, the standards for approval shall be the lesser of:*
 - (a) *Tourist areas and attractions that have an average annual attendance of seventy-five thousand (75,000) visitors and are located within fifty (50) miles of a fully controlled access highway interchange;*
 - (b) *Tourist areas and attractions that are located within fifty (50) miles of a fully controlled access highway interchange and have an annual visitation equal to the average annual daily traffic count of the fully controlled access highway at the interchange from which the attraction is served.*
- (5) *Historical sites that are located in either a rural area or a city shall have an average annual attendance of five thousand (5,000) and shall be located within fifty (50) miles from a fully controlled access highway interchange.*
- (6) *The identification of a tourist area or attraction on a specific service sign pursuant to KRS 177.0736 shall not affect its eligibility for a limited supplemental guide sign.*
- (7) *Upon receipt of an application, the commissioner of the Department of Highways shall within thirty (30) days provide written notification to the applicant of any hearings pertaining to the application. The commissioner of the Department of Highways shall make a determination on whether to approve the erection of a limited supplemental guide sign within ninety (90) days after the receipt of an application and shall provide written notification to the applicant of his decision.*
- (8) *Supplemental guide signs, including but not limited to limited supplemental guide signs, erected prior to July 1, 1998, shall not be removed due to the site selection criteria contained in Sections 1 to 4 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

- (1) *An application from an historical site or from a tourist area or attraction for the erection of a limited supplemental guide sign shall be made to the commissioner of the Department of Highways. The application shall include, but not be limited to:*
 - (a) *Evidence that demonstrates the average annual attendance;*
 - (b) *Evidence that the tourist area or attraction is established as a permanent business; and*
 - (c) *Evidence that the tourist area or attraction has all necessary and proper licenses, that normal business hours shall be maintained, that it is open to the traveling public, and that it provides recreational or educational opportunities.*
- (2) *A nonrefundable application fee of two hundred dollars (\$200) shall be paid to the Department of Highways.*
- (3) *Upon approval of the application, the applicant shall pay a fee not to exceed five hundred dollars (\$500) per year for a period of ten (10) years or the total cost of the sign and its installation, amortized for a period of ten (10) years, whichever is less, to the Transportation Cabinet.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

Pursuant to the requirements of the MUTCD Section 1A-6, the commissioner of the Department of Highways shall apply to the Federal Highway Administration, by no later than February 1, 1999, for permission to

experiment with a new usage of post-interchange guide signs on all fully controlled access highways in the Commonwealth of Kentucky.

Section 5. KRS 177.0734 is amended to read as follows:

As used in KRS 177.0734 and 177.0736, unless the context requires otherwise:

- (1) "Fully controlled access highways" means highways, limited to interstate and state parkways, that shall give preference to through traffic, shall have access only at selected public roads or streets, shall have no highway grade crossing or intersection, and shall further conform with the Federal Highway Administration's (FHWA's) adopted standards as contained in Federal Highway Program Manual (FHPM) 6-8-3-8 and to administrative regulations promulgated pursuant to KRS Chapter 13A;
- (2) "Logo signs" means signs that consist of a business identification symbol, name, brand, trademark, or combination thereof that may be attached to specific service signs, pursuant to the Manual on Uniform Traffic Control Devices (MUTCD) and administrative regulations promulgated pursuant to KRS Chapter 13A;~~and~~
- (3) "Specific service signs" means official signs, erected on the rights-of-ways of fully controlled *or partially controlled* access highways~~as defined in subsection (1) of this section,~~ or roads as defined in KRS 177.010, that shall include, but not be limited to, the display of the words "Gas", "Food", "Lodging", "*Attractions*", or "Camping" or combinations thereof and shall have space for one (1) or more logo signs that may be attached to the official signs. The erection and maintenance of the official signs shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) and administrative regulations promulgated pursuant to KRS Chapter 13A; ~~and~~
- (4) "*Partially controlled access highway*" means a highway that gives preference to through traffic, that has access only at selected public roads or streets, and that may have a limited number of highway at-grade intersections and private driveway connections.

Section 6. KRS 177.0736 is amended to read as follows:

The commissioner of the Department of Highways shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to provide for the erection of specific service signs on fully controlled access highways *or at interchanges on partially controlled access highways*. The administrative regulations shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), and shall include, but not be limited to, criteria for the following:

- (1) Distances to eligible businesses;
- (2) Selection of eligible businesses;
- (3) Acceptance of logo signs that conform to the MUTCD;
- (4) Removing or covering logo signs during off seasons for eligible businesses operated on a seasonal basis;
- (5) Defining the circumstances in which specific service signs are erected; and
- (6) Determining the costs to eligible businesses for initial installation, annual maintenance, and removal of logo signs.

Approved April 13, 1998

CHAPTER 527

(HB 617)

AN ACT relating to the regulation of entities that provide child care or child placement services.

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

Section 1. KRS 199.011 is amended to read as follows:

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

- (1) "Secretary" means the secretary for human resources;
- (2) "Cabinet" means the Cabinet for Human Resources;
- (3) "Department" means the Department for Social Services;

- (4) "Child" means any person who has not reached his eighteenth birthday;
- (5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;
- (6) "Child-caring facility" means any institution or group home, *including institutions and group homes that are publicly operated, providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility*, other than *an institution or group home* ~~[a state facility, or one (1)]~~ certified by an appropriate agency as operated primarily for educational or medical purposes, *or a residential program operated or contracted by the Department of Juvenile Justice that maintains accreditation, or obtains accreditation within two (2) years of opening from a nationally recognized accrediting organization* ~~[providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility]~~;
- (7) "Child-placing agency" means any agency licensed by the cabinet ~~[other than a state agency]~~ which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;
- (8) "Adoption worker" means an employee of the cabinet designated as such by the secretary for human resources, a social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, adoption placement services to children, or a social worker employed by or under contract to a child-placing adoption agency;
- (9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;
- (10) "Group home" means a homelike facility for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;
- (11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;
- (12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons; and
- (13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social services to all the parties involved in an adoption.
- (14) "Voluntary and informed consent" means that at the time of the execution of the consent the consenting person was fully informed of the legal effect of the consent, that the consenting person was not given or promised anything of value except those expenses allowable under KRS 199.590(6), that the consenting person was not coerced in any way to execute the consent, and that the consent was voluntarily and knowingly given. If at the time of the execution of the consent the consenting person was represented by independent legal counsel, there shall be a presumption that the consent was voluntary and informed. In the event the person was not represented by independent legal counsel, the consent shall be in writing, signed and sworn to by the consenting person and include the following:
 - (a) Date, time, and place of the execution of the consent;
 - (b) Name of the child, if any, to be adopted and the date and place of the child's birth;
 - (c) Consenting person's relationship to the child;
 - (d) Identity of the proposed adoptive parents or a statement that the consenting person does not desire to know the identification of the proposed adoptive parents;
 - (e) A statement that the consenting person understands that the consent will be final and irrevocable twenty (20) days after the execution of the consent if the placement was previously approved, if approval of the placement is required;

- (f) Disposition of the child if the adoption is not adjudged;
- (g) A statement that the consenting person has received a completed and signed copy of the consent at the time of the execution of the consent;
- (h) A statement that the consenting person understands that the consent may only be withdrawn by written notification sent by certified or registered mail addressed to either the attorney for the consenting person or to the attorney for the adoptive parents, within thirty (30) days following the execution of the consent;
- (i) Name and address of the person who prepared the consent, name and address of the person who reviewed and explained the consent to the consenting person, and a verified statement from the consenting person that the consent has been reviewed with and fully explained to the consenting person; and
- (j) Total amount of the consenting person's legal fees, if any, for any purpose related to the execution of the consent and the source of payment of the legal fees.

Section 2. KRS 199.640 is amended to read as follows:

- (1) **Any facility or agency seeking to** ~~[No person, association or organization shall]~~ conduct, operate, or maintain any child-caring facility, or child-placing agency **shall first obtain** ~~[without having]~~ a license to **conduct, operate, or maintain the facility or agency from** ~~[do so issued by]~~ the cabinet.
- (2) **The cabinet shall:**
 - (a) **Develop standards, as provided in subsection (5) of this section, which must be met by any facility or agency seeking to be licensed to conduct, operate, or maintain a child-caring facility or child-placing agency;**
 - (b) **Issue licenses to any facility or agency found to meet established standards and revoke or suspend a license after a hearing in any case that a facility or agency holding a license is determined to have substantially failed to conform to the requirements of the standards;**
 - (c) **Establish and follow procedures designed to insure that any facility or agency licensed to conduct, operate, or maintain a child-caring facility or child-placing agency complies with the requirements of the standards on an ongoing basis.**
- (3) Licenses **shall be** issued ~~[to the agency or facility shall be valid]~~ for a period of one (1) year from date of issue unless revoked by the cabinet. ~~[provided that]~~ Each licensed facility or agency shall be visited and inspected **at least one (1) time each year** by a person authorized by the cabinet **and meeting specific qualifications established by the secretary of the cabinet in an administrative regulation.** ~~[at least once each year and]~~ A complete report of ~~the [such] visit and [or] inspection~~ **shall** be filed with the cabinet.
- (4) Each license issued shall specify the type of care or service the licensee is authorized to perform. Each initial application for a license shall be accompanied by a fee of one hundred dollars (\$100) and shall, except for provisional licenses, be renewable annually upon expiration and reapplication when accompanied by a fee of fifty dollars (\$50). The fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of said account shall lapse to the general fund at the end of each biennium.
- (5) ~~(a) [(3)]~~ The secretary **shall promulgate** ~~[may adopt]~~ administrative regulations establishing **basic standards of care and service for child-caring facilities and child-placing agencies relating to the health and safety of all children in the care of the facility or agency, the basic components for a quality program, as referenced below** ~~[sanitary and hygienic conditions, the accommodations available for each child, the diet provided, the safety of child from fire and other accidents and hazards]~~, and **any** ~~[such]~~ other factors as may be necessary to promote the welfare of children cared for or placed by ~~the [such]~~ agencies and facilities. **Standards established may vary depending on the capacity of the agency or facility seeking licensure. These administrative regulations shall establish standards that insure that:**
 - 1. **The treatment program offered by the facility or agency is directed toward child safety, improved child functioning, improved family functioning, and continuity and permanence for the child;**

2. *The facility or agency has on staff, or has contracted with, individuals who are qualified to meet the treatment needs of the children being served, including their psychological and psychiatric needs;*
 3. *The facility or agency has procedures in place to insure that its staff receives ongoing training and that all staff members who are required to do so meet all regional and national standards;*
 4. *The facility or agency develops an integrated, outcomes-based treatment plan that meets the health, mental health, education, safety, and security needs of each child in its care;*
 5. *The facility or agency has procedures in place to include parents, family, and other caregivers in a child's treatment program;*
 6. *The facility or agency has procedures in place whereby it evaluates its programs on a quarterly basis and documents changes in the program if the results of the review indicate a change is needed;*
 7. *The facility or agency makes available quality programs for substance abuse prevention and treatment with providers licensed under KRS Chapter 222 as part of its treatment services;*
 8. *The facility or agency initiates discharge planning at admission and provides sufficient aftercare; and*
 9. *The facility or agency has procedures in place that outline the structure and objectives of cooperative relationships with the community within which it is located and the local school district.*
- (b) *The secretary shall promulgate regulations establishing recordkeeping and reporting requirements and standards for licensed agencies and facilities that recognize the electronic storage and retrieval of information for those facilities that possess the necessary technology and that include, at a minimum, the following information relating to children in the care of the agency or facility:*
1. *The name, age, social security number, county of origin, and all former residences of the child;*
 2. *The names, residences, and occupations, if available, of the child's parents;*
 3. *The date on which the child was received by the agency or facility; the date on which the child was placed in a foster home or made available for adoption; and the name, occupation, and residence of any person with whom a child is placed; and*
 4. *A brief and continuing written narrative history of each child covering the period during which the child is in the care of the agency or facility.*
- (c) *The secretary may promulgate administrative regulations creating separate licensure standards for different types of facilities.*
- (d) *The secretary shall promulgate administrative regulations to establish practices and procedures for the inspection of child-caring facilities and child-placing agencies. These administrative regulations shall establish a uniform reporting mechanism that includes guidelines for enforcement. ~~}; provided, however,;~~*
- (6) Any administrative regulations *promulgated*~~adopted~~ pursuant to KRS Chapter 13A to govern services provided by church-related privately operated child-caring agencies or facilities shall not prohibit the use of reasonable corporal physical discipline which complies with the provisions of KRS 503.110(1), including the use of spanking or paddling, as a means of punishment, discipline or behavior modification.
- ~~{(4) Each agency or facility licensed under this section shall keep a record containing:~~
- ~~(a) The names, ages, present and former residences of all children received;~~
 - ~~(b) The names, residence and occupation so far as is known, of the parents;~~
 - ~~(c) The dates of the reception, placing out for adoption or foster care, together with the names, occupation and residence of the persons with whom the child is placed;~~
 - ~~(d) The date and cause of termination of its custody of each child; and~~

- ~~(e) A brief history of each child until he shall have reached the age of eighteen (18) years or shall have been adopted or discharged according to the law.~~
- ~~(5) Parents are received or boarded in a family rehabilitation home pursuant to a written agreement between home and parent.~~
- ~~(7)(6)~~ All records regarding children or facts learned about children and their parents and relatives by any licensed agency or facility shall be deemed confidential in the same manner and subject to the same provisions as similar records of the cabinet. The information thus obtained shall not be published or be open for public inspection except to authorized employees of the cabinet or of such licensed agency or facility in performance of their duties.

Section 3. KRS 199.670 is amended to read as follows:

- (1) The cabinet may revoke *or suspend* a license *issued* under KRS 199.640 for any *deficiency or* condition which would have caused a denial of the license in the first instance. The cabinet may refuse to issue a license in any case where the applicant is not found to *meet the standards established* ~~possess the qualifications prescribed~~ by the secretary *in an administrative regulation promulgated in accordance with the provisions of Section 2 of this Act.*
- (2) ~~If in any case where~~ the cabinet proposes to revoke *or suspend*, or to refuse to issue a license, written notice shall be given to the licensee or applicant, stating the proposed action and grounds therefor, and notifying the licensee or applicant that the license will be revoked, *suspended*, or refused unless the applicant or licensee makes *a written request to engage in informal dispute resolution, in accordance with the provisions of subsection (4) of this section, or the applicant or licensee makes a written request* ~~application~~ for a hearing before the secretary within thirty (30) days of notice. *Notice shall be complete and effective upon mailing. If the cabinet proposes to deny the issuance or renewal of a license, notice of the proposed action shall be provided to the licensee or applicant no later than thirty (30) days after the application for licensure or renewal is received by the cabinet.*
- (3) If *a request* ~~application~~ for a hearing is made, the hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125.
- (4) ~~(a)(3)~~ *Upon receipt of a statement of deficiency from the cabinet, the applicant or licensee may request one (1) informal opportunity per survey to dispute any deficiencies with which it disagrees. The applicant or licensee shall make a written request to the cabinet for informal dispute resolution, which must be received by the cabinet within ten (10) days of the receipt of the statement of deficiency by the applicant or licensee. The request shall:*
 1. *Specify the deficiencies in dispute;*
 2. *Provide a detailed explanation of the basis for the dispute;*
 3. *Include any supporting documentation, including any information that was not available at the time of the survey; and*
 4. *If desired, request a face-to-face meeting with the regional program manager, or the manager's designee, and a surveyor who did not participate in the original survey or the decision to issue the disputed deficiency.*

(b) Upon receipt of a request for informal dispute resolution, the regional program manager, or the manager's designee, and a child-caring surveyor who did not participate in the original survey or the decision to issue the disputed deficiency shall, within thirty (30) days of receipt of the request, review the specific deficiencies in dispute, and notify the applicant or licensee in writing of the results of the review. If a face-to-face meeting was requested by the applicant or licensee, the meeting shall be held, and no decision shall be made regarding the disputed deficiencies until after the face-to-face meeting has occurred.

 1. *If materials submitted by the applicant or licensee by mail or at the face-to-face meeting demonstrate that specific deficiencies should not have been cited, those deficiencies will be removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies will be rescinded.*

2. *If, after review of the disputed deficiencies, the regional office staff affirms the deficiencies, the licensee or applicant may accept the findings of the regional office staff and make any corrections required by the cabinet, or may, within thirty (30) days of receipt of the notice, request in writing a meeting with the secretary or the secretary's designee. The secretary may designate an individual who holds the position of director or above to serve as the designee.*
 3. *The secretary or the secretary's designee shall meet in person with the licensee or applicant and review the documentation available within fifteen (15) days of receipt of the request.*
 4. *If the information provided demonstrates that specific deficiencies should not have been cited, those deficiencies will be removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies will be rescinded.*
 5. *If the secretary or the secretary's designee affirms the deficiencies, the secretary or the secretary's designee shall, within fifteen (15) days issue a final written order stating the cabinet's final position regarding the deficiencies in dispute. The decision of the secretary or the secretary's designee shall be a final order for purposes of subsection (5) of this section.*
- (c) *A request for informal dispute resolution shall not delay the required submission of a plan of correction for any deficiency not in dispute. Any corrective plan of action or similar submission required by the cabinet relating to any deficiency in dispute shall be suspended until a decision is rendered and a corrective plan of action is agreed to within the informal dispute resolution process or the secretary or the secretary's designee issues a final order.*
- (5) Any final order may be reviewed in the Circuit Court of the county in which the child-caring facility or child-placing agency is located in accordance with KRS Chapter 13B.

SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department for Social Services and the Department for Medicaid Services shall not reimburse an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds unless the Department for Medicaid Services or the Department for Social Services or a designated agent thereof has determined that there is no provider within the Commonwealth that is capable and willing to provide comparable services at a comparable cost per child to those that would be delivered by the out-of-state provider. An exception may be made if:*
 - (a) *The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or*
 - (b) *The services offered by the out-of-state resource is deemed by either department or a designated agent thereof to be more appropriate for the individual child than the services offered by the in-state provider.*
- (2) *Prior to promulgating administrative regulations governing the determination of the availability of providers of residential care within the Commonwealth, the Department for Medicaid Services and the Department for Social Services shall establish uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth.*
- (3) *Each department shall promulgate an administrative regulation in accordance with KRS Chapter 13A that contains the uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth established under subsection (2) of this section.*

Section 5. KRS 205.634 is amended to read as follows:

- (1) No medical assistance payments shall be made under this chapter to any out-of-state health facility or health service providing services within the geographic boundaries of the Commonwealth who does not have a certificate of need if the health facility or health service would be required to obtain a certificate of need under KRS Chapter 216B if the facility or service were located within the geographic boundaries of the Commonwealth.
- (2) *The Department for Medicaid Services and the Department for Social Services shall not reimburse an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds unless the Department for Medicaid Services or the Department for Social Services or a designated agent thereof has determined that there is no provider within the Commonwealth*

that is capable and willing to provide comparable services at a comparable cost per child to those that would be delivered by the out-of-state provider. An exception may be made if:

- (a) *The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or*
 - (b) *The services offered by the out-of-state resource is deemed by either department or a designated agent thereof to be more appropriate for the individual child than the services offered by the in-state provider.*
- (3) *Prior to promulgating administrative regulations governing the determination of the availability of providers of residential care within the Commonwealth, the Department for Medicaid Services and the Department for Social Services shall establish uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth.*
 - (4) *Each department shall promulgate an administrative regulation in accordance with KRS Chapter 13A that contains the uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth established under subsection (3) of this section.*

Section 6. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the following subsection shall be added as the last numbered subsection of Section 2 of this Act:

Other than for the establishment of standards, the Cabinet for Families and Children may contract with the Cabinet for Health Services to perform any or all of its responsibilities under this section and Section 3 of this Act relating to the licensing and inspection of child-caring facilities and child-placing agencies.

Approved April 13, 1998

CHAPTER 528

(HB 629)

AN ACT relating to highways.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "partial control of access" means the limited right or easement of access granted by the Transportation Cabinet under subsection (2) of this section.*
- (2) *The Transportation Cabinet shall establish minimum spacing requirements for partial control of access to a limited access facility, and the manner that the access is to be provided, for the owners or occupants of land or other persons who have a limited right or easement of access under KRS 177.220. Minimum spacing between access points shall be one thousand two hundred (1,200) feet in rural areas and six hundred (600) feet in urban areas.*
- (3) *The Transportation Cabinet may change the spacing of access control points if:*
 - (a) *1. An owner or occupant of land abutting a limited access facility requests the cabinet for the change; or*
 - 2. A local government requests the cabinet for the change; and*
 - (b) *The change in spacing of access points is supported by an engineering and traffic study approved by the state highway engineer.*
- (4) *A change in spacing of access control points shall not exceed fifteen percent (15%) of the limit established in subsection (2) of this section.*

Approved April 13, 1998

CHAPTER 529**(HB 636)**

AN ACT relating to waste tires.

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

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

The General Assembly finds that waste tires are a threat to human health, safety, and the environment when they are not properly managed. The General Assembly further finds that waste tires can be used in civil engineering applications, as tire-derived fuel, and may be recycled, but that markets for these uses have not been adequately developed. Therefore a waste tire program should be established to manage waste tires in a way that protects human health, safety, and the environment, and which encourages the development of markets for waste tires.

SECTION 2. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *A waste tire program is created to manage waste tires which for the purposes of Sections 1 to 16 of this Act shall include:*
 - (a) *Tires not used for their original, intended purpose due to wear or damage;*
 - (b) *Used tires stored for resale; and*
 - (c) *Processed waste tire material.*
- (2) *The cabinet may promulgate administrative regulations to implement the waste tire program.*

SECTION 3. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The waste tire program shall not apply to:

- (1) *A person who accumulates waste tires for an agricultural purpose;*
- (2) *A person who stores waste tires for resale, if the storage of the waste tires complies with environmental performance standards established by the cabinet for waste sites or facilities and follows common business practices of storing new motor vehicle tires on racks and moving the waste tires indoors at the close of the business day;*
- (3) *A person who accumulated up to seven hundred and fifty (750) waste tires before January 16, 1991, and who meets the following conditions:*
 - (a) *The waste tires are used as an integral part of a business, including safety barriers but excluding storage or disposal;*
 - (b) *The number of waste tires has not increased since January 16, 1991; and*
 - (c) *The person certifies to the cabinet within thirty (30) days of the effective date of this Act that actions have been taken to prevent fires and the spread of illness through disease vectors.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall engage in disposal of waste tires in Kentucky except by transfer to a permitted solid waste disposal facility and except as follows:*
 - (a) *If transferred to a contained landfill, the waste tires shall be processed to prevent the entrapment of air or water;*
 - (b) *If transferred to a residual landfill, the waste tires shall be rendered suitable for disposal in a landfill and the landfill shall accept only waste tires for disposal; or*

- (c) *If transferred to an incinerator or to any facility for use as a fuel, the incinerator or other facility shall be permitted to allow the burning of waste tires and shall have received a local determination related to the waste tires in accordance with KRS 224.40-315 (1).*
- (2) *No person shall accumulate more than twenty-five (25) waste tires in Kentucky at a time for processing, by baling, chopping, recycling, shredding, or other means of changing their shape, size, or chemical content without meeting the requirements of the waste tire program. For processing which had been approved by the cabinet before the effective date of this Act, the person who had received the approval shall register within forty-five (45) days of the effective date of this Act.*
- (3) *No person shall transport more than fifty (50) waste tires in Kentucky at a time, either in one (1) vehicle or more than one (1) vehicle managed by or operated under contract with that person, without meeting the requirements of the waste tire program, unless transported in accordance with subsection (5) of this section.*
- (4) *No person shall accumulate more than one hundred (100) waste tires in Kentucky at a time without meeting the requirements of the waste tire program, unless exempted by Section 3 of this Act or accumulated in accordance with subsection (5) or (6) of this section. For accumulations of more than one hundred (100) tires not accumulated in accordance with subsection (5) or (6) of this section and existing on the effective date of this Act, the person who has accumulated the tires shall register within forty-five (45) days of the effective date of this Act.*
- (5) *A person making retail sales of new motor vehicle tires in Kentucky may accumulate up to one thousand (1,000) waste tires at the place where retail sales are made without registering as an accumulator as required by Section 5 of this Act, if the waste tires are stored in accordance with the requirements of subsections (3), (5), (6), (7), and (8) of Section 6 of this Act, and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours. The retailer may transport the waste tires it accumulates at the place where retail sales are made without registering as a transporter as required by Section 5 of this Act if the waste tires will remain in the retailer's possession until they reach their destination.*
- (6) *An automotive recycling dealer in Kentucky who is licensed by the Transportation Cabinet pursuant to KRS 190.010 to 190.080 may accumulate up to one thousand (1,000) waste tires at the place where automotive recycling is done without registering as an accumulator as required by Section 5 of this Act if the waste tires are stored in accordance with subsections (2) to (11) of Section 6 of this Act and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours.*

SECTION 5. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless exempted by Section 3 or as authorized by subsections (4) and (5) of Section 4 of this Act, no person shall accumulate more than twenty-five (25) waste tires at a time for processing, transport more than fifty (50) waste tires at a time, or accumulate more than one hundred (100) waste tires at a time without first registering and receiving a letter of approval from the cabinet.*
- (2) *To register, the following shall be submitted:*
- (a) *The person's name and address;*
 - (b) *The address where the waste tires are to be accumulated or transferred;*
 - (c) *A statement of the purpose for accumulating, transporting, or processing the waste tires;*
 - (d) *A statement of the maximum number of waste tires to be accumulated, transported, or processed, and their passenger tire equivalents, as calculated under Section 7 of this Act;*
 - (e) *The rate at which waste tires are to be accumulated, transported, or processed;*
 - (f) *A certification stating that the person has read and understood the requirements of the waste tire program and will comply with those requirements;*
 - (g) *Financial assurance to pay for closure and corrective action as required by Sections 8 and 9 of this Act; and*
 - (h) *A disclosure statement required by KRS 224.40-330(2);*
- (3) *The cabinet shall approve the registration when the registration requirements have been met.*

SECTION 6. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

A person required to register as an accumulator, transporter, or processor of waste tires shall:

- (1) *Manage the waste tires in accordance with the registration approved by the cabinet;*
- (2) *Manage the waste tires in accordance with environmental performance standards established by the cabinet for waste sites or facilities;*
- (3) *Store waste tires in a manner that allows fire fighting equipment access to the waste tires;*
- (4) *Establish fire breaks to prevent the spread of fire;*
- (5) *Prevent mosquito infestations and entrapment of water in the waste tires;*
- (6) *Store waste tires stored outdoors in closed containers, in adjacent covered areas, or in windrows no greater than twenty-five (25) feet wide, ten (10) feet high, and seventy-five (75) feet long, with at least fifty (50) feet of open, unoccupied ground between windrows;*
- (7) *Unless the waste tires are stored in buildings, in adjacent covered areas, or closed containers, store them no closer than:*
 - (a) *Thirty (30) feet from a utility easement, property line, or highway right-of-way;*
 - (b) *Two hundred fifty (250) feet from a residence; or*
 - (c) *Two hundred fifty (250) feet from a karst feature, surface water of the Commonwealth, or unplugged water well;*
- (8) *Store waste tires on a surface with a grade of five percent (5%) or less which is free of vegetation and other flammable materials;*
- (9) *Display a permanent sign legible at one hundred (100) feet which identifies the name, address, and emergency telephone number of the person with the registration, the hours of operation, and the cabinet's emergency telephone number;*
- (10) *Comply with the recordkeeping system established by Section 13 of this Act; and*
- (11) *Transfer waste tires only to a person who presents a letter from the cabinet approving a registration issued under Section 5 of this Act or a copy of a solid waste disposal facility permit issued by the cabinet.*

SECTION 7. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *A person required to register as an accumulator, transporter, or processor of waste tires shall provide the cabinet with financial assurance to pay for closure and corrective action as required by Sections 8 and 9 of this Act.*
- (2) *The amount of the financial assurance shall be based on the maximum quantity of waste tires, calculated as passenger tire equivalents, that are accumulated, processed, or transported. Passenger tire equivalents shall be determined by using the most appropriate following calculation:*
 - (a) *One (1) whole waste tire with an inside bead diameter less than nineteen (19) inches shall equal one (1) passenger tire equivalent;*
 - (b) *One (1) whole waste tire with an inside bead diameter equal to or greater than nineteen (19) inches shall equal five (5) passenger tire equivalents;*
 - (c) *Twenty (20) pounds of waste tires shall equal one (1) passenger tire equivalent;*
 - (d) *One (1) cubic yard of loose, whole waste tires shall equal ten (10) passenger tire equivalents;*
 - (e) *One (1) cubic yard of laced or stacked whole waste tires shall equal fifteen (15) passenger tire equivalents; or*
 - (f) *One (1) cubic yard of processed waste tire material shall equal fifty (50) passenger tire equivalents.*

- (3) *The amount of financial assurance to be provided shall be one dollar (\$1) per passenger tire equivalent, with a minimum amount of ten thousand dollars (\$10,000).*
- (4) *The cabinet may approve an alternative method of determining the number of passenger tire equivalents if the alternative method ensures that adequate funds are available to meet closure and corrective action requirements.*
- (5) *The financial assurance shall be issued in favor of the cabinet and may consist of one (1) or more of the following mechanisms; surety bonds, corporate guarantees, irrevocable letters of credit, insurance, or trust funds. The financial assurance shall be submitted to the cabinet on a form or in a format approved by the cabinet. In approving a financial assurance mechanism, the cabinet shall follow the administrative regulations promulgated by the U. S. Environmental Protection Agency under Subtitle D of the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq., for solid waste disposal facilities, unless the cabinet promulgates administrative regulations setting different standards.*
- (6) *The cabinet shall forfeit the financial assurance when necessary to pay for closure or corrective action. Any money remaining after completion of closure and corrective action shall be returned to the person who posted the financial assurance.*

SECTION 8. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *A person required to register as an accumulator, transporter, or processor of waste tires shall conduct closure by:

 - (a) *Notifying its customers and the cabinet with a schedule of when waste tires will no longer be accepted and closure will begin;*
 - (b) *Removing all waste tires in accordance with the schedule;*
 - (c) *Conducting any corrective action required by Section 9 of this Act; and*
 - (d) *Certifying to the cabinet that all waste tires have been removed, that no additional waste tires will be accepted, and that any necessary corrective action has been completed.**
- (2) *The cabinet shall determine that closure has been completed before releasing the financial assurance.*

SECTION 9. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

A person required to register as an accumulator, transporter, or processor of waste tires shall conduct corrective action as necessary to protect human health, safety, and the environment. For a release or a threatened release of a hazardous substance, a pollutant or contaminant, or a petroleum or petroleum product, corrective action shall be conducted in accordance with KRS 224.01-400 and KRS 224.01-405. The person registered shall certify to the cabinet that corrective action has been completed in accordance with this section. The cabinet shall determine that corrective action has been completed before releasing the financial assurance.

SECTION 10. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *Until July 31, 2002, a person purchasing a new motor vehicle tire in Kentucky shall pay to the retailer a one dollar (\$1) fee at the time of the purchase of that tire. A new tire is a tire that has never been placed on a motor vehicle wheel rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a recapped tire. The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450. The fee shall not be subject to the Kentucky sales tax.*
- (2) *When a person purchases a new motor vehicle tire in Kentucky to replace another tire, the tire that is replaced becomes a waste tire subject to the waste tire program. The person purchasing the new motor vehicle tire shall either offer the retailer that waste tire or meet the following requirements:

 - (a) *Dispose of the waste tire in accordance with subsection (1) of Section 4 of this Act;*
 - (b) *Deliver the waste tire to a person registered in accordance with the waste tire program; or*
 - (c) *Reuse the waste tire for its original intended purpose or an agricultural purpose.**
- (3) *A retailer shall report to the Revenue Cabinet on or before the twentieth day of each month the number of new motor vehicle tires sold during the preceding month and the number of waste tires received from*

customers that month. The report shall be filed on forms and contain information as the Revenue Cabinet may require. The retailer shall remit with the report ninety-five percent (95%) of the fees collected for the preceding month and may retain a five percent (5%) handling fee.

- (4) *A retailer shall:*
- (a) *Accept from the purchaser of a new tire, if offered, for each new motor vehicle tire sold, a waste tire of similar size and type; and*
 - (b) *Post notice at the place where retail sales are made that state law requires the retailer to accept, if offered, a waste tire for each new motor vehicle tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section. The notice shall also include the following wording: "State law requires a new tire buyer to pay one dollar (\$1) for each new tire purchased. The money is collected and used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires."*
- (5) *A retailer shall comply with the requirements of the recordkeeping system for waste tires established by Section 13 of this Act.*
- (6) *A retailer shall transfer waste tires only to a person who presents a letter from the cabinet approving the registration issued under Section 5 of this Act or a copy of a solid waste disposal facility permit issued by the cabinet, unless the retailer is delivering the waste tires to a destination outside Kentucky and the waste tires will remain in the retailer's possession until they reach that destination.*

SECTION 11. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The Revenue Cabinet shall transfer monthly fees collected pursuant to Section 10 of this Act to the state treasury, for deposit into the waste tire trust fund established by Section 16 of this Act. All assessment and collection powers conveyed to the Revenue Cabinet for the assessment and collection of taxes shall apply to the assessment and collection of the fees. The Revenue Cabinet shall be reimbursed from the waste tire trust fund for its costs incurred in assessing and collecting the fees, with the reimbursement not to exceed fifty thousand dollars (\$50,000) per year.

SECTION 12. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The cabinet shall report to the General Assembly no later than January 15, 2002, on the effectiveness of the waste tire program in developing markets for waste tires, the effectiveness of the fee established in Section 10 of this Act in funding the cabinet's implementation of the waste tire program, and whether the fee should be extended beyond July 31, 2002.

SECTION 13. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *A recordkeeping system shall be implemented for a waste tire from the time it becomes a waste tire to the time it is disposed, recycled, or used as tire-derived fuel.*
- (2) *A retailer, an automotive recycling dealer, and a person required to register as an accumulator, transporter, or processor who transfers waste tires to another person shall obtain a receipt for the waste tires.*
- (3) *A person filling out a receipt shall provide the following information:*
 - (a) *That person's name, address, company and signature;*
 - (b) *The number of waste tires or their passenger tire equivalents accepted;*
 - (c) *The date the waste tires were transferred; and*
 - (d) *The name and address of the person transferring the waste tires.*
- (4) *A person who fills out a receipt shall keep a copy for three (3) years.*

SECTION 14. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet may enter into an agreement with a person to collect, transport, process, recycle, make tire-derived fuel, dispose of waste tires, or develop markets for waste tires. A person awarded a contract shall comply with the requirements of the waste tire program.*
- (2) *The cabinet may enter into a memorandum of agreement with a federal, state, or local agency to aid in implementing the waste tire program. The cabinet may reimburse the federal, state, or local agency for their expenses incurred to aid the implementation of the waste tire program if money is available in the waste tire trust fund established by Section 16 of this Act.*
- (3) *The cabinet may enter into an agreement with a local government for the removal of waste tires, including waste tires collected by the local government through a local community-sponsored program. If income is derived from the disposal of the waste tires collected through the local community-sponsored program, the income may be used to reimburse the local government for the cost of sponsoring the program.*

SECTION 15. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *If money in the waste tire trust fund established by Section 16 of this Act is not otherwise obligated, the cabinet may award a grant to a person for a project that will manage waste tires in accordance with the purposes of the waste tire program as appropriate to protect human health, safety, and the environment, or to develop markets for waste tires.*
- (2) *An applicant for a grant shall meet the following criteria:*
 - (a) *Have the legal authority to construct and operate the project;*
 - (b) *Have the ability to construct and operate the project in compliance with this chapter and the grant conditions; and*
 - (c) *The applicant and the persons who will be managing the project shall not have received a final judgment or conviction of a state or federal environmental statute or regulation in the five (5) years before submitting the application and shall not have any outstanding violations of state or federal environmental statutes or regulations.*
- (3) *The cabinet shall prioritize the applications based on the following factors:*
 - (a) *The project's consistency with the purposes of the waste tire program;*
 - (b) *The project's costs and forecasted benefits;*
 - (c) *The applicant's credit history; and*
 - (d) *The applicant's and key personnel's environmental compliance record.*
- (4) *A person awarded a grant shall:*
 - (a) *Construct and operate the project in compliance with this chapter and the grant conditions;*
 - (b) *Remain responsible for complying with this chapter and the grant conditions, even if the project is managed by someone else;*
 - (c) *Retain ownership of all real and personal property purchased with grant funds unless the cabinet approves their transfer;*
 - (d) *Submit to the cabinet monthly an itemized list of expenditures, with copies of invoices or similar documentation;*
 - (e) *Submit to the cabinet periodic progress reports; and*
 - (f) *Not change the project without the cabinet's approval.*
- (5) *The cabinet may revoke a grant and seek recovery of any grant funds dispersed if the person awarded the grant does not comply with this chapter or the grant conditions.*

SECTION 16. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

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

- (a) *Properly managing waste tires;*
 - (b) *Paying the cabinet's costs in implementing the waste tire program;*
 - (c) *Paying the Revenue Cabinet's costs of assessing and collecting the fee established by Section 10 of this Act;*
 - (d) *Entering into the agreements described in Section 14 of this Act; and*
 - (e) *Awarding the grants described in Section 15 of this Act.*
- (2) *All interest earned on money in the fund shall be credited to the fund.*
 - (3) *Money unexpended at the end of a fiscal year shall not lapse to the general fund.*
 - (4) *Any money remaining in the waste tire trust fund established by KRS 224.50-820 shall be transferred to the fund established by this section.*

Section 17. The following KRS sections are repealed:

- 224.50-820 Waste tire trust fund.
- 224.50-822 Fee to be paid on each new motor vehicle tire sold -- Monthly payment and report -- Deposit of money in trust fund.
- 224.50-823 Monthly report on number of new motor vehicle tires sold.
- 224.50-824 Waste Tire Removal and Control Program -- Purpose of program.
- 224.50-826 Requirements applicable to existing waste tire piles.
- 224.50-828 Agreements with private parties and local governments to clean up waste tire piles.
- 224.50-829 Requirement of financial assurances from waste tire processors and recyclers.
- 224.50-830 Prohibitions.
- 224.50-832 Registration of accumulations -- Information required -- Standards for controlling accumulations.
- 224.50-834 Loan program.
- 224.50-836 Agreement with Cabinet for Human Resources for enforcement purposes.
- 224.50-838 Exemptions.
- 224.50-840 Conditions under which accumulations of waste tires presently in use as an integral part of a business allowed.
- 224.50-842 Accumulations for agricultural purposes.
- 224.50-844 Exemption for contractor for lawful disposal of waste tires.
- 224.50-846 Effective date.

Approved April 13, 1998

CHAPTER 530

(HB 641)

AN ACT relating to teachers.

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

Section 1. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
 - (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

- (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
 - (c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, **grandchildren**, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and
 - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.
- (2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.
 - (3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.
 - (4) Accumulated days of sick leave shall be granted to a teacher, if prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.
 - (5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
 - (6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
 - (7)
 - (a) ***A district board of education shall establish a sick leave donation program to permit teachers to voluntarily contribute sick leave to teachers in the same school district who are in need of an extended absence from school. A teacher who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher who is authorized to receive the sick leave donated. A teacher may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.***
 - (b) ***A teacher may receive donations of sick leave if:***
 - 1. ***The teacher or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher to be absent for at least ten (10) days;***
 - 2. ***The teacher's need for the absence and use of leave are certified by a licensed physician;***
 - 3. ***The teacher has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and***
 - 4. ***The teacher has complied with the school district's policies governing the use of sick leave.***
 - (c) ***While an employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.***

- (d) *Any sick leave that remains unused, is not needed by a teacher, and will not be needed in the future shall be returned to the teacher donating the sick leave.*
- (e) *The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.*
- (8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
- ~~(9)~~~~(8)~~ After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
- ~~(10)~~~~(9)~~ Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection ~~(9)~~~~(8)~~ of this section.

Section 2. KRS 161.623 is amended to read as follows:

- (1) Effective July 1, 1982, and thereafter, a district board of education or other employer of members of the Teachers' Retirement System may compensate, at the time of retirement for service, an active teacher for unused sick-leave days in accordance with this section.
- (2) Upon the member's application for service retirement, the employer shall certify the retiring member's unused accumulated sick-leave balance to the board of trustees of the Kentucky Teachers' Retirement System. The member's sick-leave balance, expressed in days, shall be divided by one hundred eighty-five (185) days to determine the amount of service credit that may be considered for addition to the member's retirement account for the purpose of determining the retirement allowance under KRS 161.620. Such sick-leave credit shall not be used for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 161.600.
- (3) The board shall compute the cost to the retirement system of the sick-leave credit for each retiring member and shall bill the last employer of the retiring member for such cost. The employer shall pay the cost of such service credit to the retirement system within fifteen (15) days after receiving notification of the cost from the board.
- (4) Retiring members who receive service credit under this section shall not be eligible to receive compensation for accrued sick leave under KRS 161.155~~(9)~~~~(8)~~ or any other statutory provision.
- (5) Employer participation is optional and the employer may opt to purchase less service credit than the member is eligible to receive provided the same percentage of reduction is made applicable to all retiring members of the employer during a school fiscal year.
- (6) The board of trustees shall formulate and adopt necessary rules and regulations for the administration of the foregoing provisions.

Approved April 13, 1998

CHAPTER 531

(HB 649)

AN ACT relating to the practice of pharmacy.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall establish an impaired pharmacist committee to promote the early identification, intervention, treatment, and rehabilitation of pharmacists and pharmacist interns who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any other physical or mental condition.*
- (2) *The board may enter into a contractual agreement with a nonprofit corporation, pharmacy professional organization, or similar organization for the purpose of creating, supporting, and maintaining an impaired pharmacist committee.*
- (3) *The board may promulgate administrative regulations pursuant to KRS Chapter 13A to effectuate and implement the provisions of this section.*
- (4) *Beginning July 15, 1998, the board shall collect an assessment of ten dollars (\$10) to be added to each licensure renewal application fee payable to the board. This assessment shall be expended by the board on the operation of the impaired pharmacist committee.*
- (5) *Members of an impaired pharmacist committee, any administrator, staff member, consultant, agent, volunteer, or employee of the committee acting within the scope of his or her duties and without actual malice and all other persons who furnish information to the committee in good faith and without actual malice shall not be liable for any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the committee or by any individual member of the committee.*
- (6) *All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the impaired pharmacist committee, all communications to or from the committee, and all proceedings, findings, and conclusions of the committee, including those relating to intervention, treatment, or rehabilitation, that in any way pertain or refer to a pharmacist or pharmacist intern who is or may be impaired shall be privileged and confidential.*
- (7) *All records and proceedings of the committee that pertain or refer to a pharmacist or pharmacist intern who is or may be impaired shall be privileged and confidential, used by the committee and its members only in the exercise of the proper function of the committee, not be considered public records, and not be subject to court subpoena, discovery, or introduction as evidence in any civil, criminal, or administrative proceedings, except as described in subsection (8) of this section.*
- (8) *The committee may only disclose the information relative to an impaired pharmacist or pharmacist intern if:*
 - (a) *It is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired pharmacist or pharmacist intern;*
 - (b) *The release is authorized in writing by the impaired pharmacist or pharmacist intern; or*
- (c) *The committee is required to make a report to the board pursuant to KRS 315.121.*

Section 2. KRS 333.040 is amended to read as follows:

This chapter applies to all medical laboratories within the State of Kentucky, except:

- (1) Medical laboratories operated by the United States government;
- (2) Medical laboratories operated by a licensed physician, or a group of licensed physicians, solely and exclusively in connection with the diagnosis and treatment of their own patients; if any referred work is received or performed by such medical laboratories, all provisions of this chapter shall apply;
- (3) Medical laboratories operated by hospitals licensed by the secretary for human resources;
- (4) Medical laboratories operated and maintained exclusively for research purposes, involving no patient or public health service whatsoever;
- (5) *Medical laboratories operated by facilities holding a permit pursuant to KRS 315.035 and holding a valid certification issued pursuant to the Clinical Laboratory Improvement Act of 1988 (CLIA), as amended, solely and exclusively in connection with assisting a patient with the use of CLIA-waived tests available from the facility's stock or inventory, and in connection with testing and treatment of patients covered under collaborative care agreements established under KRS 315.010 and other applicable laws. If any referred work is received or performed by these medical laboratories, all provisions of this chapter shall apply.*

Section 3. KRS 315.010 is amended to read as follows:

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;
- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;
- (6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;
- (7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;
- (8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;
- (9) "Drug" means any of the following:
 - (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or
 - (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or
 - (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
 - (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;
- (10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:
 - (a) Evaluation of prescription drug orders and patient records for:
 1. Known allergies;
 2. Rational therapy contraindications;
 3. Appropriate dose and route of administration;
 4. Appropriate directions for use; or
 5. Duplicative therapies.
 - (b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;
 - (c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or

- (d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;
- (11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;
- (12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;
- (13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;
- (14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;
- (15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (16) "Pharmacist intern" means a natural person who is:
 - (a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;
 - (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
 - (d) An individual participating in a residency or fellowship program approved by the board for internship credit;
- (17) "Pharmacy" means every place where:
 - (a) Drugs are dispensed under the direction of a pharmacist;
 - (b) Prescription drug orders are compounded under the direction of a pharmacist; or
 - (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;
- (18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;
- (19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection, administration of medication in the course of dispensing or maintaining a prescription drug order, and drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;
- (20) "Practitioner" has the same meaning given in KRS 217.015(23);
- (21) "Prescription drug" means a drug which:
 - (a) Under federal law is required to be labeled with either of the following statements:
 - 1. "Caution: Federal law prohibits dispensing without prescription"; or
 - 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or

- (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;
- (22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;
- (23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;
- (24) "Society" means the Kentucky Society of Health-Systems Pharmacists;
- (25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and
- (26) "Wholesaler" means any person ~~within the Commonwealth~~ who legally buys drugs for resale or distribution to persons other than patients or consumers.

Section 4. KRS 315.065 is amended to read as follows:

- (1) Because of the continuous introduction of new therapeutic and diagnostic agents and changing concepts in the practice of pharmacy, it is essential that a pharmacist undertake a program of continuing education to maintain his professional competency to practice in the public interest.
- (2) No pharmacist's license shall be renewed until the license holder is able to submit written proof to the board that he has satisfactorily completed, in the previous renewal period, a continuing education program acceptable to the board. Such continuing education requirements shall be determined by regulation of the board, provided the course described in KRS 214.610(1) is included, but they shall not require more than an average of **one and one-half (1-1/2)** ~~fifteen (15)~~ continuing education units (CEU) per year.
- (3) The board shall adopt rules and regulations to carry out the provisions of this section, to include guidelines and criteria for reviewing and approving continuing education programs.

SECTION 5. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

- (1) ***A pharmacy shall be allowed to place drugs with a home health agency's authorized employees and with a hospice's authorized employees for the betterment of public health. The pharmacy shall remain the legal owner of the drugs.***
- (2) ***A written agreement between the pharmacy and home health agency or hospice shall document the protocol for the handling and storage of the drugs by authorized employees and shall be approved by the pharmacist in charge.***
- (3) ***The pharmacist in charge shall review the protocol to assure that safe, secure and accountable handling of controlled legend drugs is maintained under the protocol before giving approval.***
- (4) ***The pharmacist in charge or a pharmacist designee shall physically inspect and review the drug storage and handling at the home health agency and the hospice not less than annually.***
- (5) ***The home health agency and the hospice protocol shall include, but not be limited to, the following:***
- (a) ***Safe and secure storage of drugs;***
 - (b) ***Access to drugs limited to authorized employees;***
 - (c) ***Records of drugs checked out to authorized employees and records of drugs, amounts and to whom and by whom administered;***
 - (d) ***Prompt notification of the pharmacy when a drug is used, including the prescriber, patient, drug, dosage form, directions for use and other pertinent information;***
 - (e) ***Billing information;***
 - (f) ***Procedures for handling drugs beyond their expiration date; and***
 - (g) ***Inventory control.***

- (6) *The following legend drugs shall be allowed under these agreements:*
- (a) *Sterile water for injection or irrigation;*
 - (b) *Sterile saline solution for injection or irrigation;*
 - (c) *Heparin flush solution;*
 - (d) *Diphenhydramine injectable;*
 - (e) *Epinephrine injectable;*
 - (f) *Glucagon;*
 - (g) *Influenza vaccine; and*
 - (h) *Pneumonia vaccine.*
- (7) *As used in this section:*
- (a) *"Authorized employee" means any employee of a home health agency or hospice who, in the course of the employee's duties, is licensed by the employee's appropriate licensing agency to administer legend drugs;*
 - (b) *"Home health agency" means an entity required to be licensed under KRS Chapter 216; and*
 - (c) *"Hospice" means an entity authorized to hold itself out to the public as a hospice or as a licensed hospice pursuant to KRS Chapter 216.*
- (8) *The cabinet shall promulgate administrative regulations to implement the provision of this Act to become effective by October 15, 1998.*

Approved April 13, 1998

CHAPTER 532

(HB 655)

AN ACT relating to the six (6) year road plan.

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

Section 1. KRS 176.419 is amended to read as follows:

As used in KRS ~~45.245, 45.246, 176.420, 176.430, and 176.440;~~ ~~176.460, and 176.470;~~

- (1) *"Project" means the design, right-of-way, utility, or construction phase of a highway construction project; and*
- (2) *"Six (6) year road plan" means the short-term individual transportation projects that are scheduled to be constructed in each county and that are submitted each regular session to the General Assembly by the Department of Highways, including any amendments the General Assembly makes to the projects prior to the plan being enacted. The six (6) year road plan projects with phases scheduled for funding during the ensuing biennium shall be enacted in the budget memorandum and the projects with phases in the last four (4) years of the plan shall be enacted in a joint resolution and shall include, but not be limited to:*
 - (a) *The county name;*
 - (b) *The Kentucky Transportation Cabinet project identification number;*
 - (c) *The route where the project is located;*
 - (d) *The length of the project;*
 - (e) *A description of the project and the scope of improvement;*
 - (f) *The type of local, state, or federal funds to be used on the project;*
 - (g) *The stage of development for the design, right-of-way, utility, and construction phase;*
 - (h) *The fiscal year in which each phase of the project should commence;*
 - (i) *The estimated cost for each phase of the project; and*

(j) *The estimated cost to complete the project.*

Section 2. KRS 176.420 is amended to read as follows:

- (1) The Department of Highways shall undertake a continuing study of the needs of the highways under its jurisdiction for the purpose of bringing existing facilities to acceptable standards or for the replacement of existing facilities where required.
- (2) The Department of Highways shall *submit the six (6) year road plan to*~~provide~~ the General Assembly~~;~~ within ten (10) working days of submission of the executive budget *by the Governor to each*~~the~~ regular session of the General Assembly pursuant to KRS 48.100~~, the biennial highway construction program and the additional four (4) year construction plan~~. *The six (6) year road plan submitted shall be divided into six (6) sections as follows:*
 - (a) *The first section shall set forth the cabinet's revenue estimates and assumptions used in developing the six (6) year road plan.*
 - (b) *The second section shall list the projects identified in the six (6) year road plan as defined in Section 1 of this Act.*
 - (c) *The third section shall be the list of projects targeted for potential advancement, which is identified in subsection (1) of Section 3 of this Act.*
 - (d) *The fourth section shall specify statewide projects that are listed under "ZVARIOUS 99" category.*
 - (e) *The fifth section shall provide a comparison of the proposed six (6) year road plan to the six (6) year road plan enacted the previous biennium by the General Assembly. The comparison shall include a justification statement documenting the reason any project in the previously enacted six (6) year road plan was deleted from the proposed plan.*
 - (f) *The sixth section shall list by county all active road construction projects that are not included in the plan or are not shown in the plan submitted to the General Assembly because funding has been authorized for the project or work has been initiated on the project*~~biennial highway construction program shall detail those projects that the department shall advance to construction or preconstruction during the ensuing biennium. The Transportation Cabinet shall submit a justification statement for any project changed or deleted, including completed projects in the biennial highway construction program~~.
- (3) *The department shall provide the General Assembly an electronic version of the six (6) year road plan as defined in Section 1 of this Act at the same time the department submits the printed six (6) year road plan to the General Assembly under subsection (2) of this section. The information shall be*~~In addition to the information required to be submitted by subsection (2) of this section, the department shall provide the General Assembly with the computer tapes and file layout for the biennial highway construction program and four (4) year construction plan~~ *in a form cooperatively developed*~~prescribed~~ *by the Transportation Cabinet and the General Assembly and approved by*~~or~~ *the Legislative Research Commission*~~at the same time as the submission of the information~~.

Section 3. KRS 176.430 is amended to read as follows:

- (1) *It is the intent of the General Assembly to direct the cabinet to identify projects in the six (6) year road plan that may, in accordance with this section, be advanced from later years, to maximize the use of all funds available to the cabinet, and to plan for the historical precedent of projects being delayed due to unforeseen circumstances. To accomplish the purpose of this section, the cabinet shall submit to the General Assembly, at the same time the six (6) year road plan is submitted, a list of projects from the last four (4) years of the six (6) year road plan, not to exceed ten percent (10%) of the expected appropriations for the biennium, which can be advanced if additional money is received or if a project in the biennium is delayed.*
- (2) *In addition to the list submitted by the cabinet under subsection (1) of the section, the cabinet shall develop a separate list of projects from the last four (4) years of the six (6) year road plan, not to exceed ten percent (10%) of the actual biennial highway construction appropriation, which can be advanced if additional money is received or if a project in either year of the biennium is delayed. This list shall be reported to the Legislative Research Commission.*
- (3) *Any project that is accelerated under subsections (1) or (2) of this section shall be reported to the Legislative Research Commission.*

- (4) *The cabinet may change the fund source on any project in the six (6) year road plan to maximize the efficient use of federal funds*~~[The recommended biennial highway construction program submitted to the General Assembly as provided by KRS 45.245 and KRS 176.420(2) to be commenced during the ensuing biennium shall not exceed the budget submitted by the Governor for highway construction].~~
- (5)~~(2)~~ The *projects to be funded in the last four (4) years of the six (6) year plan*~~[recommended additional four (4) year construction plan submitted to the General Assembly as provided in KRS 176.420(2)]~~ shall not exceed revenue estimates provided by the Transportation Cabinet.~~[The cabinet's revenue estimates and assumptions shall be submitted with the plan.]~~
- (6)~~(3)~~ In *developing the design, right-of-way, utility, and construction phase of*~~[determining]~~ each project, the following factors shall be considered but are not exclusive:
- (a) Alignment of existing roads;
 - (b) The width or elevation of existing roadways and shoulder surfaces;
 - (c) The width of rights-of-way;
 - (d) The cost of each phase of the project plus a separate identification of the cabinet's administrative costs for each phase;
 - (e) The type and volume of traffic;
 - (f) The condition of structures and drainage;
 - (g) The accident rate;
 - (h) The geographic distribution of roadways to be constructed or reconstructed; and
 - (i) The social, economic, and environmental impact of the proposed project.
- (7)~~(4)~~ The *six (6) year road*~~[biennial construction program and the four (4) year construction]~~ plan shall designate the fiscal year each phase is scheduled to commence, a cost estimate for each phase, *and*~~[including a separate estimate of the cabinet's administrative costs for each phase,]~~ a projected~~[construction]~~ date *for each phase to begin*~~[, and construction cost estimate].~~
- (8)~~(5)~~ The Transportation Cabinet shall *monthly transmit electronic data*~~[report monthly]~~ to the General Assembly through the Legislative Research Commission *on all activity relating to all projects with open activity conducted by the Transportation Cabinet during the biennium. The data for each project shall contain all cabinet activity on projects funded through the road fund including resurfacing and rural and secondary projects, and shall also include but not be limited to the following:*
- (a) *District number and project item number which shall remain in effect throughout the entire life of the project, subject to the following conditions:*
 1. *A project split into more than one (1) project during its life shall maintain the same item number with a suffix;*
 2. *Two (2) or more projects merged shall be identified by the new merged project maintaining the project item number of one (1) of the projects being merged. The total cost of the merged project shall be set forth; and*
 3. *A project that has been merged with another project and all funds authorized for the initial project that is subsequently shifted to the new merged project shall remain in the six (6) year road plan and shall be identified with a cross reference to the superseded project and superseded project item number;*
 - (b) *The county name and county number;*
 - (c) *The route prefix, route number, and route suffix;*
 - (d) *Termini description including beginning milepoint and ending milepoint;*
 - (e) *Type of work;*
 - (f) *Length of the project in miles;*

- (g) *Project authorization system number, date the project was authorized, the TD-10 number authorizing the project, and the amount authorized;*
 - (h) *Year the project was enacted in a six (6) year road plan, and the notation "A" if the project is active and the notation "I" if the project is inactive;*
 - (i) *The phase code "P" for the planning phase, "D" for the design phase, "R" for the right-of-way phase, "U" for the utility phase, and "C" for the construction phase;*
 - (j) *The original estimate, fund code, and fiscal year each phase is expected to begin as enacted in the six (6) year road plan;*
 - (k) *The current estimate, fund code, and fiscal year each phase is expected to begin;*
 - (l) *The status of funding for each phase;*
 - (m) *The date current information has been changed for each phase;*
 - (n) *The letting date for each phase;*
 - (o) *Total number of right-of-way parcels, deeds signed, suits filed, and right-of-way entries completed;*
 - (p) *The date right-of-way plans are to be submitted to the central office in Frankfort and the status of right-of-way plans;*
 - (q) *Total utility relocations to be completed and the actual number completed;*
 - (r) *The award date, the construction project code number, and the award amount for the construction phase;*
 - (s) *The total number of contract change orders issued for each phase, the date of the most recent change order; and the net change order amount for each phase;*
 - (t) *The name of the contractor, the contractor's vendor number in the Statewide Accounting and Reporting System (STARS), current contract amount, and the current amount earned by the contractor;*
 - (u) *The estimated date for completion of the project, current percentage of work completed based upon time, and the actual contract completion date;*
 - (v) *The department's engineer's estimate for the project; and*
 - (w) *Total expenditures by phase.*
- (9) *The department shall monthly transmit electronic data to the General Assembly through the Legislative Research Commission on the activity on all state resurfacing projects and all rural secondary projects that shall include as much applicable information as possible as identified in subsection (8) of this section.*
- (10) *The department shall pursue digitizing all Kentucky roads on a geographic information system as funds are made available by the General Assembly. The digitized maps shall merge map layers and text layers to produce maps that display geographic information and textual information detailing the six (6) year road plan as enacted by the General Assembly*~~and Transportation Committee on action taken to execute the biennial highway construction program and four (4) year construction plan. The cabinet shall submit a written report as well as an electronic report identifying the following information on projects included in the biennial highway construction program and the four (4) year construction plan:~~
- ~~(a) — Advertisements relating to the letting of projects;~~
 - ~~(b) — The top three (3) bids including the amount of the contract awarded and the contract number;~~
 - ~~(c) — Final project cost estimates;~~
 - ~~(d) — Bid rejections;~~
 - ~~(e) — All contract change orders required to be submitted pursuant to KRS 45.247(2); and~~
 - ~~(f) — All project authorizations.~~

~~(6) The secretary of transportation shall be responsible for the execution of each biennial highway construction program and four (4) year construction plan as approved by the General Assembly and shall through the monthly report required by subsection (5) of this section promptly account for and explain any deviations of funding and schedule to the Interim Joint Committee on Transportation.~~

Section 4. KRS 176.440 is amended to read as follows:

- (1) *The state highway engineer shall provide a cost estimate for any project that a member of the General Assembly desires to be considered for advancement or inclusion in the six (6) year road plan if the request is received in writing by the secretary of the Transportation Cabinet no later than November 1 of the year prior to the convening of each regular session of the General Assembly. The cost estimate under this subsection shall be provided prior to January 15 of the following year.*~~[No later than July 1 of each odd-numbered year prior to the convening of each regular session of the General Assembly, the cabinet shall furnish the biennial highway construction program, and the additional four (4) year construction plan. The cabinet shall submit the information with accompanying electronic format and file layout in a form prescribed by the General Assembly. If the cabinet fails to submit the information required by this subsection on July 1, the Transportation Committee shall notify the Legislative Research Commission and the Appropriations and Revenue Committee of the cabinet's noncompliance].~~
- (2) ~~[When]The six (6) year road~~*[final biennial highway construction program and the additional four (4) year highway construction] plan*~~[are] presented to the General Assembly for approval and funding as provided in KRS 45.245, the budget memorandum, Section 2 of this Act, and KRS 176.420(2), any project changes, additions, and deletions that the General Assembly determines are not in accordance with the factors stated in KRS 176.430(3)]~~ may be amended by the General Assembly. *An amendment by the General Assembly that results in the addition of a new project phase to the six (6) year road plan shall use project phase costs supplied by the state highway engineer.*

Section 5. KRS 45.245 is amended to read as follows:

The provision of any other law notwithstanding:

- (1) The Governor shall include in the executive branch budget recommendation and in the draft budget bill for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.100, the appropriations by each source of funds for a recommended *six (6) year road plan*~~[biennial highway construction program]~~.
 - (2) The Governor shall submit a recommended *six (6) year road plan to the General Assembly*~~[biennial highway construction program]~~ within ten (10) working days after submission of the branch budget recommendations pursuant to KRS 48.100.
- ~~(3) The recommended biennial highway construction program shall include:~~
- ~~(a) A complete list and summary description of each specific highway project recommended for funding during the biennium; and~~
 - ~~(b) For each project:

 1. The county and highway district;
 2. The highway department item number for each project which shall remain in effect throughout the entire life of the project, subject to the following conditions:
 - a. A project split during its life shall maintain the same item number with a suffix; and
 - b. Merged projects shall be identified with a cross reference to the superseded item number;
 3. The route number and total miles to be constructed;
 4. A project description;
 5. The fiscal year each project phase is to commence and all estimated costs of each project phase including administrative costs of the cabinet; and
 6. The source of funding to be used.~~

- (4) ~~During each biennium the amount allotted, from all sources, for expenditure on any project in the highway construction program for that biennium, shall not exceed the appropriation to the project by more than fifteen percent (15%) as shown in the biennial highway construction program, except as provided in KRS 45.247.~~
- (5) ~~Appropriations from the road fund to the recommended biennial highway construction program shall be based on the revenue estimates pursuant to KRS 48.120. In addition, the cabinet shall provide a separate and specific list of projects from the four (4) year plan which may be accelerated in the event biennial projects are delayed pursuant to KRS 176.460. This list shall not be included in the biennial highway construction program and shall not exceed twenty percent (20%) of the total amount appropriated for highway construction projects for the biennium. If additional highway construction projects are proposed that exceed revenue estimates pursuant to KRS 48.120 or that require the suspension or modification of an existing statute, the projects shall be separately stated and categorized with the recommended funding source and account.~~

Section 6. KRS 45.246 is amended to read as follows:

The draft branch budget bills and draft bills including an appropriation provision, and the biennial highway construction act or acts submitted to the General Assembly by the Governor, and the act or acts enacted by the General Assembly, shall comply with the provisions of KRS 45.245 to ~~45.247~~~~[45.248]~~. Expression of general exclusion including, but not limited to, "any act or statute to the contrary notwithstanding," and "the provisions of any other law notwithstanding" shall not be effective as an exemption from the provisions of KRS 45.245 to ~~45.247~~~~[45.248]~~. Exemptions from the provisions of KRS 45.245 to ~~45.247~~~~[45.248]~~ shall include the specific projects exempted.

Section 7. KRS 45.247 is amended to read as follows:

- ~~(1) The Transportation Cabinet shall, prior to awarding any project phase that exceeded its cost estimate by more than fifteen percent (15%), present the project overrun to the Interim Joint Committee on Transportation for review as provided by KRS 45.248. Presentation of a project overrun shall include written certification to the Interim Joint Committee on Transportation from the state highway engineer of the Transportation Cabinet, that the project overrun is necessitated by cost increases resulting from unanticipated circumstances. This certification shall provide the specific details which have caused the project overrun.~~
- ~~(2) After the Transportation Cabinet has awarded a contract for a project, the cabinet shall submit written notification to the Interim Joint Committee on Transportation of the amount of the contract, the contract number, and the related item number and phase of work. Upon approving a contract change order that exceeds one hundred dollars (\$100), the cabinet shall submit a copy of the change order to the Interim Joint Committee on Transportation for information purposes only. If the General Assembly is in session, the cabinet shall submit the contract change order notification to the House and Senate Transportation Committees for information purposes only.~~
- ~~(3) There is created within the road fund the highway construction contingency account. The account shall consist of moneys appropriated to the account by the General Assembly. The Transportation Cabinet may transfer money from the highway construction contingency account to a highway construction project, for expenditure thereon. These moneys may be authorized by the secretary of the Transportation Cabinet for:~~
- ~~(1) Projects of an emergency nature;~~
 - ~~(2) *Promotion of* ~~To promote~~ economic or industrial development;~~
 - ~~(3) *Relief of* ~~To relieve~~ a hazardous condition;~~
 - ~~(4) ~~For~~ Other purposes *that* ~~which~~ the secretary determines to be a priority;~~
- ~~(5) Money in the highway construction contingency account may be used for the following purposes:~~
- ~~(a) *Provision of* ~~Providing~~ required state match for any unanticipated federal funds made available by the Federal Highway Administration to the Commonwealth as a result of other states not utilizing their total federal obligation;~~
 - ~~(b) The funding of any nonfederal share of a project in a previous or the current biennial highway construction programs that exceeds its cost estimate;~~
 - ~~(c) The nonfederal share of federal emergency highway projects, federal discretionary projects, and federal demonstration projects; and~~

~~(8)(d)~~ The nonfederal share of projects due to an increase in the federal apportionment or federal obligation limits.

~~{(5) The federal share of projects identified in subsection (1) of this section shall be funded through the appropriate federal aid category.}~~

Section 8. The Transportation Cabinet shall create a new funding code to be used in the six (6) year road plan to be known as state contingency funds and the abbreviation the cabinet shall use for this funding code shall be SC. The state contingency funding code shall be in addition to all other funding codes used by the cabinet in the six (6) year road plan and shall be used to identify all projects funded with state contingency account moneys.

Section 9. The following KRS sections are repealed:

45.2451 Definition of "project" for KRS 45.245, 45.247, and 45.248.

45.248 Approval of proposed contingency account transfer by legislative committee -- Monitoring of costs of state highway construction.

176.435 Electronic information databases on construction programs.

176.460 Project to be commenced in biennium for which it is planned -- Effect of failure to commence -- Exceptions -- Reinstatement of funds for delayed project -- Limitations on application of KRS 176.420 to 176.460.

176.470 Annual report on status of highway projects.

Approved April 13, 1998

CHAPTER 533

(HB 670)

AN ACT relating to real estate.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

- (1) *A principal broker may appoint himself or herself or a licensee with which he or she is associated to act as an agent for a seller or buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker.*
- (2) *If a principal broker appoints one (1) licensee to represent the seller and another licensee to represent the buyer or the prospective buyer in the same transaction, the principal broker, the firm, or the licensees shall not be deemed to be dual agents.*
- (3) *If the licensees are appointed in accordance with subsection (1) of this section, knowledge between or among the seller, the buyer, the principal broker, the firm, or the licensees shall not be imputed.*
- (4) *Nothing in this section shall prevent a real estate brokerage firm or licensee from entering into a dual agency relationship with the seller and the buyer or the prospective buyer if the firm or licensee complies with the provisions of this Chapter and administrative regulations promulgated by the commission on agency disclosure. Any licensee who, after such compliance, personally represents both the seller and the buyer in a particular transaction shall be deemed a disclosed dual agent.*

Approved April 13, 1998

CHAPTER 534

(HB 671)

AN ACT relating to planning commissions in counties with populations over three hundred thousand.

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

Section 1. KRS 100.137 is amended to read as follows:

- (1) Counties with a population of 300,000 or more inhabitants shall be a planning unit and shall have a planning commission which commission shall be composed of three (3) members, who are nonresidents of the largest city of the county, appointed by the county judge/executive of such county; three (3) members who are residents of the largest city of the county appointed by the mayor of that city; and the mayor of the largest city, or his designee; the county judge/executive, or his designee; the director of works of the largest city in the county, and the county road engineer. *The county judge/executive and the mayor together shall ensure that three (3) of the six (6) appointees are citizens who have no direct financial interest in the land development and construction industry. If the commission appoints a citizen member to fill a vacancy, the commission shall ensure that the balance is maintained. All ten (10) members of the planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be filed with the commission's records under KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings under KRS 100.157.*
- (2) In counties containing a city of the first class, all legislation implementing or amending the plan or amended plan which affects cities of the first through fourth classes shall be enacted by such cities and all other legislation implementing the plan or amended plan shall be enacted by the fiscal court.
- (3) In all other counties the establishment of a planning unit is optional, but any planning unit established in other counties shall comply with the remaining provisions of this chapter.

Approved April 13, 1998

CHAPTER 535

(HB 673)

AN ACT relating to wireless enhanced emergency 911 systems.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context requires otherwise:

- (1) *"Administrator" means the state administrator of CMRS emergency telecommunications.*
- (2) *"Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification."*
- (3) *"Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on an ALI screen of the ten-digit, or equivalent, wireless telephone number used to place a 911 call.*
- (4) *"CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. sec. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line.*
- (5) *"CMRS Board" or "board" means the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky.*
- (6) *"CMRS connection" means a mobile handset telephone number assigned to a CMRS customer.*
- (7) *"CMRS customer" means a person to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation.*

- (8) *"CMRS Fund" means the commercial mobile radio service emergency telecommunications fund.*
- (9) *"CMRS provider" means a person or entity who provides CMRS to an end user, including resellers.*
- (10) *"CMRS service charge" means the CMRS emergency telephone service charge levied under subsection (3) of Section 5 of this Act and collected under Section 8 of this Act.*
- (11) *"FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof.*
- (12) *"Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth.*
- (13) *"Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP.*
- (14) *"Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection.*
- (15) *"Proprietary information" means information held as private property, including customer lists and other related information, technology descriptions, technical information, or trade secrets.*
- (16) *"Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.*
- (17) *"Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies.*
- (18) *"Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber.*
- (19) *"Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of eight (8) members, appointed by the Governor as follows: three (3) members shall be employed by or representative of the interest of CMRS providers; one (1) member shall be a mayor of a city of the first or second class or urban-county government or their designee containing a public safety answering point; one (1) nonvoting member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; and one (1) member shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials. The commissioner of the State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.*
- (2) *The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years.*
- (3) *In addition to the administrator, appointed by the Governor under Section 3 of this Act, and other staff authorized under Section 5 of this Act, the Finance and Administration Cabinet shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the Finance and Administration Cabinet for administrative purposes only and shall operate as an independent entity within state government.*

- (4) *The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.*
- (5) *All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under Section 6 of this Act to be used by the board for administrative purposes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The Governor shall appoint a state administrator of commercial mobile radio service emergency telecommunications, subject to confirmation by the Senate, from a list of no more than three (3) candidates recommended by the CMRS Board. The administrator shall serve at the pleasure of the Governor. Vacancies shall be filled in the same manner as the original appointment. The CMRS Board shall set the administrator's compensation, which shall be paid from that portion of the CMRS fund that is authorized under subsection (1) of Section 6 of this Act to be used by the board for administrative purposes.*
- (2) *The administrator of CMRS emergency telecommunications shall serve as a member of the CMRS Board, and as the coordinator and administrative head of the board and shall conduct the day-to-day operations of the board.*
- (3) *The administrator shall, with the advice of the board, coordinate and direct a statewide effort to expand and improve wireless enhanced emergency telecommunications capabilities and responses throughout the state, including but not limited to the implementation of wireless E911 service requirements of the FCC order and rules and regulations adopted in carrying out that order. In this regard, the administrator shall:*
 - (a) *Obtain, maintain, and disseminate information relating to emergency telecommunications technology, advances, capabilities, and techniques;*
 - (b) *Coordinate and assist in the implementation of advancements and new technology in the operation of emergency telecommunications in the state; and*
 - (c) *Implement compliance throughout the state with the wireless E911 service requirements established by the FCC order and any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

There is established the commercial mobile radio service emergency telecommunications fund, the "CMRS fund," an insured, interest-bearing account to be administered and maintained by the CMRS Board. The CMRS service charge shall have uniform application within the boundaries of the Commonwealth. No charge other than the CMRS service charge is authorized to be levied by any person or entity for providing wireless 911 service or wireless E911 service. The board shall deposit all revenues derived under Section 8 of this Act into the fund, and shall direct disbursements from the fund according to the provisions of Section 6 of this Act. Moneys in the CMRS fund shall not be the property of the Commonwealth and shall not be subject to appropriation by the General Assembly. Moneys deposited or to be deposited into the CMRS fund shall not:

- (1) *Be loaned to the Commonwealth or to any instrumentality or agency thereof;*
- (2) *Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by Sections 1 to 12 of this Act; or*
- (3) *Be expended for any purpose other than a purpose authorized by Sections 1 to 12 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The board shall administer the provisions of Sections 1 to 12 of this Act, and shall have the following powers and duties:

- (1) *To review, evaluate, and approve or disapprove the plans or plan modifications that are submitted to the board for complying with the wireless E911 service requirements established by the FCC order and by any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order;*
- (2) *To develop standards to be followed by the board in reviewing, evaluating, approving, or disapproving the plans or plan modifications that are submitted to the board;*

- (3) *To collect the CMRS service charge from each CMRS connection within the Commonwealth. The CMRS service charge shall be seventy cents (\$0.70) per month per CMRS connection, and shall be collected in accordance with Section 8 of this Act beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly;*
- (4) *To review the rate of the CMRS service charge at least once every eighteen (18) months and, at its discretion, to decrease the rate or recommend that the General Assembly increase the rate if the board determines that changing the rate is necessary to achieve the purposes of Sections 1 to 12 of this Act. The first cost study shall be completed on or before July 1, 1999, and shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the board shall recommend, on the basis of the cost study, whether legislation to increase the CMRS service charge should be proposed during the 2000 Regular Session of the General Assembly;*
- (5) *To administer and maintain the CMRS fund according to the provisions of Section 4 of this Act, and promptly to deposit all revenues from the CMRS service charge into the CMRS fund;*
- (6) *To make disbursements from the CMRS fund, according to the allocations and requirements established in Section 6 of this Act;*
- (7) *To establish procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements made in accordance with Section 6 of this Act;*
- (8) *To resolve conflicts regarding reimbursable costs and expenses under subsections (2) and (3) of Section 6 of this Act;*
- (9) *To submit annual reports to the Auditor of Public Accounts no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS fund during the preceding fiscal year and all disbursements to CMRS providers and PSAPs during the preceding fiscal year;*
- (10) *To employ consultants, engineers, and other persons and employees as may be, in the judgment of the board, essential to the board's operations, functions, and responsibilities, and to fix and pay their compensation from funds available to the CMRS board;*
- (11) *To acquire, by gift, purchase, installment purchase, or lease, any equipment necessary to carry out the board's purposes and duties;*
- (12) *To retain any and all information, including all proprietary information, that is submitted to the board by CMRS providers and PSAPs, for the purposes of maintaining it and verifying its accuracy;*
- (13) *To retain, with approval by the Auditor of Public Accounts, an independent certified public accountant who shall audit, once every eighteen (18) months, the books of the board, CMRS providers, and PSAPs eligible to request or receive disbursements from the CMRS fund under Section 6 of this Act for the following purposes:*
 - (a) *To verify the accuracy of collection, receipts, and disbursements of all revenues derived from the CMRS service charge and the number of wireless E911 calls received by each PSAP eligible to request or receive disbursements from the CMRS fund; and*
 - (b) *To determine whether the revenues generated by the CMRS service charge equal, exceed, or are less than the costs incurred in order to comply with the FCC order.*

The independent certified public accountant shall make a report of the audits to the board and to the appropriate chief executive officer or officers of the CMRS providers and PSAPs. The board shall incorporate the auditor's findings in its studies of the CMRS service charge required by subsection (4) of this section. All information with respect to the audits shall be released to the public or published only in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to individual CMRS providers;

- (14) *To ensure that all carriers have an equal opportunity to participate in the wireless E911 system; and*
- (15) *To ensure that wireless E911 systems are compatible with wireline E911 systems.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The moneys in the CMRS fund shall be apportioned among the approved uses of the fund as specified in this section. The board shall make individual disbursements from the fund upon such terms and conditions necessary in view of the amount of revenues on deposit at the time each request for disbursement is reviewed and approved.

- (1) *Not more than two and one-half percent (2.5%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement by the board to pay the administrative costs and expenses incurred in the operation of the board, including the compensation of the administrator and expenses incurred pursuant to subsections (10), (11), and (13) of Section 5 of this Act.*
- (2) *From the balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under subsection (1) of this section have been subtracted, fifty percent (50%) shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (4) of this section who actually request disbursement, as follows:*
 - (a) *Twenty-five percent (25%) shall be distributed according to the "PSAP pro rata formula," whereby each receives a percentage determined by dividing one (1) by the total number of PSAPs eligible to request and actually requesting disbursements under subsection (4) of this section; and*
 - (b) *Twenty-five percent (25%) shall be distributed according to the "PSAP volume formula," whereby each receives a percentage determined by dividing the number of wireless E911 calls received by that PSAP in the previous quarter by the total number of wireless E911 calls received in the previous quarter by all PSAPs located within the boundaries of the Commonwealth that are eligible to receive and actually requesting disbursements under subsection (4) of this section.*

All amounts distributed to PSAPs under this subsection shall be used by the PSAPs solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, and of complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission pursuant to the FCC order, including the payment of costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service.

- (3) *The balance of the total monthly revenues deposited into the CMRS fund which remains after the disbursements or disbursement reservations prescribed by subsections (1) and (2) of this section have been made shall be distributed to CMRS providers licensed to do business in the Commonwealth solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service. Sworn invoices shall be presented to the board in connection with any request for reimbursement under this subsection, and approval by a majority vote of the board shall be required prior to any disbursement, which approval shall not be withheld unreasonably. In no event shall any invoice for reimbursement be approved for payment of costs that are not related to compliance with requirements established by the FCC order, or for payment of any costs incurred by a CMRS provider exceeding one hundred twenty-five percent (125%) of the CMRS emergency service charges remitted by that CMRS provider, unless prior approval for the expenditures was given by the CMRS Board. If the total amount of invoices submitted to the CMRS Board and approved for payment exceeds the amount in the CMRS fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the fund available that month, based on approved invoices, and the balance of the payments shall be carried over to the following months until all of the approved payments are made.*
- (4) *Notwithstanding any other provision of the law, no PSAP shall be eligible to request or receive a disbursement from the CMRS fund under subsection (2) of this section unless and until the PSAP:*
 - (a) *Is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board;*
 - (b) *Demonstrates that the PSAP is providing 911 services to a local government that has adopted an ordinance either imposing a special tax, license, or fee as authorized by KRS 65.760(3) or has established other means of funding wireline 911 emergency telephone service;*

- (c) *Demonstrates that the administrator of the PSAP sent a request for wireless, E911 service to a CMRS provider, and that the infrastructure of the local exchange carrier will support wireless E911 service;*
- (d) *Provides an accounting of the number of wireless E911 calls received by the PSAP during the prior calendar year; and*
- (e) *Either demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service, or provides to the board a binding resolution, duly adopted by the governing authority of the PSAP, committing the PSAP to expend funds to lease or purchase emergency telephone equipment, including necessary computer hardware and software, for database provisioning, for addressing, and for the other nonrecurring costs of establishing wireless E911 service.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The CMRS Board shall implement the provisions of Sections 1 to 12 of this Act through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.*
- (2) *As soon as practicable after its creation, the board shall promulgate regulations:*
 - (a) *Establishing procedures for the submission of plans or modifications of plans to the board, for its review and approval or disapproval, for complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, projections of anticipated costs and expenses necessary for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining on an ongoing basis all necessary data, hardware, and software required in order to provide this service;*
 - (b) *Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving the plans or modifications of plans that are submitted to it in accordance with the procedures promulgated under paragraph (a) of this subsection;*
 - (c) *Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements under subsection (2) and (3) of Section 6 of this Act; and*
 - (d) *Establishing procedures and guidelines for resolving disputes regarding reimbursable costs and expenses under subsections (2) and (3) of Section 6 of this Act.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Each CMRS provider shall act as a collection agent for the CMRS fund and shall, as part of the provider's normal monthly billing process, collect the CMRS service charges levied upon CMRS connections under subsection (2) of Section 5 of this Act from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider.*
- (2) *A CMRS provider has no obligation to take any legal action to enforce the collection of the CMRS service charges for which any CMRS customer is billed. Collection actions to enforce the collection of the CMRS service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county where the bill for CMRS service is regularly delivered, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.*
- (3) *State and local taxes shall not apply to CMRS service charges.*
- (4) *To reimburse itself for the cost of collecting and remitting the CMRS service charge, each CMRS provider may deduct and retain from the CMRS service charges it collects during each calendar month an amount not to exceed one and one-half percent (1.5%) of the gross aggregate amount of CMRS service charges it collected that month.*
- (5) *All CMRS service charges imposed under Sections 1 to 12 of this Act collected by each CMRS provider, less the administrative fee described in subsection (4) of this section, are due and payable to the board monthly and shall be remitted on or before sixty (60) days after the end of the calendar month. Collection actions*

may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, no CMRS provider or service supplier, nor their employees, directors, officers, or agents, except in cases of negligence, or wanton or willful misconduct, or bad faith, shall be liable for any damages in a civil action or subject to criminal prosecution resulting from death or injury to any person or from damage to property incurred by any person in connection with developing, adopting, establishing, participating in, implementing, maintaining, or providing access to a CMRS system for the purposes of providing wireless 911 service or E911 service in compliance with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC orders: in connection with the quality of the service; in connection with ensuring that any 911 call goes through properly; or in connection with providing access to CMRS service in connection with providing wireless 911 service or E911 service.

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Each CMRS provider shall provide customer mobile handset telephone numbers and names to PSAPs when required by the board. Each CMRS provider shall provide a quarterly report to the board of the number of calls the provider forwarded to each PSAP during that quarter. Funds from the CMRS fund may be used to pay for the costs associated with providing this information. Although customer mobile handset telephone numbers and names shall be available to PSAPs, and to the board, this information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. Mobile handset telephone numbers and names which are required to be provided under this section constitute confidential proprietary information and shall not be released to any person for purposes other than for including the numbers and names in the emergency telephone system database and for providing the numbers and names to permit a response to police, fire, medical, or other emergency situations. Notwithstanding any other provision of the law, no proprietary information provided to PSAPs under this section shall be subject to subpoena of the PSAP or otherwise released to any person other than to the submitting CMRS provider, the administrator, the board, and the independent certified public accountant retained by the board under subsection (13) of Section 5 of this Act without the express permission of the submitting CMRS provider. General information collected by the independent certified public accountant shall only be released or published in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Wireless emergency telephone service shall not be used for personal use but shall be used solely for the purpose of communications by the public in emergency situations. Any person who knowingly uses or attempts to use wireless emergency telephone service for a purpose other than obtaining public safety assistance or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges shall be guilty of a Class A misdemeanor. If the value of the wireless emergency telephone service obtained in a manner prohibited by this section or the value of the CMRS charges exceeds one hundred dollars (\$100), the offense may be prosecuted as a Class D felony.

SECTION 12. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 12 of this Act shall not be construed as enabling the Commonwealth of Kentucky, including the Public Service Commission of Kentucky, to regulate CMRS in contravention of Section 332(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. sec. 332(c)(3).

Section 13. KRS 65.750 is amended to read as follows:

As used in *this section to* KRS ~~65.755 and~~ 65.760:~~;~~

- (1) "911 emergency telephone service" means a telephone service which provides the user of the public telephone system the ability to *place calls to a public safety answering point on a twenty-four (24) hour basis and* reach local emergency service agencies ~~on a twenty-four (24) hour basis,~~ by dialing the digits 9-1-1. Such a service is capable, at minimum, of transmitting requests for law enforcement, firefighting, and emergency medical and ambulance services to a public safety agency or other provider that provides the requested service at the place where the call originates. A 911 emergency telephone service may also provide for other emergency services.

The term "911 emergency telephone service" includes the term wireline "enhanced 911 system," which means an emergency telephone system that provides the caller with wireline emergency 911 system service and, in addition, directs 911 calls to appropriate public safety answering points based on the geographical location from which the call originated and may provide the capability for automatic number identification, pseudo-automatic number identification, selective routing, and automatic location identification features. As used in KRS 65.760, the term "911 emergency telephone service" does not include the term "wireless enhanced 911 system," "wireless enhanced 911 service," or "wireless E911 service" as used in Sections 1 to 12 of this Act;

- (2) *"Automatic number identification (ANI)" means a feature that allows for the automatic display of the ten (10) digit number, or equivalent, used to place a 911 call;*
- (3) *"Automatic location identification (ALI)" means a feature by which the name and address associated with the calling party's telephone number is made available to a PSAP;*
- (4) *"Automatic location identification data management system (ALI/DBS)" means a system of manual procedures and computer programs used to create, store, and update the data required for ALI in support of enhanced 911;*
- (5) *"Dispersed private telephone system (DPTS)" means a multiline, shared tenant system or PBX used for the purpose of reselling telephone service to residential customers and whose connection to a telephone network is capable of carrying emergency calls from more than one (1) specific location within a structure or structures but does not mean a multiline, shared tenant system or PBX owned and operated by a state agency or used in providing service within a hotel or motel;*
- (6) *"Fully enhanced 911 emergency telephone service" means a telephone network feature that selectively routes calls placed to the national 911 emergency number to the proper public service answering points (PSAPs) and provides the PSAP with a voice connection and ANI and ALI information;*
- (7) *"Private branch exchange (PBX)" means a privately owned switch system that connects calls to a telephone company;*
- (8) *"Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies;*
- (9) *"Service supplier" means a person or entity that administers, maintains, and operates the ALI/DBS and may include telephone companies that provide local exchange telephone service to a telephone subscriber; and*
- (10) *"Station identification number (SIN)" means a number that a DPTS uses to identify a specific station on the switch.*

Approved April 13, 1998

CHAPTER 536

(HB 675)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
 - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and

- (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to twenty-five cents (\$0.25) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include, but not be limited to, natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;
- (b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
 2. Classified as "residential" by a municipally-owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
 3. Classified as "residential" by the governing body of a municipally-owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.
- If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;
- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;

- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the seller and the seller maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale are not subject to the sales or use tax. The property shall be regarded as having been purchased for resale. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
1. Materials which enter into and become an ingredient or component part of the manufactured product.
 2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
 - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
 - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
 3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
- (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170; ~~and~~
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority; *and*
- (13) *Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.*
- (a) *As used in this subsection:*
1. *"Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and*

2. *"Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.*
- (b) *The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet.*

Section 2. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Revenue Cabinet:

- (1) The cabinet may make administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state.
- (2) The cabinet, by representatives appointed by it in writing, may take testimony or depositions, and may examine the records, documents, files, and equipment of any taxpayer or of any person whose records, documents, or equipment will furnish knowledge concerning the tax liability of any taxpayer, when it deems this reasonably necessary for purposes incident to the performance of its functions. The cabinet may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the cabinet.
- (3) The cabinet shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.
- (4) The cabinet shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.
- (5) Attorneys employed by the cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Revenue Cabinet attorney undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including, but not limited to, the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (6) In the event of the incapacity of attorneys employed by the cabinet or at the request of the secretary of the Revenue Cabinet, the Attorney General or his designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including, but not limited to, the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (7) The cabinet may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the cabinet for administration.
- (8) The cabinet may conduct research in the fields of taxation, finance, and local government administration, and publish its findings, as the secretary may deem wise.
- (9) The cabinet may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require such taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.
- (10) *The cabinet may, when it is in the best interest of the Commonwealth and helpful to the efficient and effective enforcement, administration, or collection of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee.*

Section 3. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising **poultry**~~{chickens}~~ or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

- (16) Gasoline, special fuels, ~~and~~ liquefied petroleum gas, *and natural gas* used *exclusively and directly* to ~~operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection~~:
- (a) *Operate farm machinery as defined in subsection (11) of this section* ~~["Gasoline" is defined as in KRS 138.210(4)]~~;
 - (b) *Operate on-farm grain or soybean drying facilities as defined in subsection (14) of this section* ~~["Special fuels" is defined as in KRS 138.560(3)]~~;
 - (c) *Operate on-farm poultry or livestock facilities defined in subsection (15) of this section* ~~["Liquefied petroleum gas" is defined as in KRS 234.100(1)]~~; ~~and~~
 - (d) *Operate on farm ratite facilities defined in subsection (24) of this section* ~~["Agricultural purposes" is defined as in KRS 138.343(4)]~~;
 - (e) *Operate on-farm llama or alpaca facilities as defined in subsection (26) of this section; or*
 - (f) *Operate on-farm dairy facilities;*
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming~~. The exemption provided in this subsection shall be effective for sales made through July 31, 2000~~; and

- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

~~[The exemption provided in this subsection shall be effective for sales made through July 31, 2000.]~~

Section 4. The amendments included in Section 1 of this Act are intended to clarify existing confusion about the intent of the Legislature with regard to the application of the sales and use tax to the sale of newspaper inserts or catalogs delivered outside this state, and purchased for use, storage, or consumption outside this state.

Section 5. The amendments included in Section 1 of this Act shall be effective for sales made on or after January 1, 1988.

Section 6. The amendment contained in Section 2 of this Act shall apply retroactively to sales made on or after January 1, 1997.

Approved April 13, 1998

CHAPTER 537

(HB 684)

AN ACT relating to insurance.

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

Section 1. KRS 304.42-020 is amended to read as follows:

The purpose of this subtitle is to protect ***the persons specified in subsection (1) of Section 2 of this Act*** ~~policy owners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts~~, subject to certain limitations, against failure in the performance of contractual obligations ***under life and health insurance policies and annuity contracts specified in subsection (2) of Section 2 of this Act because of*** ~~due to~~ the impairment or insolvency of the ***member insurer that issued the*** ~~issuing such~~ policies or contracts. To provide this protection:

- (1) An association of insurers is created to ~~pay~~ ~~enable the guaranty of payment of~~ benefits and ***to continue*** ~~of continuation of~~ coverages ***as limited by this subtitle; and***
- (2) Members of the association are subject to assessment to provide funds to carry out the purpose of this subtitle; ~~and~~
- ~~(3) The association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.~~

Section 2. KRS 304.42-030 is amended to read as follows:

- (1) This subtitle shall provide coverage for the policies and contracts specified in subsection (2) of this section:
 - (a) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (b) of this subsection. ~~and~~
 - (b) To persons who are the owners of or certificate holders under such policies or contracts, ***other than structured settlement annuities,*** ~~and~~ who:
 1. Are residents; or

2. Are not residents, but only under the following conditions:
 - a. The *insurer*~~[insurers]~~ which issued *the*~~[such]~~ policies or contracts *is*~~[are]~~ domiciled in this state;
 - b. *The states in which the persons reside have associations similar to the association created by this subtitle*~~[Such insurers never held a certificate of authority in the states in which such persons reside]; and~~
 - c.~~[Such states have associations similar to the association created by this subtitle; and~~
 - d.~~[The~~~~[Such]~~ persons are not eligible for coverage by *an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law*~~[such associations]~~.
- (c) *For structured settlement annuities covered in subsection (2) of this section, paragraphs (a) and (b) of this subsection shall not apply and this subtitle shall, except as provided in paragraphs (d) and (e) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee is a resident, regardless of where the contract owner resides. If the payee is not a resident, this subtitle shall provide coverage but only under both of the following conditions:*
 1.
 - a. *The contract owner of the structured settlement annuity is a resident; or*
 - b. *The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by this subtitle; and*
 2. *Neither the payee, the beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.*
- (d) *This subtitle shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state.*
- (e) *This subtitle is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage in this subtitle is provided coverage under the laws of any other state, the person shall not be provided coverage under this subtitle. In determining the application of the provisions of this paragraph in situations where a person could be covered by the association of more than one (1) state, whether as an owner, payee, beneficiary, or assignee, this subtitle shall be construed in conjunction with other state laws to result in coverage by only one (1) association.*
- (2) (a) This subtitle shall provide coverage to the persons specified in subsection (1) of this section for direct, nongroup life, health, *or* annuity~~[, and supplemental]~~ policies or contracts and *supplemental contracts to any of these and* for certificates issued under direct group policies and contracts.
- (b) This subtitle shall not provide coverage for:
 1. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract *owner*~~[holder]~~;
 2. Any policy or contract of reinsurance, unless assumption certificates have been issued *pursuant to the reinsurance policy or contract*;
 3. Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - a. Averaged over the period of four (4) years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's corporate bond yield average averaged for that same four (4) year period or for such lesser period if the policy or contract was issued less than four (4) years before the association became obligated; and

- b. On and after the date on which the association becomes obligated with respect to ~~the~~ such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's corporate bond yield average as most recently available;
 - 4. Any **portion of a policy or contract issued to a** plan or program of an employer, association, or **other person** ~~similar entity~~ to provide life, health, or annuity benefits to its employees, ~~or~~ members, **or others** to the extent that such plan or program is self-funded or uninsured including, but not limited to, benefits payable by an employer, association, or **other person** ~~similar entity~~ under:
 - a. A multiple employer welfare arrangement as defined in 29 U.S.C. Section 1144;
 - b. A minimum premium group insurance plan;
 - c. A stop-loss group insurance plan; or
 - d. An administrative services only contract;
 - 5. Any portion of a policy or contract to the extent that it provides **for**:
 - a. Dividends or experience rating credits; ~~or~~
 - b. **Payment of** ~~provides that~~ any fees or allowances ~~be paid~~ to any person, including the policy or contract **owner** ~~holder~~, in connection with the service to or administration of such policy or contract; **or**
 - c. **Voting rights;**
 - 6. Any policy or contract issued in this state by a member insurer at a time when it did not have a certificate of authority to issue such policy or contract in this state; ~~and~~
 - 7. Any unallocated annuity contract;
 - 8. **A portion of a policy or contract to the extent that the assessments required by Section 6 of this Act with respect to the policy or contract are preempted by federal or state law;**
 - 9. **An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:**
 - a. **Claims based on marketing materials;**
 - b. **Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;**
 - c. **Misrepresentations of or regarding policy benefits;**
 - d. **Extracontractual claims; or**
 - e. **A claim for penalties or consequential or incidental damages; and**
 - 10. **A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee which in each case is not an affiliate of the member insurer.**
- (3) (a) The benefits ~~that for which~~ the association may become **obligated to cover** ~~liable~~ shall in no event exceed the lesser of:
- 1. ~~(a)~~ The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or
 - 2. ~~(b)~~ With respect to any one (1) life, regardless of the number of policies or contracts:
 - a. ~~1.~~ Three hundred thousand dollars (\$300,000) in life insurance death benefits, but not more than one hundred thousand dollars (\$100,000) net cash surrender and net cash withdrawal values for life insurance;
 - b. ~~2.~~ One hundred thousand dollars (\$100,000) in health insurance benefits, including any net cash surrender and net cash withdrawal values;

~~c.3.~~ One hundred thousand dollars (\$100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; *except with respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, one hundred thousand dollars (\$100,000) in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values.*

(b) *In no event shall the association be obligated to cover more than:*

1. *An aggregate of three hundred thousand dollars (\$300,000) in benefits with respect to any one (1) life under subparagraphs 2. and 3. of paragraph (a) of this subsection; or*
2. *With respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than one million dollars (\$1,000,000) in benefits, regardless of the number of policies and contracts held by the owner.*

(c) *The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this subtitle may be met by the use of assets attributable to covered policies or reimbursed to the association in accordance with its subrogation and assignment rights.*

(4) *In performing its obligations to provide coverage under Section 5 of this Act, the association shall not be required to guarantee, assume, reinsure or perform, or cause to be performed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.*

Section 3. KRS 304.42-040 is amended to read as follows:

This subtitle shall be ~~liberally~~ construed to effect the purpose under KRS 304.42-020 ~~which shall constitute an aid and guide to interpretation~~.

Section 4. KRS 304.42-050 is amended to read as follows:

As used in this subtitle:

- (1) "Account" means either of the three (3) accounts created under KRS 304.42-060.
- (2) "Association" means the Kentucky Life and Health Insurance Guaranty Association created under KRS 304.42-060.
- (3) *"Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specific amount. An assessment is authorized when the resolution is passed.*
- (4) *"Benefit plan" means a specific employee, union, or association of natural persons benefit plan.*
- (5) *"Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.*
- (6) "Commissioner" means the commissioner of insurance of this state.
- ~~(7)(4)~~ "Contractual obligation" means any obligation under a policy or contract or a certificate under a group policy or contract, or portion thereof, for which coverage is provided under KRS 304.42-030.
- ~~(8)(5)~~ "Covered policy" means any policy or contract *or portion of a policy or contract for which coverage is provided under* ~~within the scope of~~ KRS 304.42-030.
- (9) *"Extracontractual claims" include, but are not limited to, claims relating to bad faith in the payment of claims, punitive or exemplary damages, and attorneys' fees and costs.*

- (10)~~(6)~~ "Impaired insurer" means a member insurer which, after June 17, 1978, is not an insolvent insurer and ~~is~~
- ~~(a) — Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations; or~~
 - ~~(b) — is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.~~
- (11)~~(7)~~ "Insolvent insurer" means a member insurer which after June 17, 1978, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- (12)~~(8)~~ "Member insurer" means any insurer authorized to transact in this state any kind of insurance for which coverage is provided under KRS 304.42-030, and includes any insurer whose certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
- (a) A nonprofit hospital, medical-surgical, dental, and health service corporation, as defined by Subtitle 32 of this chapter;
 - (b) A health maintenance organization;
 - (c) A fraternal benefit society;
 - (d) A mandatory state pooling plan;
 - (e) An assessment or cooperative insurer or any entity that operates on an assessment basis;
 - (f) An insurance exchange;
 - (g) Any entity similar to the above; or
 - (h) Health insurance where such insurance is written by a member of the Kentucky Insurance Guaranty Association.
- (13)~~(9)~~ "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.
- (14) *"Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.*
- (15)~~(10)~~ "Premiums" means amounts *or considerations, by whatever name called*, received on covered policies or contracts less **returned** premiums, considerations, and deposits ~~returned thereon~~, and less dividends and experience credits ~~thereon~~. "Premiums" does not include ~~any~~ amounts *or considerations* received for any policies or contracts or for the portions of ~~any~~ policies or contracts for which coverage is not provided under KRS 304.42-030(2), except that assessable premium shall not be reduced on account of KRS 304.42-030(2)(b)3. *Relative to interest limitations and subsection (3)(b) of Section 2 of this Act relating to limitations with respect to one (1) individual and one (1) contract owner. "Premiums" shall not include with respect to multiple nongroup policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars (\$1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.*
- (16)~~(11)~~ "Person" means any individual, corporation, *limited liability company*, partnership, association, *governmental body or entity*, or voluntary organization.
- (17) *"Plan sponsor" means:*
- (a) *The employer in the case of a benefit plan established or maintained by a single employer;*
 - (b) *The employee organization in the case of a benefit plan established or maintained by an employee organization; or*
 - (c) *In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.*

- (18) (a) *"Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise the function, determined by the association in its reasonable judgment by considering the following factors:*
1. *The state in which the primary executive and administrative headquarters of the entity is located;*
 2. *The state in which the principal office of the chief executive officer of the entity is located;*
 3. *The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;*
 4. *The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;*
 5. *The state from which the management of the overall operations of the entity is directed; and*
 6. *In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.*
- However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.*
- (b) *The principal place of business of a plan sponsor of a benefit plan described in subsection (17)(c) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan or question.*
- (19) *"Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.*
- (20)~~(12)~~ *"Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date when~~at the time~~ a member insurer is determined to be an impaired or insolvent insurer, whichever occurs first~~and to whom contractual obligations are owed~~. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this subtitle shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.*
- (21) *"Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.*
- (22) *"State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.*
- (23)~~(13)~~ *"Supplemental contract" means a written~~any~~ agreement entered into for the distribution of~~policy or contract~~ proceeds under a life, health, or annuity policy or contract.*
- (24)~~(14)~~ *"Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.*

Section 5. KRS 304.42-080 is amended to read as follows:

- (1) If a member insurer is an impaired~~domestic~~ insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer ~~and~~ that are approved by the commissioner~~, and that are (except in the cases of court-ordered conservation or rehabilitation) also approved by the impaired insurer~~:

- (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; *or*
- (b) Provide such monies, pledges, *loans*, notes, guarantees, or other means as are proper to effectuate paragraph (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a) of this subsection~~[- or~~
- ~~(c) — Loan money to the impaired insurer.~~
- ~~(2) — (a) — If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then, subject to the preconditions specified in paragraph (b) of this subsection, the association shall, in its discretion, either:~~
- ~~1. — Take any of the actions specified in subsection (1) of this section subject to the conditions therein; or~~
 - ~~2. — Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.~~
- ~~(b) — The association shall be subject to the requirements of paragraph (a) of this subsection only if:~~
- ~~1. — The laws of the state of domicile of the impaired insurer provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:~~
 - ~~a. — The delinquency proceeding shall not be dismissed;~~
 - ~~b. — Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;~~
 - ~~c. — It shall not be permitted to solicit or accept new business or have any suspended or revoked certificate of authority restored; and~~
 - ~~2. — a. If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or~~
 - ~~b. — If the impaired insurer is a foreign or alien insurer, it has been prohibited from soliciting or accepting new business in this state, its certificate of authority has been suspended or revoked in this state, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the insurance supervisory official of that state}.~~
- ~~(2){(3)}~~ If a member insurer is an insolvent insurer, the association shall, in its discretion, either:
- (a)
 1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
 2. Assure payment of the contractual obligations of the insolvent insurer; and
 3. Provide such monies, pledges, *loans*, *notes*, guarantees, or other means as are reasonably necessary to discharge such duties; or
 - (b) ~~{With respect only to life and health insurance policies, }~~Provide benefits and coverages in accordance *the following provisions:*~~{with subsection (4) of this section.}~~
- ~~{(4) — When proceeding under subsections (2)(a)2. or (3)(b) of this section, the association shall, with respect to only life and health insurance policies:}~~
- ~~1.{(a)} With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under policies *or contracts* of the insolvent insurer, for claims incurred:~~

- a.~~{1-}~~ With respect to group policies **and contracts**, not later than the earlier of the next renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the association becomes obligated with respect to such policies **or contracts**;
- b.~~{2-}~~ With respect to **nongroup**~~{individual}~~ policies, **contracts, and annuities** not later than the earlier of the next renewal date (if any) under such policies **or contracts** or one (1) year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to such policies **or contracts**;
- 2.~~{b)}~~ Make diligent efforts to provide all known insureds **or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts**~~{group policyholders with respect to group policies}~~ thirty (30) days' notice of the termination **under subparagraph 1. of this paragraph** of the benefits provided;~~{and}~~
- 3.~~{c)}~~ With respect to individual **health and life insurance** policies, **and annuities covered by the association**, make available to each known insured **or annuitant**, or owner if other than the insured **or annuitant**, and with respect to an individual formerly insured **or formerly and annuitant** under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (d) of this subsection, if the insureds **or annuitants** had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy **or annuity** in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class;~~{-}~~
4. a.~~{d)}~~ ~~1 —~~ In providing substitute coverage required under **subparagraph 3. of this paragraph**~~{(e) of this subsection}~~ the association may offer either to reissue the terminated coverage or to issue an alternative policy.
- b.~~{2-}~~ Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
- c.~~{3-}~~ The association may reinsure any alternative or reissued policy.
5. a.~~{e)}~~ ~~1-~~ Alternative policies adopted by the association shall be subject to approval by the **domiciliary insurance commissioner or receivership court**. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
- b.~~{2-}~~ Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.
- c.~~{3-}~~ Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
- 6.~~{f)}~~ If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval by the **domiciliary insurance commissioner or by the receivership**~~{a}~~ court;~~{of competent jurisdiction}~~
- 7.~~{g)}~~ The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the **policy owner**~~{policyholder}~~, the insured, or the association;~~{-}~~

- (3)~~(5)~~ When proceeding under **subsection**~~subsections~~ (2)~~(b)~~~~(a)2.~~ or ~~(3)~~ of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with KRS 304.42-030(2)(b)3.
- (4)~~(6)~~ Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract for substitute coverage shall terminate the association's obligations under such policy or coverage under this subtitle with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this subtitle.
- (5)~~(7)~~ Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.
- (6)~~(8)~~ The protection provided by this subtitle shall not apply where any guaranteed protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.
- (7)~~(9)~~ In carrying out its duties under **subsection**~~subsections~~ (2)~~and (3)~~ of this section, the association may~~, subject to approval by the court~~:
- (a) ***Subject to approval by a court in this state***, impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this subtitle are less than the amounts needed to assure full and prompt performance of the association's duties under this subtitle, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and
 - (b) ***Subject to approval by a court in this state***, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. ***In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.***
- (8) ***A deposit in this state, held under law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, shall be promptly paid to the association. The association:***
- (a) ***Shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency; and***
 - (b) ***Shall remit to the domiciliary receiver the amount so paid to the association and retained in accordance with paragraph (a) of this subsection. Any amount so paid to the association less the amount retained by it in accordance with paragraph (a) of this subsection shall be treated as a distribution of estate assets under KRS 304.33-440 or similar provision of the state of domicile of the impaired or insolvent insurer.***
- (9)~~(10)~~ If the association fails to act within a reasonable period of time ***with respect to an insolvent insurer*** as provided in **subsection**~~subsections~~ (2)~~(a)2., (3), and (4)~~ of this section, the commissioner shall have the powers and duties of the association under this subtitle with respect to ~~the impaired or~~ insolvent ~~insurer~~~~insurers~~.
- (10)~~(11)~~ The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

- ~~(11)~~~~(12)~~ The association shall have standing to appear *or intervene* before any court *or agency* in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this subtitle *or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise*. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court *or agency* in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over *any person or property*~~[a third party]~~ against whom the association may have rights through subrogation *or otherwise*~~[of the insurer's policyholders]~~.
- ~~(12)~~~~(13)~~ (a) Any person receiving benefits under this subtitle shall be deemed to have assigned the rights under, and any causes of action *against any person for losses arising under, resulting from, or otherwise* relating to, the covered policy or contract to the association to the extent the benefits received because of this subtitle, whether benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this subtitle upon such person.
- (b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this subtitle.
- (c) In addition to paragraphs (a) and (b) of this subsection, the association shall have all common law rights of subrogation and any other equitable or legal remedy ~~that~~~~which~~ would have been available to the impaired or insolvent insurer or *owner, beneficiary, or payee*~~holder~~ of a policy or contract with respect to such policy or contract, *including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this subtitle against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor*.
- (d) *If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.*
- (e) *If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.*
- ~~(13)~~~~(14)~~ *In addition to the rights and powers elsewhere in this subtitle*, the association may:
- (a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this subtitle;
- (b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under KRS 304.42-090 and to settle claims or potential claims against it;
- (c) Borrow money to effect the purposes of this subtitle; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
- (d) Employ or retain such persons as are necessary *or appropriate* to handle the financial transactions of the association, and to perform such other functions as may become necessary or proper under this subtitle;
- (e) Take such legal action as may be necessary *or appropriate* to avoid *or recover* payment of improper claims;~~and~~

- (f) Exercise, for the purposes of this subtitle and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this subtitle;
 - (g) *Organize itself as a corporation or in other legal form permitted by the laws of the state;*
 - (h) *Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this subtitle with respect to the person, and the person shall promptly comply with the request; and*
 - (i) *Take other necessary or appropriate action to discharge its duties and obligations under this subtitle or to exercise its powers under this subtitle.*
- ~~(14)~~~~(15)~~ The association may join an organization of one (1) or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.
- (15) (a) *At any time within one (1) year after the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer that accrue on or after that date and that relate to contracts covered in whole or in part by the association, under any one (1) or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. The association may not exercise any such election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurer. If the association makes an election, subparagraphs 1. to 4. of this paragraph shall apply with respect to the agreements selected by the association:*
1. *The association shall be responsible for all unpaid premiums due under the agreements for periods both before and after the date, and shall be responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.*
 2. *The association shall be entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part. Upon receipt of any such amounts the association shall be obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of:*
 - a. *The amount received by the association, over*
 - b. *The benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event.*
 3. *Within thirty (30) days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each such reinsurance agreement as of the date of the association's election, which calculation shall give full credit to all items paid by either the member insurer or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other within five (5) days of the completion of the calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association under subparagraph 2. of this paragraph, the receiver, rehabilitator, or liquidator shall remit those amounts to the association as promptly as practicable.*
 4. *If the association, within sixty (60) days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the insurer shall not be entitled to terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and shall not be entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.*

- (b) *If the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the association under paragraph (a) of this subsection effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in paragraph (a) of this subsection if:*
1. *The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;*
 2. *The obligations described in subparagraph 2. of paragraph (a) of this subsection no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and*
 3. *The association has not previously expressly determined in writing that it will not exercise the election referred to in paragraph (a) of this subsection.*
- (c) *The provisions of this subsection shall supersede the provisions of any law of this state or of any affected reinsurance agreements that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreements with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions.*
- (d) *Except as otherwise expressly provided in this subsection, nothing in this subsection shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing in this subsection shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing in this subsection shall give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.*
- (16) *The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this subtitle in an economical and efficient manner.*
- (17) *If the association has arranged or offered to provide the benefits of this subtitle to a covered person under a plan or arrangement that fulfills the association's obligations under this subtitle, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.*
- (18) *Venue in a suit against the association under this subtitle shall be in Franklin County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this subtitle.*

Section 6. KRS 304.42-090 is amended to read as follows:

- (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at eight percent (8%) per annum on and after the due date.
- (2) There shall be two (2) classes of assessments:
 - (a) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses ~~and examinations conducted under the authority of KRS 304.42-120(5)~~. Class A assessments may be **authorized and called** ~~made~~ whether or not related to a particular impaired or insolvent insurer;
 - (b) Class B assessments shall be **authorized and called** ~~made~~ to the extent necessary to carry out the powers and duties of the association under KRS 304.42-080 with regard to an impaired or insolvent insurer.

- (3) (a) The amount of any Class A assessment shall be determined by the board and may be **authorized and called**~~made~~ on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. **The total of all**~~[A]~~ non-pro rata **assessments**~~[assessment]~~ shall not exceed one hundred fifty dollars (\$150) per member insurer in any one (1) calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.~~[;]~~
- (b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became **insolvent, or in the case of assessment with respect to an impaired insurer, the three (3) most recent calendar years for which information is available preceding the year in which the insurer became** impaired,~~[or insolvent]~~ bears to such premiums received on business in this state for such calendar years by all assessed member insurers.~~[; and]~~
- (c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this subtitle. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. **The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty (180) days after the assessment is authorized.**
- (4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. **Once the conditions that caused a deferral have been removed or rectified, the member shall pay all assessments that were deferred under a repayment plan approved by the association.**
- (5) (a) **Subject to the provisions of paragraph (b) of this subsection,** the total of all assessments **authorized by the association with respect to**~~upon~~ a member insurer for each account shall not in any one (1) calendar year exceed two percent (2%) of **the**~~[such]~~ insurer's **average annual premiums received in this state on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer**~~[premiums received in this state during the calendar year preceding the assessment on the policies covered by the account]~~. If the maximum assessment, together with the other assets of the association in **any other**~~[either]~~ account, does not provide in any one (1) year in **any other**~~[either]~~ account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this subtitle.
- (b) **If two (2) or more assessments are authorized in one (1) calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in paragraph (a) of this subsection shall be equal and limited to the higher of the three (3) year average annual premiums for the applicable account as calculated under this section.**
- (c) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one (1) or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.
- (6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from **assignment, subrogation,** net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses **claims**~~[if refunds are impractical]~~.

- (7) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this subtitle, to consider the amount reasonably necessary to meet its assessment obligations under this subtitle.
- (8) The association shall issue to each insurer paying an assessment under this subtitle, other than a Class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.
- (9) *(a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.*
- (b) Within sixty (60) days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.*
- (c) Within thirty (30) days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of notice of the final decision, the protesting member insurer may appeal the final action to the commissioner, in accordance with subsection (3) of Section 7 of this Act.*
- (d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.*
- (e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.*
- (10) *The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.*

Section 7. KRS 304.42-110 is amended to read as follows:

In addition to the duties and powers enumerated elsewhere in this subtitle:

- (1) The commissioner shall:
- (a) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;
- (b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this subtitle; and
- (c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner may be appointed conservator.
- (2) The commissioner may suspend or revoke, after notice and hearing conducted in accordance with KRS Chapter 13B, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. A forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.

- (3) Any *final* action of the board of directors or the association may be appealed to the commissioner by any member insurer if the appeal is taken within ~~sixty (60)~~~~thirty (30)~~ days of *its receipt of notice of* the action being appealed. Any final order of the commissioner shall be subject to judicial review as set forth in Subtitle 2 of this chapter and KRS Chapter 13B.
- (4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this subtitle.

Section 8. KRS 304.42-120 is amended to read as follows:

To aid in the detection and prevention of insurer insolvencies or impairments:

- (1) It shall be the duty of the commissioner:
- (a) To notify the commissioners of all of the other states, territories of the United States and the District of Columbia when he takes any of the following actions against a member insurer:
1. Revocation of license;
 2. Suspension of license;
 3. Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of *policy owners*~~{policyholders}~~ or creditors.
- Such notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs;
- (b) To report to the board of directors when he has taken any of the actions set forth in paragraph (a) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner;
- (c) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of any member *insurer*~~{company}~~ that such *insurer*~~{company}~~ may be an impaired or insolvent insurer;
- (d) To furnish to the board of directors the NAIC insurance regulatory information system information developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.
- (2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.
- (3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.
- (4) ~~{It shall be the duty of }~~The board of directors *may*, upon majority vote,~~{to}~~ notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.
- (5) ~~{The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (1) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the~~

~~commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.~~

~~(6)~~ The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

~~(7)~~ The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

Section 9. KRS 304.42-140 is amended to read as follows:

- (1) Nothing in this subtitle shall be construed to reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability.
- (2) Records shall be kept of all *meetings of the board of directors*~~[negotiations and meetings in which the association or its representatives are involved]~~ to discuss the activities of the association in carrying out its powers and duties under KRS 304.42-080. **The records of the association with respect to an impaired or insolvent insurer shall not be disclosed prior to**~~[Records of such negotiations or meetings shall be made public only upon]~~ the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, **prior to**~~[upon]~~ the termination of the impairment or insolvency of the insurer, or **prior to**~~[upon]~~ the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under KRS 304.42-150.
- (3) For the purpose of carrying out its obligations under this subtitle, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subsection (8) of KRS 304.42-080. Assets of the impaired or insolvent insurer **attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer** as required by this subtitle. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.
- (4) **As a creditor of the impaired or insolvent insurer as established in subsection (3) of this section and consistent with KRS 304.33-440, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this subtitle. If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.**
- (5) (a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the **policy owners**~~[policyholders]~~ of the continuing or successor insurer;
- (b) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association for funds expended in carrying out its powers and duties under KRS 304.42-080 with respect to such insurer have been fully recovered by the association.
- ~~(6)~~~~(5)~~ (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five (5) years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (b) to (d) of this subsection;

- (b) No such ~~*distribution*~~~~[dividend]~~ shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations;
- (c) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions ~~*which he*~~ would have *been* received if they had been paid immediately. If two (2) persons are liable with respect to the same distributions, they shall be jointly and severally liable;
- (d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer;
- (e) If any person liable under paragraph (c) of this subsection is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Section 10. KRS 304.42-150 is amended to read as follows:

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year. ***Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report.***

Section 11. KRS 304.42-170 is amended to read as follows:

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under this subtitle. ***Immunity shall extend to the participation in any organization of one (1) or more other state associations of similar purposes and to any such organization and its agents or employees.***

Approved April 13, 1998

CHAPTER 538

(HB 689)

AN ACT relating to juvenile justice and declaring an emergency.

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

Section 1. KRS 158.135 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
 - (a) "State agency children" means:
 1. Those children of school age committed to or in custody of the Cabinet for Human Resources and placed, or financed by the cabinet, in a Cabinet for Human Resources operated or contracted institution, treatment center, or facility, or placed or financed by the Cabinet for Human Resources in a private facility pursuant to child care agreements other than those for foster care;
 2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the mentally retarded; and
 3. Those children committed to or in custody of the Department of Juvenile Justice ***and placed in a department operated or contracted facility or program***~~[, except for children placed in a juvenile detention facility or jail as defined in KRS 15A.067].~~
 - (b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if identified on an individual educational plan, and more intensive educational programming.

- (2) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.
- (3) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for Human Resources unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.
- (4) The Cabinet for Human Resources shall contract with a university-affiliated training resource center utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.
- (5) Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

Section 2. KRS 199.011 is amended to read as follows:

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

- (1) "Secretary" means the secretary for human resources;
- (2) "Cabinet" means the Cabinet for Human Resources;
- (3) "Department" means the Department for Social Services;
- (4) "Child" means any person who has not reached his eighteenth birthday;
- (5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;
- (6) "Child-caring facility" means any institution or group home other than a state facility, *a Department of Juvenile Justice contract facility or group home*, or one (1) certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency licensed by the cabinet other than a state agency which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;
- (8) "Adoption worker" means an employee of the cabinet designated as such by the secretary for human resources, a social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, adoption placement services to children, or a social worker employed by or under contract to a child-placing adoption agency;
- (9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;
- (10) "Group home" means a homelike facility, *excluding Department of Juvenile Justice operated or contracted facilities*, for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;
- (11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;
- (12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons; and
- (13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit

from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social services to all the parties involved in an adoption.

- (14) "Voluntary and informed consent" means that at the time of the execution of the consent the consenting person was fully informed of the legal effect of the consent, that the consenting person was not given or promised anything of value except those expenses allowable under KRS 199.590(6), that the consenting person was not coerced in any way to execute the consent, and that the consent was voluntarily and knowingly given. If at the time of the execution of the consent the consenting person was represented by independent legal counsel, there shall be a presumption that the consent was voluntary and informed. In the event the person was not represented by independent legal counsel, the consent shall be in writing, signed and sworn to by the consenting person and include the following:
- (a) Date, time, and place of the execution of the consent;
 - (b) Name of the child, if any, to be adopted and the date and place of the child's birth;
 - (c) Consenting person's relationship to the child;
 - (d) Identity of the proposed adoptive parents or a statement that the consenting person does not desire to know the identification of the proposed adoptive parents;
 - (e) A statement that the consenting person understands that the consent will be final and irrevocable twenty (20) days after the execution of the consent if the placement was previously approved, if approval of the placement is required;
 - (f) Disposition of the child if the adoption is not adjudged;
 - (g) A statement that the consenting person has received a completed and signed copy of the consent at the time of the execution of the consent;
 - (h) A statement that the consenting person understands that the consent may only be withdrawn by written notification sent by certified or registered mail addressed to either the attorney for the consenting person or to the attorney for the adoptive parents, within thirty (30) days following the execution of the consent;
 - (i) Name and address of the person who prepared the consent, name and address of the person who reviewed and explained the consent to the consenting person, and a verified statement from the consenting person that the consent has been reviewed with and fully explained to the consenting person; and
 - (j) Total amount of the consenting person's legal fees, if any, for any purpose related to the execution of the consent and the source of payment of the legal fees.

Section 3. KRS 199.645 is amended to read as follows:

The Cabinet for Human Resources shall issue and enforce administrative regulations specifically addressing the unique situation of child-caring facilities and child-placing agencies which provide nonsecure care for children during the preadjudication phase of proceedings under KRS ~~Chapter 630 and 635~~ *Chapter 630*. Such facilities and agencies shall include those operated privately and those operated by units of local government. These regulations shall include standards relating to the following:

- (1) Administration;
- (2) Personnel;
- (3) Training and staff development;
- (4) Recordkeeping;
- (5) Physical plant;
- (6) Security and control;
- (7) Safety and emergency procedures;
- (8) Sanitation and hygiene;
- (9) Medical and health services;

- (10) Food services;
- (11) Intake and classification;
- (12) Programs and services;
- (13) Resident rights;
- (14) Rules and discipline;
- (15) Admission procedures;
- (16) Communication, including mail, visitation and telephone;
- (17) Release preparation and transfer programs; and
- (18) Volunteer involvement.

Section 4. KRS 15A.065 is amended to read as follows:

The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:

- (1) Prevention of juvenile crime;
- (2) Identification of juveniles at risk of becoming status or public offenders and early intervention strategies for these children, *and, except for adjudicated youth, participation in prevention programs shall be voluntary*;
- (3) Providing *informational* services to law enforcement, prosecution, victims, defense attorneys, and the public relating to juvenile crime, its prevention, detection, trial, punishment, and rehabilitation, and services for youth adjudicated delinquent or found guilty of public offenses or as youthful offenders;
- (4) ~~{The operation of or contracting for the operation of preadjudication facilities for children charged with public offenses;~~
- ~~(5) {The operation of or contracting for the operation of postadjudication treatment facilities for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;~~
- ~~{(6) The operation of or contracting for the operation of preadjudication alternatives to detention and follow up programs for children who are before the court and who enter pretrial diversion or informal adjustment programs;~~
- ~~(7) The operation of or contracting for the operation of postadjudication alternatives to detention and follow up programs, including but not limited to community based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of detention while achieving solutions to the child's problems and ensuring public safety;}~~
- ~~(5){(8)}~~ The operation or contracting for the operation of by the department, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;
- ~~(6){(9)}~~ Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;
- ~~(7){(10)}~~ Conducting research and comparative experiments to find the most effective means of:
 - (a) Preventing delinquent behavior;
 - (b) Identifying predelinquent youth;
 - (c) Preventing predelinquent youth from becoming delinquent;
 - (d) Assessing the needs of predelinquent and delinquent youth;
 - (e) Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;
 - (f) Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the

modification, combination, or elimination of programs as indicated by the assessment and the research; and

- (g) Keeping the department, the educational community, police, prosecutors, the courts, and the public abreast of the latest programs, technology, counseling tools, and other aspects of juvenile counseling, correction, and treatment;
- ~~(8)(11)~~ Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.
- ~~(9)(12)~~ The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.
- ~~(10)(13)~~ The Department of Juvenile Justice may contract with *other agencies*~~(the cabinet)~~ for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments.
- ~~(11)(14)~~ The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall provide a formulation of and recommendations for meeting the requirements of this section not less than *annually*~~(semiannually)~~ to the Governor, the Justice Cabinet, the Department of Juvenile Justice, the Cabinet for Human Resources, the Interim Joint Committees on Judiciary and Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and Appropriations and Revenue committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. ***The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils.*** The advisory board shall meet not less than quarterly. The advisory board shall be chaired by a private citizen member appointed by the Governor. The advisory board shall consist of one (1) member of each of the following:
1. Justice Cabinet;
 2. Department of Juvenile Justice;
 3. Cabinet for Human Resources;
 4. Department for Medicaid Services;
 5. Department of Education;
 6. Department of Public Advocacy;
 7. Administrative Office of the Courts;
 8. Workforce Development Cabinet;
 9. Attorney General;
 10. Kentucky Developmental Disabilities Council;
 11. Circuit Judges Association;
 12. District Court Judges Association;
 13. Commonwealth's Attorneys Association;
 14. County Attorneys Association;
 15. County Judge/Executives Association;
 16. A person eighteen (18) to twenty-five (25) years of age not associated with any other group listed in this paragraph;
 17. A person from the business community not associated with any other group listed in this paragraph;

18. A parent not associated with any other group listed in this paragraph;
19. A youth advocate not associated with any other group listed in this paragraph;
20. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
21. A local school district special education administrator not associated with any other group listed in this paragraph;
22. A peace officer not associated with any other group listed in this paragraph; and
23. A college or university professor specializing in law, criminology, corrections, or similar discipline with an interest in juvenile corrections programs.

Section 5. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, *at a cost not to exceed the Medicaid reimbursement rate*, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
 - (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Human Resources, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.
 - (b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
 - (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
 1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
 2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;

3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
 4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
 5. The funding for school services for state agency children authorized by KRS 158.135; and
 6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.
- (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
1. Provide for the development and implementation of interagency agreements that:
 - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
 - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
 2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.
- (e) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 6. KRS 610.050 is amended to read as follows:

If it appears to the court, by affidavit or by sworn testimony, that the child is a danger to himself or the community, or is in such condition or surroundings that his welfare is being harmed or threatened with harm to such a degree that his best interest requires that his custody be immediately changed by the court from the original custodian to another, the judge may sign an order giving temporary custody of the child to a suitable custodian ***consenting to temporary custody***. However, if this case involves allegations of dependency, neglect or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed; and, if the case involves allegations of mental illness, the provisions of KRS Chapter 645 shall be followed. As a part of such order, the court may direct that the child shall be taken into custody by the peace officer serving the summons or by any other peace officer and placed as directed by the court. In any event, a copy of the temporary custody order shall be served on the parent, guardian or other person exercising custodial control or supervision of the child when the summons is served. The temporary custody order shall be effective until the case is heard on its merits or until modified by the court. As a result of such order, the child shall be placed in custody and care in a home or other suitable facility.

Section 7. KRS 610.080 is amended to read as follows:

Juvenile proceedings shall consist of two (2) distinct hearings, an adjudication and a disposition, which shall be held on separate days unless the child, ***after consultation with an attorney***, waives the right to a formal predisposition investigation report and moves that the hearings be held the same day. ***However, if the disposition is to be commitment, the child's waiver shall not be valid without the consent of the Department of Juvenile Justice or the cabinet.***

- (1) The adjudication shall determine the truth or falsity of the allegations in the petition and shall be made on the basis of an admission or confession of the child to the court or by the taking of evidence.
- (2) Unless otherwise exempted, upon motion by any child brought before the court on a petition under KRS 610.010(1)(a), (b), (c) or (d), the Rules of Criminal Procedure shall apply. All adjudications shall be supported

by evidence beyond a reasonable doubt, unless specified to the contrary by other provisions of KRS Chapters 600 to 645. For actions under KRS 610.010(1)(e) the Kentucky Rules of Civil Procedure shall apply.

Section 8. KRS 610.120 is amended to read as follows:

- (1) Except as otherwise provided by KRS ~~Chapters~~~~[Chapter]~~ **605 and 635**, an order of commitment or an order of protective supervision or probation made by the court in the case of a child may be ~~reviewed,~~ continued~~[,]~~ or terminated at any time prior to expiration on the court's own initiative or on motion by:
 - (a) A child who is affected by an order of juvenile session of District Court;
 - (b) The family, custodian, guardian, or legal representative of such a child;
 - (c) The county attorney of the county in which the committing court presides; or
 - (d) Any other person having an interest in the welfare of the child.
- (2) Grounds for such action may include but are not limited to allegations that there has been a substantial change of material circumstances, there exists new evidence affecting the disposition of the child, the child is no longer in need of commitment, probation, or placement, the child has not responded to or benefited from treatment or the child has not received adequate and proper treatment, the original proceedings were not conducted in the manner required by law or the public interest requires termination of the order. Upon review of the child's case, **the Department of Juvenile Justice**, the cabinet, any agency, facility or individual responsible for the supervision, care or treatment of the child, shall divulge and communicate such information regarding the child as the court may require.

Section 9. KRS 630.010 is amended to read as follows:

In addition to those purposes set forth in KRS 600.010, this chapter shall be interpreted and construed to effectuate the following purposes regarding status offenders:

- (1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;
- (2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;~~and~~
- (3) Detention of status offenders in secure juvenile detention facilities or juvenile holding facilities should only be used for very specific and constructive purposes, when all other less restrictive alternatives to detention have been attempted and are not feasible; **and**
- (4) **Status offenders shall not be converted into public offenders by virtue of status conduct.**

Section 10. KRS 635.055 is amended to read as follows:

No child who is found to be in contempt of court shall be **committed as a public offender as a result of such finding, nor** detained because of such finding in a facility other than a secure juvenile detention facility or juvenile holding facility.

Section 11. KRS 635.100 is amended to read as follows:

- (1) **Any child committed to the Department of Juvenile Justice who is placed in a treatment facility or program and who escapes or is absent without leave shall be taken into custody and returned to the custody of the Department of Juvenile Justice by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.**
- (2) Any child committed to the Department of Juvenile Justice who is placed on supervised placement~~from a residential treatment facility~~ by the Department of Juvenile Justice and who violates the terms or conditions of supervised placement may be taken into custody and returned to active custody of the Department of Juvenile Justice by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.
- (3)~~(2)~~ The child may be taken into custody and held in ~~a~~~~one of the~~ Department of Juvenile Justice **facility, program, or contract facility,**~~treatment facilities~~ prior to the administrative hearing, provided a preliminary hearing is held by a person designated by the Department of Juvenile Justice within **five (5) days**~~forty eight (48) hours~~ of the holding to determine if there is probable cause to believe that the child violated his

supervised placement conditions and, if so, to determine if the best interest of the child requires that the child be held in custody pending an administrative hearing pursuant to subsection ~~(4)~~~~(3)~~ of this section. The child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and to be represented by counsel at the preliminary hearing.

- ~~(4)~~~~(3)~~ If the child is returned to the active custody of the Department of Juvenile Justice pending a hearing, before readmitting the child to a treatment program pursuant to this section, except as provided in subsection ~~(3)~~~~(2)~~ of this section, an administrative hearing shall be held within ten (10) working days of the *preliminary hearing*~~request to readmit the child to a treatment program~~ unless the child and his representative request or agree to a longer period of time. The hearing shall be held by *one (1) hearing officer*~~a three (3) member board~~ designated by the Department of Juvenile Justice to hear such matters at which time the child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and be represented by counsel.
- (5) *Administrative hearings conducted under this section and administrative regulations promulgated under this section shall be exempt from the requirements of KRS Chapter 13B.*
- ~~(6)~~~~(4)~~ The Department of Juvenile Justice may promulgate administrative regulations to implement the provisions of this chapter.

Section 12. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
 - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
 - (a) Finance and Administration Cabinet
 1. Higher Education Assistance Authority

- a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
 - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
- (b) Health Policy Board
 - 1. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
 - 2. Licensure revocation hearings conducted under authority of KRS Chapter 216B
- (c) Cabinet for Human Resources
 - 1. Department for Employment Services
 - a. Unemployment insurance hearings conducted under authority of KRS Chapter 341
 - 2. Department for Health Services
 - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
 - 3. Department for Social Services
 - a. Supervised placement revocation hearings conducted under authority of KRS ~~Chapter~~ ~~Chapters~~ 630 ~~and~~ 635
- (d) Justice Cabinet
 - 1. Department of State Police
 - a. State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
 - 2. Department of Corrections
 - a. Parole Board hearings conducted under authority of KRS Chapter 439
 - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
 - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
 - 3. *Department of Juvenile Justice*
 - a. *Supervised placement revocation hearings conducted under KRS Chapter 635*
- (e) Labor Cabinet
 - 1. Department of Workers' Claims
 - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
- (f) Natural Resources and Environmental Protection Cabinet
 - 1. Department for Surface Mining Reclamation and Enforcement
 - a. Surface mining hearings conducted under authority of KRS Chapter 350
 - 2. Department for Environmental Protection
 - a. Wild River hearings conducted under authority of KRS Chapter 146
 - b. Water resources hearings conducted under authority of KRS Chapter 151
 - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
 - d. Environmental protection hearings conducted under authority of KRS Chapter 224
- (g) Kentucky Occupational Safety and Health Review Commission
 - 1. Occupational safety and health hearings conducted under authority of KRS Chapter 338

- (h) Public Protection and Regulation Cabinet
 - 1. Board of Claims
 - a. Liability hearings conducted under authority of KRS Chapter 44
 - 2. Public Service Commission
 - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
 - (i) Secretary of State
 - 1. Registry of Election Finance
 - a. Campaign finance hearings conducted under authority of KRS Chapter 121
 - (j) State universities and colleges
 - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
 - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
 - 3. Campus residency hearings conducted under authority of KRS Chapter 164
 - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
 - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
 - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings;
 - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

Section 13. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be

created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

- (2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (3) "Cabinet" means the Cabinet for Human Resources;
- (4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the **Department of Juvenile Justice** ~~Cabinet~~ after consultation with ~~the Cabinet for Human Resources and~~ other appropriate state agencies;
- (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (6) "Child-caring facility" means any facility or group home other than a state facility, **Department of Juvenile Justice contract facility or group home**, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the **commitment is discharged under KRS Chapter 605 or the** committing court terminates or extends the order;
- (10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (15) "Department" means the Department for Social Services;
- (16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, ~~or~~ a secure juvenile detention facility, **or an alternative form of detention**;

- (18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (20) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;
- (21) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment;
- (22) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (23) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (24) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (25) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (26) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- (27) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (28) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (29) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (30) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (31) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (32) "Juvenile holding facility" means a physically secure setting, approved by the **Department of Juvenile Justice** ~~Cabinet~~, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the **Department of Juvenile Justice** ~~Cabinet~~ may supervise juvenile as well as adult prisoners;
- (33) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- (34) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;

- (35) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (36) "Parent" means the biological or adoptive mother or father of a child;
- (37) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (38) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (39) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (40) "Public offense action" means an action, *excluding contempt*, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (41) "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- (42) "Residential treatment facility" means a facility *or group home* with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (43) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (44) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (45) "Secretary" means the secretary of the Cabinet for Human Resources;
- (46) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

- (47) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (48) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ;
- (49) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (50) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (51) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (52) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (53) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (54) "Youth alternative center" means a nonsecure facility, approved by the Department of **Juvenile Justice**~~Corrections~~, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- (55) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 14. KRS 635.505 is amended to read as follows:

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

- (1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.
- (2) A "juvenile sexual offender" as used in this chapter means an individual who was at the time of the commission of the offense under the age of eighteen (18) years who is not actively psychotic or mentally retarded and who has been adjudicated guilty of or has been convicted of or pled guilty to:
- (a) **A felony**~~[An offense]~~ under KRS Chapter 510;
 - (b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;
 - (c) Any **felony**~~[offense]~~ under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;
 - (d) An offense under KRS 530.020;
 - (e) An offense under KRS 530.064;~~[or]~~
 - (f) An offense under KRS 531.310; **or**
 - (g) **A misdemeanor offense under KRS Chapter 510.**

Section 15. KRS 635.510 is amended to read as follows:

- (1) A child, **thirteen (13) years of age or older, shall**~~may~~ be declared a juvenile sexual offender if **the child has been adjudicated guilty of an offense listed in subsection (2)(a), (b), (c), (d), (e), or (f) of Section 14 of this Act.**
- (2)
 - (a) **A child, less than thirteen (13) years of age, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in subsection (2) of Section 14 of this Act.**
 - (b) **Any child, thirteen (13) years of age or older, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in subsection (2)(g) of Section 14 of this Act**~~;~~
 - ~~(a) Prior to an adjudicatory hearing, there is reasonable cause to believe the child has committed an offense enumerated in KRS 635.505; or~~
 - ~~(b) The court determines the alleged offender used physical force or threat of force, express or implied, in the commission of the act, or has a documented case history of a long term pattern of sexual offenses].~~
- ~~(3)~~~~(2)~~ Upon final adjudication by the juvenile court, the juvenile court judge or other authority designated by the juvenile court judge shall order a mental health assessment to be conducted on the child by the program or by a qualified mental health professional as defined in KRS 600.020 and approved by the program which shall recommend the appropriate course of treatment. Upon receipt of the findings of the assessment, the juvenile court judge or other authority designated by the juvenile court judge shall initiate a referral to the program for evaluation and treatment as indicated.

Section 16. KRS 635.515 is amended to read as follows:

- (1) ~~A~~~~ff the juvenile court declares the~~ child **declared**~~to be~~ a juvenile sexual offender~~, the individual~~ shall be committed to the custody of the Department of Juvenile Justice and shall receive treatment in a juvenile sexual offender treatment program for a minimum of two (2) years but not more than three (3) years, except that the juvenile sexual offender shall not remain in the care of the Department of Juvenile Justice after the age of twenty-one (21) years. If an individual in the care of the department as a juvenile sexual offender reaches the age of nineteen (19) years prior to the expiration of the minimum of two (2) years of treatment, that individual shall be returned to the sentencing court. At that time, the sentencing court may order the individual to complete the prescribed treatment.
- (2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Department of Juvenile Justice shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020.
- (3) The program shall develop a written treatment agreement detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.
- (4) The written treatment agreement shall be presented to the court, and the court shall include the agreement as part of the order except for good cause shown.
- (5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the offender's current condition, and recommendations by the program staff.
- (6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually-inappropriate behavior.
- (7) A discharge review shall be requested by the program sixty (60) days prior to the recommended release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

Section 17. KRS 635.020 is amended to read as follows:

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, **unless the provisions of Section 18 of this Act apply or unless he is** released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence.
- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

SECTION 18. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

- (1) ***Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youth, transferred under subsection (4) of Section 17 of this Act, committed to an adult facility operated by the Department of Corrections if it is established by a preponderance of the evidence that the juvenile:***
 - (a) ***By his or her violent behavior, injured or endangered the life or health of another youthful offender or staff members in the facility or program;***
 - (b) ***Escaped from the facility or program from which the juvenile is being held on more than one (1) occasion;***
 - (c) ***By his or her actions, caused disruption in the facility or program by encouraging other residents to engage in violent behavior which has injured or endangered the life or health of other residents or staff of the facility or program;***

- (d) *By his or her actions, caused disruption in the facility or program, smuggled contraband into the facility or program, caused contraband to be smuggled into the facility or program, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility or program; or*
 - (e) *By his or her actions has established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.*
- (2) *The hearing described in subsection (1) of this section shall be held in the sentencing Circuit Court within ten (10) days of the filing of the motion provided for in subsection (1) of this section.*
 - (3) *Upon a youth's admission to a facility or program operated by the Department of Juvenile Justice, the department shall advise that youth of the provisions of this section.*
 - (4) *Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youth committed to the Department of Corrections if the Department of Juvenile Justice establishes by a preponderance of the evidence that the youth is mentally ill, dangerous to himself or others, and cannot be adequately treated in the program. The court shall presume that a youth is mentally ill if the youth has pled guilty to, or has been convicted of, a felony and has been found by the court or jury to be guilty but mentally ill.*
 - (5) *Any youth remanded to the Department of Corrections under any provision of this chapter shall not later be placed in a facility operated by the Department of Juvenile Justice.*

Section 19. KRS 640.070 is amended to read as follows:

- (1) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youthful offender committed to an adult facility operated by the Department of Corrections if it is established by a preponderance of the evidence that the youthful offender has:
 - (a) By his violent behavior, injured or endangered the life or health of another youthful offender or staff members in the facility or program;
 - (b) Escaped from the facility or program from which he is being held on more than one (1) occasion;
 - (c) By his actions, caused disruption in the facility or program by encouraging other residents to engage in violent behavior which has injured or endangered the life or health of other residents or staff of the facility or program;
 - (d) By his actions, caused disruption in the facility or program, smuggled contraband into the facility or program, caused contraband to be smuggled into the facility or program, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility or program; or
 - (e) By his actions has established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.
- (2) The hearing shall be held in the sentencing Circuit Court within *ten (10)*~~five (5)~~ days of the filing of the motion provided for in subsection (1) of this section.
- (3) Upon admission to a facility or program operated by the Department of Juvenile Justice, the department shall advise the youthful offender of the provisions of this section.
- (4) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youthful offender committed to the Department of Corrections if it is established by a preponderance of the evidence that the youthful offender is mentally ill and is dangerous to himself or others, and cannot be adequately treated in the youthful offender program. It shall be presumed that a youthful offender is mentally ill if he has pled guilty to or has been convicted of a felony and has been found by the court or jury to be guilty but mentally ill.
- (5) *Any youth remanded to the Department of Corrections under any provision of this chapter shall not later be placed in a facility operated by the Department of Juvenile Justice.*

Section 20. KRS 640.080 is amended to read as follows:

- (1) Youthful offenders shall be subject to the jurisdiction of the Kentucky Parole Board and may be placed on parole to the Department of Corrections. The Parole Board may, with regard to a youthful offender, exercise any of the powers which it possesses pursuant to KRS Chapter 439, except as provided in KRS Chapters 600 to 645.
- (2) *A youthful offender parole violator shall, except as provided in KRS Chapters 635 and 640, be incarcerated in a secure juvenile detention facility until eighteen (18) years of age, unless released prior to that age. Upon reaching eighteen (18) years of age, an incarcerated violator shall be transferred to the Department of Corrections.*

Section 21. The following KRS section is repealed:

635.540 Board meetings -- Annual report.

Section 22. Whereas the commitment and laws regarding juveniles in detention are of primary importance to the orderly administration of the courts and to the overall safety of this Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 13, 1998

CHAPTER 539

(HB 704)

AN ACT relating to lease of real property for state use.

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

Section 1. KRS 48.111 is amended to read as follows:

- (1) The Governor shall include in the executive branch budget recommendation and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.110, for the biennium period beginning July 1, 1992, and for each biennium thereafter, a recommended program for rental of any space for which the annual rental cost will exceed two hundred thousand dollars (\$200,000).
- (2) The recommended program for leased space shall include:
- (a) A summary description of each specific two hundred thousand dollar (\$200,000) lease project recommended for funding during the biennium; and
 - (b) For each project:
 1. The name of the agency for which space will be leased;
 2. The purpose and justification for the lease;
 3. Whether the lease contains a purchase option which will be exercised during the biennium pursuant to KRS 56.806(4) and the estimated purchase price;
 4. a. Whether the lease contains a lease-purchase which will be completed during the biennium pursuant to KRS 56.806(5) prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease; and
 - b. The estimated sum of money that will have to be paid in addition to rent paid to complete the purchase;
 5. The estimated cost of the lease; and
 6. The recommended sources of funds.
- (3) All information required by subsection (2) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only the information specified in subparagraphs 1. and 2. of subsection (2)(b) of this section.
- (4) Except as provided in subsection (5) of this section, no lease with an annual rental cost which will exceed two hundred thousand dollars (\$200,000) shall be executed unless the lease has been identified and included in the

branch budget bill. The branch budget bill for the executive branch shall authorize the expenditure by the budget unit that will occupy the premises.

- (5) A lease with an annual rental cost exceeding two hundred thousand dollars (\$200,000) may be authorized even though it is not specifically listed in the biennial budget report and branch budget bill, subject to the following conditions and procedures:
- (a) A lease is awarded as the result of the consolidation of leases in which case, ***in addition to subsection (6) of this section***, the provisions of KRS 56.803 and 56.823(2) or ***of*** KRS 56.805(2) and 56.823(3) shall apply, as appropriate; or
 - (b) A lease is awarded as the result of an agency occupying substantially less space than it should, under the standards for space set by the Department for Facilities Management, in which case, ***in addition to subsection (6) of this section***, the provisions of KRS 56.803 and 56.823(2) or ***of*** KRS 56.805(2) and 56.823(3) shall apply, as appropriate. The space allocated under the new lease shall not exceed the space which should be allocated pursuant to the standards for space; or
 - (c) A lease is awarded as the result of an emergency in which case the provisions of KRS 56.805(3) and (4) and KRS 56.823(5) shall apply; or
 - (d)
 1. Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds; and
 2. Money specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the lease. Money utilized shall not jeopardize any existing program and shall not require the use of current general funds specifically dedicated to existing programs; and
 3. The Finance and Administration Cabinet shall comply with the requirements of subsection (6) of this section.
- (6) (a) ***No later than five (5) business days after an advertisement for lease proposals pursuant to paragraph (a) or (b) of subsection (5) of this section, the cabinet shall provide the Capital Projects and Bond Oversight Committee with a copy of the advertisement and shall state in writing to the committee that the copy is being provided in compliance with this paragraph.***
- (b) Prior to final authorization of a lease pursuant to paragraph (d) of subsection (5) of this section, the cabinet shall report to the Capital Projects and Bond Oversight Committee:
1. The name of the agency for which space will be leased;
 2. The purpose and justification for the lease;
 3. The estimated cost of the lease;
 4. The source of funds; and
 5. Whether the requirements of paragraph (d) of subsection (5) of this section have been met.
- ~~(c)(b)~~ Within thirty (30) days after the report ***required in paragraph (b) of this subsection*** has been submitted to the committee, the committee shall conduct its review and decide whether to approve or disapprove the proposed lease authorization. The Legislative Research Commission shall promptly transmit the committee's findings and determinations to the Finance and Administration Cabinet.
- ~~(d)(e)~~ If the committee disapproves a proposed lease authorization, the secretary of the Finance and Administration Cabinet shall:
1. Revise the proposed lease authorization to comply with the objection of the committee; or
 2. Cancel the proposed lease authorization; or
 3. Determine to proceed with the proposed lease authorization disapproved by the committee.
- ~~(e)(d)~~ The decision made by the secretary of the Finance and Administration Cabinet under paragraph ~~(d)(e)~~ of this subsection shall be communicated to the committee in writing within thirty (30) days of the committee's disapproval.

~~(f)(e)~~ The Legislative Research Commission shall maintain records of the committee's disapproval of a proposed lease authorization and the cabinet's report of its actions on a disapproved proposed lease authorization. If the committee disapproves a proposed lease authorization, the Legislative Research Commission shall transmit the committee's disapproval and the cabinet's action on the disapproval to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when next convened.

~~(g)(f)~~ If after committee review a lease is authorized, the lease shall be awarded pursuant to the provisions of KRS 56.800 to 56.823 and this section, KRS 43.050, and KRS 48.190 and shall be subsequently reviewed pursuant to the appropriate subsection of KRS 56.823.

Section 2. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department at least ninety (90) calendar days before the space requested will be required by the agency. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, he shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency by letter. A copy of the letter shall be kept on file.
- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.
- (5) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall comply with procedures established in this subsection.
 - (a) The department shall place newspaper advertisements. Each advertisement shall contain general information concerning the agency requirements for the space sought to reasonably inform persons having property to let within the county of the type of space wanted, the general location of the property, and the number of square feet needed, and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be noted in the advertisement.
 - (b) If a daily newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.
 - (c) If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought and two (2) times in a daily newspaper not published, but of general circulation, in the county where space is sought.
 - (d) If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.
 - (e) If the Commonwealth intends to lease space in any county when the estimated annual rental charge will exceed one hundred thousand dollars (\$100,000), the requirements established in paragraphs (a), (b),

- (c), and (d) of this subsection shall be followed. In addition, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the secretary of the Finance and Administration Cabinet.
- (f) When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.
- (g) The Department for Facilities Management may use any means available to notify landlords that advertisements have been placed.
- (6) To respond to a newspaper advertisement, a property owner, or his representative, shall respond in writing on or before the time and date designated in the advertisement and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the advertisement.
- (7) All written responses submitted on or before the time and date designated shall be opened at the same time, publicly read, and kept on file by the department.
- (8) Within five (5) days of the opening of written responses submitted on or before the time and date designated, the department shall mail general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be mailed to each person.
- (9) After the general requirement specifications have been mailed, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the advertisement placed pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be advised by letter of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each of these letters shall be kept on file.
- (10) After the general requirement specifications have been mailed, the department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or his representative, shall provide access to the property for such inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.
- (11) After the commissioner has reviewed the completed site evaluation forms, he shall send to each owner of property, or his representative, a letter informing the person of what would have to be done to bring the property up to general and specific requirement specifications. The commissioner's letter shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be enclosed with each letter. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated in the letter. A copy of each letter shall be kept on file.
- (12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.
- (13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:
- (a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;
- (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

- (14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the advertised requirements and general and specific requirement specifications.
- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.
- (15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:
- (a) Choose the best proposal in the interest of the Commonwealth;
- (b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or
- (c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.
- (16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.
- (b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.
- (17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.
- (18) ***The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, and the head of the agency that will occupy the leased space shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file.***
- (19) The department shall send to each person who submitted a written response on or before the time and date designated in the advertisement pursuant to subsection (6) of this section, but who was not awarded the lease, a letter stating the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each letter shall state that fact. A copy of each of these letters shall be kept on file.

Section 3. KRS 56.814 is amended to read as follows:

- (1) No officer or employee of any state agency shall engage in any act or make any representation or commitment to any person relative to the lease of any real property by the state without specific written authorization from and approval by the Finance and Administration Cabinet and neither the state nor the department shall be bound by the act, representation, or commitment unless so authorized and approved.
- (2) (a) No officer or employee of any state agency shall disclose to any person or firm who might reasonably be expected to submit a proposal, any approved plans by the department for the lease of real property for which advertisement is required under KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190 prior to the advertisement. Discussions of approved leasing plans may be held after advertisement with persons interested in submitting a proposal pertaining to the space requirements.

- (b) *If all of the proposals, submitted in response to the advertisement referred to in paragraph (a) of this subsection, are rejected, then the requirements of paragraph (a) shall govern disclosure before, and discussions after, new advertisements are placed.*

Section 4. KRS 56.823 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall report information on leases and lease modifications awarded pursuant to KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190 to the Capital Projects and Bond Oversight Committee as required by this section.
- (2) Any lease awarded pursuant to KRS 56.803, ***including all lease renewals except automatic renewals permitted under KRS 56.806(1)***, for which the annual rental cost will exceed ~~one~~^{two} hundred thousand dollars ~~(\$100,000)~~~~(\$200,000)~~ shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall include:
 - (a) The name of the agency that will occupy the premises;
 - (b) The name of the lessor;
 - (c) The terms of the lease;
 - (d) The reason for the lease;
 - (e) A copy of the writing required by KRS 56.803(17);
 - (f) A statement as to whether the Finance and Administration Cabinet complied with the requirements established in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190. If the cabinet has not complied with any requirement, the cabinet shall explain why;
 - (g) An explanation of why the Finance and Administration Cabinet chose this lessor over his competition; and
 - (h) A cost comparison between the cost per square foot of the leased space and the average cost per square foot of comparable space the state leases in the same county. If there are factors which make the comparison misleading, the cabinet shall inform the committee of these factors.
- (3) Any lease that incorporates a lease-purchase pursuant to KRS 56.806(5) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution.
 - (a) If a lease is awarded pursuant to KRS 56.803, the report shall include the:
 1. Fair market value of the property as of the time the lessor and the Commonwealth entered into the lease;
 2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
 3. Appraisal technique each appraiser employed; and
 4. Information required by subsection (2) of this section.
 - (b) 1. Except as provided in subparagraph 2. of this paragraph, if a lease is awarded pursuant to KRS 56.805(2), the report shall include the:
 - a. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
 - b. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
 - c. Appraisal technique each appraiser employed;
 - d. Information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section; and
 - e. Procedure the department followed to obtain the lease.

2. If the federal government is the lessor, the report shall include the substance of the lease-purchase.
- (4) Any lease awarded pursuant to KRS 56.805(2), *including all lease renewals except automatic renewals permitted under KRS 56.806(1)*, for which the annual rental cost will exceed ~~one~~^{two} hundred thousand dollars (~~\$100,000~~)(~~\$200,000~~) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section and the procedure the department followed to obtain the lease. The report shall also include a copy of the writing required by KRS 56.805(2).
- (5) Any lease awarded as the result of an emergency described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
 - (a) The information required by paragraphs (a), (b), (f), (g), and (h) of subsection (2) of this section;
 - (b) The terms of lease before and after the emergency; and
 - (c) The procedure the department followed after the emergency to obtain a lease.
- (6) Any built-to-suit lease awarded pursuant to KRS 56.8169 shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section. The report shall also include:
 - (a) The written finding and Governor's approval required by KRS 56.8161;
 - (b) The selection committee's ranking of firms required by KRS 56.8169(15)(a);
 - (c) The written reason for requesting best-and-final offers, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(b);
 - (d) The selection committee's selection of the best best-and-final offer, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(d);
 - (e) The certificates signed pursuant to KRS 56.8171(2); and
 - (f) The report prepared by the employee of the Auditor of Public Accounts pursuant to KRS 56.8171(3).
- (7) If the Finance and Administration Cabinet decides to exercise an option to purchase pursuant to KRS 56.806(4), the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall include the:
 - (a) Fair market value of the property;
 - (b) Option price;
 - (c) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
 - (d) Appraisal technique each appraiser employed; and
 - (e) Rent paid by the Commonwealth prior to the exercise of the option.
- (8) (a) When, pursuant to KRS 56.806(5)(a), the Finance and Administration Cabinet attempts to complete a lease-purchase through lease payments totally amortizing the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the:
 1. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
 2. Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
 3. Appraisal technique each appraiser employed; and
 4. Rent paid by the Commonwealth toward the purchase.

- (b) When, pursuant to KRS 56.806(5)(b), the Finance and Administration Cabinet attempts to complete a lease-purchase, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the terms of the lease purchase.
- (9) When, pursuant to KRS 56.806(5), the Finance and Administration Cabinet decides to attempt to complete a lease-purchase prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall state the information required by paragraph (a) or (b) of subsection (8) of this section as appropriate. The report shall also include the sum of money that must be paid in addition to rent paid, in order to complete the purchase.
- (10) If the Finance and Administration Cabinet, pursuant to KRS 56.806(5), includes in a lease the lease-purchase of the leased property and thereafter becomes aware that a purchase will not be achieved, within thirty (30) days after the cabinet becomes aware, it shall notify the Capital Projects and Bond Oversight Committee of the circumstances preventing the purchase.
- (11) (a) Except in the case of an emergency as provided in paragraph (b) of this subsection, any modification to an existing lease, made pursuant to KRS 56.813, that is less than fifty thousand dollars (\$50,000) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution, and any modification to an existing lease, made pursuant to KRS 56.813, that is fifty thousand dollars (\$50,000) or more shall be reported to the Capital Projects and Bond Oversight Committee before execution. In either case, the report shall consist of:
1. The terms of the lease before and after modification;
 2. The reason for the modification;
 3. The name of the lessor;
 4. Any comments received from the public pursuant to KRS 56.813(4); and
 5. A statement as to whether the Finance and Administration Cabinet complied with the requirements in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.
- (b) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
1. The terms of the lease before and after modification;
 2. The name of the lessor;
 3. Any comments received from the public pursuant to KRS 56.813(4); and
 4. A statement that the Finance and Administration Cabinet complied with the requirements in KRS 56.805(3) and (4) and in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.

Section 5. KRS 56.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 56.250 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each offense.
- (2) Any person who commits a moving traffic violation of any regulation of the Finance and Administration Cabinet governing the operation and use of motor vehicles on the grounds of a state-owned building, shall upon conviction be fined not less than two dollars (\$2) nor more than fifteen dollars (\$15); provided, however, that if such person is found guilty of violating any provision of such regulation for which the mandatory or discretionary revocation of drivers' licenses is prescribed by KRS 186.560 and KRS 186.570, then the penalty for such violation shall be the same as that prescribed by the law applicable to such offense.

- (3) (a) Any individual who willfully violates any of the provisions of KRS 56.8181 shall be guilty of a felony and shall be punished by a fine of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), or by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years, or both.
- (b) Any firm, corporation, or association which willfully violates any of the provisions of KRS 56.8181 shall be fined not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000). The assessment of a fine under this paragraph shall not prevent the punishment of an individual under paragraph (a) of this subsection.
- (4) Any individual, ***including any employee or official of the Commonwealth of Kentucky***, who willfully violates a provision of KRS 56.800 to 56.823, other than one found in KRS 56.8181, shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the penitentiary for not more than one (1) year, or both.
- (5) Any employee or official of the Commonwealth of Kentucky who shall willfully take, receive, or offer to take or receive, either directly or indirectly, anything of value, as an inducement, or intended inducement, in the awarding of a state lease pursuant to KRS 56.800 to 56.823, shall be guilty of a felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment in the penitentiary for not less than one (1) year nor more than ten (10) years, or both.
- (6) (a) Any individual willfully offering to make, pay, or give, either directly or indirectly, anything of value, as an inducement, or intended inducement, in the awarding of a lease pursuant to KRS 56.800 to 56.823, to any employee or official of the Commonwealth of Kentucky, shall be guilty of a felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in the penitentiary for not less than one (1) year nor more than ten (10) years, or both.
- (b) Any firm, corporation, or association willfully offering to make, pay, or give, either directly or indirectly, anything of value, as an inducement, or intended inducement, in the awarding of a lease, to any employee or official of the Commonwealth of Kentucky, shall be punished by a fine of not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000). The assessment of a fine under this paragraph shall not prevent the punishment of an individual under paragraph (a) of this subsection.
- (7) (a) ***Any person who is convicted of or enters a guilty plea for a crime established in subsections (3) to (6) of this section shall be subject to the penalty established in paragraph (b) of this subsection in addition to the penalties established in those subsections.***
- (b) ***For a period of five (5) years from the date of a person's conviction or the entering of a person's guilty plea, the Commonwealth shall not rent real property from a firm that employs the person or in which the person has any ownership interest.***

Section 6. KRS 56.805 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 56.803(4) to ~~(19)~~~~(18)~~, this section shall govern the leasing of space in a building owned by the federal government, by a political subdivision or municipal corporation of the Commonwealth, or if the space is required as the result of a bona fide emergency.
- (2) When the commissioner of the Department for Facilities Management determines that it is in the Commonwealth's best interest for him to negotiate a lease in a building owned by the federal government or by a political subdivision or municipal corporation of the Commonwealth, he shall do so. The commissioner shall state in writing his justifications for the determination, and the writing shall be kept on file.
- (3) A bona fide emergency shall be deemed to exist only in cases where the head of an agency already occupying leased premises certifies in writing to the Secretary of the Finance and Administration Cabinet that:
- (a) The leased premises have been damaged or destroyed by fire, windstorm, or other casualty; or
- (b) The leased premises are found to be in violation of regulations of the Kentucky Occupational Safety and Health Review Commission, and the violations cannot be remedied within thirty (30) days after the issuance of a citation to the lessor of the premises; or
- (c) The leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and regulations and cannot be made safe within a reasonable time; or

- (d) 1. The necessity for leased premises arises from the enactment or adoption of federal legislation or regulations or state legislation, the effective date of which mandates commencement of programs to be housed in leased space before there is time for space to be acquired by advertisement; and
 - 2. The agency's functions will be impaired or have to be discontinued unless other quarters to house the agency's operations are immediately located and occupied by the agency; or
 - (e) An emergency, other than one described in paragraph (a), (b), (c), or (d) of this subsection, exists, and the Governor has given his express written authorization of an emergency lease. The certificate shall state the details of the emergency, and the head of the agency shall include the Governor's written authorization along with the certificate sent to the Secretary of Finance and Administration Cabinet.
- (4) Upon receipt by the Finance and Administration Cabinet of the certificate, written pursuant to paragraph (a), (b), (c), or (d) of subsection (3) of this section, or the certificate and the Governor's authorization written pursuant to paragraph (e) of subsection (3) of this section, the Department for Facilities Management shall take the action to locate and negotiate for the lease of space meeting the certifying agency's reasonable needs. As appropriate, the department shall keep the certificate or the certificate and the Governor's written authorization on file.

SECTION 7. A NEW SECTION OF KRS 56.800 TO 56.823 IS CREATED TO READ AS FOLLOWS:

- (1) *When the Department for Facilities Management solicits for procurement of leased office space under the provisions of Section 2 of this Act, a proposal for new construction shall be considered if it does not contain any provision for a lease-purchase or an option to purchase.*
- (2) *The Department for Facilities Management shall only consider a proposal for construction of leased office space with provision for lease-purchase or option to purchase if the proposal is submitted in response to a solicitation for proposals for built-to-suit leases in accordance with KRS 56.8169.*

Approved April 13, 1998

CHAPTER 540

(HB 727)

AN ACT relating to state employees.

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

Section 1. KRS 18A.005 is amended to read as follows:

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

- (1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the commissioner;
- (2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;
- (3) "Board" means the Personnel Board created by KRS 18A.045;
- (4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;
- (5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the commissioner on request of an appointing officer for consideration in filling a position in the classified service;
- (6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the

same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;

- (7) *"Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;*
- (8) *"Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;*
- (9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;
- ~~(10)(8)~~ "Commissioner" means the commissioner of the Department of Personnel as provided for in KRS 18A.015;
- ~~(11)(9)~~ "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;
- ~~(12)(10)~~ "Department" means the Department of Personnel provided for in KRS 18A.015, unless the context indicates otherwise;
- ~~(13)(11)~~ "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;
- ~~(12)~~ ~~"Emergency employee" means an employee appointed without regard to the examination requirements of KRS 18A.010 to 18A.200 to any position by reason of a governmental emergency. An emergency appointment shall not exceed thirty (30) working days in duration and is nonrenewable.;~~
- ~~(14)(13)~~ "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, ~~or~~ part-time, *or interim* basis;
- (15) *"Full-time employee" means an employee in a full-time position;*
- ~~(16)(14)~~ *"Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:*
- (a) *Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and*
- (b) *Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time*~~[Federally funded time limited employee" means an employee appointed to a federally funded time limited position and, except as provided in KRS 18A.115, may in all other respects be entitled to the benefits provided permanent, full-time regular employees as defined in this chapter];~~
- ~~(15)~~ ~~"Federally funded time limited position" means a position created for the specific purpose of providing public service employment or one (1) time special or research project services for a limited period of time and shall not exceed the period of time for which that specific federal funding is provided.;~~
- ~~(17)(16)~~ "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence. "Initial probation" does not include a probationary period served by a laid-off employee who accepts a bona fide written offer of appointment;
- (18) *"Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;*
- (19) *"Interim position" means a position established to address a one time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;*
- (20) *"Part-time employee" means an employee in a part-time position;*

- (21) **"Part-time position"** means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;
- (22)~~(17)~~ "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;
- (23)~~(18)~~ "Position" means an office or employment in an agency (whether part-time, full-time, ~~permanent, temporary, seasonal, federally funded time limited,~~ or **interim** ~~emergency~~), occupied, or vacant) involving duties requiring the services of one (1) person;
- (24)~~(19)~~ "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;
- (25)~~(20)~~ "Promotional probation" means the ~~six (6) month~~ period of service, **consistent with the length of the initial probationary period**, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;
- ~~(21) "Provisional employee" means any employee appointed on a temporary or interim basis to a permanent position under KRS 18A.010 to 18A.200 without examination, such appointment being made necessary by the absence of a register for the position involved and by the time limitations and prohibition on renewal as defined in KRS 18A.110(7)(h);~~
- (26)~~(22)~~ "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;
- (27)~~(23)~~ "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;
- (28)~~(24)~~ "Reemployment" shall mean the rehiring of an employee with status who has been laid off;
- (29)~~(25)~~ "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;
- (30)~~(26)~~ "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;
- (31)~~(27)~~ "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;
- ~~(28) "Seasonal employee" means an employee appointed to a seasonal position;~~
- ~~(29) "Seasonal position" means a position that is temporary, coincides with a particular season or seasons of the year, and does not exceed eleven (11) months' duration;~~
- (32)~~(30)~~ "Seniority" means the total number of months of state service;
- (33)~~(31)~~ "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service;
- ~~(32) "Temporary employee" means an employee appointed to a temporary position;~~
- ~~(33) "Temporary position" means a position that is created for a definite period of time not to exceed six (6) months and not renewable;~~
- (34) "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

Section 2. KRS 18A.110 is amended to read as follows:

- (1) The commissioner shall promulgate comprehensive administrative regulations for the classified service governing:
 - (a) Applications and examinations;
 - (b) Certification and selection of eligibles;
 - (c) Classification and compensation plans;
 - (d) Incentive programs;
 - (e) Layoffs;
 - (f) Registers;
 - (g) Types of appointments;
 - (h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, and special leaves of absence, provided that the commissioner shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985.
- (2) The commissioner shall promulgate comprehensive administrative regulations for the unclassified service.
- (3)
 - (a) Except as provided by KRS 18A.355, the commissioner shall not promulgate administrative regulations that would reduce an employee's salary; and
 - (b) As provided by KRS 18A.0751(4)(e), the commissioner may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.
- (4) The commissioner may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.
- (5)
 - (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;
 - (b) Administrative regulations promulgated by the commissioner shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
 - (c) No administrative body other than the Department of Personnel shall promulgate administrative regulations governing the subject matters specified in this section.
- (6) Prior to filing an administrative regulation with the Legislative Research Commission, the commissioner shall submit the administrative regulation to the board for review.
 - (a) The board shall review the administrative regulation proposed by the commissioner not less than twenty (20) days after its submission to it;
 - (b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the commissioner;
 - (c) The commissioner shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and
 - (d) After the commissioner has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (7) The administrative regulations shall provide:
 - (a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class;

1. The commissioner shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The commissioner shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;
 2. The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments on the basis of the availability of funds. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the department of any review and approval conducted under the provisions of this section;
- (b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the secretary of the Finance and Administration Cabinet. The plan shall take into account such factors as:
1. The relative levels of duties and responsibilities of various classes of positions;
 2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
 3. The state's financial resources.

Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;

- (c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly **and applications accepted** at least **ten (10)**~~fifteen (15)~~ days **prior to certification of a register**~~[in advance of the date fixed for the filing of applications therefor]~~, and may be advertised through the press, radio, and other media. The commissioner shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The commissioner shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;
- (d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the commissioner for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;
- (e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the commissioner in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;
- (f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;
- ~~(g) For emergency employment for not more than thirty (30) working days with or without examination, with the consent of the commissioner;~~
- ~~(h) For provisional employment without competitive examination when there is no appropriate eligible list available. No provisional employment shall continue longer than six (6) months, nor shall successive provisional appointments be allowed to the same position;~~

- ~~(g)~~ For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);
- ~~(h)~~~~(j)~~ For layoffs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;
- ~~(i)~~~~(k)~~ For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility *without written examination*; and
- ~~(j)~~~~(l)~~ For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.

Section 3. KRS 18A.113 is amended to read as follows:

- (1) It shall be unlawful to coerce employees who may be or who are subject to layoff to resign or retire in lieu of layoff. Dismissals shall comply with statutes relating thereto, and layoffs shall not be utilized as a method of dismissal.
- (2) In the same cabinet, county and job classification, *interim*~~[provisional, temporary, emergency, federally funded time limited,]~~ and probationary employees shall be laid off before ~~[permanent]~~ full-time or ~~[permanent]~~ part-time employees with status. For purposes of layoff, "probationary employee" does not include an employee with status serving a promotional probation. A cabinet shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.
- (3) If two (2) or more employees subject to layoff in a lay-off plan submitted to the commissioner have the same qualifications, the employee with the lesser seniority shall be laid off first.
- (4) An employee who is laid off shall be placed on a reemployment register for the class of position from which he was laid off and for any class for which he is qualified. He shall have the right to test for any class of position for which he is qualified to take an examination. If he passes the examination, he shall be placed on the register for the class.
- (5) For a period of five (5) years, laid-off employees shall be hired before any applicant or eligible except another laid-off employee with greater seniority who is already on such register.
- (6) For a period of five (5) years, a laid-off employee shall not be removed from any register unless:
 - (a) He notifies the department in writing that he no longer desires consideration for a position on such register;
 - (b) He declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county, as the position from which he was laid off;
 - (c) Without good cause, he fails to report for an interview after he has been notified in writing at least ten (10) calendar days prior to the date of the interview;
 - (d) He is unqualified for appointment;
 - (e) He is unable to perform the duties of the class;
 - (f) He has made a false statement of a material fact in his application;
 - (g) He has used or attempted to use political influence or bribery to secure an advantage in connection with his placement on the register;
 - (h) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;
 - (i) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;
 - (j) He cannot be located by postal authorities at the last address provided by him; or
 - (k) He has otherwise willfully violated the provisions of this chapter.

- (7) When the department is notified by an appointing authority that a laid-off employee has accepted a bona fide offer of appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same as or less than that of the class to which he has been appointed.
- (8) When a laid-off employee is removed from a register he shall be notified in writing and shall be notified of his right to appeal to the board under the provisions of KRS 18A.095.

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

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
 - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;
 - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television;
 - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
 - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
 - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
 - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
 - (j) Physicians employed as such;
 - (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
 - (l) The judicial department, referees, receivers, jurors, and notaries public;
 - (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
 - (n) Patients or inmates employed in state institutions;
 - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
 - (p) *Interim*~~Seasonal, temporary, and emergency~~ employees;
 - (q)~~Federally funded time limited employees;~~

- ~~(e)~~ Officers and members of the state militia;
 - ~~(r)~~~~(s)~~ State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;
 - ~~(s)~~~~(t)~~ University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
 - ~~(t)~~~~(u)~~ Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
 - ~~(u)~~~~(v)~~ Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
 - ~~(v)~~~~(w)~~ County and Commonwealth's attorneys and their respective appointees;
 - ~~(w)~~~~(x)~~ Chief district engineers and the state highway engineer;
 - ~~(x)~~~~(y)~~ Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;
 - ~~(y)~~~~(z)~~ Employees of the Kentucky Peace Corps; and
 - ~~(z)~~~~(aa)~~ Employees of the Council on Postsecondary Education.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
 - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
 - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
 - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
 - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

Section 5. KRS 18A.155 is amended to read as follows:

- (1) The commissioner shall prepare and submit proposed administrative regulations to the Governor for employees in unclassified positions enumerated in paragraphs (g), (h), (i), (j), (k), (p), **(t), and (u)**, ~~and (v)~~ of subsection (1) of KRS 18A.115. Such administrative regulations shall become effective after approval by the Governor and promulgation in accordance with KRS Chapters 12 and 13A. The administrative regulations shall provide:
 - (a) For the preparation, maintenance and revision of a position classification plan for all aforementioned positions in the unclassified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. After such classification plan has been approved by the Governor, the commissioner shall allocate the positions of every employee in the

unclassified service to one (1) of the classes of the plan. Any employee affected by the allocation of a position to a class shall, after filing with the commissioner a written request for reconsideration thereof in such manner and form as the commissioner may prescribe, be given a reasonable opportunity to be heard thereon by the commissioner;

- (b) For a pay plan for all aforementioned employees in the unclassified service, after consultation with appointing authorities and the secretary of Finance and Administration, and taking into account such factors as:
 1. The relative levels of duties and responsibilities of various classes of positions;
 2. Rates paid for comparable positions elsewhere; and
 3. The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner through the secretary of Finance and Administration. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed;

- (c) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;
 - (d) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided in subsection (1) of this section;
 - (e) For the development and operation of programs to improve the work effectiveness and morale of employees in the unclassified service, including training, safety, health, welfare, counseling, recreation, and employee relations; and
 - (f) For such other rules and administrative regulations, not inconsistent with KRS 18A.005 to 18A.200, as may be proper and necessary for its enforcement.
- (2) Nothing herein shall be construed to preclude the optional use of administrative regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e), (p), (u), and (w)~~(c)~~ of subsection (1) of KRS 18A.115 and on behalf of members of state boards and commissions who work on a full-time, salaried basis.

Section 6. KRS 36.040 is amended to read as follows:

The adjutant general shall:

- (1) Represent the Governor in all military matters pertaining to the Commonwealth of Kentucky;
- (2) Be the executive head of the Department of Military Affairs and exercise all functions vested by law in the department;
- (3) Be responsible to the Governor for the proper carrying into effect of all laws, rules, and regulations of the United States and of this state affecting the militia and other military organizations established by law;
- (4) Perform the duties prescribed for him by laws of the United States and regulations issued thereunder;
- (5) Direct and supervise the chiefs of staff departments and supervise all troops and all departments, arms, and branches of the Kentucky Army and Air National Guard;
- (6) Supervise the preparation of all returns and reports of the Department of Military Affairs;
- (7) Keep a register of all the officers of the Kentucky National Guard, and make a written report to the Governor for the annual period ending on June 30 of each year of the operations and conditions of the Department of Military Affairs;
- (8) Cause to be prepared and issued all necessary blank books, forms, and notices required to carry into full effect matters assigned to the adjutant general under the provisions of KRS Chapters 36, 37, and 38;
- (9) Direct and supervise the safekeeping and repairing of the ordnance, arms, accouterments, equipment, and all other military property belonging to the state or issued to it by the United States;

- (10) Notify the Finance and Administration Cabinet of all military property of the state which after inspection is found unsuitable for use of the cabinet;
- (11) Keep an account of:
 - (a) All expenses, including pay of officers and enlisted men, allowance to officers and organizations;
 - (b) Any other moneys required to be disbursed by him and through his office, including subsistence and transportation of the National Guard; and
 - (c) All military property of the United States.
- (12) Issue and make requisitions for military property under the direction of the Governor, but no military property shall be issued to persons or organizations other than those belonging to the National Guard, except to such portion of the Kentucky active militia as is called out by the Governor;
- (13) Maintain as a part of his office a Bureau of War Records in which all records pertaining to wars and relics shall be kept, and be custodian of all such records, relics, colors, standards, and battle flags now the property of the state, or in its possession, or which the state may hereafter acquire;
- (14) Organize units of the National Guard at places designated by the Governor and have the members mustered into service under regulations prescribed by the Governor;
- (15) Issue all regulations, orders, and directives for the proper functioning and utilization of the Department of Military Affairs and its divisions; *and*
- (16) *Hire, discharge, and pay any personnel that the adjutant general deems necessary to fulfill defense contracts without regard to KRS Chapter 18A.*

Section 7. In order to provide for the orderly implementation of Sections 1 to 5 of this Act:

- (1) Seasonal positions of less than nine (9) months and temporary positions in effect as of July 1, 1998 shall expire upon their normal expiration date;
- (2) Federally funded time limited positions in effect as of July 1, 1998 shall expire upon the conclusion of the grant in effect at that time, or the conclusion of the project, whichever occurs first; and
- (3) Employees serving in part-time positions of one hundred (100) hours or more per month and employees serving in seasonal positions of nine (9) months or more as of the effective date of this Act shall be converted to full-time status.

Approved April 13, 1998

CHAPTER 541

(HB 736)

AN ACT relating to parole.

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

Section 1. KRS 439.320 is amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of seven (7) members, to be confirmed by the Senate in accordance with KRS 11.160. He shall make each appointment from a list of three (3) names given to him by the Commission on Correction and Community Service. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than four (4) board members shall be of the same political party. The board shall be attached to the Justice Cabinet for administrative purposes only; the Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.
- (2) The Governor shall name one (1) member as chairman of the board. The chairman shall be the chief administrative officer of the board and shall be responsible for all administrative, organizational, and personnel matters of the board.

- (3) The members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his term at which time the Governor shall name his successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.
- (4) The organization of the board shall be determined by the chairman and a quorum of the board shall be as follows:
 - (a) For parole hearings at which the inmate appears before the board, three (3) members; and
 - (b) For all other business, four (4) members. A decision by any three (3) member panel in a parole hearing shall be final only if it is unanimous; otherwise the case must be reviewed and voted on by not less than four (4) members of the board. Parole decisions for inmates who do not appear before the board shall be reviewed and voted on by not less than four (4) members of the board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) board members whose terms expire May 23, 1994, the Governor shall appoint two (2) members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.
- (7) ***The Governor shall appoint up to two (2) part-time Parole Board members, to be confirmed by the Senate in accordance with KRS 11.160. The appointment process for these members shall be the same as set forth in subsection (1) of this section, and these members shall possess the same qualifications of a full-time Parole Board member with the additional requirement that they shall have previously served as a full-time Parole Board member. These members may participate in considering the grant or revocation of parole at the request of the chairman. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses. The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.***

Section 2. KRS 439.340 is amended to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his admission to an adult state penal or correctional institution or county jail if he is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include his criminal record, his conduct, employment, and attitude in prison, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his offense and his previous social history to the institution and the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner and shall have him appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and

make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the board believes he is able and willing to fulfill the obligations of a law abiding citizen.

- (3) The board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.
- (4) The board shall insure that sentenced felons confined in county jails are considered for parole within thirty (30) days of their parole eligibility date and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail to his business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail to the Commonwealth's attorney who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.
- (7) *Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.*
- (8) Any hearing provided for in subsections (5), ~~and~~ (6), *and* (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. *The time, date, and location of closed hearings shall not be disclosed to the public.*
- ~~(9)~~ Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.

- ~~(10)(9)~~ The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his agents or employees to comply with any of the provisions of subsections (5), (6), and ~~(8)(7)~~ of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- ~~(11)(10)~~ No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he has successfully completed the Sexual Offender Treatment Program.
- ~~(12)(11)~~ Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- ~~(13)(12)~~ When an order for parole is issued, it shall recite the conditions thereof.

Approved April 13, 1998

CHAPTER 542

(HB 739)

AN ACT relating to liens.

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

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

- (1) *It is the intent of the General Assembly that a statewide computerized lien information system be created to accumulate, index, and disseminate information relative to liens and related filings made with the Secretary of State according to Article 9 of KRS Chapter 355.*
- (2) *The Kentucky Lien Information System is hereby created and established as a division within the Department of State.*
- (3) *The Kentucky Lien Information System shall be operational beginning on January 4, 1999.*

SECTION 2. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the filings required by KRS 355.9-401, 355.9-402, 355.9-403, 355.9-404, 355.9-405, 355.9-406, and 355.9-407, a secured party shall file a financing statement, or any amendment, assignment, continuation, release, or termination related thereto, in the Office of the Secretary of State. The financing statement, amendment, assignment, continuation, release, or termination filed under this section shall be on a form prescribed by the Secretary of State.*
- (2) *The Secretary of State shall receive a fee of one dollar (\$1) for the filings made under this section.*
- (3) *The filing requirement of this section shall not apply when the collateral is timber to be cut or is minerals or the like, including oil and gas, other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or when the financing statement is filed as a fixture filing under KRS 355.9-313 and the collateral is goods which are or are to become fixtures.*
- (4) *The Secretary of State shall index all filings made under this section for inclusion in the Kentucky Lien Information System.*
- (5) *The filings in the Office of the Secretary of State required under this section are for information purposes only and are not intended to convey notice or constitute perfection. Any legal reliance shall be on the basis of the requirements of KRS 355.9-401 and the filings required under KRS 355.9-401.*

Section 3. KRS 355.9-105 is amended to read as follows:

- (1) In this article unless the context otherwise requires:
 - (a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;
 - (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods but a charter or other contract involving the use or hire of a vessel

is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

- (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;
 - (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
 - (e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;
 - (f) "Document" means document of title as defined in the general definitions of Article 1 (KRS 355.1-201) and a receipt of the kind described in subsection (2) of KRS 355.7-201;
 - (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
 - (h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (KRS 355.9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;
 - (i) ***"Identification number" means a distinct alpha, numeric, or alphanumeric designation assigned to a person. The identification number for a person who is other than an individual shall be the Internal Revenue Service taxpayer identification number of the person. If the person is an individual, the identification number shall be the person's Social Security number or a number assigned in accordance with administrative regulations promulgated by the Secretary of State;***
 - (j) "Instrument" means a negotiable instrument (defined in KRS 355.3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;
 - ~~(k)~~ "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
 - ~~(l)~~ An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;
 - ~~(m)~~ "Security agreement" means an agreement which creates or provides for a security interest;
 - ~~(n)~~ "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;
 - (o) ***"System" means the Kentucky Lien Information System created in Section 1 of this Act.***
- (2) Other definitions applying to this article and the sections in which they appear are:
- "Account." KRS 355.9-106;
 - "Attach." KRS 355.9-203;
 - "Commodity contract." KRS 355.9-115;
 - "Commodity customer." KRS 355.9-115;
 - "Commodity intermediary." KRS 355.9-115;
 - "Construction mortgage." KRS 355.9-313(1);

"Consumer goods." KRS 355.9-109(1);
 "Control." KRS 355.9-115;
 "Equipment." KRS 355.9-109(2);
 "Farm products." KRS 355.9-109(3);
 "Fixture." KRS 355.9-313(1);
 "Fixture filing." KRS 355.9-313(1);
 "General intangibles." KRS 355.9-106;
 "Inventory." KRS 355.9-109(4);
 "Investment property." KRS 355.9-115;
 "Lien creditor." KRS 355.9-301(3);
 "Proceeds." KRS 355.9-306(1);
 "Purchase money security interest." KRS 355.9-107;
 "United States." KRS 355.9-103.

(3) The following definitions in other articles apply to this article:

"Broker." KRS 355.8-102;
 "Certificated security." KRS 355.8-102;
 "Check." KRS 355.3-104;
 "Clearing corporation." KRS 355.8-102;
 "Contract for sale." KRS 355.2-106;
 "Control." KRS 355.8-106;
 "Delivery." KRS 355.8-301;
 "Entitlement holder." KRS 355.8-102;
 "Financial asset." KRS 355.8-102;
 "Holder in due course." KRS 355.3-302;
 "Note." KRS 355.3-104;
 "Sale." KRS 355.2-106;
 "Securities intermediary." KRS 355.8-102;
 "Security." KRS 355.8-102;
 "Security certificate." KRS 355.8-102;
 "Security entitlement." KRS 355.8-102;
 "Uncertificated security." KRS 355.8-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 4. KRS 355.9-402 is amended to read as follows:

- (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address *and identification number* of the debtor, and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned and must describe the

production season. If the production season is not described, the financing statement shall be deemed to describe the crops produced in the production season which ends within twelve (12) months after the filing date of the financing statement. A financing statement shall not describe more than one (1) production season. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or when the financing statement is filed as a fixture filing (KRS 355.9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state or in any other state.

- (2) A financing statement which otherwise complies with subsection (1) of this section is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:
 - (a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state, or that the debtor's location was changed to this state under such circumstances; or
 - (b) Proceeds under KRS 355.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
 - (c) Collateral as to which the filing has lapsed; or
 - (d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7) of this section).

(3) A form substantially as follows is sufficient to comply with subsection (1) of this section:

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

- (a) This financing statement covers the following types (or items) of property:
(Describe)
- (b) (If collateral is crops) The above described crops are growing or are to be grown on:
(Describe real estate)
- (c) (If applicable) The above goods are to become fixtures on (or) The above timber is standing on (or) The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on:
(Describe real estate)

and this financing statement is to be filed in the same office as the real estate records. (If the debtor does not have an interest of record) The name of a record owner is

(d) (If products of collateral are claimed) Products of the collateral are also covered.

Signature of debtor (or assignor)

Signature of secured party (or assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

- (5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or a financing statement filed as a fixture filing (KRS 355.9-313), must show that it covers this type of collateral, must recite that it is to be filed in the same office as the real estate records, and the financing statement must contain a description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.
- (6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:
 - (a) The goods are described in the mortgage by item or type;
 - (b) The goods are or are to become fixtures related to the real estate described in the mortgage;
 - (c) The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
 - (d) The mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

- (7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the debtor notifies the secured party in writing of the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.
- (8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

Section 5. KRS 355.9-403 is amended to read as follows:

- (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.
- (2) Except as provided in subsection (6) of this section a filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five (5) year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five (5) year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.
- (3) A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the five (5) year period specified in subsection (2) of this section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and date filed, ***contain the identification number of the debtor***, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other relating filings, or by other means, that if he physically destroys the financing statements of a period more than

five (5) years past, those which have been continued by a continuation statement or which are still effective under subsection (6) of this section shall be retained.

- (4) Except as provided in subsection (7) of this section a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.
- (5) The uniform fee for filing and indexing an original or a continuation statement shall be as provided for in KRS 64.012. This fee includes the fee for filing and indexing a termination statement and for sending or delivering the terminated instrument and financing statement.
- (6) A real estate mortgage which is effective as a fixture filing under subsection (6) of KRS 355.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.
- (7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

Section 6. KRS 355.9-404 is amended to read as follows:

- (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement ~~that states to the effect~~ that he no longer claims a security interest under the financing statement, **contains the identification number of the debtor**, and ~~identifies~~ **identify** the original statement by file number and date filed. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. The uniform fee for filing and indexing such an assignment or statement thereof shall be three dollars (\$3). If the affected secured party fails to file such termination statement as required by this subsection, or to send such a termination statement within ten (10) days after proper demand therefor he shall be liable to the debtor for one hundred dollars (\$100), and in addition for any loss caused to the debtor by such failure.
- (2) In the absence of a demand by the debtor for a statement of termination, and within fifteen (15) days after a secured transaction evidenced by record in the county clerk's or Secretary of State's office has terminated, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement or other instrument, which shall be identified by file number and date filed. If the actual secured party willfully fails to send such a termination statement within fifteen (15) days after he no longer claims a security interest, he shall be liable to the debtor for twenty-five dollars (\$25), and in addition for any loss caused to the debtor by such failure.
- (3) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one (1) copy of the termination statement to the secured party stamped to show the time of receipt thereof. Whenever a statement required under this chapter need be sent to a party to the transaction by the filing officer, it shall be sufficient for the filing officer to send the statement to the party entitled to receive it, at his last known address. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.
- (4) The uniform fee for filing and indexing a termination statement for any financing statement filed prior to July 1, 1966, for which a termination fee was not paid when the financing statement was filed and for sending or

delivering the terminated instrument and for sending or delivering the financing statement shall be three dollars (\$3).

Section 7. KRS 355.9-405 is amended to read as follows:

- (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in KRS 355.9-403(4). The uniform fee for filing and indexing a financing statement so indicating an assignment shall be as provided in KRS 64.012.
- (2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, *the identification number of the debtor*, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing and indexing such a separate statement of assignment shall be as provided in KRS 64.012. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of KRS 355.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.
- (3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Section 8. KRS 355.9-406 is amended to read as follows:

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, *the identification number of the debtor*, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be as provided for in KRS 64.012.

Section 9. KRS 355.2A-103 is amended to read as follows:

- (1) In this article unless the context otherwise requires:
 - (a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
 - (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
 - (c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line

of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

- (d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
- (e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.
- (f) "Fault" means wrongful act, omission, breach, or default.
- (g) "Finance lease" means a lease with respect to which:
 - 1. The lessor does not select, manufacture, or supply the goods;
 - 2. The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
 - 3. One of the following occurs:
 - a. The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - b. The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - c. The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - d. If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- (h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (KRS 355.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
- (i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
- (j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
- (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

- (l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
 - (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.
 - (n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
 - (o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
 - (p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
 - (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
 - (r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
 - (s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
 - (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
 - (u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
 - (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
 - (w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
 - (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
 - (y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.
 - (z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.
- (2) Other definitions applying to this article and the sections in which they appear are:
- "Accessions." KRS 355.2A-310(1).
 - "Construction mortgage." KRS 355.2A-309(1)(d).
 - "Encumbrance." KRS 355.2A-309(1)(e).
 - "Fixtures." KRS 355.2A-309(1)(a).
 - "Fixture filing." KRS 355.2A-309(1)(b).
 - "Purchase money lease." KRS 355.2A-309(1)(c).
- (3) The following definitions in other articles apply to this article:
- "Account." KRS 355.9-106.

- "Between merchants." KRS 355.2-104(3).
- "Buyer." KRS 355.2-103(1)(a).
- "Chattel paper." KRS 355.9-105(1)(b).
- "Consumer goods." KRS 355.9-109(1).
- "Document." KRS 355.9-105(1)(f).
- "Entrusting." KRS 355.2-403(3).
- "General intangibles." KRS 355.9-106.
- "Good faith." KRS 355.2-103(1)(b).
- "Instrument." KRS 355.9-105(1)(j)~~(i)~~.
- "Merchant." KRS 355.2-104(1).
- "Mortgage." KRS 355.9-105(1)(k)~~(j)~~.
- "Pursuant to commitment." KRS 355.9-105(1)(l)~~(k)~~.
- "Receipt." KRS 355.2-103(1)(c).
- "Sale." KRS 355.2-106(1).
- "Sale on approval." KRS 355.2-326.
- "Sale or return." KRS 355.2-326.
- "Seller." KRS 355.2-103(1)(d).

- (4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Approved April 13, 1998

CHAPTER 543

(HB 740)

AN ACT relating to license plates.

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

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

- (1) *Any person who complies with the provisions of KRS 186.186 may apply for a special Kentucky Horse Council license plate.*
- (2) *In addition to the fees required by KRS 186.186, a person applying for a Kentucky Horse Council license plate shall pay a ten dollar (\$10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with a Kentucky Horse Council license plate shall pay a five dollar (\$5) fee, in addition to the renewal fee established in KRS 186.186(2). The five dollar (\$5) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.*
- (3) *A special Kentucky Horse Council license plate shall be the color and design selected by the Kentucky Horse Council and approved by the Transportation Cabinet. The name Kentucky and the annual registration renewal decal shall appear on the plate. The Transportation Cabinet may use any combination of letters or numerals as needed in the numbering of the license plates.*
- (4) *All revenues generated pursuant to this subsection shall be forwarded by the Transportation Cabinet to the Kentucky Horse Council.*

Section 2. KRS 186.174 is amended to read as follows:

- (1) Any owner or lessee of a motor vehicle that is required to be registered under the provisions of KRS 186.050(1) or (3)(a), except taxicabs, airport limousines, and rental motor vehicles, or any owner of a motorcycle required to be registered under the provisions of KRS 186.050(2) may, in addition to registration under KRS 186.050(1) or (3)(a), obtain a personalized license plate by applying for a personalized license plate in the office of the county clerk and upon payment of a twenty-five dollar (\$25) fee. A person applying for a personalized license plate shall submit the initial application and twenty-five dollar (\$25) fee for a personalized license plate in person to the county clerk, but may submit the annual application to renew the personalized license plate with the twenty-five (\$25) fee by mail to the county clerk. Applications and fees for personalized license plates pursuant to this section must be received by the Transportation Cabinet on or before September 1 preceding the year that the plate or renewal is to be issued. A personalized license plate shall be ~~issued in the same manner as regular license plates issued pursuant to this chapter and shall not be~~ replaced annually unless the applicant **chooses to receive a renewal registration decal**~~[changes the letter or number combinations appearing on the plate. Payments required to be made under this section shall be in the form of a certified check, a cashier's check, or a money order].~~ A county clerk shall immediately forward the application and the twenty-five dollar (\$25) fee for a personalized license plate to the Transportation Cabinet. Personalized plates issued under this section expire December 31 each year.
- (2) A personalized plate shall not be issued that would conflict with or duplicate the alphabetical-numerical system used for regular license plates or any other license plates issued in the Commonwealth, and shall not contain a combination of more than six (6) letters of the alphabet and arabic numerals, including spaces. A personalized plate shall not be issued if, in the discretion of the cabinet, it carries a letter or number combinations that carry connotations offensive to good taste and decency. The owner or lessee shall submit an application and twenty-five dollar (\$25) fee annually to renew a personalized license plate pursuant to the provisions of subsection (1) of this section. Once an applicant obtains a personalized plate, he will have first priority on that plate for each of the following years that he makes timely and proper application.
- (3) When registering a vehicle required to be registered under KRS 186.050(1) or (3)(a), the cabinet shall send the personalized plate to the county clerk in the county in which the applicant would be required to register his motor vehicle. The county clerk of the county of residence shall issue the personalized license plate and receive fourteen dollars fifty cents (\$14.50), of which three dollars (\$3) shall constitute the clerk's fee and eleven dollars fifty cents (\$11.50) shall constitute the cabinet's fee.
- (4) When registering a motorcycle, the cabinet shall send the personalized plate to the county clerk in the county in which the applicant would be required to register his motorcycle. The clerk shall issue the personalized plate and receive three dollars (\$3) and three dollars (\$3) for each sidecar attachment.
- (5)
 - (a) Upon the sale, transfer, or termination of lease of the motor vehicle bearing the personalized plate, the owner or lessee shall remove it and return it and the certificate of registration to the county clerk. The clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar fifty cent (\$11.50) state fee and a three dollar (\$3) clerk's fee. The vehicle may then be transferred as provided by KRS Chapter 186.
 - (b) When the personalized plate has been presented to the clerk, he shall reissue it free of charge by the Transportation Cabinet and upon payment of a two dollar (\$2) clerk's fee, for use on any other vehicle of the same classification and category owned or leased by the same person purchasing the personalized plate for the current license period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who will forward the license plate to Frankfort.
- (6) Any applicant seeking a license plate according to this section for a vehicle provided to him pursuant to an occupation shall conform to the requirements set forth in KRS 186.050(14).
- (7) If a personalized plate deteriorates, if he has not transferred a vehicle during the current license period, the applicant may obtain a regular plate free.
- (8) The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to further the purposes of this section.

Approved April 13, 1998

CHAPTER 544**(HB 756)**

AN ACT relating to child care assistance account.

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

Section 1. KRS 186.040 is amended to read as follows:

- (1) Upon receiving the application and fee, the county clerk shall issue to the owner a certificate of registration containing the information required by subsection (2) of this section and a registration plate. If the cabinet finds that there is a shortage of materials suitable for making plates, or that a substantial saving will result, it may require by regulation with the approval of the Governor that previously issued plates continue to be used for a designated period. For services performed, the owner shall pay the county clerk the sum of three dollars (\$3) for each registration, or if the registration exceeds a twelve (12) month period, the clerk shall receive a fee of four dollars (\$4).
- (2) The certificate of registration shall contain the registration number, the name and post office address of the owner, and such other information as the cabinet may require.
- (3) *Any person requesting a certificate of registration or renewal of registration of any type of motor vehicle shall have the opportunity to donate one dollar (\$1) to the child care assistance account. The one dollar (\$1) donation shall be added to the regular fee for vehicle registration. One donation may be made per issuance or renewal of vehicle registration. Donation to the child care assistance account shall be voluntary and may be refused by the applicant at the time of the issuance or renewal of any vehicle registration.*
- (4) *The county clerk may retain five percent (5%) of fees collected for the child care assistance account under subsection (3) of this section. The remaining funds shall be deposited into a trust and agency account in the State Treasury to the credit of the Cabinet for Human Resources for the exclusive use as follows:*
 - (a) *Funds shall be made available to the agencies that administer child care subsidy funds; and*
 - (b) *Funds shall be used as determined by the cabinet for working families whose income exceeds the state income eligibility limits for child day care assistance.*

Section 2. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources in subsection (4) of Section 1 shall be changed to the Cabinet for Families and Children.

Approved April 13, 1998

CHAPTER 545**(HB 785)**

AN ACT relating to the medical assistance program.

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

Section 1. KRS 205.640 is amended to read as follows:

- (1) For purposes of this section, "hospital" includes all hospitals licensed in this state to provide acute care, psychiatric care, and rehabilitative services.
- (2) The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.
- (3) The "Medical Assistance Revolving Trust Fund (MART)" shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.359 shall be deposited in the State Treasury to the credit of the fund. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.359 shall be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994

and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.

- (4) The "Medical Assistance Indigent Trust Fund (MAIT)" shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of Medicaid services in accordance with the provisions of subsection (2) of this section. All investment earnings of the fund shall be credited to the fund. Notwithstanding the provisions of KRS 48.500 and 48.600, the MAIT fund shall be exempt from any state budget reduction acts.
- (5) An amount, necessary to result in a total fund of *ninety-three*~~[eighty one]~~ million dollars *(\$93,000,000)*~~(\$81,000,000)]~~ for fiscal year *1998-99*~~[1995]~~, and *ninety-four*~~[eighty six]~~ million~~[five hundred thousand]~~ dollars *(\$94,000,000)*~~(\$86,500,000)]~~ for fiscal year *1999-2000*~~[1996]~~ including provider tax revenues and federal matching funds, to the extent possible *without exceeding Kentucky's federal disproportionate share hospital cap*, shall be transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding the disproportionate share program established by the commissioner of Medicaid services.
- (a)~~—~~ ~~The sum of one million dollars (\$1,000,000) in fiscal year 1995, and one and one half million dollars (\$1,500,000) in fiscal year 1996, taken entirely from provider tax revenues, transferred to the MAIT fund, shall be used to compensate hospitals that do not qualify for the disproportionate share program for services provided by the hospitals to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty level except nonemergency care rendered through a hospital emergency room, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Human Resources.~~
- (b)~~]~~ ~~The amount remaining in the MAIT fund shall be used to compensate hospitals qualifying for the disproportionate share program for service provided by the hospitals to Medicaid recipients beyond the covered days and individuals and families with total annual incomes and resources up to one hundred fifty percent (150%)~~~~[(100%)]~~ of the federal poverty level,~~[except nonemergency care rendered through a hospital emergency room,]~~ as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Human Resources in accordance with this section.
- (b)~~(c)~~ ~~An~~~~[No]~~ individual hospital shall receive distributions from the MAIT fund *for*~~[that exceed]~~ indigent~~[inpatient]~~ care provided by *that*~~[the]~~ hospital *if the care meets*~~[that meet]~~ the guidelines established in paragraphs (a) and (b) of this subsection and *is* documented to the Department for Medicaid Services, as reimbursed at the hospital's Medicaid rate; *provided, however, that the Medicaid rate shall not exceed the Medicare upper limit.*
- (c)~~(d)~~ Distributions to hospitals from the MAIT fund shall be made on a quarterly basis. One fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:
1. Hospitals shall report care provided to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred *fifty* percent *(150%)*~~[(100%)]~~ of the federal poverty including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital~~[, and except nonemergency care rendered through a hospital emergency room, level]~~ to the Cabinet for Human Resources on a quarterly basis. The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20 and October 20 of each year thereafter.
 2. Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Human Resources, Department for Medicaid Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, with payment for documented qualifying services provided at the ~~lesser of each~~ hospital's *Medicaid*~~[individual per diem]~~ rate~~[or the weighted median per diem for hospitals in each peer group,]~~ as established annually by the Department of Medicaid Services.
 3. Within ninety (90) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Human Resources, Department for Medicaid Services shall remit to

each hospital the amount determined to be due pursuant to the provisions of subparagraph 2. of this paragraph. If the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be carried forward to satisfy future claims.

- (d) *For purposes of this section, the Medicaid rate for hospitals with less than two hundred (200) licensed acute care beds, means the cost of providing indigent care services as calculated by the department by applying each hospital's cost-to-charge ratio to allowable indigent charges. By July 1 of each year, the Department for Medicaid Services shall calculate the cost-to-charge ratio for each hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges.*
- (6) ~~Except for nonemergency care rendered through a hospital emergency room,~~Hospitals receiving reimbursement from the MAIT fund shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred *fifty* percent (150%)~~(100%)~~ of the federal poverty level.
- (7) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations necessary, pursuant to KRS Chapter 13A, for the administration and implementation of this section.
- (8) All hospitals receiving reimbursement from the MAIT fund shall:
- (a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay.";
 - (b) Accept benefits of state health insurance coverage described in KRS 18A.229 and 18A.2281;
 - (c) Provide to Medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the Medicaid program; and
 - (d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for Medicaid recipients. The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *A county-owned or -operated hospital shall receive an enhanced Medicaid payment in an amount, calculated from the most recent cost report filed by that hospital with the department as of June 30 of each year, equal to the difference between the amount of total payments made to the hospital by the department or a managed care entity for covered services provided to Medicaid beneficiaries, including services attributable to recipients in Medicaid managed care programs, during the state fiscal year and the hospital's cost for the services determined by the department under Medicare payment principles. Reimbursement under this section shall be made in a single payment. From July 1 through August 1 of each year, the Department for Medicaid Services shall calculate the payment due to be made to each county-owned or -operated hospital and shall make the payment to each hospital no later than August 15 of each state fiscal year. The department shall make an enhanced payment to each county owned or -operated hospital in state fiscal year 1998 using cost reports filed with the department on or before June 30, 1998, for the hospitals' latest fiscal year.*
- (b) *A payment described in this section is not due to a county-owned or -operated hospital unless an intergovernmental transfer is made. A county-owned or -operated hospital may make an intergovernmental transfer, or an intergovernmental transfer may be made on behalf of the hospital by a county, budget unit of a county governmental agency, or lending institution if it is not prohibited by state or federal law.*
- (c) *An intergovernmental transfer shall be made to the enhanced Medicaid payment fund by August 2 of each state fiscal year in an amount equal to eighty percent (80%) of the amount determined under paragraph (a) of this subsection, and shall be matched with federal funds.*

- (d) *An enhanced Medicaid payment shall be made to each county-owned or -operated hospital participating in the intergovernmental transfer program in an amount equal to one hundred percent (100%) of the hospital's Medicaid shortfall as determined under paragraph (a) of this subsection.*
- (e) *The department shall determine the Medicaid shortfall for all other hospitals that are not county-owned or -operated or are not state-university-owned or -operated hospitals, which shall be equal to the difference between total payments made by the department or a managed care entity for covered services provided to Medicaid beneficiaries, including those enrolled in managed care, during the state fiscal year and the hospital's costs for the services as determined by the department under Medicare payment principles. Funds remaining from the enhanced Medicaid program shall be distributed to each hospital which is not county-owned or -operated or is not state-university-owned or -operated on a pro rata basis. If funds remain in the enhanced Medicaid payment fund after making enhanced Medicaid payments required by this subsection, the remaining funds shall be available for use by the department for funding the regular Medicaid program.*
- (2) *The enhanced Medicaid payment authorized under subsection (1) of this section shall not be implemented as part of the disproportionate share hospital program or if federal financial participation is not available.*
- (3) *The Cabinet for Human Resources shall promulgate administrative regulations to implement the provisions of this section.*

Section 3. There is hereby established a Medicaid Managed Care Oversight Advisory Committee, five (5) Senate members of which shall be appointed by the Senate President and five (5) House of Representatives members of which shall be appointed by the Speaker of the House. The Committee shall meet at least four (4) times annually and shall provide oversight on the implementation of Medicaid managed care within the Commonwealth including access to services, utilization of services, quality of services, and cost containment.

Approved April 13, 1998

CHAPTER 546

(HB 786)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The following definitions shall apply to Sections 1 to 17 of this Act:

- (1) *"Interested person" means:*
 - (a) *Any affiliated person of a company;*
 - (b) *Any member of the immediate family of any natural person who is an affiliated person of a company;*
 - (c) *Any person or partner or employee of any person who at any time since the beginning of the last two (2) completed fiscal years of a company has acted as legal counsel for the company; or*
 - (d) *Any natural person whom the commissioner by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two (2) completed fiscal years of a company, a material business or professional relationship with a company or with the principal executive officer of the company.*
- (2) *"Intermediate holding company" means a holding company which is a subsidiary of a mutual insurance holding company, and which either directly or through a subsidiary intermediate holding company has one (1) or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by Section 2 of this Act, to be at all times owned by the mutual insurance holding company. The commissioner shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company.*

- (3) *"Majority of the voting shares of the capital stock of the reorganized insurance company" means shares of the capital stock of the reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company which are required by this Section 2 of this Act, to be held by the mutual insurance holding company may be held by indirect ownership through one (1) or more intermediate holding companies in a corporate structure approved by the commissioner, provided, however, that indirect ownership through one (1) or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company.*
- (4) *"Mutual insurance holding company" means a holding company organized on the mutual plan and incorporated under the laws of Kentucky, resulting from the reorganization of a domestic mutual insurance company in accordance with Sections 2 and 3 of this Act, with one (1) or more stock insurance holding company subsidiaries or stock insurance company subsidiaries.*
- (5) *"Plan of reorganization" means a plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company.*
- (6) *"Stock offering" means any proposed sale, exchange, transfer or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock; including, but not limited to, an initial public offering, private equity placement, or grants of stock options and other equity based compensation. For purposes of Sections 15, 16, and 17 of this Act, "stock offering" shall not mean:*
- (a) *An offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights; or*
 - (b) *A transfer of stock between a mutual insurance holding company, an insurance company subsidiary of a mutual holding company, and an insurance company subsidiary of an intermediate holding company subsidiary to a mutual holding company.*

SECTION 2. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The commissioner, after a public hearing conducted in accordance with KRS Chapter 13B, if satisfied that the interest of the policyholders are properly protected and that the plan or reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization, and may require as a condition of approval modification of the proposed plan of reorganization as the commissioner finds necessary for the protection of the policyholders' interests. A reorganization under this section is subject to KRS 304.37-120 (1), (2), (3), (6), and (7). The commissioner shall retain jurisdiction over a mutual insurance holding company organized under this section to assure that policyholder interests are protected.*
- (2) *All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.*
- (3) *A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed under this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing conducted in accordance with KRS Chapter 13B, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval modification of the proposed merger as the commissioner finds necessary for the protection of the policyholders' interests. A merger under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7). The commissioner shall retain*

jurisdiction over a mutual insurance holding company organized under this section to assure that policyholder interests are protected.

- (4) *A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of the insurance companies under Subtitle 37 of KRS Chapter 304.*

SECTION 3. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign mutual insurance company may reorganize upon the approval of the commissioner and in compliance with the requirement of any law or regulation which is applicable to the foreign mutual insurance company by merging its policyholders' membership interests into a mutual insurance holding company formed under Section 2 of this Act, and continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing as provided in KRS 304.37-120(4)(b), may approve the proposed merger. A merger under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7).*
- (2) *The reorganizing foreign mutual insurance company may remain a foreign company after the merger, and, may be admitted to do business in this state. A foreign mutual insurance company which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of KRS 304.37-120 shall apply to a merger authorized under this section.*

SECTION 4. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under KRS Chapter 271B shall be incorporated under KRS Chapter 271B. The articles of incorporation and any amendments to the articles of the mutual insurance holding company shall be subject to approval of the commissioner and the Attorney General in the same manner as those of an insurance company.

SECTION 5. A NEW SECTION OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A mutual insurance holding company is deemed to be an insurer subject to Subtitle 33 of KRS Chapter 304 and shall automatically be a party to any proceeding under Subtitle 33 of KRS Chapter 304 involving an insurance company which as a result of a reorganization under Section 2 of this Act, is a subsidiary of the mutual insurance company. In any proceeding under Subtitle 33 of KRS Chapter 304 involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the recognized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by the court under Subtitle 33 of KRS Chapter 304.

SECTION 6. A NEW SECTION OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *KRS 304.24-380 is not applicable to a reorganization or merger under Sections 2 and 3 of this Act.*
- (2) *KRS 304.24-380 is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company organized under KRS 304 Subtitle 24 as if it were a mutual insurance company.*

SECTION 7. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in KRS 292.310 (13).

SECTION 8. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by Section 2 of this Act to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or*

otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company.

- (2) *Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, hypothecation, or alienation of, in, or on the majority of the voting shares of the reorganized insurance company, which is required by Section 2 of this Act to be at all times owned by a mutual insurance holding company, is in violation of Section 2 of this Act, and shall be void in inverse chronological order of the date of the conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, hypothecation, or alienation, as to the shares necessary to constitute a majority of the voting shares.*
- (3) *The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by Section 2 of this Act to be at all times owned by a mutual insurance holding company, shall not be subject to execution and levy as provided in KRS Chapter 426.*
- (4) *The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two (2) or more reorganized insurance companies or two (2) or more intermediate holding companies which were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations as provided in this section to which the shares of the merging or consolidating reorganized insurance companies or intermediate holding companies were subject by Section 2 of this Act, prior to the merger or consolidation.*

SECTION 9. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to any other items required to be filed with the department under KRS Chapter 304, each mutual insurance holding company shall supply to the department of insurance, by March 1 of each year, an annual statement consisting of the following:*
 - (a) *An income statement;*
 - (b) *A balance sheet;*
 - (c) *A cash flow statement;*
 - (d) *Complete information on the status of any closed block of business formed as a part of a plan or reorganization;*
 - (e) *An investment plan covering all assets; and*
 - (f) *A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company.*
- (2) *The aggregate pledges and encumbrances of a mutual holding company's assets shall not affect more than forty-nine percent (49%) of the company's stock in any subsidiary insurance holding company or subsidiary insurance company that resulted from a reorganization or merger.*
- (3) *At least fifty percent (50%) of the generally accepted accounting practices net worth of a mutual insurance holding company shall be invested in insurance company subsidiaries.*

SECTION 10. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No policyholder who is a member of a mutual insurance holding company shall receive because of a membership interest any payment of a policy credit, dividend, or other distribution unless the payment has been approved by the commissioner. The commissioner, after a public hearing, if satisfied the proposed payment is fair and equitable to policyholders who are members, may approve the proposed payment and may require as a condition of approval modification of the proposed payment as the commissioner finds necessary for the protection of policyholders.

SECTION 11. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The reorganizing or merging insurer shall file with the commissioner an application requesting approval of the proposed reorganization or merger. The application shall include the following:

- (1) *A Form A filing as described in KRS 304.37-120 and the administrative regulations promulgated thereunder;*

- (2) *A plan of reorganization as described in Section 12 of this Act;*
- (3) *A plan to obtain the approval by a majority of two thirds (2/3) of the participating policyholders in accordance with the applicant's articles of incorporation and bylaws. Policyholders must be provided with sufficient information to evaluate the merits of the proposed transaction, including a description of the purpose of the transaction, risks associated with the transaction, and alternatives considered. Policyholders shall be given not less than twenty (20) days notice of any vote on approval of the reorganization;*
- (4) *A copy of the mutual insurance holding company's proposed articles of incorporation and bylaws specifying all membership rights;*
- (5) *The names, addresses, and occupational information of all corporate officers and members of the initial mutual insurance holding company board of directors;*
- (6) *Information sufficient to demonstrate that the financial condition of the applicant will not be diminished upon reorganization;*
- (7) *A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary;*
- (8) *An index demonstrating where in the application information supplied in compliance with each of the foregoing provisions is found; and*
- (9) *Any other information requested by the commissioner at any time during the proceedings.*

SECTION 12. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The reorganizing or merging insurer shall file a plan of reorganization, approved by the affirmative vote of a majority of its board of directors, for review and approval by the commissioner. The plan shall provide the following:

- (1) *Establishing a mutual insurance holding company with at least one (1) stock insurance company subsidiary or one (1) wholly owned intermediate holding company with a stock insurance subsidiary, the shares of which shall be held exclusively by the wholly owned intermediate holding company;*
- (2) *Protecting the immediate and long term interests of existing policyholders;*
- (3) *Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company;*
- (4) *Providing for membership interest of future policyholders;*
- (5) *Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders;*
- (6) *Demonstrating that, in the event of proceedings under Subtitle 33 of KRS Chapter 304 involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company;*
- (7) *Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company, which is or would be in excess of that determined by the board of directors of the mutual insurance holding company to be necessary, shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members;*
- (8) *Describing the nature and content of the annual report and financial statement to be sent to each member;*
- (9) *Describing the applicant's plan for a stock offering in accordance with the provisions of Section 15; and*
- (10) *Describing other relevant matters the applicant deems appropriate.*

SECTION 13. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The application and plan of reorganization submitted to the commissioner shall demonstrate that :

- (1) *Policyholder interests are properly preserved and protected;*

- (2) *The plan is fair and equitable to policyholders; and*
- (3) *The financial condition of the applicant will not be diminished.*

SECTION 14. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A public hearing required by Sections 2 and 3 of this Act shall be conducted as directed in Subtitle 2 of KRS Chapter 304 and Chapter 13B;*
- (2) *In addition to any notice required by KRS Chapter 304 and Chapter 13B, the department shall supplement any notice by newspaper publication and broadcast announcements, in accordance with KRS Chapter 424;*
- (3) *The commissioner may retain at the applicant's expense any attorneys, actuaries, accountants, investment bankers, or other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed application and plan of reorganization or merger;*
- (4) *Upon receipt of the application and plan of reorganization or merger, the commissioner shall submit any application to the Attorney General for examination. The Attorney General shall have access to the commissioner's staff and all consultants retained by the commissioner for review of the application. The Attorney General may examine the application and plan of reorganization or merger for compliance with the standards in Section 12 of this Act. The Attorney General may submit written findings and a recommendation of approval, disapproval, or conditional approval of the application and plan of reorganization or merger to the commissioner. Written findings and recommendations shall be delivered to the commissioner no later than five (5) days prior to the public hearing required by Sections 2 and 3 of this Act, and shall be entered into the record at the hearing;*
- (5) *The commissioner shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries;*
- (6) *Following the hearing required in Sections 2 and 3 of this Act, the commissioner shall, by order, approve, conditionally approve, or deny an application. The commissioner may require, as a condition of approval of the proposed reorganization, modification of the proposed plan of reorganization as the commissioner finds necessary. The applicant shall accept required modifications by filing appropriate amendments to the proposed plan of reorganization with the commissioner within thirty (30) days of the date of the order of the commissioner requiring modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within thirty (30) days, the proposed reorganization shall be deemed denied;*
- (7) *An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within one hundred eighty (180) days unless the time period is extended by the commissioner upon a showing of good cause;*
- (8) *The commissioner may revoke approval or conditional approval of an applicant's plan of reorganization if the commissioner finds the applicant has failed to comply with the plan of reorganization. The commissioner may compel completion of a plan of reorganization unless the plan is abandoned in its entirety. The commissioner shall retain jurisdiction over the applicant until a plan of reorganization has been completed;*
- (9) *Upon completion of all elements of a plan of reorganization and any conditions placed on the reorganization by the commissioner, the applicant shall provide a notice of and documentation of completion to the commissioner; and*
- (10) *Within twelve (12) months after the commissioner receives the notice specified in subsection (9) of this section, the commissioner shall examine the affairs, transactions, accounts, records, and assets of the mutual holding company, reorganized insurer, and its affiliated persons for compliance with the plan of reorganization and for protection of policyholder interests.*

SECTION 15. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual*

insurance holding company shall occur without the prior approval of the commissioner. The commissioner's approval may be obtained only through an application and hearing process.

- (2) *Every application for approval of a stock offering shall contain the following information:*
- (a) *A description of the stock intended to be offered by the applicant, including a description of all shareholder rights;*
 - (b) *The total number of shares authorized to be issued, the estimated number of shares the applicant requests permission to offer, and the intended date or range of dates for the offering;*
 - (c) *A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined;*
 - (d) *The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) or more of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application;*
 - (e) *A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering;*
 - (f) *A detailed description of all expenses to be incurred in conjunction with the stock offering;*
 - (g) *An explanation of how funds raised by the stock offering are to be used; and*
 - (h) *Any other information requested by the commissioner.*
- (3) *No application regarding a planned stock offering shall be approved unless the plan contains provisions;*
- (a) *Requiring a majority of the members of the board of directors of the mutual insurance holding company to be persons who are not interested persons of the mutual insurance holding company or of any subsidiary or affiliated person of the company. The commissioner may waive this requirement upon a showing of good cause based on clear and convincing evidence;*
 - (b) *For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the commissioner;*
 - (c) *Requiring that the board of directors of any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary of a mutual holding company, or the insurance company subsidiary of an intermediate holding company shall include at least three (3) directors who are not interested persons of the mutual insurance holding company;*
 - (d) *Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not interested persons who shall have sole responsibility for evaluating and approving the price of any stock offering;*
 - (e) *Establishing, within the board of directors of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, an executive compensation committee consisting exclusively of directors who are not interested persons, who shall have sole responsibility for evaluating and approving compensation for directors, officers, and employees;*
 - (f) *Establishing that for any committee of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, at least two-thirds of any committee having responsibility for*

making decisions affecting capital structure or mergers and acquisitions shall not be interested persons;

- (g) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from the purchase or beneficial ownership of any shares of the stock offering, or issuance of stock options to or for the benefit of the officers, directors, and insiders for a period of at least six (6) months following the first date the offering was publicly and regularly traded. This paragraph shall not be construed to limit the rights of officers, directors, and insiders from exercising subscription rights generally accorded members of the mutual insurance holding company, except that, in accordance with any subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than one percent (1%) of the stock offering for a period of at least six (6) months following the first date the offering was publicly and regularly traded;*
- (h) For a period of two (2) years after the six (6) month period referred to in paragraph (g) of this section, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or beneficially own, in the aggregate, more than five percent (5%) of the stock of the insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company; and*
- (i) Requiring that all members of the mutual insurance holding company are granted stock subscription rights in any initial stock offering; this requirement may be waived by the commissioner upon a showing of good cause at public hearing. For purposes of this paragraph, good cause may only be found where the members of the mutual insurance holding company are given rights to participate in the appreciation of the stock offered that are comparable to stock subscription rights.*
- (4) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one (1) class of stock if:*

 - (a) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary; and*
 - (b) No class of common stock possesses greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.*
- (5) The commissioner shall hire, at the applicant's expense, attorneys, actuaries, accountants, investment bankers, and other experts as may reasonably be necessary to assist the commissioner in reviewing the application.*
- (6) The commissioner shall, in the commissioner's discretion, hold a public hearing in accordance with KRS Chapter 13B, regarding any application for approval of a stock offering. Upon receipt of an application for approval of a stock offering which includes an initial offering of stock the commissioner shall hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. The commissioner shall provide the applicant adequate notice of the hearing so that the applicant can provide notice of the hearing to members of the mutual insurance holding company, in a manner approved by the commissioner, not less than twenty (20) days prior to the hearing. Following the hearing, the commissioner may approve, conditionally approve, or deny the application. The commissioner may approve the plan if:*

 - (a) The offering complies with these rules and other provisions of law;*
 - (b) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions; and*
 - (c) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.*
- (7) Nothing in this section shall be deemed to prohibit the filing of a registration statement with the Securities and Exchange Commissioner prior to or concurrently with the giving of notice to members.*

- (a) *Notwithstanding subsections (1) to (6) of this section, a stock offering which is not an initial stock offering, and which offers stock regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the commissioner, or designated on the national association of securities dealers automated quotations-national market system may be sold if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of Sections 1 to 17 of this Act. The entity shall deliver to the commissioner not less than thirty (30) days prior to the offering, a notice of the planned stock offering and information regarding the following:*
1. *The total number of shares intended to be offered;*
 2. *The intended date of sale;*
 3. *Evidence that the stock is regularly traded on one (1) of the public exchanges noted in subsection (a) of this section; and*
 4. *A record of the trading pace and trading volume of the stock during the prior fifty-two (52) weeks.*
- (b) *The commissioner shall be deemed to have approved the sale unless, within thirty (30) days following receipt of the notice, the commissioner issues an objection to the sale. If the commissioner issues an objection to the sale, the procedures set forth in subsection (2) of this section shall be followed to determine whether the commissioner approves the proposed sale;*
- (c) *Approval of a stock offering obtained under either subsection (6) or (7) of this section shall expire ninety (90) days following the date of the approval or deemed approval, except as otherwise provided by the order of the commissioner; and*
- (d) *No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant shall contain a representation that the commissioner's approval of a stock offering constitutes an endorsement of the price, price range, or any other information relating to the stock.*

SECTION 16. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The following practices are prohibited:

- (1) *Borrowing funds from the mutual insurance holding company, or its subsidiaries and affiliates, to finance the purchase of any portion of a stock offering;*
- (2) *Payment of commissions, "special fees," and any other special payment or extraordinary compensation to officers, directors, interested persons, and affiliates, for arranging, promoting, aiding, or assisting in reorganization to a mutual insurance holding company, or for arranging, promoting, aiding, assisting, or participating in the structuring and placement of a stock offering; and*
- (3) *Entering into an understanding or agreement transferring legal or beneficial ownership of stock to another person in avoidance of these rules.*

SECTION 17. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *At no time shall the officers, directors, or insiders of the mutual insurance holding company and its subsidiaries and affiliates beneficially own, in the aggregate, more than eighteen percent (18%) of the voting stock of the insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.*
- (2) *This subsection applies to directors of the mutual insurance holding company and its subsidiaries and affiliates. These directors shall not purchase or beneficially own, in the aggregate, more than three percent (3%) of the voting stock of an insurance company subsidiary of a mutual insurance company or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.*

- (3) *No person may directly or indirectly offer to acquire or acquire, in any manner, beneficial ownership of more than fifteen percent (15%) of any class of voting securities of an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.*

Approved April 13, 1998

CHAPTER 547

(HB 815)

AN ACT relating to the State Advisory Council for Gifted and Talented Education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *The State Advisory Council for Gifted and Talented Education is hereby created and attached to the Kentucky Department of Education. The council's purpose is to make recommendations regarding the provisions of services for gifted and talented students in Kentucky's education system.*
- (a) *The council shall be composed of nineteen (19) voting members who shall be appointed by the Governor and three (3) non-voting, ex officio members. The members shall be appointed representing various constituencies as follows:*
1. *Four (4) members shall be teachers within local school districts representing elementary, middle, and high school levels with at least one (1) full-time teacher of gifted and talented students and one (1) full-time teacher who teaches in a regular classroom;*
 2. *Four (4) members shall be parents of students in local school districts, including two (2) parents of students identified as gifted and talented and at least one (1) who serves or has served on a school council;*
 3. *Three (3) members shall be from postsecondary education institutions, including one (1) from an independent college or university;*
 4. *One (1) member shall be a superintendent of a local school district;*
 5. *Two (2) members shall be principals, including one (1) from an elementary or middle school and one (1) from a high school;*
 6. *Two (2) members shall be coordinators of gifted and talented programs and services in local school districts;*
 7. *One (1) member shall be a local board of education member ;*
 8. *One (1) member shall represent the visual and performing arts; and*
 9. *One (1) member shall be appointed from the private business sector.*
- (b) *The three (3) non-voting ex officio members shall be: the state consultant for gifted and talented education in the Kentucky Department of Education, a staff person designated by the executive secretary of the Education Professional Standards Board, and a staff person designated by the president of the Council on Postsecondary Education. Vacancies shall be filled by the Governor as they occur in a manner consistent with the provisions for initial appointment.*
- (c) *Each board member shall serve a three (3) year term or until a successor is appointed, except that for initial appointments to the board, three (3) of the members shall be appointed to serve a one (1) year term, eight (8) of the members shall be appointed to serve a two (2) year term, and eight (8) of the members shall be appointed to serve a three (3) year term. A member may be reappointed but may not serve more than two (2) consecutive terms.*
- (2) *The council shall advise the commissioner of education, the Kentucky Board of Education, and the Education Professional Standards Board concerning the development of administrative regulations and education policy regarding gifted and talented students. The commissioner of education and the executive secretary for the Education Professional Standards Board shall submit proposed administrative regulations*

and educational policies relating to gifted and talented education and other administrative regulations that impact gifted and talented students for review by the advisory council prior to seeking approval of the appropriate board.

- (3) *As the advisory council considers issues relating to gifted and talented students, it shall seek dialogue with other agencies and organizations, including the Parent Teachers Association, the Governor's Scholars Program, the Governor's School for the Arts, the Kentucky Association of School Councils, the Kentucky Association for Gifted Education, the Kentucky School Boards Association, the Kentucky Association of School Administrators, and the Kentucky Council for Exceptional Children.*
- (4) *The advisory council shall annually elect a chair from its membership, establish meeting operational procedures, and meet at least two (2) times annually.*
- (5) *The Department of Education shall provide staff and administrative support and shall administer the funds appropriated to support the expenses of the council.*
- (6) *The members of the advisory council shall serve without compensation, but shall be reimbursed for necessary expenses in the same manner as state employees.*

Approved April 13, 1998

CHAPTER 548

(HCR 14)

A CONCURRENT RESOLUTION directing the Tobacco Task Force to study a tobacco price support program among the states.

WHEREAS, the federal tobacco price support program is an effective, very low cost, government program that enables Kentucky's small farm operators to remain economically stable and self-sustaining; and

WHEREAS, an informal survey conducted in 1994 revealed that over 50% of tobacco experts believe there is a "moderate" to "high" probability that the federal tobacco price support program will be abolished within 10 years; and

WHEREAS, there is now before the U. S. Senate a proposal to end the federal tobacco price support program which has been introduced, in part, as a response to the Attorneys General/Tobacco Industry Settlement, Proposed Resolution of June 20, 1997; and

WHEREAS, persuasive arguments may be made that the movement to end the program is not based upon any shortcomings of the program but rather is based partly upon a desire to disrupt the market for tobacco in the belief that the disruption will accomplish through indirect action what has not been achieved through direct action -- to persuade individuals to end their use of tobacco products; and

WHEREAS, ending the tobacco price support program for this reason unfairly penalizes small farmers because it is estimated that more than 50% will no longer be able to grow tobacco without the price support program, yet many small farmers will not have the opportunity to replace that income in many areas of the state, and most notably in eastern Kentucky, where off-farm jobs are not widely available; and

WHEREAS, ending tobacco price supports for this reason also places 38 Kentucky counties at severe economic risk, because they are particularly dependent on the growing of tobacco for economic stability due to high unemployment in those counties; and

WHEREAS, Kentucky must protect against the economic disruption that would follow from an end to the federal tobacco price support program and prepare to substitute an equally effective program to provide tobacco price stability to small farmers and the communities in which they live;

NOW, THEREFORE,

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

Section 1. The Tobacco Task Force is directed to develop a strategy for the state to enter into a tobacco price support program with other tobacco producing states. The strategy shall include but not be limited to: structuring a

states' program similar to the federal program; determining the legal requirements for establishing a states' tobacco price support program; and preparing the initial steps that Kentucky may need to take to enter into a states' program.

Section 2. The task force shall hold no less than two (2) meetings to carry out the purposes of Section 1. The task force shall, at a minimum, seek testimony from the Kentucky Farm Bureau, the Community Farm Alliance, the Burley Tobacco Growers Cooperative Association, the Burley Auction Warehouse Association, the Council for Burley Tobacco, the University of Kentucky College of Agriculture, Ag Project 2000, the Governor's Office, the Department of Agriculture, and the Economic Development Cabinet.

Section 3. The task force shall report to the LRC no later than September 15, 1999. In the event that the U. S. Congress moves to end the federal tobacco price support program before the report is due, the task force shall immediately advise the Legislative Research Commission and the Governor's Office on the steps to take to best protect the interests of the state and the state's tobacco producers.

Approved April 13, 1998

CHAPTER 549

(HCR 114)

A CONCURRENT RESOLUTION directing a study relating to protection of the elderly from fraud and abuse.

WHEREAS, the Senior Citizens Advisory Commission of the Legislative Research Commission indicates that fraudulent crime against the elderly is swiftly on the rise; and

WHEREAS, the Senior Citizens Advisory Commission indicates that fraudulent crime against the elderly is one of the elderly's greatest concerns; and

WHEREAS, state and local police indicate that often they do not find out about the commission of these crimes until many days or months have passed because the victims feel ashamed; and

WHEREAS, the elderly continue to suffer from exploitation problems; and

WHEREAS, the state and local police and Attorney General's Office indicate that there needs to be more effective methods to educate the elderly about exploitation; and

WHEREAS, the Senior Citizens Advisory Commission indicates that there is an additional problem of the underreporting of abuse, neglect, and exploitation of the elderly; and

WHEREAS, protection of its people is a number one goal of the Commonwealth of Kentucky;

NOW, THEREFORE,

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

Section 1. The Interim Joint Committee on Health and Welfare of the Legislative Research Commission is directed to undertake a study to determine the most common types of abuse, neglect, and exploitation of the elderly and the most effective approach to education and protection. The study shall include an assessment of the adequacy of current law, and the availability of appropriate methods of intervention. The study shall determine the need for coordination among city, county, state, and federal entities as it relates to prevention, education, and protection. The study shall include dialogue with and seek recommendations from professionals from law enforcement, health care, social work, mental health, long-term care ombudsmen, and staff from adult day care centers, senior citizen centers, hospitals, local health departments, nutrition centers, and other agencies or organizations that work with the elderly population and their families.

Section 2. The Interim Joint Committee on Health and Welfare shall report its findings and recommendations to the year 2000 Regular Session of the General Assembly.

Section 3. Staff services to be utilized in completing this study are estimated to cost \$15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 13, 1998

CHAPTER 550**(SB 19)**

AN ACT relating to income taxation.

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

Section 1. KRS 141.010 is amended to read as follows:

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

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by

a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;~~and~~

- (i)
 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j) ***Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600; and***
- (k) ***Exclude any capital gains income attributable to property taken by eminent domain.***
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment

of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
 - (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and
 - (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
 - (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
 - (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
 - (18) "Nonresident" means any individual not a resident of this state;
 - (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
 - (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
 - (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
 - (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
 - (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
 - (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 - (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. The amendment contained in Section 1 of this Act shall apply to taxable years beginning after December 31, 1997.

Approved April 13, 1998

CHAPTER 551

(SB 41)

AN ACT relating to a gas system restoration and development project account.

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

Section 1. KRS 147A.200 is amended to read as follows:

- (1) The Department of Local Government is authorized and directed to apply for and receive federal funds to be placed in a state account called the Gas System Restoration *and Development* Project Account, and to provide staff to administer said funds. *The funds in this account may be used in any gas system restoration or development project approved by the Gas System Restoration and Development Project Account Review Board.*

- (2) A Gas System Restoration *and Development* Project Account Review Board is established, and shall consist of seven (7) members appointed by the Governor. ***The board shall be chaired by the commissioner of the Department of Local Government, and shall include***~~including~~ representatives of the Public Service Commission, state fire marshal's office, Department of Local Government, banking and finance industry, commercial or industrial consumers, Kentucky Gas Association, and low income or minority group consumers. Members shall be reimbursed for necessary expenses in attending meetings.
- (3) The review board shall meet ***as necessary***~~monthly~~, and shall establish rules for conducting its business. The review board shall consider applications for loans from the account, and approve or disapprove loan applications. No loan shall be considered unless the applicant has complied with all construction and securities requirements of the Public Service Commission. In reviewing loan applications, the review board may request the testimony of the county judge/executive of an affected county, and any other witnesses deemed appropriate.

Approved April 13, 1998

CHAPTER 552

(SB 65)

AN ACT relating to dentistry.

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

Section 1. KRS 313.080 is amended to read as follows:

- (1) ***Each person who is licensed to practice dentistry in Kentucky shall, by the thirty-first day of December of each odd-numbered year, register with the board and maintain satisfactory evidence of completion of continuing education as provided in this section. The registration shall be made on a form prescribed by the board and furnished by the board's executive director, and shall include the licensee's name, address, license number, and any other available information that the board may consider necessary. All registrations shall be in effect for the two (2) year period beginning on the first day of January of the following even-numbered year and ending on the last day of December of the following odd-numbered year.***
- (2) By December 31 of each ***biennial licensing period as provided in subsection (1) of this section***~~year~~, every dentist licensed to practice in this state shall return to the board evidence satisfactory to the board that ~~the~~~~such~~ dentist has accumulated a sufficient number of points for continuing dental education in accordance with a schedule of points which shall be adopted by the board. ~~Provided,~~ However, that the board, in its discretion, may make exceptions to the point requirement for continuing dental education for ~~any~~~~such~~ hardship or other extenuating circumstances ~~that~~~~as~~ the board deems appropriate. The continuing dental education shall include completion of the course described in KRS 214.610(1).
- ~~(3)~~~~(2)~~ By December 31 of each ***biennial licensing period as provided in subsection (1) of this section***~~year~~, every dentist licensed to practice in this state shall return to the board the renewal notice properly signed and a license fee in the amount prescribed by the board. The dentist shall thereupon receive a license renewal certificate, ***if the dentist***~~provided that he~~ has also complied with the requirements of subsection ~~(2)~~~~(1)~~ of this section. The board shall fix the license fee at ~~an~~~~such~~ amount as is necessary to maintain a revolving fund at an approximate level of one hundred fifty thousand dollars (\$150,000). The license fee for each ***licensing period***~~year~~ shall be set by the board. Notice of ~~a change in~~ the amount of license renewal fee shall be given to each dentist licensed in the state by the board not later than ***thirty (30) days before the end of the renewal period***~~December 1~~.
- (4) Any license granted by the board shall be ***automatically*** suspended if the holder fails to ***submit a properly completed renewal application to the board, with payment of the renewal fee, as required in this section. For purposes of this section, any renewal application shall be deemed timely submitted if it is delivered to the board office by December 31, or duly mailed and postmarked by that date. Any***~~secure the renewal certificate by January 1 of each year, but any~~ license thus suspended may be restored by the board upon the payment to the board of ***the biennial registration fee, and in addition thereto, a reinstatement fee of fifty dollars (\$50) within one (1) year after the suspension.***

- (5) *Each dentist licensed under this chapter shall notify the board in writing of any change in the person's name, office address, or employment within ten (10) days after the change has taken place.*

Section 2. KRS 313.150 is amended to read as follows:

- (1) Proceedings to **reprimand, place on probation, revoke, suspend, refuse to renew, or refuse to issue**~~revoke or suspend~~ a license may be taken by the board from the matters within its knowledge or upon the information of another. If the informant is a member of the board, the other members shall constitute the board for the purpose of judging the accused. Every accusation shall be in writing, verified by some person familiar with the facts charged in it. Three (3) copies shall be filed with the secretary-treasurer of the board. Upon receiving the accusation the board shall, if it considers it sufficient, schedule an administrative hearing.
- (2) All administrative hearings conducted under authority of this chapter shall be conducted in accordance with the provisions of KRS Chapter 13B.
- (3) Any final order of the board may be appealed to the Circuit Court of the county in which the board met.

Section 3. KRS 313.305 is amended to read as follows:

- (1) *Each person who is licensed to practice dental hygiene in the Commonwealth shall, by the thirty-first day of December of each even-numbered year, register with the board and maintain satisfactory evidence of completion of continuing education as provided in this section. The registration shall be made on a form prescribed by the board and furnished by the board's executive director and shall include the licensee's name, address, license number, and any other available information that the board may consider necessary. All registrations shall be in effect for the two (2) year period beginning on the first day of January of the following odd-numbered year and ending on the last day of December of the following even-numbered year.*
- (2) By December 31 of each **biennial licensing period as provided in subsection (1) of this section**~~year~~, every dental hygienist licensed to practice in this state shall return to the board evidence satisfactory to the board that the dental hygienist has accumulated a sufficient number of points for continuing dental hygienist education in accordance with a schedule of points which shall be adopted by the board. Continuing dental hygienist education shall include completion of the course described in KRS 214.610(1). In approving continuing education activities, the board shall develop criteria to determine the actual effect upon the competency of the participant.~~Provided,~~ However,~~that~~ the board, in its discretion, may make exceptions to the point requirement for continuing dental hygienist education for **any**~~such~~ hardship or other extenuating circumstances **that**~~as~~ the board deems appropriate.
- (3)~~(2)~~ By December 31 of each **biennial licensing period as provided in subsection (1) of this section**~~year~~, every dental hygienist licensed to practice in this state shall return to the board the hygienist's renewal notice properly signed and a fee ~~of ten dollars (\$10) or an amount as hereinafter~~ prescribed by the board **by administrative regulation subject to the provisions of KRS Chapter 13A**. The dental hygienist shall then receive a license renewal certificate, ~~if provided that~~ compliance with the requirements of subsection (1) of this section is met. The **biennial**~~annual~~ renewal license fee shall be established by the board in an amount as is necessary to maintain the level of the revolving fund in accordance with the provisions of KRS 313.080. The license fee for each **licensing period**~~year~~ shall be set **biennially** by the board. Notice of change in the amount of license renewal fee shall be given to each dental hygienist licensed in the state by the board not later than **thirty (30) days prior to each renewal period**~~December 1~~.
- (4) Any license granted by the board shall be suspended if the holder fails to **submit a properly completed renewal application to the board, with payment of a renewal fee, as required in this section. For purposes of this section, any renewal application shall be deemed timely submitted if it is delivered to the board office by December 31, or duly mailed and postmarked by that date.**~~secure the renewal certificate by January 1 of each year, but~~ Any license thus suspended may be restored by the board upon the payment to the board of **the biennial registration fee and, in addition thereto, of a reinstatement fee of twenty-five dollars (\$25) within one (1) year after the suspension.**
- (5) *Each dental hygienist licensed to practice under this chapter shall notify the board in writing of any change in the licensee's name, office address, or employment within ten (10) days after the change has taken place.*

Section 4. KRS 313.020 is amended to read as follows:

No person, except those licensed and registered under prior laws of this state, shall practice or attempt to practice dentistry unless he has been licensed by the board and has registered his license as provided in *Section 1 of this Act* [KRS 313.110].

Section 5. The Legislative Research Commission shall direct that a study on the practice of dentistry be conducted during the 1998-2000 interim. The study shall be for the purposes of determining: if and to what extent denturists should be regulated in the Commonwealth; if the Kentucky Board of Dentistry is the proper and most efficient entity to regulate those engaged in the practice of dentistry; and whether registration similar to the ones established for dentists and dental hygienists in Sections 1 and 3 of this Act should be established for those practicing dentistry.

Section 6. The following KRS sections are repealed:

313.110 Registration of license with county clerk -- Attestation -- Clerk's fee.

313.120 Forfeiture of license for failure to register it.

313.307 Registration of dental hygienists -- License in county -- Fee.

Approved April 13, 1998

CHAPTER 553

(SB 92)

AN ACT relating to the flag of the United States.

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

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

Notwithstanding any agreement or restrictions contravening a person's right to display a flag, that person may display a flag of the United States which is no larger than two (2) feet by three (3) feet from the person's residence, regardless of whether the person owns or leases the residence, provided that the flag is displayed in such a manner as is deemed proper by state or federal law, including 36 U.S.C. sec. 173 et seq. Any agreement contravening this right shall be void and unenforceable in any court of the Commonwealth. No person shall discriminate or retaliate against a person who properly displays the flag of the United States in conformity with this section and not in contravention of any other statute or administrative regulation directly regulating the flag's display. This section shall supplement, and not limit or abridge in any manner, the right of persons to otherwise display the flag of the United States.

Approved April 13, 1998

CHAPTER 554

(SB 208)

AN ACT relating to deposit of public funds.

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

Section 1. KRS 41.240 is amended to read as follows:

- (1) (a) Before any bank shall be named as a state depository to receive public funds, it shall *either pledge or provide* to the State Treasurer, as collateral, securities *or other obligations* having *an aggregate current face value or* ~~at~~ current quoted market value at least equal to the deposits *or provide to the State Treasurer a surety bond or surety bonds in favor of the State Treasurer in an amount at least equal to the deposits*, provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be *so* collateralized. The president or cashier of each depository bank shall submit to the Treasurer and the State Investment Commission a statement subscribed and sworn to by him showing:

1. The *face value or* current quoted market value of the securities *or other obligations* pledged *or provided* as of the time the securities *or other obligations* are offered as collateral; *and*

2. *The value of surety bonds provided as of the time such surety bonds are provided as collateral.*

The~~market~~ valuation of all pledged *or provided* collateral *and the face amount of all surety bonds provided as collateral* shall be reported to the State Treasurer and State Investment Commission upon receipt of deposit and within ten (10) days of the close of each quarter after the quarter beginning December 31. Such *value with respect to pledged collateral other than surety bonds*~~quotes~~ shall be as of the end of the quarter or the preceding business day and, *as to market values*, shall be obtained from a reputable bond pricing service. The State Treasurer and Governor may from time to time call for additional collateral to adequately secure the deposits as *aggregate face or* current market values may require.

- (b) No deposit of state collected demand and time funds shall collectively exceed at any time the depository's sum of capital, reserves, undivided profits and surplus or ten percent (10%) of the total deposits of any particular depository, whichever is less. Deposits will be valued at the end of each business day.
- (2) (a) As an alternative to paragraph (1)(a) of this section, a Kentucky depository insured by the Federal Deposit Insurance Corporation may *either* pledge to the State Treasurer, as collateral, securities *or other obligations* having *an aggregate face value or* a current quoted market value *or provide to the State Treasurer a surety bond or surety bonds in an amount* equal to eighty percent (80%) of the value of the state deposit including demand and time accounts, if the depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature. The value of the state deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.
- (b) ~~Market~~ Valuation of all pledged *or provided* collateral *and the face amount of surety bonds provided* shall be reported to the State Treasurer and the State Investment Commission upon receipt of the state deposit and within ten (10) days of the close of each quarter after the quarter beginning December 31.
- (c) Depositories designated as qualified for reduced pledging shall be so recorded in the executive journal.
- (d) The State Investment Commission shall determine eligibility for the reduced pledging option based on totally objective and quantifiable measures of financial intermediary performance. The information for such eligibility shall be obtained from publicly available documents. The State Investment Commission shall promulgate the particular criteria of eligibility by regulations issued pursuant to KRS Chapter 13A.
- (3) Depositories which do not qualify or do not choose to qualify under subsection (1) or (2) of this section shall not receive state deposits in excess of amounts that are insured by an instrumentality of the United States.
- (4) Only the following securities *and other obligations* may be accepted by the State Treasurer as collateral under this section:
 - (a) Bonds, notes, *letters of credit* or other obligations of or *issued or* guaranteed by the United States, or those for which the credit of the United States is pledged for the payment of the principal and interest thereof, and any bonds, notes, debentures, *letters of credit*, or any other obligations~~or securities~~ issued or guaranteed by any federal governmental agency *or instrumentality*, presently or in the future established by an Act of Congress, as amended or supplemented from time to time, *including, without limitation, the United States government corporations listed in subsection (1)(c) of Section 3 of this Act*;
 - (b) Obligations of the Commonwealth of Kentucky including revenue bonds issued by its statutory authorities, commissions or agencies;
 - (c) Revenue bonds issued by educational institutions of the Commonwealth of Kentucky as authorized by KRS 162.340 to 162.380;
 - (d) Obligations of any city of the first, second, and third classes of the Commonwealth of Kentucky, or any county, for the payment of principal and interest on which the full faith and credit of the issuing body is pledged;
 - (e) School improvement bonds issued in accordance with the authority granted under KRS 162.080 to 162.100;~~and~~

- (f) School building revenue bonds issued in accordance with the authority granted under KRS 162.120 to 162.300, provided that the issuance of such bonds is approved by the Kentucky Board of Education; **and**
- (g) ***Surety bonds issued by sureties rated in one (1) of the three (3) highest categories by a nationally recognized rating agency.***

Section 2. KRS 56.520 is amended to read as follows:

- (1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following purposes:
 - (a) To acquire real estate for state governmental use;
 - (b) To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;
 - (c) To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.
- (2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of KRS Chapter 56, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.
- (3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or his representative at a designated place, day, and hour, all of which shall be announced in the advertising made relative thereto.
- (4) In the event the commission issues and sells bonds for a building project as authorized by KRS Chapter 56, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in connection with the building project, and it may so obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.
- (5) ***The commission may invest proceeds from the sale of its revenue or other authorized bonds in financial instruments and investments*** as provided in KRS 42.500~~[-, the commission may invest proceeds from the sale of its revenue or other authorized bonds as follows:~~
 - ~~(a) — Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;~~
 - ~~(b) — Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Services;~~
 - ~~(c) — Obligations for the Commonwealth of Kentucky;~~
 - ~~(d) — Bonds and notes of any state or local government or public authority;~~
 - ~~(e) — Savings certificates issued by any federal savings and loan association if any principal amount of the certificate in excess of the amount insured by the federal government, or any agency thereof, is fully collateralized;~~
 - ~~(f) — Prime quality commercial paper bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;~~
 - ~~(g) — Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, if the accepting bank or its~~

~~holding company is either incorporated in the Commonwealth of Kentucky or has outstanding publicly held obligations bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations;~~

- ~~(h) Participating share in a mutual fund for local government investment;~~
- ~~(i) A commingled investment pool established and administered under KRS 66.480;~~
- ~~(j) Evidences of ownership of or fractional undivided interests in future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian;~~
- ~~(k) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States or entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a federal reserve bank, or any commercial bank, trust company, or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

 - ~~1. Such obligations that are subject to the repurchase agreement are delivered in physical or in book entry form to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority. The repurchase agreement shall provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;~~
 - ~~2. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedure, conforming to the extent practicable with federal regulations and satisfactory to the local government or public authority, have been established for the benefit of the local government or public authority or its assignee;~~
 - ~~3. The securities are free and clear of any adverse third party claims; and~~
 - ~~4. The repurchase agreement is in a form satisfactory to the local government or public authority; and~~~~
- ~~(l) Guaranteed investment contracts with a bank or insurance company, if the bank or insurance company bears one (1) of the two (2) highest ratings of at least one (1) nationally recognized rating service and does not bear a rating below one (1) of the two (2) highest ratings by any nationally recognized rating service}.~~

Section 3. KRS 66.480 is amended to read as follows:

- (1) The governing body of a city, county, urban-county, charter county, school district (provided that its general procedure for action is approved by the Kentucky Board of Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:
 - (a) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. These investments may be accomplished through repurchase agreements reached with sources including, but not limited to, national or state banks chartered in Kentucky;
 - (b) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
 1. United States Treasury;

2. Export-Import Bank of the United States;
 3. Farmers Home Administration;
 4. Government National Mortgage Corporation; and
 5. Merchant Marine bonds;
- (c) Obligations of any corporation of the United States government, including but not limited to:
1. Federal Home Loan Mortgage Corporation;
 2. Federal Farm Credit Banks;
 3. Bank for Cooperatives;
 4. Federal Intermediate Credit Banks;
 5. Federal Land Banks;
 6. Federal Home Loan Banks;
 7. Federal National Mortgage Association; and
 8. Tennessee Valley Authority;
- (d) Certificates of deposit issued by or other interest-bearing accounts of any bank or savings and loan institution which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations, *including surety bonds*, permitted by KRS 41.240(4);
- (e) Uncollateralized certificates of deposit issued by any bank or savings and loan institution rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
- (f) Bankers' acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
- (g) Commercial paper rated in the highest category by a nationally recognized rating agency;
- (h) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;
- (i) Securities issued by a state or local government, or any instrumentality of agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency; and
- (j) Shares of mutual funds, each of which shall have the following characteristics:
1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;
 2. The management company of the investment company shall have been in operation for at least five (5) years; and
 3. All of the securities in the mutual fund shall be eligible investments pursuant to this section.
- (2) The investment authority provided by subsection (1) of this section shall be subject to the following limitations:
- (a) The amount of money invested at any time by a local government or political subdivision in one (1) or more of the categories of investments authorized by subsections (1)(e), (f), (g), and (i) of this section shall not exceed twenty percent (20%) of the total amount of money invested by the local government; and
 - (b) No local government or political subdivision shall purchase any investment authorized by subsection (1) on a margin basis or through the use of any similar leveraging technique.
- (3) The governing body of every local government or political subdivision that invests or reinvests money subject to its control or jurisdiction according to the provisions of subsection (1) of this section shall by January 1,

1995, adopt a written investment policy that shall govern the investment of funds by the local government or political subdivision. The written investment policy shall include, but shall not be limited to the following:

- (a) A designation of the officer or officers of the local government or political subdivision who are authorized to invest and oversee the investment of funds;
 - (b) A list of the permitted types of investments;
 - (c) Procedures designed to secure the local government's or political subdivision's financial interest in the investments;
 - (d) Standards for written agreements pursuant to which investments are to be made;
 - (e) Procedures for monitoring, control, deposit, and retention of investments and collateral;
 - (f) Standards for the diversification of investments, including diversification with respect to the types of investments and firms with whom the local government or political subdivision transacts business;
 - (g) Standards for the qualification of investment agents which transact business with the local government, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm capable and qualified to transact business with the local government or political subdivision; and
 - (h) Requirements for periodic reporting to the governing body on the status of invested funds.
- (4) Sheriffs, county clerks, and jailers, who for the purposes of this section shall be known as county officials, may, and at the direction of the fiscal court shall, invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of KRS 134.300, 134.320, and 160.510, as permitted by this section.
 - (5) The provisions of this section are not intended to impair the power of a county official, city, county, urban-county, charter county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.
 - (6) The governing body or county official may delegate the investment authority provided by this section to the treasurer or other financial officer or officers charged with custody of the funds of the local government, and the officer or officers shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.
 - (7) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.
 - (8) The state local debt officer is authorized and directed to assist county officials and local governments (except school districts) in investing funds that are temporarily in excess of operating needs by:
 - (a) Explaining investment opportunities to county officials and local governments through publication and other appropriate means; and
 - (b) Providing technical assistance in investment of idle funds to county officials and local governments that request that assistance.
 - (9) (a) The state local debt officer may create an investment pool for local governments (except school districts) and county officials; and counties and county officials and cities may associate to create an investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local debt officer. The Auditor of Public Accounts may review the report of the independent certified public

accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his own investigative report or audit to verify the findings of the independent certified public accountant's report.

- (b) If the state local debt officer creates an investment pool, he shall establish an account in the Treasury for the pool. He shall also establish a separate trust and agency account for the purpose of covering management costs, and he shall deposit management charges in this account. The state local debt officer may issue regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings, and assignment of charges.
 - (c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.
- (10) (a) With the approval of the Kentucky Board of Education, local boards of education, or any of them that desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the Kentucky Board of Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his own investigative report or audit to verify the findings of the independent certified public accountant's report.
- (b) The Kentucky Board of Education may issue administrative regulations governing the operation of the investment pool including, but not limited to, provisions on minimum allowable investments and investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.

Section 4. KRS 287.330 is amended to read as follows:

- (1) Banks, subject to statutory or charter limitations, may pledge such portion of their assets *or provide surety bonds* as may be required by law as collateral security for government deposits made with them, or any of them, by or under the authority of the United States, or for any other deposit required by law to be secured.
- (2) Notwithstanding any law requiring security for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B of the Federal Reserve Act (38 Stat. 251) as amended.
- (3) If a bank proposes to sell its assets and transfer its deposit liability to another bank and the purchasing bank is unwilling to accept a sufficient amount of the assets to cover the liability to depositors and other creditors, the selling bank may, with the consent of the commissioner, pledge all or a part of its remaining or unacceptable assets to secure a loan for an amount sufficient to cover the remaining liability to the depositors and other creditors.

Approved April 13, 1998

CHAPTER 555

(SB 214)

AN ACT relating to the Kentucky Forest Conservation Act.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context requires otherwise:

- (1) *"Best management practices" means effective, practical, economical, structural, or nonstructural methods that prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from the land to surface or groundwater, or that otherwise protect water quality from potential adverse effects of timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority;*
- (2) *"Cabinet" means the Natural Resources and Environmental Protection Cabinet;*
- (3) *"Director" means the director of the Division of Forestry;*
- (4) *"Division" means the Division of Forestry;*
- (5) *"Logger" means any person who conducts timber harvesting operations for commercial purposes;*
- (6) *"Operator" means any person who operates or exercises control over any timber harvesting operations;*
- (7) *"Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or business organization, and any agency or instrumentality of federal, state, or local government, including any publicly-owned utility or any publicly-owned corporation of federal, state, or local government;*
- (8) *"Timber harvesting operations" means activities directly related to the cutting or removal of trees from the forest as a raw material for commercial processes or purposes, including timber preharvesting and postharvesting activities associated with the implementation of appropriate best management practices. "Timber harvesting operations" does not include:*
 - (a) *The cutting of firewood;*
 - (b) *The cutting of evergreens grown for and cut for the traditional Christmas holiday season;*
 - (c) *The removal of trees incidental to clearing for coal mining or farm purposes or incidental to ground-disturbing construction activities, including well sites, and access roads and gathering lines for oil and natural gas operations;*
 - (d) *The cutting of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities, unless those trees are being sold or provided as raw material for commercial wood product purposes; or*
 - (e) *The cutting of trees by an individual, nonindustrial landowner on his own property, if the cutting is performed by the individual, nonindustrial landowner; and*
- (9) *"Water pollution" has the same meaning as in KRS 224.01-010.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds, determines, and declares as follows:

- (1) *Healthy, sustainable forests that are ecologically sound provide economic opportunities and benefit the overall quality of life for all Kentuckians;*
- (2) *High quality forests provide clean air and water and biodiversity;*
- (3) *A diverse forest economy must include forest product industries, recreation, and tourism;*
- (4) *Timber harvesting operations must be conducted in an ecologically sound manner; and*

- (5) *Kentucky must promote the stewardship of its public and private forest lands while recognizing the rights and responsibilities of private landowners;*
- (6) *Comprehensive continuous forest inventories are needed to provide information to make decisions to meet present and future needs;*
- (7) *Increased awareness of the economic, social, and ecological importance of Kentucky's forests is needed to:*
 - (a) *Educate the public and industry in order to make wise decisions for the future of the forest resource; and*
 - (b) *Recognize and respond to threats to the forest resource;*
- (8) *It is the purpose of Sections 1 to 12 of this Act to provide private landowners and loggers with education, technical assistance, and incentives that encourage them to manage their properties and carry out timber harvesting operations that will assure sustainable forests in the Commonwealth.*
- (9) *Sections 1 to 12 of this Act shall not be construed as affecting the requirements of any other laws of the Commonwealth relating to environmental protection, including water quality or forestry.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

In addition to any other powers and duties vested in it by law, the cabinet has the authority, power, and duty to:

- (1) *Promote the sustainability of Kentucky's forest ecosystems;*
- (2) *Improve, maintain, and protect the health and condition of Kentucky's forest resources;*
- (3) *Promote the most efficient utilization of forest resources;*
- (4) *Provide educational opportunities to increase landowner, logger, and public appreciation, awareness, and knowledge of Kentucky's forests; and*
- (5) *Promulgate administrative regulations under KRS Chapter 13A to accomplish the purposes of Sections 1 to 12 of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established within the division an information and education program for the following purposes:*
 - (a) *To develop public awareness of the importance of the forests of Kentucky;*
 - (b) *To promote forest stewardship and sound forest utilization practices of private woodland owners and the forest industry; and*
 - (c) *To coordinate with other agencies and organizations to assure effective, long-term forest conservation programs.*
- (2) *The division shall implement an educational program that emphasizes sustainable forests and the full range of economic, ecological, and social opportunities provided by privately owned forests by:*
 - (a) *Sponsoring field days that enable individual woodland owners to recognize and resolve problems that they encounter in dealing with their woodland resources;*
 - (b) *Developing demonstration programs involving forests and management of forest ecosystems including urban forests;*
 - (c) *Developing and implementing programs that give special attention to educational needs of small, private, nonindustrial forest landowners; and*
 - (d) *Supporting the Kentucky Cooperative Extension Service in promoting and conducting technology transfer education programs specifically for woodland owners.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

- (1) *The division shall maintain an inventory of Kentucky's forests and provide a report on the status of Kentucky's forests on a biennial basis. The status report shall address, at a minimum, timber growth and removal, commercial species composition, timber quality, market information, forest health, and industry*

activity. The division shall cooperate with the U.S. Forest Service in carrying out the provisions of this subsection.

- (2) *In order to have accurate, current, and complete information and data, the division shall:*
- (a) *Assist the implementation of the Southern Annual Forest Inventory System by supplying five (5) two-person crews to perform annual data collection;*
 - (b) *Develop and implement annual surveys of mills, landowners, timber buyers, and other appropriate entities to determine levels of harvesting and timber and log prices; and*
 - (c) *Use Geographic Information System (GIS) technology and ensure coordination with statewide GIS efforts.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

There is established a Forest Stewardship Incentives Fund to be administered by the division. Monies from the fund shall be used for cost-share programs to provide financial assistance to landowners for the development of stewardship plans, and for stewardship practices, including, but not limited to, reforestation and afforestation, forest improvement, soil and water protection and improvement, riparian and wetland protection and improvement, wildlife habitat improvement and permanent wildlife planting, and forest recreation enhancement.

SECTION 7. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

- (1) *After two (2) years from the effective date of this Act, no person shall conduct timber harvesting operations within the Commonwealth unless there is on the site during the timber harvesting operations at least one (1) logger in charge of the harvest who has successfully completed the Master Logger Program.*
- (2) *After successful completion of the Master Logger Program, continuing education shall be required of the loggers every three (3) years.*
- (3) *The cabinet shall specify the education and training requirements for the Master Logger Program as developed by the University of Kentucky, the Kentucky Forest Industries Association, and the division, shall specify the requirements for continuing education, and, may establish a basic fee for the program that bears a reasonable relationship to the cost of training.*
- (4) *The division shall maintain a current list of all loggers who have successfully completed the Master Logger Program and required continuing education, and shall make the list available to the public. All master loggers shall provide the cabinet with a published phone number.*
- (5) *Loggers who have previously completed the Kentucky Master Logger Program are considered to be in compliance with subsection (1) of this section.*
- (6) *Any logger who primarily uses mules or horses in the logging operation shall be exempt from the Master Logger Program.*
- (7) *After two (2) years from the effective date of this Act, all state parks shall have on staff at least one (1) employee who has completed the Master Logger Program.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

- (1) *Two (2) years from the effective date of this Act, any logger or operator engaged in the conduct of any timber harvesting operations shall use appropriate best management practices.*
- (2) *No logger or operator shall conduct any timber harvesting operations in a manner that is causing or will likely cause water pollution.*
- (3) *If the cabinet determines that a logger or operator engaged in timber harvesting operations has failed to use the appropriate best management practices or is causing water pollution, the cabinet shall give the logger or operator a written warning of the facts alleged to constitute the failure to use the best management practice or the water pollution, and a reasonable period for abatement and compliance.*
- (4) *If, after the time for abatement in the written warning, the cabinet determines that the logger or operator has failed to implement the appropriate best management practices or has failed to abate the water pollution, the logger or operator will be provided an opportunity for an informal conference with the district forester. After the opportunity for an informal conference, if the cabinet determines that the logger or operator has failed to implement the appropriate best management practices or has failed to abate the water pollution, the cabinet shall issue a notice of violation stating the best management practice that the logger*

or operator has failed to implement or the facts alleged to constitute the water pollution, and order the logger or operator to implement corrective measures within a specified period of time.

- (5) *If, after the issuance of a notice of violation, the logger or operator fails to implement the best management practice or corrective measures, the cabinet shall issue a special order mandating the logger or operator to immediately implement the best management practice or the corrective measures. The cabinet may also order the logger or operator to cease all or a portion of the timber harvesting operation constituting the violation, and if the cabinet does so, the logger or operator shall cease all or a portion of the timber harvesting operation, until an inspection determines that the violation has been abated. At the time the special order is issued, the cabinet shall notify the logger or operator of the opportunity for an administrative hearing under subsection (2) of Section 9 of this Act, to be held within five (5) working days of the receipt of a written request made by the logger or operator.*
- (6) *If the cabinet finds that any logger or operator is conducting any timber harvesting operations in violation of subsection (1) of Section 7 of this Act or in a manner that is causing or is likely to cause water pollution that is presenting or will likely present an imminent and substantial danger to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life, or to a public water supply, or to recreational, commercial, agricultural, or industrial uses, the cabinet may issue an emergency order directing the logger or operator to immediately cease the activity and implement corrective measures within a reasonable time, and the logger or operator shall immediately cease the activity and implement corrective measures. At the time the order is issued, the cabinet shall also notify the logger or operator of the opportunity for an administrative hearing under subsection (2) of Section 9 of this Act to be held within five (5) working days of the receipt of a written request. The commencement of proceedings by the cabinet under subsection (3), (4), or (5) of this section shall not preclude the cabinet from issuing an emergency order under this subsection.*
- (7) *Notification under this section shall be by certified mail, return receipt requested, sent to the last known address of the logger or operator, or by hand delivery by the cabinet.*
- (8) *If the logger or operator fails or refuses to cease activity or comply with and implement the best management practices or corrective measures in a special order issued under subsection (5) of this section or fails to cease activity and implement corrective measures in an emergency order under subsection (6) of this section, unless extended by the cabinet, the logger or operator shall be deemed a bad actor and shall be subject to civil penalties under Section 10 of this Act after an opportunity for a hearing under Section 9 of this Act.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

- (1) *If the cabinet has evidence that a violation of subsection (1) of Section 7 of this Act has occurred, or has deemed a logger or operator to be a bad actor under subsection (8) of Section 8 of this Act, the cabinet shall serve written notice of the determination and the provision alleged to have been violated and the cabinet shall require the person complained against to answer the charges at an administrative hearing to be held not less than twenty-one (21) days after the date of the notice, unless the person complained against waives the twenty-one (21) day period.*
- (2) *Any person not previously heard who considers himself aggrieved by any determination of the cabinet under Sections 1 to 12 of this Act, may file a petition alleging that the determination is contrary to law or fact and is injurious to him, citing the grounds and reasons therefor, and demanding an administrative hearing. Unless the cabinet considers the petition frivolous, it shall schedule an administrative hearing before the cabinet not less than ninety (90) days after the date of the notice, unless the person complained against waives the ninety (90) day period, except that hearings requested under subsections (5) and (6) of Section 8 of this Act shall be held within five (5) working days of receipt of a petition. The right to demand a hearing under this subsection shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the determination complained of, or could have had notice. The cabinet shall be represented at the administrative hearing by the Office of Legal Services.*
- (3) *All hearings under Sections 1 to 12 of this Act shall be conducted under KRS 224.10-440. Appeals may be taken from all final orders under KRS 224.10-470.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

Any operator or logger who is deemed by the division to be a bad actor under subsection (8) of Section 8 of this Act or who violates subsection (1) of Section 7 of this Act may, after an opportunity for an administrative hearing, be assessed a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. In determining the amount of the penalty, consideration shall be given to the operator's or logger's history of noncompliance; the seriousness of the violation and any damage caused, including any irreparable harm to the environment or hazard to public health or safety or the health and safety of animals, fish, or aquatic life; the degree of fault and whether the conduct was intentional or negligent; and the demonstrated good faith in remedying the pollution. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the cabinet's Office of Legal Services. All sums recovered shall be deposited in the Forest Stewardship Incentives Fund. The Circuit Court in the county in which the violation occurred shall have concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of Sections 1 to 12 of this Act or the orders and administrative regulations promulgated by the cabinet.

SECTION 11. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established a Forestry Best Management Practices Board consisting of thirteen (13) members for the purposes of updating Kentucky's forest practice guidelines for water quality management and the Division of Forestry's administrative regulations regarding timber harvesting operations, and supervising the implementation of forestry best management practices and timber harvesting operations regulations by the Division of Forestry. The offices of the board shall be maintained at a place designated by the board.*
- (2) *The initial appointments to the board shall be made within one (1) year of the effective date of this Act, and the appointments shall be for staggered terms to assure continuity. The Governor shall appoint members to the board representing the following:*
 - (a) *Five (5) members who are farmers or woodland owners with at least fifty (50) acres of woodland and who are actively engaged in woodland management:*
 1. *One (1) of these members from a list of three (3) persons nominated by the Kentucky Woodland Owners Association;*
 2. *One (1) of these members from a list of three (3) persons nominated by the Kentucky Department of Agriculture;*
 3. *One (1) of these members from a list of three (3) persons nominated by the Kentucky Farm Bureau Federation; and*
 4. *Two (2) of these members shall be farmers at large;*
 - (b) *One (1) logger in good standing;*
 - (c) *One (1) member of the Department of Forestry of the University of Kentucky;*
 - (d) *One (1) member of the Kentucky Division of Forestry;*
 - (e) *Three (3) members of a Kentucky wood industry; and*
 - (f) *Two (2) members at large who are woodland owners.*
- (3) *Except for initial staggered appointments, board memberships shall be for a period of four (4) years, and members may be appointed to no more than two (2) full consecutive terms. Appointments to the board shall be made consistent with subsection (2) of this section.*
- (4) *The chair of the board shall be chosen from the members selected to meet the criteria in subsection (2) of this section.*
- (5) *The board shall review existing forestry best management practices within one (1) year after establishment of the board and shall conduct periodic reviews for rewriting the best management practices regulations no sooner than every five (5) years thereafter.*
- (6) *The board shall oversee implementation of best management practice education and enforcement by the Division of Forestry.*
- (7) *The board shall meet at least once a year for the purpose of conducting its oversight responsibilities.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 149 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 12 of this Act may be cited as the "Kentucky Forest Conservation Act."

Approved April 13, 1998

CHAPTER 556

(SB 228)

AN ACT relating to dentistry.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may establish an impaired dentist or dental hygienist committee, to be designated as the well-being committee, to promote the early identification, intervention, treatment, and rehabilitation of dentists or dental hygienists who may be impaired by reasons of illness, alcohol or drug abuse, or as a result of any physical or mental condition. The board may enter into a contractual agreement with a nonprofit corporation or a dental association for the purpose of creating, supporting, and maintaining a committee to be designated as the well-being committee. The board may promulgate administrative regulations subject to the provisions of KRS Chapter 13A to effectuate and implement any committee formed pursuant to this section. The board may expend any funds it deems necessary to adequately provide for operational expenses of any committee formed pursuant to this section. Any member of the well-being committee as well as any administrator, staff member, consultant, agent, or employee of the committee acting within the scope of their duties and without actual malice, and all other persons who furnish information to the committee in good faith and without actual malice, shall not be liable for any claim of damages as a result of any statement, decision, opinion, investigation, or action taken by the committee, or by any individual member of the committee.*
- (2) *All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the well-being committee, as well as communications to or from the committee, and any findings, conclusions, interventions, treatment, rehabilitation, or other proceedings of the committee which in any way pertain to a licensee who may be, or who actually is, impaired shall be privileged and confidential.*
- (3) *All records and proceedings of the well-being committee which pertain or refer to a licensee who may be, or who actually is, impaired shall be privileged and confidential and shall be used by the committee and its members only in the exercise of the proper function of the committee and shall not be considered public records and shall be subject to court subpoena and subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (4) of this section.*
- (4) *The well-being committee may disclose information relative to an impaired licensee only when:*
 - (a) *It is essential to disclose the information to further the intervention, treatment, or rehabilitation needs of the impaired licensee, and only to those persons or organization with a need to know; or*
 - (b) *Its release is authorized in writing by the impaired licensee; or*
 - (c) *The committee is required to make a report to the board; or*
 - (d) *The information is subject to court order.*

Section 2. KRS 313.020 is amended to read as follows:

No person, except those licensed and registered under prior laws of this state, shall practice or attempt to practice dentistry unless *the person* ~~he~~ has been licensed by the board ~~and has registered his license as provided in KRS 313.110~~.

Section 3. KRS 313.030 is amended to read as follows:

- (1) Nothing in this chapter shall prevent students from performing dental operations under the supervision of competent instructors within the dental school, college, or department of a university *or private practice facility approved* ~~recognized~~ by the board. The board may authorize the students of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school,

or under the board of health, or in a public clinic or a charitable institution. *No fee shall be accepted by the student beyond the expenses provided by the stipend.*

- (2) Students shall be at all times under the direct supervision of a dentist licensed in this state, who is an instructor of the institution at which they are studying.

Approved April 13, 1998

CHAPTER 557

(SB 257)

AN ACT relating to teacher salary deductions.

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

Section 1. KRS 161.158 is amended to read as follows:

- (1) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As permitted in KRS 160.280(5), board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.
- (2) Each district board of education shall adopt policies or regulations which will provide for deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof. The deductions shall be made from salaries earned in at least eight (8) different pay periods, and shall be remitted to the appropriate organization or association as specified by the employees *within thirty (30) days following the deduction provided the district has received appropriate invoices or necessary documentation.* The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction. Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.
- (3) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

Approved April 13, 1998

CHAPTER 558

(SB 277)

AN ACT relating to recycling in school districts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

- (1) *Each local board of education shall adopt a plan and procedures for recycling white paper and cardboard in all board-owned and operated facilities.*
- (2) *A local board of education shall be exempt from the requirement to establish a recycling program as described in this section if there is no recycling facility within the county or within a reasonable distance in an adjoining geographic area, or the district cannot locate a recycling vendor to service the school district, without incurring a negative fiscal impact.*

- (3) *The board may delegate to each school or school council the responsibility for designing its own procedures; however, the superintendent or the superintendent's designee shall periodically review the operating procedures to assure that recycling is being carried out.*

Approved April 13, 1998

CHAPTER 559

(SB 328)

AN ACT relating to hospitals.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1, 2, and 3 of this Act, the following definitions shall apply:

- (1) *"Rural health network" means an organization that consists of at least one (1) facility that has been or will be designated as a critical access hospital and at least one (1) hospital that furnishes acute care services.*
- (2) *"Secretary" means the Secretary of the Cabinet for Human Resources.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Human Resources shall make application to the Secretary of the United States Department of Health and Human Services to establish a Medicare rural hospital flexibility program in accordance with 42 U.S.C. 1395i-4, as amended by the Balanced Budget Act of 1997, Public Law 105-33.*
- (2) *The cabinet shall develop and submit as part of its application a rural health plan that:*
- (a) *Provides for the creation of one (1) or more rural health networks;*
 - (b) *Promotes regionalization of rural health services in the state;*
 - (c) *Improves access to hospital and other health services for rural residents of the state; and*
 - (d) *Designates rural hospitals as critical access hospitals.*
- (3) *The secretary shall designate as a critical access hospital any facility which complies with the provisions of Section 3 of this Act.*

Section 3. KRS 216.380 is amended to read as follows:

- (1) The licensure category of *critical access*~~[rural primary care]~~ hospital is hereby created for existing licensed acute-care hospitals which qualify under this section for that status.
- (2) It shall be unlawful to operate or maintain a *critical access*~~[rural primary care]~~ hospital without first obtaining a license from the Cabinet for Human Resources. An acute-care hospital converting to a *critical access*~~[rural primary care]~~ hospital shall not require a certificate of need.~~[New construction of a rural primary care hospital shall require a certificate of need.]~~ A certificate of need shall not be required for services provided on a contractual basis in a *critical access*~~[rural primary care]~~ hospital.~~[No new rural primary care hospital facilities shall be constructed before July 15, 1994.]~~
- (3) Only a hospital licensed as a general acute-care hospital may be relicensed as a *critical access*~~[rural primary care]~~ hospital if all of the following criteria are met:
- (a) The *hospital*~~[facility]~~ is:
 1. Located *more than a thirty-five (35) mile drive from another hospital or other health facility;*
or
 2. *Where the terrain is mountainous or only secondary roads are available, the hospital is located more than a fifteen (15) mile drive; or*
 3. *The hospital is certified by the secretary as a necessary provider of health care services to area residents*~~[at least twenty (20) miles, via road that is paved year round, from the nearest licensed acute care hospital providing twenty four (24) hour emergency care];~~

- (b) The *hospital is a nonprofit or public hospital*~~[facility has sixty (60) or fewer beds];~~ ~~and~~
 - (c) The *hospital*~~[facility]~~ is not in a county which is part of a standard metropolitan statistical area;
 - (d) *Except as provided in paragraph (e) of this subsection, the hospital provides not more than fifteen (15) acute care inpatient beds for providing inpatient care for a period not to exceed ninety-six (96) hours unless:*
 - 1. *Patient transfer to another hospital is precluded because of inclement weather or other emergency conditions; or*
 - 2. *A peer review organization or an equivalent entity has waived the ninety-six (96) hour restriction on a case-by-case basis;*
 - (e) *If the hospital is operating swing beds under which the hospital's inpatient hospital facilities are used for the provision of extended care services, the hospital may be designated as a critical access hospital so long as the total number of beds that may be used at any time for furnishing of either extended care services or acute inpatient services does not exceed twenty-five (25) beds and the number of beds used at any time for acute inpatient services does not exceed fifteen (15) beds. For the purposes of this section, any bed of a unit of the hospital that is licensed as a nursing facility at the time the hospital applies to the state for designation as a critical care access hospital shall not be counted.*
- (4) A *critical access*~~[rural primary care]~~ hospital shall provide the following services:
- (a) Twenty-four (24) hour emergency-room care *that the secretary determines is necessary for insuring access to emergency care services in each area served by a critical access hospital; and*
 - (b) *Basic laboratory, radiologic, pharmacy, and dietary services. These services may be provided on a part-time, offsite contractual basis*~~[with at least one (1) individual present who has completed certification and maintained competency in advanced cardiac and trauma life support, and a physician or physician extender on call.~~
 - ~~(b) At least six (6) acute care beds which shall be used for observation and treatment of acute care conditions designated by the Cabinet for Human Resources. In no case shall patients remain in a rural primary care hospital for more than ninety six (96) hours; and~~
 - ~~(c) Basic laboratory, radiologic, pharmacy, and dietary services. These services may be provided on an off-site contractual basis but shall be available twenty four (24) hours per day.~~
- (5) A *critical access*~~[rural primary care]~~ hospital may provide the following services:
- (a) Swing beds or a distinct *unit of the hospital which is a nursing facility in accordance with KRS Chapter 216B and subject to approval under certificate of need*~~[, but only if there is not a bed available in any nursing facility, intermediate care facility, or skilled nursing facility within the county of residence of the patient or of the hospital, or the patient has been refused admission to the nursing facility, intermediate care facility, or skilled nursing facility];~~
 - (b) Surgery~~[with the limits of the ninety six (96) hour length of stay and designated conditions];~~
 - (c) Normal obstetrics~~[within the limits of the ninety six (96) hour length of stay];~~
 - (d) Primary care;
 - (e) Adult day health care;
 - (f) Respite care; ~~and~~
 - (g) Rehabilitative and therapeutic services including, but not limited to, physical therapy, respiratory therapy, occupational therapy, speech pathology, and audiology, which may be provided on an off-site contractual basis;
 - (h) *Ambulatory care;*
 - (i) *Home health services which may be established upon obtaining a certificate of need; and*
 - (j) *Mobile diagnostic services with equipment not exceeding the major medical equipment cost threshold pursuant to KRS Chapter 216B and for which there are no review criteria in the State Health Plan.*

- (6) The following staffing plan shall apply to a **critical access**~~[rural primary care]~~ hospital:
- (a) **The hospital shall meet staffing requirements as would apply under section 1861(e) of Title XVIII of the federal Social Security Act to a hospital located in a rural area except that:**
 1. **The hospital need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the hospital shall be open and fully staffed, except insofar as the facility is required to make available emergency services and nursing services available on a twenty-four (24) hour basis;**
 2. **The hospital need not otherwise staff the facility except when an inpatient is present**~~[medical staff shall have at least one (1) physician who shall serve as a medical director]; [and]~~
 - (b) Physician **assistants and nurse practitioners**~~[extenders]~~ may **provide inpatient care**~~[treat patients]~~ within the limits of their statutory scope of practice **and with oversight**~~[. Physician extenders shall be supervised]~~ by a physician who is not required to be on site **at the hospital**~~[at all times. When the facility is occupied by a patient, a physician shall be on call within one half (1/2) hour].~~
- (7) A **critical access**~~[rural primary care]~~ hospital shall have a ~~[written]~~ **quality assessment and performance improvement program and procedures for review of utilization of services**~~[assurance program. Quality assurance may be provided through a contractual arrangement].~~
- (8) A **critical access**~~[rural primary care]~~ hospital shall have written contracts assuring the following linkages:
- (a) Secondary and tertiary hospital referral services which shall provide for the transfer of a patient to the appropriate level of care and the transfer of patients to the **critical access**~~[rural primary care]~~ hospital for recuperative care;
 - (b) Ambulance services;
 - (c) Home health services; and
 - (d) Nursing facility services if not provided on site.
- (9) **If the critical access hospital is part of a rural health network, the hospital shall have the following:**
- (a) **An agreement for patient referral and transfer, development, and use of communications systems including telemetry and electronic sharing of patient data, and emergency and nonemergency transportation; and**
 - (b) **An agreement for credentialing and quality assurance with a network hospital, peer review organization, or other appropriate and qualified entity identified in the state rural health plan**~~[An application for licensure as a rural primary care hospital together with the hospital's strategic plan shall be provided by the applicant to the Kentucky Board of Family Health Care Providers for review and recommendation to the Division for Licensure and Regulation within the Cabinet for Human Resources. The board shall review the application and plan with regard to feasibility and the appropriateness of these services which are proposed in the context of other services available or the lack thereof in the service area of the applicant].~~
- (10) The Cabinet for Human Resources shall **provide for**~~[seek a federal Medicaid waiver to permit cost based]~~ reimbursement of services provided to Medicaid recipients in a **critical access**~~[rural primary care]~~ hospital.
- (11) The Cabinet for Human Resources shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of law to the contrary, hospitals located in a hospital district pursuant to KRS 216.310 to 216.360 may offer the following services and facilities in counties contiguous to the hospital district and shall obtain a certificate of need where required:

- (1) **Home health services;**
- (2) **Rural health clinics;**
- (3) **Physician office buildings;**

- (4) *Mobile diagnostic services; and*
- (5) *Any other service or facility where there is agreement between the hospital and a provider located in a county contiguous to the hospital district to jointly develop and operate the service or facility.*

Approved April 13, 1998

CHAPTER 560

(SB 339)

AN ACT relating to unclaimed property.

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

Section 1. KRS 393.060 is amended to read as follows:

The following property held or owing by a banking or financial organization is presumed abandoned:

- (1) Any deposit (legal, beneficial, equitable, or otherwise), ***whether*** payable on demand ***or a time deposit, including a deposit that is automatically renewable***, in any bank or trust company in this state, together with the interest thereon ***and less any deductions permissible under state or federal law including but not limited to dormancy fees and service charges***, unless the owner has within seven (7) years ***or within seven (7) years of the first date of maturity, in the instance of a time deposit***:
- (a) ~~*Communicated*~~~~*Negotiated*~~ in writing ***or by other means, reflected in a contemporaneous record prepared by or on behalf of the bank or trust company***, with the bank or trust company concerning it;
- (b) Been credited with interest ~~*on the passbook or certificate of deposit*~~ on his request ***or by his action***;
- (c) Had a transfer, disposition of interest, or other transaction noted of record in the books or records of the bank or trust company; ~~*or*~~
- (d) Increased or decreased the amount of the deposit; ***or***
- (e) ***Has not received a regularly mailed statement of account or other notification or communication, mailed by the bank or trust company. Mailings shall be considered not received if returned to the bank or trust company marked undeliverable by the United States Postal Service or other provider of delivery services. A mailing shall be considered regularly mailed if it is of the type sent to all owners of a certain category of deposit and is mailed no less than annually***;
- (2) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that with the exception of traveler's checks has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks that has been outstanding for more than fifteen (15) years from the date of its issuance unless the owner has within seven (7) years or within fifteen (15) years in the case of traveler's checks corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization;
- (3) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven (7) years from the date on which the lease or rental period expired.

Section 2. KRS 393.280 is amended to read as follows:

- (1) The department, through its employees, may ***at reasonable times and upon reasonable notice*** examine all ***relevant*** records of any person ***except any banking organization or financial organization*** where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter ***during the preceding reporting period. Records shall be considered relevant to the examination of the preceding reporting period if they document the period necessary, for that type of property, to establish presumed abandonment.***

- (2) *The Department of Financial Institutions may at reasonable times and upon reasonable notice examine all relevant records of any banking organization or financial organization if there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period.*
- (3) *Documents and working papers obtained or compiled by the department or the Department of Financial Institutions in the course of conducting an examination are confidential and are not open records under KRS 61.870 to 61.884.*
- (4) The State Treasurer may promulgate any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any regular employee of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

Section 3. KRS 393.130 is amended to read as follows:

- (1) Upon the payment or delivery of abandoned property to the department, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the department under this chapter is relieved of all liability ~~to the extent of the value of the property so paid or delivered for any claim~~ which then exists or which thereafter may arise or be made in respect to the property.
- (2) Any holder of ~~property~~ ~~deposits or any life insurance company~~ who has paid moneys to the department pursuant to this chapter ~~may~~ ~~shall~~ make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder or company, *without imposing a fee or other charge. The department may accept a holder's affidavit as sufficient proof of the holder's right to recover money under this section.*
- (3) Notwithstanding the provisions of KRS 393.140, posting or advertising is not required in the event payment is made to persons entitled thereto by holders of deposits of life insurance companies in compliance with this section. The claim shall be paid without deduction for the cost of advertising or services provided in KRS 393.115.
- (4) *Upon payment or delivery of property presumed abandoned, other than money, by a holder to the department in accordance with this chapter, any person appearing entitled thereto shall receive from the department, in addition to proceeds from the liquidation or conversion of the property, any income or gain realized or accruing to the property at or before the liquidation or conversion of the same.*
- (5) *Property that is held in an interest-bearing demand, savings, or time deposit shall, from the time that it is presumed abandoned in accordance with this chapter, be placed by the holder in an interest-bearing account made assignable to the department. The department, through its employees, may examine the records relevant to the establishment and maintenance of an interest bearing account in accordance with Section 2 of this Act. Upon demand and proper proof by a person appearing entitled to payment of property or portions of property so deposited, the holder may withdraw the property and any accrued interest for payment to the person entitled thereto. Property so deposited and not claimed by a person appearing properly entitled to receipt shall be paid, with accrued interest, to the department ten (10) years after it is presumed abandoned or upon establishment of actual abandonment, whichever occurs first.*
- (6) *Property removed from a safe deposit box or other safekeeping depository is received by the department subject to the holder's right to be reimbursed for the cost of opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid or other charges. The department shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the department in selling the property.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

- (1) *An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date that the property was presumed abandoned and extending to a time that is twenty-four (24) months after the date that the property is paid or delivered to the department. This subsection shall not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.*
- (2) *An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property and that is not in violation of subsection (1) of this section, is enforceable only if:*

- (a) *The agreement is in writing;*
 - (b) *The agreement provides that the fee or compensation agreed upon is an amount not more than ten percent (10%) of the value of the property collected;*
 - (c) *The agreement clearly sets forth the nature of the property and the services to be rendered;*
 - (d) *The agreement is signed by the apparent owner; and*
 - (e) *The agreement states the value of the property before and after the fee or other compensation has been deducted.*
- (3) *An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.*
- (4) *This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.*
- (5) *An advertisement, a written communication, or an agreement concerning the location, delivery, recover, or assistance in the recovery of property reported under this chapter shall contain a provision stating that, by law, any contract provision requiring the payment of a fee for finding property that has been held by the administrator for less than twenty-four (24) months is void and not enforceable, and that fees are limited to an amount not more than ten percent (10%) of the value of the property collected.*

Section 5. KRS 393.092 is amended to read as follows:

If specific property which is subject to the provisions of KRS 393.060, 393.064, 393.066, ~~393.070~~ and 393.090 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

- (1) It may be claimed as abandoned or escheated under the laws of such other state; and
- (2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

Section 6. KRS 393.110 is amended to read as follows:

- (1) *A holder of property presumed abandoned shall make an annual report to the department concerning the property. The report shall be filed on or before November 1 of each year and shall cover the twelve (12) months ending on July 1 of that year. All property so reported shall be turned over by November 1 to the department. The report shall be verified and* ~~Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the department with respect to the property annually as of July 1. The report shall be filed in the office of the department on or before August 1 of each year for the preceding July 1. The report~~ shall include:
- (a) Except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of one hundred dollars (\$100) or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the records of the life insurance corporation;
 - (b) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under one hundred dollars (\$100) each may be reported in the aggregate. The holder of abandoned property shall maintain its records for a period of five (5) years from the date of its report for items reported in the aggregate. If the owner of property reported in the aggregate makes a valid claim within five (5) years, the holder shall refund the property and deduct the amount refunded from the next report due to the department;
 - (c) The date when the property became payable, demandable, or returnable, and the date of the last known transaction with the owner with respect to the property if readily available; and

- (d) Any other information which the department prescribes by administrative regulations necessary for the administration of this chapter. The report shall be made in duplicate; the original shall be retained by the department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days this copy on the courthouse door or the courthouse bulletin board, and also to publish the copy pursuant to KRS Chapter 424; except the sheriff shall not be required to publish any item with a fair cash value of one hundred dollars (\$100) or less. The list shall be published within thirty (30) days of its receipt by the sheriff and this publication shall constitute compliance with the requirements of KRS Chapter 424. The cost of the publication shall be paid by the state. The sheriff shall immediately certify in writing to the department the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and the posting and publishing shall be constructive notice to all interested parties.
- (2) ***The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report, stating that the holder is in possession of the property subject to this section***~~[Within sixty (60) days after the receipt of the report required by subsection (1) of this section, the department shall mail notice to each person having an address listed in the report who appears to be entitled to property presumed abandoned under this chapter];~~ except the ***holder***~~[department]~~ shall not be required to mail a notice to any ***apparent owner***~~[person whose name appears on the abandoned property list]~~ where the fair cash value of the property is one hundred dollars (\$100) or less. The notice shall contain:
- (a) A statement that according to a report filed with the department properties are being held to which the addressee appears entitled;
 - (b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and
 - (c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to whom all further claims must be directed.
- (3) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, by ***November 1***~~[January 1]~~ of each year, turn over to the department all property so reported; but if the person making the report or the owner of the property shall certify to the department that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall report the existence of any fact or circumstance which has a substantial tendency to rebut the presumption, then, the person reporting or holding the property shall not be required to turn the property over to the department except on order of court. If a person files an action in court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding the property shall be under no duty while the action is pending to turn the property over to the department, but shall have the duty of notifying the department of the pendency of the action.
- (4) The person reporting or holding the property or any claimant of it shall always have the right to a judicial determination of his rights under this chapter, and nothing in this chapter shall be construed otherwise. The Commonwealth may institute an action to recover the property presumed abandoned, whether it has been reported or not, and may include in one (1) petition all the property within the jurisdiction of the court in which the action is brought if the property of different persons is set out in separate paragraphs.

Section 7. KRS 393.140 is amended to read as follows:

- (1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five (5) years after the judgment, file his claim to the property with the department.
- (2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee, or other person entitled under the laws of this state relating to wills, descent, and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

~~{(3) Any claimant that is an heir or a relative to the original owner shall, within fifteen (15) days after filing any claim permitted under this section in excess of one hundred dollars (\$100), publish notice of the claim pursuant to KRS Chapter 424 in the county in which the property was held before being transferred to the state. If the claim is for one hundred dollars (\$100) or less, the claimant shall post at the courthouse door and three (3) other conspicuous places in that county, and shall file proof of publication or posted notice with the department. No claim shall be allowed until fifteen (15) days after proof of the notice is received by the department.}~~

SECTION 8. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this section, the department, within three (3) years of the receipt of abandoned property, may sell it to the highest bidder at a public sale at a location in the state which, in the judgment of the department, affords the most favorable market for the property. The department may decline the highest bid and reoffer the property for sale if the department considers the bid to be insufficient. The department need not offer the property for sale if the department considers that the probable cost of sale will exceed the proceeds of the sale. At least three (3) weeks prior to a sale conducted under this section, the department shall publish a notice of the sale in a newspaper of general circulation in the county in which the property is to be sold.*
- (2) *Securities listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the department. If securities are sold by the department before the expiration of three (3) years after their delivery to the department, a person making a claim under this chapter before the end of the three (3) year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this chapter after the expiration of the three (3) year period is entitled to receive the securities delivered to the department by the holder, if they still remain in the custody of the department, or the net proceeds received from the sale, and is not entitled to receive any appreciation in the value of the property occurring after the delivery to the department, except in the case of intentional misconduct or malfeasance by the department.*
- (3) *A purchaser of property at a sale conducted by the department pursuant to this chapter takes property free of all claims of the owner or previous holder and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.*

Section 9. The following KRS sections are repealed:

393.025 Owner of abandoned property loses income or increments accruing thereafter.

393.070 Deposits not payable on demand -- When presumed abandoned.

Approved April 13, 1998

CHAPTER 561

(SB 351)

AN ACT relating to pharmaceutical services for Medicaid.

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

SECTION 1. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in Sections 1 to 6 of this Act, "available" means the calendar date when a new drug is first covered on a statewide basis through normal distribution channels for the Medical Assistance Program patients in the Commonwealth.*
- (2) *As used in Sections 1 to 6 this Act, "commissioner" means the commissioner of the Department for Medicaid Services.*
- (3) *As used in Sections 1 to 6 this Act, "new drug" means any entity that is marketed under a product licensing application, new drug application, or a supplement to a new drug application, and prescribed by a health care provider with prescribing authority for a medically accepted indication, except those drugs or classes of drugs identified in 42 U.S.C. section 1396r-8(d)(2), as amended, and that is any of the following:*

- (a) *Any new chemical or molecular entity;*
- (b) *Any new dosage form of an existing chemical or molecular entity;*
- (c) *Any combination of an existing chemical or molecular entity created for a distinct therapeutic purpose; or*
- (d) *Any new indication for an existing chemical or molecular entity approved by the Federal Food and Drug Administration.*

SECTION 2. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *No prior authorization shall be required for reimbursement of any claim involving any Medicaid-covered new drug that is available after the effective date of this Act, for a period of at least twelve (12) months, during which time the Drug Management Review Advisory Board may review the product.*
- (2) *The Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A for the drug submission program. Prior to implementation of the administrative regulations, the Drug Management Review Advisory Board shall review the guidelines.*
- (3) *The Department for Medicaid Services shall, within twenty-four (24) months of the effective date of this Act, analyze drug class reviews of all current drugs requiring prior authorization, and shall continue requiring prior authorization by using drug class reviews, safety, utilization factors, and unusual or extreme cost drivers having inappropriate economic impact on the Department for Medicaid Services, until the review criteria are promulgated by administrative regulations according to KRS Chapter 13A, and pursuant to subsection (2) of Section 3 of this Act. At least fifty percent (50%) of class reviews shall be completed within twelve (12) months of the effective date of this Act.*

SECTION 3. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *The Drug Management Review Advisory Board shall coordinate the use of utilization data to identify appropriate use of pharmaceuticals and determine any need for educational interventions. Prospective drug utilization review and retrospective drug utilization review measures shall be utilized to monitor the success of the interventions. Interventions shall be evaluated for a period of not less than six (6) months.*
- (2) *The Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A setting forth the procedures by which all products are placed in the prior authorization drug file.*
- (3) *The commissioner may prior authorize any product that the commissioner determines may pose any significant safety issues or impose an inappropriate financial burden upon the Medicaid program. Placement of a drug on prior authorization by the commissioner shall initiate a review by the Drug Management Review Advisory Board.*
- (4) *Drug reviews related to prior authorization decisions shall not take longer than ninety (90) days.*
- (5) *Implementation and performance of the duties of this section and Sections 1, 2, and 4 of this Act and any drug review shall be performed by the staff of the Cabinet for Human Resources, or its contractors.*

SECTION 4. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *A Drug Management Review Advisory Board is hereby established and attached to the Cabinet for Human Resources for administrative purposes. The board shall consist of sixteen (16) members to be appointed by the secretary of the Cabinet for Human Resources and shall be constituted as follows:*
 - (a) *Five (5) members shall be physicians, one (1) each from the fields of family medicine, internal medicine, pediatrics, and geriatrics. The fifth physician appointed shall be from any other recognized field of medicine. Two (2) of the above indicated physicians shall be representatives of the two (2) current medical schools in the Commonwealth, the University of Kentucky and the University of Louisville Schools of Medicine;*
 - (b) *Five (5) members shall be pharmacists, at least one (1) of whom shall be designated as the representative of the University of Kentucky College of Pharmacy;*
 - (c) *Two (2) members shall be advanced registered nurse practitioners;*

- (d) *One (1) member shall be an optometrist and one (1) member shall be a physician's assistant;*
- (e) *One (1) member shall be a representative of the Cabinet for Human Resources designated to serve on an ex officio basis; and*
- (f) *One (1) nonvoting member shall be a member of the pharmaceutical manufacturing industry.*
- (2) (a) *The physician members of the board shall be appointed from a list of three (3) qualified physicians for each vacancy submitted by the Kentucky Medical Association.*
- (b) *The pharmacist members of the board shall be appointed from a list of three (3) qualified pharmacists for each vacancy submitted by the Kentucky Pharmacy Association.*
- (c) *The advanced registered nurse practitioner members of the board shall be appointed from a list of three (3) for each vacancy, submitted by the Kentucky Nurses Association.*
- (d) *The optometrist shall be appointed from a list of three (3) qualified optometrists submitted by the Kentucky Optometric Association.*
- (e) *The physician's assistant shall be appointed from a list of three (3) qualified physicians assistants submitted by the Kentucky Board of Medical Licensure.*
- (3) *The secretary may appoint one (1) nonvoting industry representative to be selected from a list of three (3) members nominated from the Pharmaceutical Research and Manufacturers of America. The secretary may request additional names for appointments and current members may be considered for reappointment. All members of the board shall be licensed and actively practicing in their respective professions in the Commonwealth and shall have knowledge or expertise in at least one (1) of the following areas:*
 - (a) *The clinically appropriate prescribing, utilization, and evaluation of pharmaceuticals;*
 - (b) *The clinically appropriate dispensing and monitoring of pharmaceuticals;*
 - (c) *Drug utilization review, pharmaco-economic and pharmaco-epidemiological evaluation and intervention, pharmacotherapeutic intervention methods in disease management using treatment algorithms, critical paths, and other measures that have been well defined and validated; and*
 - (d) *Medical quality assurance.*
- (4) *Three (3) of the initially appointed physician members, three (3) of the initially appointed pharmacist members, and one (1) of the initially appointed advanced registered nurse practitioners shall be appointed for a term of one (1) year. The remaining initial members shall be appointed for a term of two (2) years. Subsequent appointments shall be for a term of two (2) years. Members shall serve for no more than three (3) consecutive terms. The board shall designate a chair and vice chair. A member shall serve no more than two (2) consecutive terms as chair.*
- (5) *The first meeting of the board shall take place within thirty (30) days of the appointment of all the members of the board.*
- (6) *The board shall meet at least quarterly, or upon the call of the chair or the commissioner. A majority of the voting members of the board shall constitute a quorum. All meetings shall be conducted in accordance with the provisions of the Open Meetings Act, KRS 61.805-61.850, and all balloting shall take place by roll call vote.*
- (7) *Actions of the board shall require a majority vote of the members present or participating through distance communication technology. No member may vote on a matter where a conflict of interest may exist. The chair may vote on any matter before the board unless a conflict of interest exists.*

SECTION 5. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *The Drug Management Review Advisory Board shall have at least the following duties and responsibilities:*
 - (a) *Review and make recommendations to the commissioner or designee on predetermined prospective drug use review standards submitted to the board by the Department for Medicaid Services or its contractor;*
 - (b) *Evaluate the use of the predetermined prospective drug use review standards and make recommendations to the commissioner or the commissioner's designee concerning modification or elimination of existing standards and the need for additional standards;*

- (c) *Make recommendations to the commissioner or the commissioner's designee concerning guidelines governing written predetermined standards that pharmacies must use in conducting prospective drug use review if they do not use approved software;*
 - (d) *Oversee the retrospective drug use review contract and incorporate the results into predetermined retrospective drug use review standards;*
 - (e) *Review and make recommendations to the commissioner or the commissioner's designee on predetermined retrospective drug use standards submitted to the board by the Department for Medicaid Services;*
 - (f) *Make recommendations to the commissioner or the commissioner's designee concerning the modification or elimination of existing predetermined retrospective drug use review standards and the need for additional standards;*
 - (g) *Identify and develop educational topics on common drug therapy problems if needed to improve prescribing or dispensing practices of practitioners;*
 - (h) *Make recommendations to the commissioner or the commissioner's designee concerning which mix of interventions would most effectively lead to an improvement in the quality of drug therapy;*
 - (i) *Conduct periodic re-evaluations to determine the effectiveness of educational effort and, if necessary, modify the interventions;*
 - (j) *Establish standards for the identification of suspected fraud and abuse;*
 - (k) *Prepare and submit to the commissioner an annual drug use review report that contains the following information:*
 - 1. *A description of the nature and scope of the retrospective drug utilization program including the identity of the contractor, the frequency of screening of claims data and the criteria and standards used, along with new or revised copies of the clinical criteria, and in subsequent years, a list of revised criteria and deleted criteria;*
 - 2. *A summary of nonpatient and provider specific educational activities including information on the use of each type of patient and provider specific intervention that indicates the guidelines for use and frequency of use by type of intervention and the effectiveness of each type of intervention on changes in prescribing or dispensing practices;*
 - 3. *An evaluation of the adequacy of prospective drug use review database software; and*
 - 4. *Details on policy guidelines adopted by the board pertaining to written criteria that pharmacies may use if they do not use a computer prospective drug utilization review database;*
 - (l) *Provide advice to the Department for Medicaid Services regarding outpatient drug coverage and the delivery of quality care in the most cost-effective manner possible, giving consideration to the therapeutic equivalence and the cost, including rebate, of drugs and within the context of disease management. In advising the department, the board may consider the effectiveness of all interventions used to manage a particular disease over time, the stage and intensity of the disease, and the economic, clinical, and patient-prospective outcomes, including quality of life. Rebate information shall be considered during executive sessions and shall assure that confidential rebate information is protected in accordance with federal and state law; and*
 - (m) *Recommend to the commissioner the criteria for publication pursuant to KRS Chapter 13A relating to the evaluation and consideration of new products with input from affected parties, including the pharmaceutical industry.*
- (2) *The board shall function in accordance with the Kentucky Open Meetings Law and the Kentucky Open Records Act. The board may designate subcommittees to address specific issues and to report findings to the board. In conducting its business, the board shall utilize distance communication technologies whenever possible.*
- (3) *Clerical and administrative support shall be provided the board through the Cabinet for Human Resources or by contract.*

SECTION 6. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *Any recommendation by the board is advisory to the commissioner.*
- (2) *Any interested party may request an opportunity to make a presentation or argument to the board on any item under consideration by the board. The Cabinet for Human Resources shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish requirements for presentations before the board.*
- (3) *Any interested party who is aggrieved by a recommendation of the board to the commissioner or his designee may submit written exceptions consisting of only new information that was not available to be presented at the time of the board's consideration of the matter. These written exceptions shall be submitted within ten (10) days of the recommendation. After the time for filing exceptions has expired, the commissioner or the commissioner's designee shall consider all exceptions filed in a timely manner prior to acting upon the recommendation of the board. If the deadline for filing written exceptions falls on a Saturday, Sunday, or a state holiday, the exceptions may be filed the following day.*
- (4) *In making a final decision on any recommendation of the board, the commissioner may seek additional and clarifying information from any source. Any additional information submitted to the commissioner shall be made a part of the administrative record supporting the final decision.*
- (5) *An appeal from a decision of the commissioner may be made in accordance with KRS Chapter 13B by a manufacturer of the product. Unless held in abeyance or otherwise addressed by the hearing officer, the decision of the commissioner stands until final disposition of the issue.*

Section 7. KRS 205.561 is amended to read as follows:

The cabinet shall submit an annual report to the Governor and the Legislative Research Commission on the dispensing of prescription medications to persons eligible under KRS 205.560, on or before September 1 of the year. Such report shall include an estimate of the current cost to pharmacies, including associated administrative costs, of dispensing prescription medications to eligible recipients under the provisions of KRS 205.560, the current level of dispensing fee provided by the cabinet, and an estimate of additional revenues required to adequately adjust reimbursement to cover costs for such pharmacies. ***The report shall also include current data on the most utilized and abused drugs in Medicaid, a determination of factors causing high drug costs and drug usage rates of Medicaid recipients, objectives, and timelines for cost containment in the Medicaid drug program, comparative data from other states, and cost effectiveness of the drug formulary and prior authorization process. The annual report shall be developed with the advice of the Drug Management Review Board created under Section 4 of this Act.***

Approved April 13, 1998

CHAPTER 562

(SB 364)

AN ACT relating to environmental protection.

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

Section 1. KRS 224.01-400 is amended to read as follows:

- (1) As used in this section:
 - (a) "Hazardous substance" means any substance or combination of substances including wastes of a solid, liquid, gaseous, or semi-solid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment. The substances may include but are not limited to those which are, according to criteria established by the cabinet, toxic, corrosive, ignitable, irritants, strong sensitizers, or explosive, except that the term "hazardous substance" shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under this section, and shall not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas;

- (b) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing hazardous substances, pollutants, or contaminants into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant, but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; the release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of the Act, or any release of source by-product, or special nuclear material from any processing site designated under Sections 102(a)(1) or 302(a) of the Uranium Mill Tailing Radiation Control Act of 1978; and the normal application of fertilizer;
 - (c) "Site" means any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage containers, motor vehicles, rolling stock, or aircraft, or any other place or area where a release or threatened release has occurred. The term shall not include any consumer product in consumer use;
 - (d) "Environmental emergency" means any release or threatened release of materials into the environment in such quantities or concentrations as cause or threaten to cause an imminent and substantial danger to human health or the environment; the term includes, but is not limited to, discharges of oil and hazardous substances prohibited by Section 311(b)(3) of the Federal Clean Water Act - (Public Law 92-500), as amended;
 - (e) "Threatened release" means a circumstance which presents a substantial threat of a release;
 - (f) "Pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term "pollutant or contaminant" shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under this section and shall not include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas);
 - (g) "Environment" means the waters of the Commonwealth, land surface, surface, and subsurface soils and strata, or ambient air within the Commonwealth or under the jurisdiction of the Commonwealth;
 - (h) "Financial institution" means, for purposes of subsections (26) and (27) of this section, the following:
 - 1. A bank or trust company defined by KRS Chapter 287;
 - 2. A savings and loan association defined by KRS Chapter 289;
 - 3. A credit union defined by KRS Chapter 290;
 - 4. A mortgage loan company or loan broker defined by KRS Chapter 294;
 - 5. An insurer defined by KRS Chapter 304; and
 - 6. Any other financial institution engaged in the business of lending money, the lending operations of which are subject to state or federal regulation; and
 - (i) "Fiduciary" means, for purposes of subsections (26) and (27) of this section, a fiduciary as defined by KRS Chapter 386.
- (2) The cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A designating individual hazardous substances, pollutants, or contaminants; establishing their respective reportable quantities; and establishing their respective release notification requirements, which differ from those designated or established in subsections (3) to (9) of this section, if necessary to:
- (a) Protect human health and the environment;
 - (b) Maintain consistency with valid scientific development; or

- (c) Maintain consistency with newly adopted federal regulations.
- (3) The hazardous substances for which release notification is required shall be those hazardous substances designated in 40 C.F.R. Part 302 under the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended; those extremely hazardous substances designated in 40 C.F.R. Part 355 under Title III of the Superfund Amendments and Reauthorization Act of 1986; nerve and blister agents designated under KRS 224.50-130(2); and any hazardous substances designated by the cabinet in administrative regulations promulgated pursuant to subsection (2) of this section.
 - (4) The reportable quantity for a release of a hazardous substance designated in 40 C.F.R. Part 302 under the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, shall be the quantity designated in 40 C.F.R. Part 302. The reportable quantity for a release of an extremely hazardous substance designated in 40 C.F.R. Part 355 under Title III of the Superfund Amendments and Reauthorization Act of 1986 shall be the quantity designated in 40 C.F.R. Part 355. The reportable quantity for a release of a nerve or blister agent designated under KRS 224.50-130(2) shall be any quantity. The cabinet may establish reportable quantities for hazardous substances in administrative regulations promulgated pursuant to subsection (2) of this section which differ from those established in this subsection. The reportable quantity for any hazardous substance designated by the cabinet in administrative regulations promulgated pursuant to subsection (2) of this section shall be the reportable quantity established by the cabinet.
 - (5) The release notification requirements for a release of a hazardous substance designated in 40 C.F.R. Part 302 under the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, shall be the notification requirements established in 40 C.F.R. Part 302. The release notification requirements for a release of an extremely hazardous substance designated in 40 C.F.R. Part 355 under Title III of the Superfund Amendments and Reauthorization Act of 1986 shall be the notification requirements established in 40 C.F.R. Part 355. Whenever notification of a release or threatened release of a hazardous substance is required pursuant to this section, any person possessing or controlling the hazardous substance shall immediately notify the cabinet's twenty-four (24) hour environmental response line. The cabinet may establish release notification requirements by administrative regulation promulgated pursuant to subsection (2) of this section which differ from those established in this subsection. The release notification requirements for any hazardous substance designated by the cabinet in administrative regulations promulgated pursuant to subsection (2) of this section shall be the release notification requirements established in the cabinet's administrative regulations.
 - (6) Any person possessing or controlling a pollutant or contaminant for which a reportable quantity has been established by administrative regulation promulgated pursuant to subsection (2) of this section shall immediately notify the cabinet's twenty-four (24) hour environmental response line, as soon as that person has knowledge of any release or threatened release, other than a permitted release or application of a pesticide in accordance with the manufacturer's instructions, of a pollutant or contaminant to the environment in a quantity equal to or exceeding the reportable quantity. In the notice to be made to the cabinet, the person shall state, at a minimum, the location of the release or threatened release, the material released or threatened to be released, and the approximate quantity and concentration of the release or threatened release.
 - (7) Any person possessing or controlling a pollutant or contaminant shall, as soon as that person has knowledge of any release or threatened release of a pollutant or contaminant from a site to the environment in a quantity which may present an imminent or substantial danger to the public health or welfare, immediately notify the cabinet's twenty-four (24) hour environmental response line. In the notice to be made to the cabinet, the person shall state, at a minimum, the location of the release or threatened release, the material released or threatened to be released, and the approximate quantity and concentration of the release or threatened release. If a person possessing or controlling a pollutant or contaminant for which a reportable quantity has not been established in administrative regulations promulgated pursuant to subsection (2) of the section fails to report a release or threatened release because of a good-faith belief that the release did not present an imminent or substantial danger to the public health or welfare, that person shall not be liable for a violation of the release notification requirements of this section. In determining whether a person has acted in good faith, the cabinet shall consider the circumstances surrounding the release, including whether the release was a permitted release or the application of a pesticide in accordance with the manufacturer's instructions.
 - (8) The cabinet may require the person subject to the release notification requirements of subsections (5) to (9) of this section to provide a written report on the release or threatened release. This report shall be submitted to the environmental response section of the cabinet within seven (7) days of the cabinet's demand for the report. The report shall identify the following:

- (a) The precise location of the release or threatened release;
 - (b) The name, address, and phone number of the person possessing or controlling the material at the time of the release or threatened release;
 - (c) The name, address, and phone number of persons having actual knowledge of the facts surrounding the release or threatened release;
 - (d) The specific pollutant or contaminant or hazardous substance released or threatened to be released;
 - (e) The concentration and quantity of the pollutant or contaminant or hazardous substance in the release or threatened release;
 - (f) The circumstances and cause of the release or threatened release;
 - (g) Efforts taken by the person to control or mitigate the release or threatened release;
 - (h) To the extent known, the harmful effects of the release or threatened release;
 - (i) The transportation characteristics of the medium or matrix into which the material was released or threatened to be released;
 - (j) Any present or proposed remedial action by the person at the site of the release or threatened release;
 - (k) The name, address, and phone number of the person who can be contacted for additional information concerning the release or threatened release; and
 - (l) Any other information that may facilitate remediation of the site.
- (9) A person possessing or controlling a hazardous substance, pollutant, or contaminant shall immediately notify the cabinet pursuant to subsection (5) of this section when release notification, including notification of a continuous release reported under the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, is provided to the United States Environmental Protection Agency. Within seven (7) days of providing any written notification to the United States Environmental Protection Agency, the person shall submit to the cabinet a copy of the release notification submitted to the United States Environmental Protection Agency. The cabinet shall not require additional information pursuant to subsection (5) of this section if the release notification is in compliance with this subsection, unless a written report is required under subsection (8) of this section or the release or threatened release constitutes an environmental emergency.
- (10) Any person in charge of a vessel or site from which oil is discharged in a harmful quantity as defined by 40 C.F.R. Part 110 in contravention of Section 311 of the Federal Clean Water Act shall immediately notify the cabinet's twenty-four (24) hour environmental response line. In the notice to be made to the cabinet, the person shall state, at a minimum, the location of the discharge, the material discharged, and the approximate quantity and concentration of the discharge.
- (11) Any person possessing or controlling petroleum or a petroleum product as defined by KRS 224.60-115(15) shall, as soon as that person has knowledge of any release or threatened release, other than a permitted release or application of a pesticide in accordance with the manufacturer's instructions, in an amount of twenty-five (25) gallons or more in a twenty-four (24) hour period, except for diesel fuel for which the reportable quantity is seventy-five (75) gallons or more in a twenty-four (24) hour period, or in contravention of Section 311 of the Federal Clean Water Act, immediately notify the cabinet's twenty-four (24) hour environmental response line. In the notice to be made to the cabinet, the person shall state, at a minimum, the location of the release or threatened release, the material released or threatened to be released, and the approximate quantity and concentration of the release or threatened release.
- (12) The cabinet may require the person subject to subsections (10) and (11) of this section to provide a written report on the discharge or release. This report shall be submitted to the environmental response section of the cabinet within seven (7) days of the cabinet's demand for the report. The report shall identify the following:
- (a) The precise location of the discharge or release;
 - (b) The name, address, and phone number of the person possessing or controlling the material at the time of the discharge or release;

- (c) The name, address, and phone number of persons having actual knowledge of the facts surrounding the discharge or release;
 - (d) The concentration and quantity of the discharge or release;
 - (e) The circumstances and cause of the discharge or release;
 - (f) Efforts taken by the person to control or mitigate the discharge or release;
 - (g) To the extent known, the harmful effects of the discharge or release;
 - (h) The transportation characteristics of the medium or matrix into which the material was discharged or released;
 - (i) Any present or proposed remedial action by the person at the site of the discharge or release;
 - (j) The name, address, and phone number of the person who can be contacted for additional information concerning the discharge or release; and
 - (k) Any other information that may facilitate an emergency spill response, or remediation of the site.
- (13) Timely notification received under the release notification requirements of this section or information obtained in a notification received under the release notification requirements of this section may not be used against the person making the notification in any criminal proceeding, except in a prosecution for submitting a false or untimely notification to the cabinet. Notification received by the cabinet of a threatened release or discharge shall not be deemed a separate incident.
- (14) The cabinet shall be the lead agency for hazardous substance, pollutant, or contaminant emergency spill response and, after consultation with other affected federal, state, and local agencies and private organizations, shall establish a contingency plan for undertaking emergency actions in response to the release of a hazardous substance, pollutant, or contaminant. The contingency plan shall:
- (a) Provide for efficient, coordinated, and effective action to minimize damage to the air, land, and waters of the Commonwealth caused by the release or threatened release of hazardous substances, pollutants, or contaminants;
 - (b) Include containment, cleanup, and disposal procedures;
 - (c) Provide for remediation or restoration of the lands or waters affected consistent with this section;
 - (d) Assign duties and responsibilities among state cabinets and agencies in coordination with federal and local agencies;
 - (e) Provide for the identification, procurement, maintenance, and storage of necessary equipment and supplies;
 - (f) Provide for designation of persons trained, prepared, and available to provide the necessary services to carry out the plan; and
 - (g) Establish procedures and techniques for identifying, containing, removing, and disposing of hazardous substances released or being released.
- (15) The cabinet shall have the authority, power, and duty to:
- (a) Recover from persons liable therefor for the benefit of the hazardous waste management fund, the cabinet's actual and necessary costs expended in response to a threatened release, an environmental emergency, or a release of a hazardous substance that is reportable under this section. Except as provided in paragraph (b) of this subsection, this section is intended solely to recognize the existence of a cause of action on behalf of the cabinet and is not intended to expand or contract the bases of liability, the elements of proof, or the amount of liability of any person;
 - (b) Notwithstanding paragraph (a) of this subsection, recover its costs incurred in the removal of oil or hazardous substances discharged in violation of Section 311(b)(3) of the Federal Clean Water Act from any person liable therefor under Section 311 of the Federal Clean Water Act subject to limitations of liability and defenses provided in the section. The limitations of liability shall apply to the total of state and federal expenses; and

- (c) In every case where action required under this section is not being adequately taken or the identity of the person responsible for the release or threatened release is unknown, the cabinet or its agent may contain, remove, or dispose of the hazardous substance, pollutant, or contaminant or take any other action consistent with this section, including, but not limited to, issuance of an emergency order as provided in KRS 224.10-410 to the person possessing, controlling, or responsible for the release or threatened release as necessary for the protection of the environment and public health, safety, or welfare. ~~§~~
- (16) Any duly authorized officer, employee, or agent of the cabinet may upon notice to the owner or occupant enter any property, premises, or place at any time for the purposes of this section, if the entry is necessary to prevent damage to the air, land, or waters of the Commonwealth. Notice to the owner or occupant shall not be required if the delay attendant upon providing it will result in imminent risk to public health or safety.
- (17) The cabinet shall prepare and annually update an inventory of all sites in the Commonwealth at which there is or has been an environmental emergency or a release of a hazardous substance, pollutant, or contaminant. In preparing the inventory, the cabinet shall determine, based on information available to the cabinet, the impact of each site on public health and the environment and identify the relative priority for restoration or remedial action. Upon determining that no further restoration or remedial action is necessary, the cabinet shall so designate the site on the inventory. A separate designation of sites where a remedial action involving on-site containment or treatment has been performed and other sites where restoration of the environment has not been achieved shall be maintained. A review of environmental conditions at sites remediated by on-site containment or treatment and other sites where restoration or remediation of the environment is not achieved shall be conducted by the cabinet every five (5) years to determine whether additional action is necessary to protect human health or the environment.
- (18) Any person possessing or controlling a hazardous substance, pollutant, or contaminant which is released to the environment, or any person who caused a release to the environment of a hazardous substance, pollutant, or contaminant, shall characterize the extent of the release as necessary to determine the effect of the release on the environment, and shall take actions necessary to correct the effect of the release on the environment. Any person required to take action under this subsection shall have the following options:
- (a) Demonstrating that no action is necessary to protect human health, safety, and the environment;
 - (b) Managing the release in a manner that controls and minimizes the harmful effects of the release and protects human health, safety, and the environment, *provided that the management may include any existing or proposed engineering or institutional controls and the maintenance of those controls*;
 - (c) Restoring the environment through the removal of the hazardous substance, pollutant, or contaminant;
or
 - (d) Any combination of paragraphs (a) to (c) of this subsection.
- (19) Unless otherwise required by the cabinet, a person required to characterize the extent of a release and correct the effect of the release on the environment under subsection (18) of this section may take those actions without making the demonstrations to the cabinet required by subsections (18) to (21) of this section, if:
- (a) The release is less than the reportable quantity of a hazardous substance, pollutant, or contaminant;
 - (b) The release is of a pollutant or contaminant for which a reportable quantity has not been established by administrative regulation promulgated pursuant to subsection (2) of this section, if the release does not present an imminent or substantial danger to the public health or welfare; or
 - (c) The release is authorized by a state or federal permit.
- (20) If a person required to take action under subsection (18) of this section demonstrates to the cabinet that, pursuant to subsection (18)(a) of this section, no action is necessary to protect human health, safety, and the environment or, pursuant to subsection (18)(b) of this section, the release will be managed in a manner that controls and minimizes the harmful effects of the release and protects human health, safety, and the environment, the cabinet shall not require restoration of the environment through the removal of the hazardous substance, pollutant, or contaminant pursuant to subsection (18)(c) of this section.
- (21) A person required to take action under subsection (18) of this section who does not restore the environment through removal of the hazardous substance, pollutant, or contaminant in accordance with subsection (18)(c) of

this section shall demonstrate to the cabinet that the remedy is protective of human health, safety, and the environment, by considering the following factors:

- (a) The characteristics of the substance, pollutant, or contaminant, including its toxicity, persistence, environmental fate and transport dynamics, bioaccumulation, biomagnification, and potential for synergistic interaction and with specific reference to the environment into which the substance, pollutant, or contaminant has been released;
 - (b) The hydrogeologic characteristics of the facility and the surrounding area;
 - (c) The proximity, quality, and current and future uses of surface water and groundwater;
 - (d) The potential effects of residual contamination of potentially impacted surface water and groundwater;
 - (e) The chronic and acute health effects and environmental consequences to terrestrial and aquatic life of exposure to the hazardous substance, pollutant, or contaminant through direct and indirect pathways;
 - (f) An exposure assessment; and
 - (g) All other available information.
- (22) A person who submits a proposal to the cabinet pursuant to subsection (18) of this section may request in writing a final determination on the proposal no sooner than thirty (30) days after its submission. When a final determination on the proposal is requested, the cabinet shall make its final determination within sixty (60) working days from the date the request is received by the cabinet. After a final determination has been made, the person requesting the final determination may request a hearing pursuant to the provisions of KRS 224.10-420. Nothing in this subsection shall relieve any person of any obligations imposed by law during an environmental emergency, nor shall it require the cabinet to approve a proposal which would violate this chapter or the administrative regulations promulgated pursuant thereto.
- (23) (a) The cabinet shall have a lien against the real and personal property of a person liable for the actual and necessary costs expended in response to a release or threatened release or an environmental emergency. The lien shall be filed with the county clerk of the county in which the property of the person is located.
- (b) If a financial institution exempted from liability by subsection (26) of this section conveys the site it has acquired, then the cabinet shall have a lien against the site for the actual and necessary costs expended in response to a release or threatened release or an environmental emergency. The lien shall be filed with the county clerk of the county in which the site is located.
- (24) Nothing in this section shall replace the financial and technical assistance available to the Commonwealth pursuant to Section 311 of the Federal Clean Water Act (Public Law 92-500) as amended, but shall be used to provide the Commonwealth with a mechanism for additional response to releases and threatened releases of hazardous substances, pollutants, or contaminants.
- (25) Defenses to liability, limitations to liability, and rights to contribution shall be determined in accordance with Sections 107(a) to (d) and 113(f)(1) of the Comprehensive Environmental Response Compensation and Liability Act, as amended, and the Federal Clean Water Act, as amended.
- (26) In addition to the defenses and limitations provided in subsection (25) of this section, a financial institution that acquired a site by foreclosure, by receiving an assignment, by deed in lieu of foreclosure, or by otherwise becoming the owner as a result of the enforcement of a mortgage, lien, or other security interest held by the financial institution, shall not be liable under this section with respect to the site, if:
- (a) The financial institution served only in an administrative, custodial, financial, or similar capacity with respect to the site before its acquisition;
 - (b) The financial institution did not control or direct the handling of the material causing the environmental emergency, or control or direct the handling of the hazardous substance, pollutant, or contaminants, at the site before its acquisition;
 - (c) The financial institution did not participate in the day-to-day management of the site before its acquisition;
 - (d) The financial institution, at the time it acquired the site, did not know and had no reason to know that a hazardous substance, pollutant, or contaminant was disposed at the site. For purposes of this paragraph, the financial institution shall have undertaken, at the time of acquisition, all appropriate inquiries into

the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. What actions constitute all appropriate inquiries shall be determined by taking into account any specialized knowledge or experience on the part of the financial institution, the relationship of the market value of the site to the value of the site if uncontaminated, commonly known or reasonably ascertainable information about the site, the obviousness of the presence or likely presence of contamination at the site, the ability to detect the contamination by appropriate inspection, and any other relevant factor;

- (e) The financial institution, when it undertakes actions to protect or preserve the value of the site, undertakes those actions in accordance with this chapter and the administrative regulations adopted pursuant thereto;
 - (f) The financial institution, its employees, agents, and contractors did not cause or contribute to an environmental emergency, or to a release or threatened release of a hazardous substance, pollutant, or contaminant; and
 - (g) The financial institution complies with the release notification requirements of subsection (9) of this section.
- (27) In addition to the defenses and limitations provided in subsection (25) of this section, a financial institution serving as a fiduciary with respect to an estate or trust, the assets of which contain a site, shall not be liable under this section with respect to the site if:
- (a) The financial institution served only in an administrative, custodial, financial, or similar capacity with respect to the site before it became a fiduciary;
 - (b) The financial institution did not control or direct the handling of the material causing the environmental emergency, or control or direct the handling of the hazardous substance, pollutant, or contaminants, at the site before it became a fiduciary;
 - (c) The financial institution did not participate in the day-to-day management of the site before it became a fiduciary;
 - (d) The financial institution, at the time it became a fiduciary, did not know and had no reason to know that a hazardous substance, pollutant, or contaminant was disposed at the site. For purposes of this paragraph, the financial institution shall have undertaken, at the time it became a fiduciary, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. What actions constitute all appropriate inquiries shall be determined by taking into account any specialized knowledge or experience on the part of the financial institution, the relationship of the market value of the site to the value of the site if uncontaminated, commonly known or reasonably ascertainable information about the site, the obviousness of the presence or likely presence of contamination at the site, the ability to detect the contamination by appropriate inspection, and any other relevant factor;
 - (e) The financial institution, when it undertakes actions to protect or preserve the value of the site, undertakes those actions in accordance with this chapter and the administrative regulations adopted pursuant thereto;
 - (f) The financial institution, its employees, agents, and contractors did not cause or contribute to an environmental emergency, or to a release or threatened release of a hazardous substance, pollutant, or contaminant; and
 - (g) The financial institution complies with the release notification requirements of subsection (9) of this section.

Approved April 13, 1998

CHAPTER 563**(SB 373)**

AN ACT relating to moneys deposited with the circuit clerk.

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

Section 1. KRS 30A.200 is amended to read as follows:

All moneys which are deposited with the clerk and which are payable to a third person, not the Commonwealth, or which may become payable to such third person as a result of court action or otherwise shall be:

- (1) Logged in the appropriate record of the clerk and the person paying or depositing the money shall be given a receipt.
- (2) Deposited daily in a bank approved as a state depository bank in a special escrow account or accounts subject to the clerk's withdrawal as required in the daily course of the clerk's business or as may be ordered by a court.
- (3) Not subject to the provisions of KRS Chapter 41 relating to the deposit of money in the State Treasury until by action of a court, such as forfeiture of a bond, the money is due and owing to the Commonwealth.
- (4) *In a criminal proceeding or in a proceeding under KRS Chapter 186 to KRS Chapter 189A, assessed a fee of five percent (5%) of the total value of the deposit, which shall be paid by the depositor at the time of making the deposit and which shall be in addition to the amount deposited. The fee shall be deposited by the clerk into a trust and agency account with the Administrative Office of the Courts and is to be used by the circuit clerk to hire additional deputy clerks and for enhancement of deputy clerk salaries to compensate for the additional duties necessitated by this section.*

Approved April 13, 1998

CHAPTER 564**(SB 376)**

AN ACT relating to underinsured motorist coverage.

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

Section 1. KRS 304.39-320 is amended to read as follows:

- (1) As used in this section, "underinsured motorist" means a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against that party for damages on account of injury due to a motor vehicle accident.
- (2) Every insurer shall make available upon request to its insureds underinsured motorist coverage, whereby subject to the terms and conditions of such coverage not inconsistent with this section the insurance company agrees to pay its own insured for such uncompensated damages as he may recover on account of injury due to a motor vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon, to the extent of the underinsurance policy limits on the vehicle of the party recovering.
- (3) *If an injured person or, in the case of death, the personal representative agrees to settle a claim with a liability insurer and its insured, and the settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an underinsured motorist claim, then written notice of the proposed settlement must be submitted by certified or registered mail to all underinsured motorist insurers that provide coverage. The underinsured motorist insurer then has a period of thirty (30) days to consent to the settlement or retention of subrogation rights. An injured person, or in the case of death, the personal representative, may agree to settle a claim with a liability insurer and its insured for less than the underinsured motorist's full liability policy limits. If an underinsured motorist insurer consents to settlement or fails to respond as required by subsection (4) of this section to the settlement request within the thirty (30) day period, the injured party may proceed to execute a full release in favor of the underinsured motorist's liability insurer and its insured and finalize the proposed settlement without prejudice to any underinsured motorist claim.*

- (4) *If an underinsured motorist insurer chooses to preserve its subrogation rights by refusing to consent to settle, the underinsured motorist insurer must, within thirty (30) days after receipt of the notice of the proposed settlement, pay to the injured party the amount of the written offer from the underinsured motorist's liability insurer. Thereafter, upon final resolution of the underinsured motorist claim, the underinsured motorist insurer is entitled to seek subrogation against the liability insurer to the extent of its limits of liability insurance, and the underinsured motorist for the amounts paid to the injured party.*
- (5) *The underinsured motorist insurer is entitled to a credit against total damages in the amount of the limits of the underinsured motorist's liability policies in all cases to which this section applies, even if the settlement with the underinsured motorist under subsection (3) of this section or the payment by the underinsured motorist insurer under subsection (4) of this section is for less than the underinsured motorist's full liability policy limits. The term "total damages" as used in this section means the full amount of damages determined to have been sustained by the injured party, regardless of the amount of underinsured motorist coverage. Nothing in this section, including any payment or credit under this subsection, reduces or affects the total amount of underinsured motorist coverage available to the injured party.*

Approved April 13, 1998

CHAPTER 565

(SB 395)

AN ACT relating to motor vehicles.

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

Section 1. KRS 186.020 is amended to read as follows:

- (1) Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with regulations issued by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days. The bill of sale or assigned title must be in the motor vehicle during this fifteen (15) day period. If the owner of a motor vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides. If the owner of a motor vehicle does not reside in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which the motor vehicle is principally operated. If the owner of a motor vehicle is other than an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of either county. The application when presented to the county clerk for registration shall be accompanied by:
- (a) A bill of sale and a manufacturer's certificate of origin if the application is for the registration of a new motor vehicle;
 - (b) The owner's registration receipt, if the motor vehicle was last registered in this state;
 - (c) A bill of sale and the previous registration receipt, if last registered in another state where the law of that state does not require the owner of a motor vehicle to obtain a certificate of title or ownership;
 - (d) A certificate of title, if last registered in another state where the law of that state requires the owner of a motor vehicle to obtain a certificate of title or ownership;
 - (e) An affidavit from an officer of a local government saying that the motor vehicle has been abandoned and that the provisions of KRS 82.630 have been complied with, for local governments which elect to use the provisions of KRS 82.600 to 82.640; and
 - (f) The application from a person who has brought a motor vehicle into the Commonwealth from another state shall be accompanied by proof that the motor vehicle is insured in compliance with KRS 304.39-080.
- (2) After that, the owner of any motor vehicle registered under KRS 186.050(1) or (2) shall register his motor vehicle on or before the date on which his certificate of registration expires. If, before operating the motor vehicle in this state, the owner registers it at some later date and pays the fee for the full year, he will be

deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet.

- (3) After that, the owner of any commercial vehicle registered under KRS 186.050(3) to (14) shall register his commercial vehicle on or before April 1 of each year. If, before operating a commercial vehicle in this state, the owner registers it at some later date and pays the required fee, he will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet.
- (4) The application and documents presented therewith, including the sheriff's certificate of inspection, shall be affixed to the Transportation Cabinet copy of the certificate of title or registration and sent to the Transportation Cabinet by the clerk.
- (5) At least ~~thirty (30)~~ **forty-five (45)** days prior to the expiration of registration of any motor vehicle previously registered in the Commonwealth as provided by KRS 186A.035, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. In addition, the department shall provide appropriate forms and information to permit renewal of motor vehicle registration to be completed by mail. Any registration renewal by mail shall require payment of an additional two dollar (\$2) fee which shall be received by the county clerk. Nonreceipt of the notice herein shall not constitute a defense to any registration related offense.

Section 2. KRS 186A.035 is amended to read as follows:

- (1) All motor vehicles, including motorcycles, with a gross vehicular weight of six thousand (6,000) pounds or less, first registered, or for which the registration is renewed in this state on or after January 1, 1983, shall be placed in a system of year-round registration based upon the birth month of the owner, in order to distribute the work of registering motor vehicles as uniformly as practicable throughout the twelve (12) months of the year.
- (2) If the owner of a motor vehicle is other than an individual, the month in which the owning entity came into being shall be used for purposes of this section. If a motor vehicle is jointly owned, the owners shall indicate to the county clerk the birth month of one (1) of them to be used for purposes of this section. In addition, if a motor vehicle is jointly owned by a husband and wife, the ownership shall exist as a joint tenancy with right of survivorship, unless the registration expressly states to the contrary and gives an alternative specific status. Upon the death of one (1) of the spouses, the jointly-owned vehicle shall transfer to the surviving spouse free from payment of any state-required transferral fees.
- (3) The certificate of registration and license plate issued for a motor vehicle first registered, renewed, or titled in this state on or after January 1, 1983, shall be valid, unless canceled by the cabinet in accordance with KRS Chapter 186 or this chapter, upon payment of the required fee, for a period beginning on the first day of the month of the year in which registration is applied for, and expiring on the last day of the next birth month of the owner following the month during which registration is applied for. Upon the owner's request, and after payment of the proper prorated fee, an owner may obtain a certificate of registration and license plate valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration. Any transaction relating to registration or registration renewal which would cause an unexpired Kentucky motor vehicle license plate to be surrendered shall have that unexpired fee prorated or credited against any additional fee required by a subsequent registration.
- (4) After a motor vehicle has been initially placed in the system of year-round registration, the owner shall renew the registration annually during the owner's birth month, by making application to the county clerk and paying the fee required for twelve (12) consecutive months of registration, which shall take effect on the first day of the month succeeding the owner's birth month and shall expire on the last day of the owner's next birth month. The county clerk shall be entitled to a registration fee of two dollars (\$2) for each registration, or if the registration exceeds a twelve (12) month period the clerk shall receive a fee of three dollars (\$3).
- (5) At least forty-five (45) days prior to the expiration of the registration of any motor vehicle previously registered in the Commonwealth as provided by subsection (1) of this section, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. ~~Any registration renewal or vehicle transfer notice by mail shall require payment of an additional one dollar (\$1) fee which shall be received by the county clerk.~~ Nonreceipt of the notice required by this subsection shall not constitute a defense to any registration related offense.
- (6) Any owner who fails to renew the registration of a motor vehicle during the month in which the previous registration expired, shall, if he applies for renewal of the registration in some later month, pay the same fees

that would have been required if the registration had been renewed in the month which the previous registration expired.

- (7) Fees which must be prorated in carrying out the intent of this section shall be prorated on the basis of twelfths of the annual registration fee. Any vehicle which is registered at any time during a month shall pay the fee required for that whole month plus any additional months of registration purchased consistent with the intent of the section.
- (8) The county clerk shall ensure that the certificate of registration issued to an owner displays the month and year in which the registration period begins and the month and year of its expiration, and shall issue to the owner a decal or decals corresponding to the month and year of expiration shown in the certificate of registration which shall be placed upon the corresponding license plate by the owner in the manner required by administrative regulations of the Department of Vehicle Regulation.

Section 3. KRS 186A.105 is amended to read as follows:

- (1) Motor vehicle dealers, their agents and county clerks, before equipping a vehicle with a temporary tag, shall print or stamp in waterproof ink, legibly, in the spaces provided on such tag:
 - (a) The month, day and year the vehicle was delivered to the purchaser;
 - (b) The month, day and year of expiration of the tag which shall be no more than **thirty (30)**~~fifteen (15)~~ days following the date of delivery of the vehicle to the purchaser;
 - (c) The purchaser's or owner's name;
 - (d) The year model, make and vehicle identification number of the vehicle sold; and
 - (e) Either the dealer's name, city of principal place of business and the telephone number, including telephone area code, or the clerk's name, county and telephone number, including area code.
- (2) The dealer's employee who executes the temporary tag shall place his signature in the space provided. A dealer who issues, or whose agents issue, temporary tags shall keep a log of each temporary tag obtained and each ~~such~~ tag issued, showing all information entered by the dealer or dealer's agent on forms supplied by the cabinet, and shall make such log available for inspection by any law enforcement officer upon request. ~~The~~**Such** log shall be retained by the dealer for a period of at least two (2) years following the date of issuance of the last dated tags whose issuance is indicated on any individual temporary tag log sheet.
- (3) The county clerk who executes the temporary tag shall place his signature in the space provided. A county clerk who issues temporary tags shall keep a log of each temporary tag obtained and each tag issued, showing all information entered by the county clerk on forms supplied by the cabinet, and shall make the log available for inspection by any law enforcement officer upon request. The log shall be retained by the county clerk for a period of at least two (2) years following the date of issuance of the last dated tags whose issuance is indicated on any individual temporary tag log sheet.

Section 4. KRS 186.570 is amended to read as follows:

- (1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:
 - (a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.
 - (b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.
 - (c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability of these persons. The board shall consist of licensed medical and rehabilitation specialists.~~—The non-state government members of the Medical Review Board shall be paid a fee of one hundred dollars (\$100) per day plus reasonable expenses for performing this service.~~

- (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.
 - (e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.
 - (f) A person required by KRS 186.480 to take an examination has been issued a license without first having passed the examination.
 - (g) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.
 - (h) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.
 - (i) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
 - (j) That person has failed to provide proof of motor vehicle security pursuant to KRS 186A.040.
- (2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied or suspended. The denial or suspension shall continue until the arrearage has been eliminated, or payments on the child support arrearage are being made in accordance with a court or administrative order. Before the license may be reinstated, proof of elimination of the child support arrearage from the Cabinet for Human Resources shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for Human Resources and the Transportation Cabinet.
- (3) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by first class mail to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which if committed in this state would be grounds for the suspension or revocation of an operator's license. If a person so convicted is not the holder of a Kentucky operator's license, the cabinet shall deny him a license for the same period as if he had possessed a license and license had been suspended. The cabinet may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.
- (5) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a commercial driver's license.
- (6) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.
- (7) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

Section 5. KRS 186.1864 is amended to read as follows:

- (1) ***Except as provided for in subsection (4) of this section***, any person who complies with the provisions of KRS 186.186 may apply for a special youth soccer license plate.
- (2) After the Transportation Cabinet offsets its administrative costs for computer programming of a special youth soccer license plate, all revenues generated by the initial state fee for youth soccer license plates pursuant to KRS 186.186 shall be forwarded by the Transportation Cabinet to the Tourism Cabinet on a quarterly basis. The Tourism Cabinet shall deposit all funds received pursuant to this subsection into a trust and agency account dedicated to promoting and furthering youth soccer programs in Kentucky. The Tourism Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish criteria for awarding grants to nonprofit organizations that promote youth soccer programs in Kentucky.
- (3) Youth soccer license plates shall contain the words "Support Youth Soccer" and shall boldly feature the ***United States Youth Soccer Association***~~[1995 World Cup soccer]~~ emblem. The name "Kentucky" and the expiration date shall appear on the youth soccer license plate. The cabinet may use any combination of letters or numerals as needed in the design. The application for a youth soccer license plate may be combined with a request that the plate be a personalized plate authorized pursuant to KRS 186.174.
- (4) ***The cabinet shall begin printing the youth soccer license plates if it receives nine hundred (900) applications submitted in accordance with KRS 186.186 by December 31, 1998. If nine hundred (900) applications are not received by December 31, 1998, the cabinet shall refund deposits received in accordance with KRS 186.186.***

Section 6. KRS 190.010 is amended to read as follows:

As used in KRS 190.010 to 190.990:

- (1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:
 - (a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.
 - (b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers.
 - (c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers.
 - (d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes.
 - (e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler.
- (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto.
- (3) The term "motor vehicle dealer" shall not include:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
 - (b) Public officers while performing their official duties; or
 - (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees.
- (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles.
 - (5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles.
 - (6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties.
 - (7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers.
 - (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles *for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation.*
 - (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles. Motorcycles shall not include mopeds as defined in this section.
 - (10) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction.
 - (11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction.
 - (12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, that is self propelled, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.
 - (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer.
 - (14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.
 - (15) "Commission" means the Motor Vehicle Commission.
 - (16) "Commissioner" means the commissioner of the department.
 - (17) "Department" means the Department of Vehicle Regulation.
 - (18) "Licensor" means the commission.

- (19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances.
- (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity.
- (21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product.
- (22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b).
- (23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.
- (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact.
- (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise.

Section 7. The following KRS section is repealed:

186.276 Seat tax on airport shuttle vehicles.

Approved April 13, 1998

CHAPTER 566

(SB 399)

AN ACT relating to highways.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 177.010 TO 177.890 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares the purpose of Sections 1 to 6 of this Act to be the appropriate recognition and preservation of the scenic qualities of many of Kentucky's roadways. Therefore, the General Assembly is creating a state system of scenic byways and scenic highways to preserve and present scenic byways and scenic highways for vehicular, bicycle, and pedestrian travel in an unhurried and leisurely environment.

SECTION 2. A NEW SECTION OF KRS CHAPTER 177.010 TO 177.890 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the context requires otherwise:

- (1) "Advertising device" means as defined in KRS 177.830;
- (2) "Archaeological quality" means those characteristics of the area surrounding a scenic byway or a scenic highway that are physical evidence of historic or prehistoric human life or activity and that are visible and capable of being inventoried and interpreted. The archaeological interest, as identified through ruins,

artifacts, structural remains, or other physical evidence shall have scientific significance that educates the viewer and causes the viewer to appreciate the past;

- (3) *"Cultural quality" means evidence or expressions of the customs or traditions of a distinct group of people. Cultural features shall include, but not be limited to, crafts, music, dance, rituals, festivals, speech, food, special events, and vernacular architecture, as currently practiced. The cultural qualities of the area surrounding a scenic byway or scenic highway may highlight one (1) or more significant communities or ethnic traditions;*
- (4) *"Historic quality" means legacies of the past that are distinctly associated with the physical elements of the landscape, whether natural or manmade, and that are of historic significance, educate the viewer, and cause the viewer to appreciate the past. The historic qualities reflect the actions of people and may include buildings, settlement patterns, or other examples of human activity. Historic qualities may be inventoried, mapped, and interpreted, and they possess integrity of location, design, setting, material, workmanship, feeling, and association;*
- (5) *"Intrinsic quality" means one (1) or more of the following:*
 - (a) *Archaeological quality;*
 - (b) *Cultural quality;*
 - (c) *Historic quality;*
 - (d) *Natural quality;*
 - (e) *Recreational quality; or*
 - (f) *Scenic quality;*
- (6) *"Natural quality" means those features in the visual environment that are in a relatively undisturbed state. These features shall predate the arrival of human populations and may include geological formations, fossils, landforms, water bodies, vegetation, and wildlife. If there is evidence of human activity, the natural features must reveal minimal disturbances;*
- (7) *"Outdoor advertising device" means an advertising device that is not located on the premises of the entity being advertised;*
- (8) *"Recreational quality" means outdoor recreational activities directly associated with and dependent upon the natural and cultural elements of the scenic byway or scenic highway's landscape. The recreational activities shall provide opportunities for active and passive recreational experiences including, but not limited to, downhill skiing, rafting, boating, fishing, hiking, and simple roadway driving. The recreational activities may be seasonal, but the quality and importance of the activities as seasonal operations shall be well recognized;*
- (9) *"Scenic byway" means a highway maintained by a local government that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement;*
- (10) *"Scenic highway" means a state-maintained highway that has roadsides or view sheds of aesthetic, cultural, historical, or archaeological value worthy of preservation, restoration, protection, or enhancement; and*
- (11) *"Scenic quality" means the heightened visual experience derived from the view of the natural and manmade elements of the scenic byway or scenic highway. The characteristics of the landscape are strikingly distinct and offer a pleasing and memorable visual experience. All elements of the landscape, including landform, water, vegetation, and manmade development, must contribute in harmony to the quality of the scenic byway's or scenic highway's visual environment and share in its intrinsic qualities.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 177.010 TO 177.890 IS CREATED TO READ AS FOLLOWS:

The Transportation Cabinet, in coordination with the Tourism Cabinet and the Kentucky Heritage Council, shall promulgate administrative regulations under KRS Chapter 13A to establish:

- (1) *Specific criteria for a road to be designated a scenic byway or a scenic highway;*
- (2) *A process for nominating and review of a road as a scenic byway or scenic highway;*

- (3) *A process for designating a road as a scenic byway or scenic highway; and*
- (4) *A process to remove the scenic designation from a byway or highway if the intrinsic qualities of the road change or if the community affected by the road requests the scenic designation to be removed.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 177.010 TO 177.890 IS CREATED TO READ AS FOLLOWS:

A road may be designated a scenic byway or scenic highway if it has a minimum of one (1) intrinsic quality as defined in Section 1 of this Act; a limit on existing visual intrusions that significantly impact the road; and a local support group that has requested scenic designation for the road and that is committed to maintaining the intrinsic qualities of the area surrounding the road.

SECTION 5. A NEW SECTION OF KRS CHAPTER 177.010 TO 177.890 IS CREATED TO READ AS FOLLOWS:

- (1) *The Transportation Cabinet shall attempt to maintain the character of a state-maintained road that has been designated a scenic highway.*
- (2) *The Transportation Cabinet shall erect and maintain appropriate scenic highway identification signs on each road designated a scenic byway or scenic highway.*
- (3) *The Transportation Cabinet shall conduct necessary routine maintenance and care of a state-maintained road designated as a scenic highway.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 177.010 TO 177.890 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall prohibit the erection of an outdoor advertising device adjacent to or visible from a scenic highway on which outdoor advertising devices as defined in Section 2 of this Act are regulated under KRS 177.830 through 177.890.*
- (2) *The status of an outdoor advertising device shall not be changed by a highway being designated as scenic if the outdoor advertising device was legal or designated as nonconforming on the date the highway was designated as scenic.*

Section 7. The Transportation Cabinet shall remove the scenic designation from KY 101 and KY 259 in Edmonson County immediately upon the effective date of this Act and shall remove all highway signs on KY 101 and KY 259 indicating the routes are scenic byways or scenic highways. All other roads designated scenic byways or scenic highways by the Transportation Cabinet prior to the effective date of this Act shall retain their designation and be included under the provisions of this Act.

Section 8. If the reorganization of the Tourism Cabinet into the Tourism Development Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Tourism Cabinet appearing in Section 3 of this Act shall be codified as the Tourism Development Cabinet.

Approved April 13, 1998

CHAPTER 567

(SB 55)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 304.39-040 is amended to read as follows:

- (1) Basic reparation benefits shall be paid without regard to fault.
- (2) Basic reparation obligors and the assigned claims plan shall pay basic reparation benefits, under the terms and conditions stated in this subtitle, for loss from injury arising out of maintenance or use of a motor vehicle. This obligation exists without regard to immunity from liability or suit which might otherwise be applicable.
- (3) *Every insurer writing liability insurance coverage for motorcycles in this Commonwealth shall make available for purchase as a part of every policy of insurance covering the ownership, use, and operation of*

motorcycles the option of basic reparations benefits, added reparations benefits, uninsured motorist, and underinsured motorist coverages.

- (4) Notwithstanding any other provisions of this subtitle, no operator or passenger on a motorcycle is entitled to basic reparation benefits from any source for injuries arising out of the maintenance or use of such a motorcycle unless such reparation benefits have been purchased as optional coverage for the motorcycle or by the individual so injured.

Approved April 13, 1998

CHAPTER 568

(SB 119)

AN ACT relating to theft of services.

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

Section 1. KRS 514.060 is amended to read as follows:

- (1) A person is guilty of theft of services when:
- (a) ***The person***~~He~~ intentionally obtains services by deception or threat or by false token or other means to avoid payment for the services which he knows are available only for compensation;~~or~~
 - (b) ***The person intentionally obtains wireless communications services or access to services by any of the following means:***
 1. ***Unauthorized interception of any electronic serial number, mobile identification number, personal identification number, or like identifying number;***
 2. ***Unauthorized interception of any cellular service or personal communications service as terms may be defined in Title 47 C.F.R., Parts 22 and 24 respectively;***
 3. ***Unauthorized interception of any similar telephone service; or***
 4. ***Use of deception, threat, or other means to avoid payment for the services which the person knows are available only for charge or compensation; or***
 - (c) Having control over ***or unauthorized access to the use of*** the services of others to which ***the person***~~He~~ is not entitled, ***the person***~~He~~ intentionally diverts the services to ***the person's***~~his~~ own benefit or the benefit of another not entitled thereto.
- (2) Where compensation for services is ordinarily paid immediately upon the rendering of the services, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay shall be prima facie evidence that the services were obtained by deception as to intention to pay.
- (3) In any prosecution for theft of gas, water, electricity, or other public service, where the utility supplying the service had installed a meter or other device to record the amount of service supplied, proof that:
- (a) The meter or other device has been altered, tampered with, or bypassed in ~~a~~^{such} manner *so* as to prevent or reduce the recording thereof; or
 - (b) Service has been, after having been disconnected by the utility supplying service, reconnected without authorization of the utility

shall be prima facie evidence of the intent to commit theft of service by the person or persons obligated to pay for service supplied through the meter or other device.

- (4) Theft of services is a Class A misdemeanor unless the value of the service is three hundred dollars (\$300) or more, in which case it is a Class D felony.

Section 2. KRS 514.065 is amended to read as follows:

- (1) As used in this section, ***"telecommunications***~~telephone~~ ***service"*** means any communication service ordinarily provided~~by a telephone utility~~ for ***a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, writings, images, sounds, or intelligence of any nature by telephone,*** including but not limited to ***cellular and personal communications service, as terms may be defined in Title***

47 C.F.R., Parts 22 and 24, respectively, telephones, wire, radio, electromagnetic, photoelectronic, or photooptical systems~~[the transmission of voice, data, pictures or signals of all kinds]~~, but excluding cable television services, even if provided by a telephone utility.

- (2) A person is guilty of possession, use, or transfer for use of a device for theft of **telecommunications**~~[telephone]~~ services when **the person**~~[he]~~:
- (a) Makes, **assembles**, or possesses any instrument, apparatus, equipment, or device designed, **modified, altered, programmed, reprogrammed, or otherwise** adapted for or used for commission of a theft of **telecommunications**~~[telephone]~~ services in violation of KRS 514.060; or
 - (b) Sells, gives, transports, or otherwise transfers to another, or offers or advertises to sell, give, or otherwise transfer any instrument, apparatus, equipment, or device described in paragraph (a) of this subsection, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ **the**~~[such]~~ instrument, apparatus, equipment, or device, or to allow the same to be used or employed, for a purpose described in paragraph (a) of this subsection, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling **the**~~[such]~~ instrument, apparatus, equipment, or device.
- (3) An instrument, apparatus, equipment or device described in paragraph (a) of ~~[this]~~ subsection (2) **of this section** shall not include any instrument, apparatus, equipment, or device authorized or approved or otherwise permitted by an agency of the federal government or the Commonwealth of Kentucky.
- (4) Possession, use, or transfer for use of a device for theft of **telecommunications**~~[telephone]~~ services is a Class A misdemeanor unless the defendant has previously been convicted of violating this section, in which case it is a Class D felony.
- (5) **Notwithstanding any other provision of this chapter, any instrument, apparatus, equipment, or device designed, modified, altered, programmed, reprogrammed, or otherwise adapted for or used for commission of a theft of telecommunications service in violation of KRS 514.060, may be seized under warrant or incident to a lawful arrest for the violation of KRS 514.060, and, upon the conviction of any person for a violation, the court shall order any instrument, apparatus, equipment, device, or plans or instructions for making or assembling them forfeited to the state or destroyed in accordance with KRS 500.090(1)(a), or if requested by the person providing the telecommunications service in the territory in which they were seized, turned over to the telecommunications service provider.**

Approved April 13, 1998

CHAPTER 569

(SCR 95)

A CONCURRENT RESOLUTION directing the Legislative Research Commission to create a Task Force on Historic Properties.

WHEREAS, the preservation, restoration, oversight, and funding of historic buildings and grounds are important endeavors in maintaining and enhancing the quality of life of citizens of the Commonwealth of Kentucky; and

WHEREAS, the preservation, restoration, oversight, and funding of historic buildings and grounds create many new jobs, create many opportunities to attract new businesses, attract many tourists, and have a positive impact on the economic well-being of the citizens of the Commonwealth of Kentucky; and

WHEREAS, the preservation, restoration, oversight, and funding of historic buildings and grounds have played an important role in maintaining and enhancing the business, social, and religious communities throughout the Commonwealth of Kentucky; and

WHEREAS, the responsibility for the preservation and management of historic buildings and grounds owned by the Commonwealth is dispersed among different cabinets and agencies of state government; and

WHEREAS, Kentucky state government officials and the Kentucky General Assembly recognize the need for cooperation, coordination, and long-term planning among agencies with responsibilities for historic buildings and grounds;

NOW, THEREFORE,

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

Section 1. The Legislative Research Commission is directed to create a Task Force on Historic Properties to conduct a study of the preservation, restoration, maintenance, oversight, and management of historic buildings and grounds owned by the Commonwealth of Kentucky, and to make recommendations relating to centralized management, the development of a long term planning capability, and the development of a comprehensive database of historic properties and grounds to assure that state-owned historic buildings and grounds are preserved, restored, and maintained for future generations.

Section 2. The members of the Task Force on Historic Properties shall include the following eighteen members:

(1) A Senate and a House of Representatives member of the Capital Planning Advisory Board, appointed by the Legislative Research Commission;

(2) A Senate and a House of Representatives member of the Appropriations and Revenue Committees, appointed by the Legislative Research Commission;

(3) A member of the Senate and a member of the House of Representatives appointed by the Legislative Research Commission;

(4) Four citizen members with an interest and background in the preservation and maintenance of historic properties appointed by the Legislative Research Commission;

(5) The Commissioner of the Kentucky Department of Parks or his designee;

(6) The Commissioner of the Department of Facilities Management in the Cabinet for Finance and Administration Cabinet or his designee;

(7) The Director of the Division of Historic Properties in the Cabinet for Finance and Administration or his designee;

(8) The Director of the Kentucky Historical Society or his designee;

(9) The Executive Director of the Kentucky Heritage Council or his designee;

(10) The State Budget Director or his designee;

(11) The Dean of the University of Kentucky College of Architecture or his designee; and

(12) The Director of the Forrest C. Pogue Public History Institute at Murray State University or his designee.

The President of the Senate and the Speaker of the House of Representatives shall each designate co-chairs of the task force from the members of the task force from their respective legislative chambers.

Section 3. All state agencies and postsecondary educational institutions shall provide, as requested by the Task Force on Historic Properties, any information and expertise which it has available relative to historic properties and historic preservation.

Section 4. The Task Force on Historic Properties shall make periodic reports to the Capital Planning Advisory Board, and shall present its findings and recommendations to the Capital Planning Advisory Board of the General Assembly no later than July 1, 1999.

Section 5. Staff services to be utilized in completing this study are estimated to cost \$30,000. These staff services shall be provided from the regular Legislative Research Commission budget, and are subject to the limitations and other research responsibilities of the Commission.

Approved April 13, 1998

CHAPTER 570

(SB 18)

AN ACT relating to sewage disposal systems.

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

Section 1. KRS 211.350 is amended to read as follows:

- (1) The cabinet shall regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems that have a surface discharge.
- (2) No person, firm, or corporation shall construct, install, alter, or cause to be constructed, installed, or altered, any on-site sewage disposal system subject to regulation by the cabinet without having first obtained an on-site sewage disposal permit from the **local health department**~~cabinet~~. Nothing in this section shall be construed ~~as~~ to deny a farmstead owner the right to obtain a permit. Except for farmstead owners on their own property, the construction, installation, or alteration shall be performed only by a person certified by the cabinet pursuant to KRS 211.357.
- (3) No person, firm, or corporation shall use or continue to use or permit the use or continued use of any on-site sewage disposal system that is constructed, installed, or altered under an on-site sewage disposal permit if the cabinet **or local health department** through a duly-authorized inspector, employee, or agent finds that the system was not constructed, installed, or altered in conformance with the permit and regulations issued by the cabinet.
- (4) ***No certified electrical inspector acting under authority of KRS 227.491 shall issue the certificates of approval of temporary or permanent electrical wiring unless the inspector has in his or her possession a notice of release as described in paragraphs (a) and (b) of this subsection. The inspector shall record the number of the notice of release on the certificate of approval. The person requesting approval of electrical wiring shall be responsible for obtaining the release from the local health department and providing it to the electrical inspector. This requirement shall only apply to dwellings, mobile homes, manufactured housing, buildings, or other structures that are constructed or installed after the effective date of this Act. This requirement shall not apply to structures that do not have sewage waste fixtures or to those that are connected to a sewage waste disposal system approved by the Natural Resources and Environmental Protection Cabinet. Nothing in this section shall be construed to deny the continued use of any electrical service connected to wiring approved prior to the effective date of this Act.***
 - (a) ***An initial notice of release to allow temporary electrical power for construction shall be issued to the property owner or owner's agent by the local health department upon the application for a site evaluation.***
 - (b) ***A final notice of release to allow for permanent electrical power shall be issued to the property owner or owner's agent by the local health department upon approval of an on-site sewage disposal plan.***
 - (c) ***This section shall not apply to any county that has adopted the Uniform State Building Code and has and enforces on-site sewage disposal permitting.***
- (5) All applications for on-site sewage disposal permits shall be accompanied by plans and specifications for the proposed system, including results of soils tests and other information as directed by the cabinet by regulation. Any action to deny an application shall be subject to appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- ~~(6)~~~~(5)~~ The cabinet shall fix a schedule of fees for the functions performed by the cabinet relating to the regulation of on-site sewage disposal systems. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the cabinet shall be paid into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out its responsibilities relating to the regulation of on-site sewage disposal systems. No part of the fund shall revert to the general fund of the Commonwealth.

(7)~~(6)~~ Any regulation relating to on-site sewage disposal that is in effect on July 15, 1992, shall remain in effect until altered by the secretary. The secretary may issue additional regulations necessary to carry out the purposes of this section.

(8)~~(7)~~ Nothing in this section shall authorize or allow the cabinet to inspect or take enforcement action against on-site sewage disposal systems installed on farmsteads prior to July 15, 1992, or modifications to those systems unless the actions are determined in writing by the cabinet, upon a written, verified complaint, to be necessary to prevent imminent harm or damage to the safety, life, or health of a person. In this instance, the cabinet shall deliver to the landowner a copy of the written determination and the verified complaint prior to the commencement of the inspection or enforcement action.

Section 2. KRS 211.981 is amended to read as follows:

- (1) All sewage or sewage sludge hauled pursuant to the provisions of KRS 211.970 to 211.982 shall be disposed of **by *landspreading at an approved site*** or in a publicly-owned sewage treatment plant, unless it is demonstrated to the satisfaction of the cabinet that a publicly-owned sewage treatment plant does not exist within a reasonable hauling distance from the site at which the sewage or sewage sludge is received, or the publicly-owned sewage treatment plant refuses to accept the sewage or sewage sludge.
- (2) If the cabinet determines that no publicly-owned sewage treatment plant is available for use by a licensed hauler, the cabinet may approve an alternative mode of disposal including, but not limited to, landspreading. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A governing landspreading and other acceptable modes of disposal which insure:
 - (a) That no contamination threat is posed to surface waters from any run-off; and
 - (b) That all reasonable protection is afforded to prevent contamination of groundwater.
- (3) Trenching of sewage and sewage sludge shall be prohibited except where specifically authorized by the cabinet.

Section 3. KRS 224.50-760 is amended to read as follows:

- (1) (a) For purposes of this section and KRS 224.46-580(7), special wastes are those wastes of high volume and low hazard which include but are not limited to mining wastes, utility wastes (fly ash, bottom ash, scrubber sludge), sludge from water treatment facilities and **wastewater**~~[-waste-water]~~ treatment facilities, cement kiln dust, gas and oil drilling muds, and oil production brines. Other wastes may be designated special wastes by the cabinet;
- (b) Disposal sites or facilities for special wastes shall be exempt from the provisions of KRS 224.46-520 and the provisions of KRS 224.43-810, 224.43-815, and 224.46-820 to 224.46-870 but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580), and regulations issued pursuant thereto, unless the special waste received is listed or meets the criteria of a hazardous waste in regulations pursuant to KRS 224.46-510(3). If the special waste is a hazardous waste as specified in regulations pursuant to KRS 224.46-510(3), the site or facility shall be required by the cabinet to comply with the provisions of KRS 224.46-520 but shall not be subject to the requirements of KRS 224.40-310(6);
- (c) Generators of special wastes shall register with the cabinet and be subject to the provisions of KRS 224.46-510, except for generators of coal mining wastes which shall be regulated pursuant to the provisions of KRS Chapter 350;~~[-and]~~
- (d) The cabinet shall, when promulgating regulations affecting special waste, recognize special waste as a separate and distinct indivisible category and shall recognize the distinct differences between the category of special wastes and other hazardous wastes and solid wastes as defined in KRS 224.01-010(31)(a) and KRS 109.012(9) due to the fact that special wastes have large volume but low hazardousness. The cabinet's regulations for the generation, transport, recordkeeping, reporting, treatment, storage, and disposal shall reflect those distinct differences. The cabinet's regulations shall recognize and incorporate, where appropriate, and if consistent with the policies of KRS 224.46-510 to 224.46-570, any deadline extensions, studies, and specialized requirements for specific kinds of special wastes that are or may be undertaken at the federal or other levels of government; **and**
- (e) ***It is the intent of the General Assembly that the processing of sludge from water treatment facilities and wastewater treatment facilities by composting shall be considered an industrial process. The***

cabinet shall, when promulgating administrative regulations affecting sludge from water treatment facilities and wastewater treatment facilities, consider the treatment of this sludge by composting as an industrial process. The provisions of this paragraph and subsection (3) of this section shall not apply to a city, county, urban-county government, charter county government, or special district as defined in KRS Chapter 65 that processes its own water treatment or wastewater treatment sludge by composting on property owned or leased by the city, county, urban-county government, charter county government, or special district.

- (2) Generators of waste oil shall be exempt from the provisions of KRS 224.46-510 and 224.46-520 so long as waste oil is not specified as a hazardous waste in regulations pursuant to KRS 224.46-510(3) but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580), and regulations issued pursuant thereto.
- (3) *A permit application to establish, operate, or modify a composting site or composting facility for the processing of water treatment sludge or wastewater treatment sludge, shall require immediately the general public notice provided for in subsections (4) and (5) of KRS 224.40-310. If a hearing is requested, no permit to establish, operate, or modify a composting site or facility shall be issued prior to the public hearing. The hearing shall be held within the county where the composting site or facility is located or proposed. Composting of this sludge shall be considered an industrial process.*

Approved April 13, 1998

CHAPTER 571

(HJR 35)

A JOINT RESOLUTION relating to the budget process and declaring an emergency.

WHEREAS, the Constitution of the Commonwealth of Kentucky empowers the General Assembly to make appropriations; and

WHEREAS, the Kentucky Supreme Court recognizes that the budget, which appropriates the revenue of the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter; and

WHEREAS, the General Assembly has enacted into law the statutory budget process that is primarily codified in KRS Chapter 48; and

WHEREAS, the statutes provide that prior to the passage of a budget bill, the appropriations committees of the General Assembly shall prepare a budget memorandum that shall enumerate the changes made by the appropriations committees in a branch budget recommendation, and that shall explain the changes in detail sufficiently to convey the intent of the appropriations committees; and

WHEREAS, the Kentucky Supreme Court has upheld the use of the budget memorandum as a valid part of the statutory process;

NOW, THEREFORE,

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

Section 1. Any mandates, directives, or initiatives contained in the 1998-2000 Legislative Branch Budget Memorandum shall have the force and effect of law.

Section 2. The staff of the Legislative Research Commission shall have the authority, subject to the approval of the Legislative Research Commission, to make technical or format adjustments to the 1998-2000 Legislative Branch Budget Memorandum that do not alter the sense, meaning, or effect of the 1998-2000 Legislative Branch Budget Bill or the 1998-2000 Legislative Branch Budget Memorandum.

Section 3. The provisions of the 1998-2000 Legislative Branch Budget Memorandum shall not be construed to contain appropriations and, therefor, shall not supersede appropriations contained in the 1998-2000 Legislative Budget Bill or appropriations contained in any other enactment of the 1998 Regular Session of the General Assembly. If any mandate, directive, or initiative contained in the 1998-2000 Legislative Branch Budget Bill conflicts with any mandate, directive, or initiative contained in the 1998-2000 Legislative Branch Budget Memorandum, the mandate, directive, or initiative contained in the 1998-2000 Legislative Branch Budget Bill shall prevail.

Section 4. Whereas the Legislative Branch Budget Bill takes effect upon its passage and approval of the Governor or its otherwise becoming law, an emergency is declared to exist, and this Joint Resolution takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Section 5. The 1998-2000 Legislative Branch Budget Memorandum is as follows:

Approved April 14, 1998

CHAPTER 572

(HJR 36)

A JOINT RESOLUTION relating to the budget process and declaring an emergency.

WHEREAS, the Constitution of the Commonwealth of Kentucky empowers the General Assembly to make appropriations; and

WHEREAS, the Kentucky Supreme Court recognizes that the budget, which appropriates the revenue of the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter; and

WHEREAS, the General Assembly has enacted into law the statutory budget process that is primarily codified in KRS Chapter 48; and

WHEREAS, the statutes provide that prior to the passage of a budget bill, the appropriations committees of the General Assembly shall prepare a budget memorandum that shall enumerate the changes made by the appropriations committees in a branch budget recommendation, and that shall explain the changes in detail sufficiently to convey the intent of the appropriations committees; and

WHEREAS, the Kentucky Supreme Court has upheld the use of the budget memorandum as a valid part of the statutory process;

NOW, THEREFORE,

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

Section 1. Any mandates, directives, or initiatives contained in the 1998-2000 Judicial Branch Budget Memorandum shall have the force and effect of law.

Section 2. The staff of the Legislative Research Commission shall have the authority, subject to the approval of the Legislative Research Commission, to make technical or format adjustments to the 1998-2000 Judicial Branch Budget Memorandum that do not alter the sense, meaning, or effect of the 1998-2000 Judicial Branch Budget Bill or the 1998-2000 Judicial Branch Budget Memorandum.

Section 3. The provisions of the 1998-2000 Judicial Branch Budget Memorandum shall not be construed to contain appropriations and, therefor, shall not supersede appropriations contained in the 1998-2000 Judicial Budget Bill or appropriations contained in any other enactment of the 1998 Regular Session of the General Assembly. If any mandate, directive, or initiative contained in the 1998-2000 Judicial Branch Budget Bill conflicts with any mandate, directive, or initiative contained in the 1998-2000 Judicial Branch Budget Memorandum, the mandate, directive, or initiative contained in the 1998-2000 Judicial Branch Budget Bill shall prevail.

Section 4. Whereas the Judicial Branch Budget Bill takes effect upon its passage and approval of the Governor or its otherwise becoming law, an emergency is declared to exist, and this Joint Resolution takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Section 5. The 1998-2000 Judicial Branch Budget Memorandum is as follows:

Approved April 14, 1998

CHAPTER 573

(HJR 34)

A JOINT RESOLUTION relating to the budget process and declaring an emergency.

WHEREAS, the Constitution of the Commonwealth of Kentucky empowers the General Assembly to make appropriations; and

WHEREAS, the Kentucky Supreme Court recognizes that the budget, which appropriates the revenue of the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter; and

WHEREAS, the General Assembly has enacted into law the statutory budget process that is primarily codified in KRS Chapter 48; and

WHEREAS, the statutes provide that prior to the passage of a budget bill, the appropriations committees of the General Assembly shall prepare a budget memorandum that shall enumerate the changes made by the appropriations committees in a branch budget recommendation, and that shall explain the changes in detail sufficiently to convey the intent of the appropriations committees; and

WHEREAS, the Kentucky Supreme Court has upheld the use of the budget memorandum as a valid part of the statutory process;

NOW, THEREFORE,

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

Section 1. Any mandates, directives, or initiatives contained in the 1998-2000 State/Executive Branch Budget Memorandum shall have the force and effect of law.

Section 2. The staff of the Legislative Research Commission shall have the authority, subject to the approval of the Legislative Research Commission, to make technical or format adjustments to the 1998-2000 State/Executive Branch Budget Memorandum that do not alter the sense, meaning, or effect of the 1998-2000 State/Executive Branch Budget Bill or the 1998-2000 State/Executive Branch Budget Memorandum.

Section 3. The provisions of the 1998-2000 State/Executive Branch Budget Memorandum shall not be construed to contain appropriations and, therefor, shall not supersede appropriations contained in the 1998-2000 State/Executive Budget Bill or appropriations contained in any other enactment of the 1998 Regular Session of the General Assembly. If any mandate, directive, or initiative contained in the 1998-2000 State/Executive Branch Budget Bill conflicts with any mandate, directive, or initiative contained in the 1998-2000 State/Executive Branch Budget Memorandum, the mandate, directive, or initiative contained in the 1998-2000 State/Executive Branch Budget Bill shall prevail.

Section 4. Whereas the State/Executive Branch Budget Bill takes effect upon its passage and approval of the Governor or its otherwise becoming law, an emergency is declared to exist, and this Joint Resolution takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Section 5. The 1998-2000 State/Executive Branch Budget Memorandum is as follows:

Approved April 14, 1998

CHAPTER 574

(SB 11)

AN ACT relating to higher education employees.

WHEREAS, it is the responsibility of the General Assembly to provide adequate resources to support a quality system of public postsecondary education;

WHEREAS, it is the responsibility of the General Assembly to promote the development of a strategic agenda to improve effectiveness, efficiency, and accessibility of postsecondary education in the state;

WHEREAS, it is critical to the economic well-being of the state that the level of education of Kentucky citizens be improved;

WHEREAS, the 1997 Postsecondary Education Improvement Act focused attention on governance, funding, and clarification of missions of the postsecondary education institutions;

WHEREAS, the public as a whole, and in particular the students, have a right to expect excellence in teaching, scholarship, and service by highly-qualified faculty;

WHEREAS, the faculty has a vested interest in assuring that all faculty, including tenured faculty perform at a high level in teaching, scholarship, and service;

WHEREAS, a comprehensive, formal, periodic evaluation of faculty performance, developed by the faculty and addressing the unique needs of individual faculty assignments with a primary purpose of ensuring continuous support for faculty development can enhance the overall vitality of postsecondary education in the state; and

WHEREAS, there is evidence that the majority of the postsecondary education institutions in Kentucky have begun the development and implementation of periodic, post-tenure review systems to promote excellence;

NOW, THEREFORE,

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

Section 1. The faculty and administration of each public postsecondary education institution is requested to continue the development of a comprehensive, periodic post-tenure review system that meets the unique needs of the institution, the units within the institution, and individual assignments. In the development of the system, the faculty and administration are encouraged to consider the following:

- (1) Engaging faculty and administrators across the institution or among units within the institution in a systematic developmental process with sufficient time for input, piloting, and refining ideas;
- (2) Developing indicators of quality of teaching, scholarship, and service;
- (3) Identifying resources needed to support faculty development;
- (4) Determining appropriate mechanisms for peer feedback; and
- (5) Keeping the board of trustees or board of regents informed during the developmental process.

Section 2. The Council on Postsecondary Education is encouraged to conduct a status review of post-tenure review in Kentucky public postsecondary institutions by September 1, 1999, and to report its findings no later than October 1, 1999, to the Interim Joint Committee on Education.

Approved April 14, 1998

CHAPTER 575

(SB 21)

AN ACT relating to education and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly of the Commonwealth of Kentucky hereby declares that the best interest of the Commonwealth mandates that financial assistance be provided to ensure access of Kentucky citizens to public and private postsecondary education at the postsecondary educational institutions of the Commonwealth.*
- (2) *It is the intent and purpose of the General Assembly that the enactment of Sections 1 to 6 of this Act shall be construed as a long-term financial commitment to postsecondary education and that the funding provided by subsections (3) and (4) of Section 7 of this Act shall not be diverted from the purposes described in Sections 1 to 6, and 8 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act:

- (1) *"Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;*
- (2) *"Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;*
- (3) *"ACT score" means the composite score achieved on the American College Test or an equivalent score, as determined by the council, on the Scholastic Assessment Test;*
- (4) *"Authority" means the Kentucky Higher Education Assistance Authority;*
- (5) *"Award period" means two (2) consecutive academic terms;*

- (6) *"Commonwealth merit scholarship" means a scholarship provided to an eligible student to attend a participating institution;*
- (7) *"Commonwealth merit scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;*
- (8) *"Commonwealth merit scholarship trust fund" means the Wallace G. Wilkinson Commonwealth merit scholarship trust fund;*
- (9) *"Council" means the Council on Postsecondary Education created under KRS 164.011;*
- (10) *"Eligible student" means any person who is a Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the Commonwealth merit scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;*
- (11) *"Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;*
- (12) *"Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;*
- (13) *"High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;*
- (14) *"Maximum award amount" means the sum of the proportionate base scholarship amount earned by an eligible student in each academic year of high school study and any supplemental award earned by an eligible student. The amount so determined shall be the maximum amount available to the eligible student for any award period;*
- (15) *"Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs; and*
- (a) 1. *Is publicly operated; or*
 2. *Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; and*
- (b) *Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;*
- (16) *"Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and*
- (17) *"Supplemental award" means commitment of additional scholarship funds under subsection (3) of Section 4 of this Act to an eligible student based on the eligible student's ACT score.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson Commonwealth Merit Scholarship Trust Fund" to which shall be credited net lottery revenues transferred in accordance with Section 7 of this Act; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.*
- (2) *The moneys in the fund are hereby continuously appropriated only for the purposes set forth in Sections 1 to 6, and 8 of this Act.*

- (3) *The council shall administer the Commonwealth merit scholarship trust fund. Upon the approval of the council, the authority may expend funds from the Commonwealth merit scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Commonwealth merit scholarship trust fund.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Commonwealth merit scholarship awards shall be based upon an established base scholarship amount and an eligible student's grade point average. The base scholarship amount for students attaining a grade point average between 2.5 and 4.0 for the 1998-1999 academic year shall be as follows:*

<i>GPA</i>	<i>Amount</i>	<i>GPA</i>	<i>Amount</i>
2.50	\$125.00	3.30	\$325.00
2.60	\$150.00	3.40	\$350.00
2.70	\$175.00	3.50	\$375.00
2.75	\$187.50	3.60	\$400.00
2.80	\$200.00	3.70	\$425.00
2.90	\$225.00	3.75	\$437.50
3.00	\$250.00	3.80	\$450.00
3.10	\$275.00	3.90	\$475.00
3.20	\$300.00	4.00	\$500.00
3.25	\$312.50		

The council shall review the base amount of the Commonwealth merit scholarship beginning with the 1999-2000 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

- (2) *The authority shall commit to provide to each eligible student the base amount of the Commonwealth merit scholarship for each academic year of high school study in the Commonwealth merit scholarship curriculum that the student has attained at least a 2.5 grade point average. The award shall be based upon the eligible student's grade point average at the close of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible student, regardless of any subsequent increases made to the base amount of the Commonwealth merit scholarship through the promulgation of an administrative regulation by the council.*
- (3) (a) *The authority shall commit to provide to each eligible student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test a supplemental award for the award period beginning in the fall of 1999, based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:*

<i>ACT Score</i>	<i>Annual Bonus</i>	<i>ACT Score</i>	<i>Annual Bonus</i>
15	\$21	22	\$171
16	\$43	23	\$193
17	\$64	24	\$214
18	\$86	25	\$236
19	\$107	26	\$257
20	\$129	27	\$279
21	\$150	28 or above	\$300

Subsequent supplemental awards for eligible students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

- (b) *The authority shall commit to provide to each eligible student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:*

<i>ACT Score</i>	<i>Amount</i>	<i>ACT Score</i>	<i>Amount</i>
15	\$36	22	\$286
16	\$71	23	\$321
17	\$107	24	\$357
18	\$143	25	\$393
19	\$179	26	\$428
20	\$214	27	\$464
21	\$250	28 and above	\$500

The council shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

- (c) *The council shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who graduate from a nonpublic high school not certified by the Kentucky Board of Education and Kentucky residents who obtain a General Educational Development (GED) diploma within five (5) years of their high school graduating class.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Every eligible student who has graduated from high school and who has earned a Commonwealth merit scholarship, or a Commonwealth merit scholarship and a supplemental award, shall be eligible to receive the Commonwealth merit scholarship, or the Commonwealth merit scholarship and the supplemental award, for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.*
- (2) *To receive the Commonwealth merit scholarship or a Commonwealth merit scholarship and supplemental award, an eligible student shall:*
- (a) *Enroll in and attend a participating institution as a full-time student or a part-time student; and*
- (b) *Maintain eligibility as provided in subsection (3) of this section.*
- (3) *Eligibility for a Commonwealth merit scholarship or a Commonwealth merit scholarship and supplemental award shall terminate upon the earlier of:*
- (a) *The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or*
- (b) *The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a Commonwealth merit scholarship or a Commonwealth merit scholarship and supplemental award for a cumulative total of eight (8) academic terms if the student enrolls full-time in a four (4) year program.*
- (4) (a) *The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible student for an award period shall be disbursed by the authority to the eligible student in two (2) equal installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period.*
- (b) *The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible student for any academic term in which the*

student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible student.

- (c)
 - 1. *An eligible student who is enrolled full-time in an undergraduate program of study shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study. To retain the maximum award for the second award period, an eligible student shall have a 2.5 grade point average at the end of the first award period. To retain the maximum award amount for subsequent award periods, an eligible student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period.*
 - 2. *Any eligible student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.*
 - 3. *Any eligible student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.*
 - 4. *Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each eligible student enrolled as a full-time or part-time student at the participating institution.*
 - 5. *Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.*
- (5) *The expiration of a student's five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:*
 - (a) *A serious and extended illness or injury of the student, certified by an attending physician;*
 - (b) *The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;*
 - (c) *Natural disasters that would render a student unable to attend classes; or*
 - (d) *Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.*
- (6) *An eligible student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the Commonwealth merit scholarship, or the Commonwealth merit scholarship and the supplemental award for a maximum of ten (10) academic terms. The expiration of an eligible student's five (5) year eligibility shall be extended to six (6) years for eligible students meeting the requirements of this subsection.*
- (7) *Each eligible student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students during the academic year. The list shall identify the high school and shall contain each eligible student's name, social security number, address, grade point average for the academic year, expected or actual graduation date, and highest ACT score. The authority shall notify each eligible student of his or her Commonwealth merit scholarship award earned each academic year. The authority shall determine the final Commonwealth merit scholarship and supplemental award based upon the actual final grade point average and highest ACT score and shall notify each eligible student of the final determination. The authority shall make available a list of eligible students to participating institutions.*

- (2) *Not later than January 30, 1999, and each January 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students expected to graduate during the academic year. The list shall identify the high school and shall contain each eligible student's name, Social Security number, address, grade point average for the fall academic period of the current academic year, and highest ACT score. The authority shall then calculate each eligible student's projected Commonwealth merit scholarship and supplemental award based on the eligible student's data available to the Authority and shall make available to participating institutions by April 1 of each academic year a comprehensive list of prospective graduates who are eligible students and their projected scholarship and supplemental award amounts. The authority shall notify each prospective high school graduate who is an eligible student of his or her projected Commonwealth merit scholarship and supplemental award amount.*
- (3) *The authority shall provide data access only to participating institutions that have either received an admission application from an eligible student or have been listed by the eligible student on the Free Application For Federal Student Aid.*
- (4) *For each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:*
- (a) *The student's initial eligibility for a Commonwealth merit scholarship or Commonwealth scholarship and supplemental award through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;*
 - (b) *The student's highest ACT score attained by the date of graduation from high school;*
 - (c) *The eligible student's full-time or part-time enrollment status at the beginning of each academic term; and*
 - (d) *The eligible student's cumulative grade point average after the completion of each award period.*
- (5) *Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible students enrolled for that academic term. Commonwealth merit scholarships and supplemental awards shall be disbursed by the authority to each eligible student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.*
- (6) *Except as provided in this subsection, the Commonwealth merit scholarship and the supplemental award shall not be reduced.*
- (a) *If the sum of the Commonwealth merit scholarship and the supplemental award plus other student financial assistance from all sources exceeds the eligible student's total cost of education, as defined in 20 U.S.C. sec. 1087ll, need-based financial assistance awards administered by the authority and the participating institution shall be reduced by the amount that all student financial assistance exceeds the total cost of education.*
 - (b) *Commonwealth merit scholarships and supplemental awards shall not be awarded to any eligible students who are in default on any obligation to the authority under any programs administered by the authority under KRS 164.785 until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.*
- (7) *Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of Commonwealth merit scholarships and supplemental awards under the provisions of Sections 1 to 6 and 8 of this Act.*

Section 7. KRS 154A.130 is amended to read as follows:

- (1) All money received by the corporation from the sale of lottery tickets and all other sources shall be deposited into a corporate operating account. The corporation is authorized to use all money in the corporate operating account for the purposes of paying prizes and the necessary expenses of the corporation and dividends to the state. The corporation shall allocate the amount to be paid by the corporation to prize winners. The amount in the corporate operating account which the corporation anticipates will be available for the payment of prizes on an annuity basis, may be invested in direct United States Treasury obligations. These instruments may be in varying maturities with respect to payment of annuities and may be in book-entry form. Monthly, no later than the last business day of the succeeding month, the corporation shall transfer to a lottery trust fund the amount

of net revenues which the corporation determines are surplus to its needs. These funds shall be held in trust until 1990 at which time the General Assembly shall determine the manner in which the funds will be allocated and appropriated. The net revenues shall be determined by deducting from gross revenues the payment costs incurred in the operation and administration of the lottery, including the expenses of the corporation and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of lottery equipment and materials, fixed capital outlays, and the payment of prizes to the holders of winning tickets. After the start-up costs are paid, it is the intent of the Legislature that it shall be the goal of the corporation to transfer each year thirty-five percent (35%) of gross revenues to the general fund for the purposes stated above.

- (2) A Kentucky lottery trust account is established in the State Treasury. Net lottery revenues shall be credited to this restricted account as provided in subsection (1) of this section. Moneys credited to the Kentucky lottery trust account shall be invested by the state in accordance with state investment practices and all earnings from the investments shall accrue to this account. No moneys shall be allotted or expended from this account unless pursuant to an appropriation by the General Assembly, except that moneys as are needed shall be transferred to the general fund pursuant to the provisions of the Acts of the Extraordinary Session of the 1988 General Assembly. Moneys in the Kentucky lottery trust account shall not lapse at the close of the state fiscal year.
- (3) *Beginning in fiscal year 1999-2000, and each fiscal year thereafter, three million dollars (\$3,000,000) from net lottery revenues from the sale of lottery tickets shall be credited from the general fund as follows:*
 - (a) *To the Collaborative Center for Literacy Development, one million two hundred thousand dollars (\$1,200,000) in fiscal year 1999-2000 and each fiscal year thereafter; and*
 - (b) *To the early reading incentive fund, one million eight hundred thousand dollars (\$1,800,000) in fiscal year 1999-2000 and each fiscal year thereafter.*
- (4) *After the allocation of three million dollars (\$3,000,000) to literacy development, as provided in subsection (3) of this section, net lottery revenues from the sale of lottery tickets shall be credited from the general fund as follows:*
 - (a) *To the Wallace G. Wilkinson Commonwealth merit scholarship trust fund established in Section 3 of this Act:*
 1. *Seven million dollars (\$7,000,000) in fiscal year 1999-2000;*
 2. *Fifteen percent (15%) in fiscal year 2000-2001;*
 3. *Twenty-five percent (25%) in fiscal year 2001-2002;*
 4. *Thirty-two percent (32%) in fiscal year 2002-2003;*
 5. *Forty percent (40%) in fiscal year 2003-2004; and*
 6. *Forty-five percent (45%) in fiscal year 2004-2005 and each fiscal year thereafter; and*
 - (b) *To the College Access Program and the Kentucky Tuition Grants Program established in KRS Chapter 164:*
 1. *Fourteen million dollars (\$14,000,000) in fiscal year 1998-1999;*
 2. *Fifteen million dollars (\$15,000,000) in fiscal year 1999-2000;*
 3. *Thirty-two percent (32%) in fiscal year 2000-2001 through fiscal year 2002-2003;*
 4. *Forty percent (40%) in fiscal year 2003-2004;*
 5. *Forty-five percent (45%) in fiscal year 2004-2005; and*
 6. *Fifty-five percent (55%) of net lottery revenues in fiscal year 2005-2006 and each fiscal year thereafter.*
- (5) The Auditor of Public Accounts shall be responsible for a financial postaudit of the books and records of the corporation. The postaudit shall be conducted in accordance with generally accepted accounting principles, shall be paid for by the corporation, and shall be completed within ninety (90) days of the close of the corporation's fiscal year. The Auditor of Public Accounts shall contract with an independent, certified public accountant who meets the qualifications existing to do business within the Commonwealth of Kentucky to perform the corporation postaudit. The Auditor of Public Accounts shall remain responsible for the annual

postaudit and the corporation shall pay all audit costs. The Auditor of Public Accounts may, at any time, conduct additional audits, including performance audits, of the corporation as he deems necessary or desirable. Contracts shall be entered into for audit services for a period not to exceed five (5) years and the same firm shall not receive two (2) consecutive audit contracts. All audits shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives. The corporation shall reimburse the Auditor of Public Accounts for the reasonable costs of any audits performed by him. The corporation shall cooperate with the Auditor of Public Accounts by giving employees designated by any of them access to facilities of the corporation for the purpose of efficient compliance with their respective responsibilities. With respect to any reimbursement that the corporation is required to pay to any agency, the corporation shall enter into an agreement with that agency under which the corporation shall pay to the agency an amount reasonably anticipated to cover the reimbursable expenses in advance of the expenses being incurred.

SECTION 8. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of KRS 164.7535 and 164.785 to the contrary, if sufficient funds are available, the authority shall do one (1) of the following:

- (1) *Promulgate an administrative regulation to increase the maximum amount available under the grant programs to each student, up to the prevailing tuition rate charged by the regional public universities for full-time enrollment in an undergraduate program, but in no event shall a student receive more than the student's cost of education less expected family contribution and other anticipated student financial assistance;*
- (2) *Promulgate an administrative regulation to increase the average income level for qualification for the grant programs; or*
- (3) *Promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs.*

Approved April 14, 1998

CHAPTER 576

(SB 33)

AN ACT relating to state holidays.

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

Section 1. KRS 18A.190 is amended to read as follows:

- (1) State offices shall be closed and state employees shall be given a holiday on the following days:
 - (a) The first day of January plus one (1) extra day;
 - (b) The third Monday in January;
 - (c) ~~The third Monday in February;~~
 - ~~(d)~~ Good Friday, one-half (1/2) day;
 - ~~(d)~~~~(e)~~ The last Monday in May;
 - ~~(e)~~~~(f)~~ The fourth day of July;
 - ~~(f)~~~~(g)~~ The first Monday in September;
 - ~~(g)~~~~(h)~~ *The eleventh day of November;*
 - (h) Presidential election day as required under KRS 2.190;
 - (i) The fourth Thursday in November plus one (1) extra day; *and*
 - (j) The twenty-fifth day of December plus one (1) extra day.
- (2) When any of the days enumerated in subsection (1) falls on a Saturday, the preceding Friday shall be observed as the holiday, and when any of the days enumerated in subsection (1) falls on a Sunday, the following Monday

shall be observed as the holiday. When one (1) extra day is mentioned in paragraphs (a), (i) and (j) of subsection (1), the Governor shall designate the extra day.

- (3) The holidays set out in this section are in addition to vacation leave and other benefits of state employees.

Approved April 14, 1998

CHAPTER 577

(SB 53)

AN ACT relating to limitations of civil actions.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- (a) *"Childhood sexual assault" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a felony in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.030, 530.020, 530.064, 531.310, or 531.320. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault;*
- (b) *"Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;*
- (c) *"Child" means a person less than eighteen (18) years old; and*
- (d) *"Injury or illness" means either a physical or psychological injury or illness.*

(2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault shall be brought before whichever of the following periods last expires:

- (a) *Within five (5) years of the commission of the act or the last of a series of acts by the same perpetrator;*
- (b) *Within five (5) years of the date the victim knew, or should have known, of the act; or*
- (c) *Within five (5) years after the victim attains the age of eighteen (18) years.*

(3) If a complaint is filed alleging that an act of childhood sexual assault or childhood sexual abuse occurred more than five (5) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:

- (a) *The court rules upon the motion to seal;*
- (b) *Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or*
- (c) *The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.*

Section 2. This Act shall apply to all actions which accrue before or after the date this Act becomes law. The General Assembly finds that retroactive effect is necessary to provide uniform justice to the victims of sexual offenses who were children when the offenses occurred.

Approved April 14, 1998

CHAPTER 578**(SB 121)**

AN ACT relating to abortion.

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

Section 1. KRS 311.720 is amended to read as follows:

As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context otherwise requires:

- (1) "Abortion" shall mean the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death.
- (2) "Hospital" shall mean those institutions licensed in the Commonwealth of Kentucky pursuant to the provisions of KRS Chapter 216.
- (3) "Consent" as used in KRS 311.710 to 311.820 with reference to those who must give their consent shall mean an informed consent expressed by a written agreement to submit to an abortion on a written form of consent to be promulgated by the secretary for human resources.
- (4) "Cabinet" shall mean the Cabinet for Human Resources of the Commonwealth of Kentucky.
- (5) "Fetus" shall mean a human being from fertilization until birth.
- (6) "Human being" shall mean any member of the species homo sapiens from fertilization until death.
- (7) ***"Partial-birth abortion" shall mean an abortion in which the physician performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.***
- (8) ***"Vaginally delivers a living fetus before killing the fetus" shall mean deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus.***
- (9) "Physician" shall mean any person licensed to practice medicine in the Commonwealth or osteopathy pursuant to the provisions of this chapter.
- ~~(10)(8)~~ "Viability" shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother.
- ~~(11)(9)~~ "Accepted medical procedures" shall mean procedures of the type performed in the manner and in a facility with equipment sufficient to meet the standards of medical care which physicians engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.

SECTION 2. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

No physician shall perform a partial-birth abortion.

Section 3. KRS 311.595 is amended to read as follows:

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

- (1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;
- (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;
- (3) Committed, procured, or aided in the procurement of an unlawful abortion, ***including a partial-birth abortion;***
- (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of

- Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor, under the laws;
- (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;
 - (6) Become addicted to a controlled substance;
 - (7) Become a chronic or persistent alcoholic;
 - (8) Developed a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public;
 - (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof;
 - (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;
 - (11) Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art;
 - (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including, but not limited to, the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board;
 - (13) Violated any agreed order, letter of agreement, order of suspension, or the terms or conditions of any order of probation, issued by the board;
 - (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar, or different name;
 - (15) Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured;
 - (16) Willfully violated a confidential communication;
 - (17) Had his license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof. This subsection shall not require relitigation of the disciplinary action;
 - (18) Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund;
 - (19) Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each;
 - (20) Been removed, suspended, expelled, or disciplined by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action; or

- (21) Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action.

Section 4. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Human Resources, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
 - (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11) (a)
 1. ***Any physician who performs a partial-birth abortion in violation of Section 2 of this Act shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.***
 2. ***A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.***
 3. ***Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.***

- (b) *Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.*
- (c) *No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.*
- (12) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.726 shall be guilty of a Class A misdemeanor.
- ~~(13)(12)~~ Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
- ~~(14)(13)~~ Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- ~~(15)(14)~~ Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
- ~~(16)(15)~~ Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- ~~(17)(16)~~ Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- ~~(18)(17)~~ Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
- ~~(19)(18)~~ A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- ~~(20)(19)~~ Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(21)(20)~~ Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- ~~(22)(21)~~ Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.
- ~~(23)(22)~~ Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- ~~(24)(23)~~ Any person who violates KRS 311.914 shall be guilty of a violation.
- ~~(25)(24)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- ~~(26)(25)~~ (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;
- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- ~~(27)(26)~~ A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.
- ~~(28)(27)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(29)(28)~~ Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- ~~(30)(29)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

~~(31)~~~~(30)~~ Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).

~~(32)~~~~(31)~~ Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

Approved April 14, 1998

CHAPTER 579

(SB 177)

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.

- (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Medical Examiner Program.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Office of Development.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
- (a) Department of Highways.
 - (b) Department of Vehicle Regulation.

- (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Office of Aeronautics.
 - (g) Office of General Counsel.
 - (h) Office of Public Relations.
 - (i) Office of Personnel Management.
 - (j) Office of Minority Affairs.
 - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
 - (b) Department of Job Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.
 - (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
- (a) Department for Health Services.
 - (b) Department for Social Insurance.
 - (c) Department for Social Services.
 - (d) Department for Medicaid Services.
 - (e) Department for Mental Health and Mental Retardation Services.
 - (f) Commission for Children with Special Health Care Needs.
 - (g) Public Assistance Appeals Board.
 - (h) Office of Administrative Services.

- (i) Office of Communications.
 - (j) Office of General Counsel.
 - (k) Office of Inspector General.
 - (l) Office of Policy and Budget.
 - (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management and Economic Analysis.
 - (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) Department of Information Systems.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Pollution Abatement Authority.
 - (j) Kentucky Savings Bond Authority.
 - (k) Deferred Compensation Systems.
 - (l) Office of Equal Employment Opportunity Contract Compliance.
 - (m) Capital Plaza Authority.
 - (n) County Officials Compensation Board.
 - (o) Kentucky Employees Retirement Systems.
 - (p) Commonwealth Credit Union.
 - (q) State Investment Commission.
 - (r) Kentucky Housing Corporation.
 - (s) Governmental Services Center.
 - (t) Kentucky Local Correctional Facilities Construction Authority.
 - (u) Kentucky Turnpike Authority.
 - (v) Historic Properties Advisory Commission.
9. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.

- (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor-Management Relations *and Mediation*.
 - (m) Office of General Counsel.
 - (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
- (a) Department of Property Taxation.
 - (b) Department of Compliance and Taxpayer Assistance.
 - (c) Department of Administrative Services.
 - (d) Office of General Counsel.
11. Tourism Cabinet:
- (a) Department of Travel Development.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of Film Promotion.
 - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) Governor's Council on Vocational Education.
 - (h) The State Board for Proprietary Education.
 - (i) The Foundation for Adult Education.
 - (j) The Kentucky Job Training Coordinating Council.
 - (k) Office of General Counsel.
 - (l) Office of Communication Services.
 - (m) Office of Development and Industry Relations.
 - (n) Office of Workforce Analysis and Research.
 - (o) Office for Administrative Services.
 - (p) Office for Policy, Budget, and Personnel.
 - (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
 - (a) Kentucky Community Service Commission.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. KRS 198B.658 is amended to read as follows:

- (1) The board shall issue a master heating, ventilation, and air conditioning contractor's license to any person who:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades as a journeyman heating, ventilation, and air conditioning mechanic for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor; and
 - (c) Has passed an examination prescribed by the board to determine competency to practice heating, ventilation, and air conditioning contracting.
- (2) The board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to any person who:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor, or who prior to July 1, 1995, under the direction and supervision of a person who qualifies under KRS 198B.662; and
 - (c) Has passed an examination prescribed by the board to determine competency to install, maintain, and repair heating and cooling systems, heating and cooling service, burner service, and hydronic systems.
- (3) The board shall issue an apprentice heating, ventilation, and air conditioning mechanic's certificate to any person who is registered with the board.
 - (a) The board shall establish by administrative regulation the minimum number of hours of experience required by apprentices and shall maintain an apprentice register to credit an apprentice for hours worked under the supervision of a master heating, ventilation, and air conditioning contractor and journeyman heating, ventilation, and air conditioning mechanic. Experience gained under the supervision of a Kentucky licensed master heating, ventilation, and air conditioning contractor while registered as an apprentice with the Kentucky Labor Cabinet, Division of Employment Standards, ~~and~~ Apprenticeship and Training in cooperation with the U.S. Department of Labor, Bureau of Apprenticeship and Training, shall be accepted toward the two (2) year experience requirement for a journeyman heating, ventilation, and air conditioning mechanic license.
 - (b) The apprentice register shall include the name, address, Social Security number, employer, and dates of employment of the apprentice.
 - (c) The apprentice shall notify the board in writing of any change in address or employer.
 - (d) Apprentices and pre-apprentices shall not be required to pay fees for a certificate of registration or a registration renewal fee.

- (4) The satisfactory completion of one (1) academic year of a board-approved curriculum or one (1) year of professional training in heating, ventilation, and air conditioning work may be considered as equivalent to one (1) year of employment required by subsection (2)(b) of this section, not to exceed one (1) year.
- (5) The satisfactory completion of one (1) academic year of teaching experience in a board-approved or state-approved technical education program in heating, ventilation, and air conditioning shall be considered as equivalent to one (1) year of employment, as required by subsection (1)(b) or (2)(b) of this section. No more than one (1) year of approved teaching experience may be used in meeting the requirements of subsection (1)(b) or (2)(b) of this section.

Section 3. KRS 336.015 is amended to read as follows:

- (1) The secretary of labor shall have the duties, responsibilities, power, and authority relating to labor, wages and hours, occupational safety and health of employees, child labor, apprenticeship, workers' compensation, and all other matters previously under the jurisdiction of the commissioner and Department of Labor.
- (2) The Labor Cabinet shall consist of the Offices of the Secretary, General Counsel, Administrative Services, Labor-Management Relations *and Mediation*; the Kentucky Workers' Compensation Funding Commission; the Workers' Compensation Board; the Occupational Safety and Health Review Commission; and the Departments of Workplace Standards, and Workers' Claims. The commissioner of the Department of Workplace Standards and the Department of Workers' Claims within the Labor Cabinet shall be under the direction and control of the secretary of the Labor Cabinet.

Section 4. KRS 336.020 is amended to read as follows:

- (1) The Department of Workplace Standards shall be headed by a commissioner, and shall be divided for administrative purposes into the Divisions of Employment Standards, *Apprenticeship and Training* ~~and Mediations~~; *Special Fund*; Occupational Safety and Health Compliance; and Education and Training for Occupational Safety and Health.
- (2) The Department of Workers' Claims shall be administered by a commissioner and shall be divided for administrative purposes into the Divisions of Claims Processing and Appeals, *Information and Research, Security and Compliance*, Administrative Law Judges, *and Insurance*~~, and Special Fund~~.

Section 5. KRS 336.164 is amended to read as follows:

- (1) The council shall function as an advisory agent of state government and provide leadership and assistance for labor and management in this state, and shall serve to effect improved labor-management relations within the state, and to thereby attract and encourage new and existing industry in this state.
- (2) The council shall not infringe upon or assume the responsibilities, duties or functions of the Labor Cabinet or Cabinet for Economic Development. The council may make recommendations to the Governor and the Legislature on matters relating to labor-management problems in this state and any other matter it deems necessary.
- (3) Meetings of the council may be held at any location in this state; however the principal office of the council will be located in Frankfort, Kentucky.
- (4) The secretary of labor shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary expenses incurred as a result of attending council meetings, and he shall act as the executive secretary of the council. The executive director of the Office of Labor-Management Relations *and Mediation* shall be responsible for the coordination of such staff and supplies.

Section 6. KRS 336.165 is amended to read as follows:

The Office of Labor-Management Relations *and Mediation* shall, subject to appropriation from the General Assembly or funds made available to the office from any other public or private source, provide grants-in-aid to labor-management relations organizations that include both labor and management representatives. An organization shall use a grant-in-aid for the purpose of improving labor-management relations or improving communications with respect to subjects of mutual interest or concern to labor and management. The office shall not provide a grant-in-aid to any organization which interferes with collective bargaining in any plant or industry. The Office of Labor-Management Relations *and Mediation* shall promulgate administrative regulations necessary to carry out this section.

Section 7. KRS 342.122 is amended to read as follows:

- (1)
 - (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards, *Apprenticeship and Training* ~~and *Mediation*~~ and the Office of Labor-Management Relations *and Mediation*, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.
 - (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.
 - (c) In addition to the assessment imposed in paragraph (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars (\$4,750,000).
 - (d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
 - (e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.
- (2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.
- (3) The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

- (4) A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.
- (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.
- (6) Each self-insured employer, group self-insurer, or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.
- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 8. KRS 336.140 is amended to read as follows:

The ~~secretary~~~~commissioner~~ may inquire into the causes of strikes, lockouts, and other disputes between employers and employees, and endeavor to effect an amicable settlement. He may create ~~within the department~~ boards to which disputes between employers and employees may be submitted on request of both the employer and the employees for mediation. Where a joint wage agreement, existing between an employer and any labor organization, provides for the settlement of disputes, any disputes that arise shall be settled by the terms of the contract, and when so settled shall be binding and final upon the ~~secretary~~~~commissioner~~.

Section 9. KRS 336.151 is amended to read as follows:

- (1) It shall be the duty of the ~~secretary~~~~commissioner~~, in order to prevent or minimize interruptions growing out of labor disputes, to assist parties to labor disputes to settle such disputes through conciliation and mediation.
- (2) The ~~secretary~~~~commissioner~~ may proffer his services in any labor dispute either upon his own motion or upon the request of one or more of the parties to the dispute. Whenever the ~~secretary~~~~commissioner~~ proffers his services in any dispute and the services of the ~~secretary~~~~commissioner~~ have been accepted, it shall be the duty of the ~~secretary~~~~commissioner~~ to put himself in communication with the parties and to use his best efforts, by mediation and conciliation, to bring them to agreement.
- (3) If the ~~secretary~~~~commissioner~~ is not able to bring the parties to agreement by mediation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to

strike, lockout, or other coercion. The failure or refusal of either party to agree to any procedure suggested by the ~~secretary~~~~commissioner~~ shall not be deemed a violation of any duty or obligation imposed by KRS 336.151 and 336.152.

Section 10. KRS 336.152 is amended to read as follows:

In order to prevent or minimize interruptions growing out of labor disputes, employees and employers and their representatives, shall:

- (1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;
- (2) Whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;
- (3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the ~~secretary~~~~commissioner~~ under KRS 336.151 and 336.152 for the purpose of aiding in a settlement of the dispute.

Section 11. KRS 336.160 is amended to read as follows:

The ~~secretary~~~~commissioner~~ shall present biennial reports to the General Assembly giving statistical data relating to employment and unemployment in the state such as the hours and wages of employees, cost of living, the amount of labor required, the estimated number and classification of persons unemployed, the estimated number of persons depending on daily labor for support, the probable chances of increased employment, the number of unemployed depending on public relief, facts relating to industrial accidents, the workers' compensation for industrial injuries, labor disputes, and facts relating to acts of the department in the enforcement of the law and its work generally.

Section 12. KRS 345.010 is amended to read as follows:

When used in this chapter:

- (1) "Public employer" means a city of the first class or any city that petitions the ~~commissioner of the Department of Workplace Standards, under the direction of the~~ secretary of the Labor Cabinet to be included by this chapter;
- (2) "Firefighter" means an employee of the public employer engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;
- (3) "Labor organization" means any chartered labor organization of any kind in which firefighters participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;
- (4) "Exclusive representative" means the labor organization which has been designated by the State Labor Relations Board as the representative of the majority of firefighters in appropriate units or has been so recognized by the public employer;
- (5) "Board" means the State Labor Relations Board;
- (6) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;
- (7) "~~Secretary~~~~Commissioner~~" means the ~~commissioner of the Department of Workplace Standards, under the direction and supervision of the~~ secretary of the Labor Cabinet of the Commonwealth of Kentucky.

Section 13. KRS 345.080 is amended to read as follows:

- (1) If after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications in an existing agreement the parties to the negotiations are deadlocked, either party or the parties jointly may petition the board, by certified mail, return receipt requested, or by registered mail, to initiate fact finding.
- (2) Upon receipt of a petition to initiate fact finding, the ~~secretary~~~~commissioner~~ shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the ~~secretary~~~~commissioner~~ is empowered to utilize his office in an effort to effectuate a settlement between the parties through mediation and conciliation.

- (3) Upon completion of the *secretary's*~~commissioner's~~ investigation, and if a settlement between the parties has still not been reached, the *secretary*~~commissioner~~ shall within five (5) days appoint a qualified and disinterested person as the impartial chairman of a three (3) man panel to function as the fact finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) by the employer, parties to the deadlocked negotiations.
- (4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the employer is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings the panel shall, by majority decision, make written findings of fact and recommendations for solution of the dispute. The panel shall cause all of its written findings, recommendations, and opinions to be served on the employer and labor organization (parties) and same shall be released to the public. Expenses incurred by the three (3) man panel in this section shall be paid by the parties involved in the labor dispute.
- (5) The *secretary*~~commissioner~~ may adopt, promulgate, amend, and rescind such rules and regulations as he deems necessary and administratively feasible not inconsistent with the provisions of this chapter to carry out his responsibilities over the fact-finding procedures set forth in this section. However, unless the parties agree to extend the time for the hearings, they must be completed with recommendations from the fact-finding panel, within one hundred twenty (120) days from the date the petition to initiate the fact-finding procedure was received by the *secretary*~~commissioner~~.

Section 14. The General Assembly confirms Executive Order 96-885, dated on July 9, 1996, relating to reorganization of the Labor Cabinet, to the extent it is not otherwise confirmed by this Act, and except for the creation of the Office of the Fraud Prevention, which was superseded by Executive Order 97-69.

Approved April 14, 1998

CHAPTER 580

(SB 186)

AN ACT relating to literacy programs.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section and Section 3 of this Act, unless the context requires otherwise:*
- (a) *"Reading" means the process of comprehending the meaning of written text by depending on:*
1. *The ability to use phonics skills, that is, knowledge of letters and sounds, to decode printed words quickly and effortlessly, both silently and aloud;*
 2. *The ability to use previously learned strategies for reading comprehension; and*
 3. *The ability to think critically about the meaning, message, and aesthetic value of the text.*
- (b) *"Reliable, replicable research" means objective, valid, scientific studies that:*
1. *Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;*
 2. *Rely on measurements that meet established standards of reliability and validity;*
 3. *Test competing theories, where multiple theories exist;*
 4. *Are subjected to peer review before their results are published; and*
 5. *Discover effective strategies for improving reading skills.*
- (2) *The early reading incentive fund is created to improve the reading skills of students in the primary program. The Department of Education, upon the recommendation of the Early Reading Incentive Grant Steering Committee, shall provide grants to schools to support teachers in the implementation of reliable, replicable research-based reading models that use a balance of instructional strategies, including phonics*

instruction, to address the diverse learning needs of those students reading at low levels. Any moneys in the fund at the close of the fiscal year shall not lapse but shall be carried forward to be used for the purposes specified in this section.

- (3) *Upon recommendation of the Early Reading Incentive Grant Steering Committee, the state board shall establish by promulgation of an administrative regulation in accordance with provisions of KRS Chapter 13A an application process and the criteria for funding grants. The application shall include, but not be limited to, the following:*
 - (a) *Identification of the research-based model to be implemented;*
 - (b) *The method for identifying qualified students to be served;*
 - (c) *An implementation plan and timeline, including supporting professional development efforts;*
 - (d) *A plan for evaluation to assess the short-term and long-term success of the program;*
 - (e) *A budget; and*
 - (f) *Approval of the application by the school council if one exists, the principal, and the superintendent of schools.*
- (4) *In order to qualify for funding, the school council, or if none exists, the superintendent of schools, shall allocate matching funds. Funding for professional development allocated to the school council under KRS 160.345 and for continuing education under Section 4 of this Act may be used as part of the school's match.*
- (5) *The Department of Education shall make available to schools:*
 - (a) *Information concerning successful, research-based early reading models, including phonics instruction, from the Collaborative Center for Literacy Development created under Section 3 of this Act;*
 - (b) *Strategies for successfully implementing early reading programs, including professional development support and the identification of funding sources; and*
 - (c) *A list of professional development providers offering teacher training related to phonics instruction.*
- (6) *The Department of Education shall submit a report to the Interim Joint Committee on Education no later than September 1 of each year outlining the use of grant funds and a summary of the program's evaluation conducted by the Collaborative Center for Literacy Development under Section 3 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *The Early Reading Incentive Grant Steering Committee is hereby created for the purpose of advising the Kentucky Board of Education and the Department of Education concerning the implementation and administration of the early reading incentive grant fund created by Section 1 of this Act. The committee shall be composed of fifteen (15) members including the commissioner of education or the commissioner's designee, the president of the Council on Postsecondary Education or the president's designee, a representative from the Advisory Council for Adult Education and Literacy to be selected by its membership, and the following members, to be appointed by the Governor:*
 - (a) *Two (2) primary program teachers with a specialty or background in reading and literacy;*
 - (b) *Eight (8) university professors with a specialty or background in reading and literacy representing each of the public universities; and*
 - (c) *Two (2) individuals from the state at large with background and interest in reading and literacy.*
- (2) *Each member of the committee, other than members who serve by virtue of their position, shall serve for a term of three (3) years or until a successor is appointed and qualified except that upon initial appointment, four (4) members shall serve a one (1) year term, four (4) members shall serve a two (2) year term, and four (4) members shall serve a three (3) year term.*
- (3) *A majority of the full authorized membership shall constitute a quorum.*
- (4) *The committee shall elect, by majority vote, a chair, who shall be the presiding officer of the committee, preside at all meetings, and coordinate the functions and activities of the committee. The chair shall be elected or reelected each calendar year.*

- (5) *The committee shall be attached to the Department of Education for administrative purposes.*
- (6) *The committee shall:*
 - (a) *Identify needs in schools throughout the state regarding reading and literacy programs;*
 - (b) *Develop criteria for the solicitation, review, and approval of grant applications provided under Section 1 of this Act;*
 - (c) *Develop a process for monitoring grants that are awarded; and*
 - (d) *Recommend approval of grant applications based upon criteria established by the committee.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The Collaborative Center for Literacy Development: Early Childhood through Adulthood is created to make available training for educators in reliable, replicable research-based reading models, and to promote literacy development. The center shall be responsible for:*
 - (a) *Developing and implementing a clearinghouse for information about models addressing reading and literacy from the elementary grades through adult education;*
 - (b) *Collaborating with public and private institutions of postsecondary education to provide for teachers and administrators quality preservice and professional development in early reading instruction, including phonics instruction;*
 - (c) *Assisting districts located in areas with low levels of reading skills to assess and address identified literacy needs;*
 - (d) *Providing professional development and coaching for classroom teachers implementing selected reliable, replicable research-based reading models;*
 - (e) *Developing and implementing a comprehensive research agenda evaluating the early reading models implemented in Kentucky under Section 1 of this Act; and*
 - (f) *Establishing a demonstration and training site for early literacy located at each of the public universities.*
- (2) *The center shall submit an annual report on its activities to the Governor and the Legislative Research Commission no later than September 1 of each year.*
- (3) *With the advice of the Department of Adult Education and Literacy in the Cabinet for Workforce Development and the Department of Education, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Collaborative Center for Literacy Development at a public institution of postsecondary education. The Council on Postsecondary Education shall approve the location no later than October 1, 1998, and monitor the establishment of the center.*

Section 4. KRS 158.070 is amended to read as follows:

- (1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.
- (2) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:
 - (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
 - (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
 - (c) No teacher shall be required to teach more than the minimum term during the school year.
- (3) Each local board of education shall use four (4) days of the minimum school term for professional development and planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095. The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays, provided, however, any holiday which occurs on Saturday may

be observed on the preceding Friday. Each local board may use two (2) days for planning activities without the presence of pupils. Each local board may use the number of days deemed necessary for:

- (a) National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
 - (b) Local disaster which would endanger the health or safety of children; and
 - (c) Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the chief state school officer.
- (4) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (3)(b) of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.
- (5) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and that day may be used for professional development activities, professional meetings, or parent-teacher conferences.
- (6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.
- (7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. ***A school district that has a school operating a model early reading program under Section 1 of this Act may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.***
- (8) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section. However, for the school years 1994-95 and 1995-96, local school districts may use up to five (5) instructional days or up to thirty (30) hours during instructional days for additional professional development for teachers if the following conditions are met:
- (a) The local board determines the number of additional days or hours to be used for professional development and designates them in the school calendar; and
 - (b) A plan for the use of the additional days or hours is developed by each school and approved by the district superintendent. The plan shall consist of training selected from a list approved by the Kentucky Department of Education.

Approved April 14, 1998

CHAPTER 581**(SB 199)**

AN ACT relating to telephone solicitation.

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

Section 1. KRS 367.46951 is amended to read as follows:

As used in KRS 367.46951 to 367.46999, unless the context otherwise requires:

- (1) "Telephone solicitation" means:
 - (a) A telephone call *or message sent by a facsimile machine* to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:
 1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
 2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
 3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
 4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan; or
 - (b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant *or telemarketer* or who have not previously requested credit from the merchant, to a prospective purchaser if the merchant *or telemarketer* represents or implies to the recipient of the notification that any of the following applies:
 1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
 2. That the recipient will receive a prize or gift if the recipient calls the merchant *or telemarketer*; or
 3. That if the recipient buys one (1) or more items from the merchant *or telemarketer*, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;
- (2) "Telephone solicitation" does not mean *the following*:
 - (a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;
 - (b) A telephone call made primarily in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;
 - (c) *A telephone call to any person with whom the telemarketer or merchant has a prior or existing business relationship, including but not limited to the solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;*
 - (d) *A telephone call made by any of the following*:
 1. *A college or university accredited by a national or regional accrediting organization;*

2. *An organization exempt from taxation under Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code;*
3. *A school, or a person on behalf of a school, regulated by the Kentucky Department of Education;*

~~[a telephone call made by any of the following:]~~

- 4.~~[1.]~~ A real estate broker or sales associate properly licensed under the provisions of KRS Chapter 324;
- 5.~~[2.]~~ A broker-dealer, agent, or investment adviser properly registered under the provisions of KRS Chapter 292;
- 6.~~[3.]~~ An insurance agent, solicitor, or consultant properly licensed under the provisions of Subtitle 9 of KRS Chapter 304;
- 7.~~[4.]~~ An employment agency that has obtained a current permit from the Cabinet for Human Resources under the provisions of KRS Chapter 340;
- 8.~~[5.]~~ A person soliciting the sale of a subscription to a newspaper, magazine, or periodical of general circulation, or a cable television service;
- 9.~~[6.]~~ A merchant *or telemarketer* or the merchant's *or telemarketer's* affiliate or authorized agent, when the merchant *or telemarketer* is regulated by the Public Service Commission;
- 10.~~[7.]~~ A merchant *or telemarketer* soliciting the sale of food costing less than one hundred dollars (\$100) to each address;
- 11.~~[8.]~~ A person who periodically issues and delivers catalogs to potential purchasers if the catalog includes a written description or illustration and the sales price of each item offered for sale, includes at least twenty-four (24) full pages of written material or illustrations, is distributed in more than one (1) state, and has an annual circulation of not less than two hundred fifty thousand (250,000) customers;
- 12.~~[9.]~~ The solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;
- 10.~~[10.]~~ Any corporation, partnership, or individual whose business or activities are regulated by the Commonwealth of Kentucky, Department for Financial Institutions;
- 13.~~[11.]~~ A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;
- 12.~~[12.]~~ A merchant *or telemarketer* or the merchant's *or telemarketer's* affiliate or authorized agent when the merchant *or telemarketer* is subject to the control or licensure regulations of the Federal Communications Commission;
- 14.~~[13.]~~ A book, video, or record club or contractual plan or arrangement in which the *merchant or telemarketer*~~[seller]~~ provides the consumer with a form which the consumer may use to instruct the *merchant or telemarketer*~~[seller]~~ not to ship the offered merchandise, or which is regulated by federal regulation concerning the use of negative option plans by sellers in commerce, or which otherwise provides for the sale of books, records, or videos. Examples of the latter plan include continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;
- 15.~~[14.]~~ A merchant *or telemarketer* who: solicits without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; does not make the major sales presentation during the solicitation but arranges for the major presentation to be made at a later, face-to-face meeting between the sales person and the purchaser; and does not go or cause another to collect payment for the purchase or deliver any item purchased to the prospective purchaser directly following the telephone solicitation;~~[or]~~
- 16.~~[15.]~~ Any telephone marketing service company which provides telemarketing sales services under contract to merchants and has been operating continuously for at least five (5) years under

the same business name and seventy-five percent (75%) of whose services are performed for merchants exempted under KRS 367.46951 to 367.46999, if the company files an annual certification with the Office of the Attorney General on a form prescribed by the Attorney General. The certification shall include the company's basis for claiming the exemption and shall indicate the company's agreement to comply with the provisions of KRS 367.46951 to 367.46999, if applicable;

17. ***A telephone call made by a merchant or telemarketer located in Kentucky to a location outside the Commonwealth of Kentucky;***
18. ~~[(d)A telephone call made by]~~ A merchant or his employee if the merchant has operated for at least two (2) years, under the same name as that used in connection with its telemarketing operations, a retail establishment in Kentucky where consumer goods are displayed and offered for sale on a continuing basis if a majority of the merchant's business involves the buyers obtaining services or products at the merchant's retail establishment; or
19. ~~[(e)A telephone call made by]~~ A merchant ***or telemarketer*** or the merchant's ***or telemarketer's*** affiliate or authorized agent, where the merchant ***or telemarketer*** is a publicly traded corporation;

Except for ***paragraph (d)16.*** ~~[subparagraph (2)(e)15.]~~ of this ***subsection*** ~~[section]~~, the exemptions provided under ***this subsection*** ~~[(2) of this section]~~ shall apply only to a merchant ***or telemarketer*** or the merchant's ***or telemarketer's*** affiliate or authorized agent engaging in a telephone solicitation on the merchant's ***or telemarketer's*** behalf;

- (3) "Consumer goods or services" means goods, services, or interests in real property used by natural persons primarily for personal, family, or household purposes;
- (4) "Consumer loan" means any extension of credit, including credit cards and other forms of revolving credit, to a natural person primarily for the purposes of purchasing consumer goods or services or for paying existing personal, family, or household debts;
- (5) "Consumer" means a natural person who receives a telephone solicitation;
- (6) "Legal name of the merchant" means the real name of the merchant, as defined in KRS 365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to KRS 365.015;
- (7) "Merchant" means the individual or business entity offering the consumer goods or services, an investment, business, or employment opportunity, or a consumer loan;
- (8) "Caller" or "sales person" means the individual making the call or operating the automatic dialing or recorded message device and causing the call to be made;
- (9) "Division" means the Consumer Protection Division of the Office of the Attorney General;
- (10) "Automated calling equipment" means any device or combination of devices used to select or dial telephone numbers and to deliver recorded messages to those numbers without the use of a live operator; and
- (11) ***"Telemarketer" means any person who under contract with a merchant or in connection with a telephone solicitation initiates or receives telephone calls to or from a consumer of goods and services. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director, or partner to the management activities of a business.***
- (12) "Publicly-traded corporation" means an issuer or subsidiary of an issuer that has a class of securities which is:
 - (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78l) and which is registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
 - (b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or
 - (c) A reported security within the meaning of subparagraph (4) of Regulation Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A subsidiary of an issuer that qualifies for exemption under this paragraph shall not itself be exempt unless at least sixty percent (60%) of the voting power of its shares is owned by the qualifying issuer.

(13) ***"Telemarketing company" means a company whose primary business is to engage in telephone solicitation.***

Section 2. KRS 367.46977 is amended to read as follows:

- (1) If the merchant *or telemarketer* represents or implies that the consumer will receive a prize, award, or similar item of value from a number of such prizes or awards, all sales presentations shall include the actual number of individuals who have received the item having the greatest value, ***a description of the item, the market value of the item, the number of prizes to be awarded, the conditions to receive the item, the odds of winning, the statement that no purchase is necessary to win the prize or to participate in the promotion,*** and the actual number of individuals who have received the item with the least value within the preceding twelve (12) months or since the merchant *or telemarketer* has been in business if less than twelve (12) months.
- (2) If the merchant *or telemarketer* is offering *real estate*, an investment, business, or employment opportunity, the sales presentation shall include the following:
 - (a) The number of consumers or investors who have participated to date;
 - (b) The actual experience of the consumers or investors as measured by the standards used in the sales presentations; and
 - (c) ***The price of the real estate or investment;***
 - (d) ***The location of the real estate or investment;***
 - (e) ***Regarding an investment or business opportunity, the reasonable likelihood of success and a notice of the risk; and***
 - (f) If the opportunity is so recent that no actual performance experience exists, that fact shall be disclosed in all sales presentations, and no other representation of performance shall be made in sales presentations.
- (3) If the sales presentation includes representations of prices below those usually charged for items, the sales presentation shall include the name of the manufacturer, importer, or supplier of such items and the locations within the merchant' *or telemarketer's* calling state or this state at which the items are offered at usual prices. If the item has never been sold in the merchant's *or telemarketer's* calling state or this state no representation of usual selling price shall be made.
- (4) ***If presenting information on merchandise or service, the total cost of the goods or services that are the subject of the call shall be given.***
- (5) ***If any restrictions, limitations, or conditions for the purchase or investment exist, these shall be disclosed during the telephone sales presentation.***
- (6) ***Terms for refunds, cancellation, exchange, or repurchase of the subject of the sales presentation shall be disclosed during the telephone sales presentation.***

SECTION 3. A NEW SECTION OF KRS 367.46951 TO 367.46999 IS CREATED TO READ AS FOLLOWS:

It is a prohibited telephone solicitation act or practice and a violation of KRS 367.46951 to 367.46999 for any telemarketing company to engage in the following conduct:

- (1) ***Advertising or representing that registration as a telemarketer equals an endorsement or approval by any government or governmental agency;***
- (2) ***Requesting a fee in advance to remove derogatory information from or improve a person's credit history or credit record;***
- (3) ***Requesting or receiving a payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telephone solicitation transaction;***
- (4) ***Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketing company has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;***
- (5) ***Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or bond or other account without the consumer's express written authorization;***

- (6) *Procuring the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected;*
- (7) *Assisting, supporting, or providing substantial assistance to any telemarketer when the telemarketing company knew or should have known that the telemarketer was engaged in any act or practice prohibited under this section;*
- (8) *Making a telephone solicitation to anyone under eighteen (18) years of age. When making a telephone solicitation the telemarketer shall inquire as to whether the person is eighteen (18) years of age or older and the answer shall be presumed to be correct;*
- (9) *Utilizing any method to block or otherwise circumvent the use of a caller identification service when placing an unsolicited telephone solicitation call;*
- (10) *Directing or permitting employees to use a fictitious name or not to use their name while making a telephone solicitation.*
- (11) *Threatening, intimidating, or using profane or obscene language;*
- (12) *Causing the telephone to ring more than thirty (30) seconds in an intended telephone solicitation;*
- (13) *Engaging any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;*
- (14) *Initiating a telephone solicitation call to a person, when that person has stated previously that he or she does not wish to receive solicitation calls from that seller;*
- (15) *Making or causing to be made an unsolicited telephone solicitation call if the number for that telephone appears in the current publication of the "no telephone solicitation calls" list maintained by the Office of the Attorney General, Division of Consumer Protection. Any holder of a telephone number may notify the division and be placed on a "no telephone solicitation calls" list indicating the wish not to receive unsolicited telephone solicitation calls by notification to the division. The names of persons requesting to be on the "no telephone solicitation calls" list shall remain on the list until the person rescinds his or her name from the list. The list shall be published quarterly in hard copy and may be made available in other formats at the discretion of the division. After the publication of the list each month each telemarketing company shall be deemed to be on notice not to solicit any person whose name appears on the list. The division shall charge a fee calculated to defray costs of the no telephone solicitation calls program to telemarketing companies for the provision of the list. Funds collected shall be deposited into the division's trust and agency account. The list shall be made available to requesters either on a statewide or county by county basis; or*
- (16) *Engaging in telemarketing to a person's residence at any time other than between 10 a.m. - 9 p.m. local time, at the called person's location.*

Section 4. KRS 367.46999 is amended to read as follows:

Any person, including, but not limited to, a merchant, *a telemarketer*, a salesperson, agent or representative of the merchant, or an independent contractor, who knowingly violates any provision of KRS 367.46951 to 367.46999 or engages in any act, practice, or course of business which operates or would operate as fraud or deceit upon any person in connection with a sale shall be guilty of a Class D felony, *except that any person who violates subsections (7) to (16) of Section 3 of this Act shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for any subsequent offense.* The Office of the Attorney General shall have concurrent enforcement powers as to such felonies *and misdemeanors.*

Approved April 14, 1998

CHAPTER 582

(SB 217)

AN ACT relating to medical facility standards.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) **"Abortion facility" means any place in which an abortion is performed.**
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A.
- ~~(3)(2)~~ "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located.
- ~~(4)(3)~~ "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license.
- ~~(5)(4)~~ "Cabinet" means the Cabinet for Human Resources.
- ~~(6)(5)~~ "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
 - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
 - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof.
- ~~(7)(6)~~ "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.
- ~~(8)(7)~~ "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter.
- ~~(9)(8)~~ "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet.
- ~~(10)(9)~~ "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature.
- ~~(11)(10)~~ "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.
- ~~(12)(11)~~ "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this

subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included.

- ~~(13)~~~~(12)~~ "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095.
- ~~(14)~~~~(13)~~ "Nonclinically-related expenditures" means expenditures for:
- (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
 - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
 - 1. Parking facilities;
 - 2. Telecommunications or telephone systems;
 - 3. Management information systems;
 - 4. Ventilation systems;
 - 5. Heating or air conditioning, or both;
 - 6. Energy conservation; or
 - 7. Administrative offices.
- ~~(15)~~~~(14)~~ "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.
- ~~(16)~~~~(15)~~ "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state.
- ~~(17)~~~~(16)~~ "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;
 - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
 - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
 - (d) Any staff reports or recommendations prepared by or for the cabinet;
 - (e) Any recommendation or decision of the cabinet;
 - (f) Any testimony or documentary evidence adduced at a hearing;
 - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
 - (h) Any other items required by administrative regulations promulgated by the cabinet.
- ~~(18)~~~~(17)~~ "Secretary" means the secretary of the Cabinet for Human Resources.
- ~~(19)~~~~(18)~~ "State health plan" means the document prepared triennially, updated annually, and approved by the Governor.
- ~~(20)~~~~(19)~~ "Substantial change in a health service" means:
- (a) The addition of a health service for which there are review criteria and standards in the state health plan;
 - (b) The addition of a health service subject to licensure under this chapter; or

- (c) The reduction or termination of a health service which had previously been provided in the health facility.
- ~~(21)~~~~(20)~~ "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility.
- ~~(22)~~~~(21)~~ "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
 - (b) A substantial change in bed capacity, except for reductions;
 - (c) A change of location; or
 - (d) An increase in costs greater than the allowable amount as prescribed by regulation.
- ~~(23)~~~~(22)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person.
- ~~(24)~~~~(23)~~ "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area.
- ~~(25)~~~~(24)~~ "To establish" means to construct, develop, or initiate a health facility.
- ~~(26)~~~~(25)~~ "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract.
- ~~(27)~~~~(26)~~ "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.020 is amended to read as follows:

- (1) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to ***abortion facilities as defined in Section 1 of this Act***; any hospital which does not charge its patients for hospital services and does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government; assisted living residences; family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary-care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including, but not limited to, wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically-related expenditures; the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars (\$600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes, intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.
- (2) Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:
 - (a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts, ***except any*** ~~unless the~~ physician's office ***that*** meets the criteria set forth in KRS 216B.015~~(4)~~~~(3)~~;

- (b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; unless the physician's office meets the criteria set forth in KRS 216B.015(4)~~(3)~~, *or unless the physician's office is also an abortion facility as defined in Section 1 of this Act*, except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;
 - (c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;
 - (d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;
 - (e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and
 - (f) On-duty police and fire department personnel assisting in emergency situations by providing first aid or transportation when regular emergency units licensed to provide first aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.
- (3) An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.
 - (4) Notwithstanding any other provision of law to the contrary, dual-license acute care beds licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996, may be converted to nursing facility beds by December 31, 1996, without applying for a certificate of need. Any dual-license acute care beds not converted to nursing facility beds by December 31, 1996, shall, as of January 1, 1997, be converted to licensed acute care beds.
 - (5) Notwithstanding any other provision of law to the contrary, no dual-license acute care beds or acute care nursing home beds that have been converted to nursing facility beds pursuant to the provisions of subsection (3) of this section may be certified as Medicaid eligible after December 31, 1995, without the written authorization of the secretary.
 - (6) Notwithstanding any other provision of law to the contrary, total dual-license acute care beds shall be limited to those licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996. No acute care hospital may obtain a new dual license for acute care beds unless the hospital had a licensure application filed and in process prior to February 10, 1996.
 - (7) Ambulance services owned and operated by a city government, which propose to provide services in coterminous cities outside of the ambulance service's designated geographic service area, shall not be required to obtain a certificate of need if the governing body of the city in which the ambulance services are to be provided enters into an agreement with the ambulance service to provide services in the city.

Section 3. KRS 216B.042 is amended to read as follows:

- (1) The cabinet shall:
 - (a) Establish by promulgation of administrative regulation under KRS Chapter 13A reasonable application fees for licenses and promulgate other administrative regulations necessary for the proper administration of the licensure function;
 - (b) Issue, deny, revoke, modify, or suspend licenses or provisional licenses in accordance with the provisions of this chapter;~~and~~
 - (c) Establish licensure standards and procedures to ensure safe, adequate, and efficient *abortion facilities*, health facilities and health services. These regulations, under KRS Chapter 13A, shall include, but need not be limited to:

1. Patient care standards and safety standards, minimum operating standards, minimum standards for training, required licenses for medical staff personnel, and minimum standards for maintaining patient records;
2. Licensure application and renewal procedures; and
3. Classification of health facilities and health services according to type, size, range of services, and level of care; *and*

(d) Compile in a single document, maintain, and make available to abortion facilities and the public during regular business hours, all licensure standards and procedures promulgated under KRS Chapter 13A related to abortion facilities.

- (2) The cabinet may authorize its agents or representatives to enter upon the premises of any health care facility for the purpose of inspection, and under the conditions set forth in administrative regulations promulgated under KRS Chapter 13A by the cabinet.
- (3) The cabinet may revoke licenses or certificates of need for specific health facilities or health services or recommend the initiation of disciplinary proceedings for health care providers on the basis of the knowing violation of any provisions of this chapter.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) The cabinet shall, no later than September 1, 1998, and subject to the provisions of KRS Chapter 13A, promulgate administrative regulations providing licensure standards and procedures for abortion facilities. The cabinet shall begin enforcing the administrative regulations on March 1, 1999.***
- (2) Any person operating an abortion facility for which a license is required under this chapter may apply for the license prior to March 1, 1999.***
- (3) Each abortion facility shall report monthly to the cabinet the information required by the cabinet by administrative regulation for each abortion performed in the facility.***
- (4) Licensed acute-care hospitals shall be exempt from the provisions of this section, except for any reporting requirements issued by the cabinet.***

SECTION 5. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) Each abortion facility shall enter into a written agreement with a licensed acute-care hospital capable of treating patients with unforeseen complications related to an abortion facility procedure by which agreement the hospital agrees to accept and treat these patients.***
- (2) If unforeseen complications arise prior to or during an abortion facility procedure, the patient shall be transferred to the licensed acute-care hospital with which the abortion facility has a written agreement as provided under subsection (1) of this section or to the hospital selected by the patient, if the patient so chooses.***
- (3) Each abortion facility shall enter into a written agreement with a licensed local ambulance service for the transport of any emergency patient within the scope of subsection (1) of this section to the licensed acute-care hospital.***
- (4) The written agreements of an abortion facility with an acute-care hospital and with a local ambulance service shall be filed by the abortion facility with the cabinet.***

Section 6. KRS 214.450 is amended to read as follows:

As used in KRS 214.452 to 214.466, unless the context otherwise requires:

- (1) "Blood" means any blood, blood product, blood component, or blood derivative including plasma.
- (2) "Blood establishment" means a place of business under one (1) management at one (1) general physical location which engages in the collection, preparation, processing, labeling, packaging, and dispensing of blood to any health care facility, health service, or health care provider and which is licensed by the United States Food and Drug Administration. Blood establishment does not include autologous blood donation programs permitted under KRS 214.456.
- (3) "Blood-borne communicable disease" means any of those diseases which are specifically so defined and set forth in administrative regulation promulgated by the United States Food and Drug Administration.

- (4) "Health facility" means any health facility set forth under KRS 216B.015~~[(9)]~~ which provides for the transfusion of blood into a living human body.
- (5) "Health care provider" means any person licensed or certified under the laws of the Commonwealth as a dentist, physician, osteopath, registered nurse, practical nurse, paramedic, emergency medical technician, or physician assistant.
- (6) "Health service" means any health service as set forth under KRS 216B.015~~[(40)]~~ and which provides for the transfusion of blood into a living human body.
- (7) "Transfuse" means to transfer blood from one (1) person to another.
- (8) "Donor" means either a paid or volunteer donor of blood.
- (9) "Untested blood" means blood that has not been tested or blood for which test results have not yet been returned.

SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Attorney General, upon certification by the secretary of the Cabinet for Human Resources, shall seek injunctive relief in a course of proper jurisdiction to prevent violations of the provisions of KRS Chapter 216B regarding abortion facilities or the administrative regulations promulgated in furtherance thereof in cases where other administrative penalties and legal sanctions imposed have failed to prevent or cause a discontinuance of the violation.

Section 8. KRS 216B.990 is amended to read as follows:

- (1) Any person who, in willful violation of this chapter, operates a health facility ***or abortion facility*** without first obtaining a license or continues to operate a health facility ***or abortion facility*** after a final decision suspending or revoking a license, shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.
- (2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars (\$500) for each violation.
- (3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.
- (6) Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars (\$100) per day for failure to post required notices and one hundred dollars (\$100) per instance for willfully failing to provide an itemized statement within the required time frames.
- (7) Any boarding home which does not register as required by KRS 216B.305, shall be fined one hundred dollars (\$100) and ten dollars (\$10) per day thereafter until they have registered.
- (8) ***Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.***

Section 9. This Act shall not be construed as repealing any of the laws of the Commonwealth relating to abortion facilities but shall be considered supplementary to them.

Section 10. If any provision of this Act or its application is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Approved April 14, 1998

CHAPTER 583

(SB 221)

AN ACT relating to riverport authorities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 65.520 is amended to read as follows:

- (1) Any governmental unit by act of its legislative body, or any two or more governmental units acting jointly by acts of their legislative bodies, and with the approval of the ***Transportation Cabinet, Office of the Secretary***~~Cabinet for Economic Development~~, may establish a developmental riverport authority to be composed of six (6) members.
- (2) The authority shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the powers and duties prescribed by KRS 65.510 to 65.650. The authority may exercise all powers granted to governmental agencies by KRS 58.010 to 58.140. The authority may exercise all powers, consistent with its powers and duties stated in this chapter, granted by KRS 273.171 to corporations governed by KRS 273.161 to 273.390.
- (3) ***The responsibility for riverports shall be established within the Transportation Cabinet to provide oversight on development activities involving riverport authorities. The cabinet shall be responsible for managing a study that will develop a long-range capital improvements plan for Kentucky's riverports that shall include, but not be limited to:***
 - (a) ***Guidelines for ground transportation access to riverports;***
 - (b) ***A model for determining the economic impact of riverports; and***
 - (c) ***A blueprint for creating long-term funding mechanisms for riverports.***

Approved April 14, 1998

CHAPTER 584

(SB 224)

AN ACT relating to economic development.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.22-040 is amended to read as follows:

- (1) Each year the authority shall under its rural economic development assistance program, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, ***or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent twelve (12) consecutive months for which unemployment figures are available***, and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate ***that meets the criteria of this subsection***~~[above the state average]~~, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing

agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county.

- (2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of ***one hundred thousand dollars (\$100,000)*** ~~five hundred thousand dollars (\$500,000)~~ by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension. No economic development project which will result in the replacement of manufacturing facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:
 - (a) Rehabilitates a manufacturing facility:
 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
 2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces a manufacturing facility existing in the Commonwealth:
 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - (c) Replaces an existing manufacturing facility located in the same qualified county, and the existing manufacturing facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval and completion by the eligible company of its bond, loan, or other financing and review thereof by the authority, the authority may by final approval designate an eligible company to be an approved company.

Section 2. KRS 154.28-080 is amended to read as follows:

- (1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.
- (2) The standards for approval of eligible companies and economic development projects shall include, but not be limited to: the creditworthiness of eligible companies; the number of new jobs to be provided by an economic

development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

- (3) The economic development project shall involve a minimum investment of *one hundred thousand dollars (\$100,000)*~~five hundred thousand (\$500,000)~~ by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final resolution authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development projects for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.
- (4) No economic development project which will result in the replacement of a manufacturing or agribusiness facility existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that:
 - (a) Rehabilitates a manufacturing or agribusiness facility:
 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
 2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces a manufacturing facility existing in the Commonwealth:
 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - (c) Replaces an existing manufacturing facility located in the same qualified county that cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing facility to be replaced. Any economic development project satisfying the requirements of this subsection shall be eligible only for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the eligible company without the consent of the lessor.
- (5) With respect to each eligible company making an application to the authority for inducements, and with respect to these economic development projects described in the application which do not involve an expansion, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and KRS 141.400, the eligible company will not locate its economic development project within the Commonwealth. Upon the review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project.
- (6) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company.
- (7) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Approved April 14, 1998

CHAPTER 585**(SB 227)**

AN ACT relating to health insurance and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. In the event that House Bill 315 of this Regular Session passes the General Assembly including the language contained in subsection (4) of Section 28 of the Senate Committee Substitute to that Bill, found at page 63, lines 12 through 17, and the language contained in Senate Floor Amendment 25 (document number 983891) to that Bill, and the Governor signs House Bill 315 or it otherwise becomes a law, that section of the enrolled version of House Bill 315 corresponding to Section 28 of the Senate Committee Substitute to that Bill is amended to read as follows:

- (1) A managed care plan shall arrange for a sufficient number and type of primary care providers and specialists throughout the plan's service area to meet the needs of enrollees. Each managed care plan shall demonstrate that it offers:
 - (a) An adequate number of accessible acute care hospital services, where available;
 - (b) An adequate number of accessible primary care providers, including family practice and general practice physicians, internists, obstetricians/gynecologists, and pediatricians, where available;
 - (c) An adequate number of accessible specialists and subspecialists, and when the specialist needed for a specific condition is not represented on the plan's list of participating specialists, enrollees have access to nonparticipating health care providers with prior plan approval;
 - (d) The availability of specialty services; and
 - (e) A provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence, to the extent those services are available.
- (2) A managed care plan shall provide telephone access to the plan during business hours to ensure plan approval of nonemergency care. A managed care plan shall provide adequate information to enrollees regarding access to urgent and emergency care.
- (3) A managed care plan shall establish reasonable standards for waiting times to obtain appointments, except as provided for emergency care.
- ~~[(4) A managed care plan shall cover emergency room screening and stabilization without prior authorization as needed for conditions that reasonably appear to constitute an emergency medical condition, based on the patient's presenting symptoms. To promote continuity of care and optimal care by the treating physician, the emergency department should contact the patient's primary care physician as soon as possible.]~~

Section 2. Section 1 of 1998 Kentucky Acts Chapter 106 (Senate Bill 63) is amended to read as follows:

- (1) All health benefit plans shall provide coverage, including therapeutic, respite, and rehabilitative care, for the treatment of autism of a child covered under the policy.
- (2) Coverage for autism shall be subject to a five hundred dollar (\$500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.
- (3) As used in this section, "autism" means:
 - (a) A total of six (6) or more items from subparagraphs 1., 2., and 3. of this paragraph, with at least two (2) from subparagraph 1. and one (1) each from subparagraphs 2. and 3.:
 1. Qualitative impairment in social interaction, as manifested by at least two (2) of the following:
 - a. Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;
 - b. Failure to develop peer relationships appropriate to developmental level;

- c. A lack of spontaneous seeking to share enjoyment, interests, or achievement with other people; or
 - d. Lack of social or emotional reciprocity.
2. Qualitative impairments in communication as manifested by at least one (1) of the following:
- a. Delay in, or total lack of, the development of spoken language;
 - b. In individuals with adequate speech, marked impairment in the ability to imitate or sustain a conversation with others;
 - c. Stereotyped and repetitive use of language or idiosyncratic language; or
 - d. Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental levels.
3. Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one (1) of the following:
- a. Encompassing preoccupation with one (1) or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;
 - b. Apparently inflexible adherence to specific, nonfunctional routines or rituals;
 - c. Stereotyped and repetitive motor mannerisms; or
 - d. Persistent preoccupation with parts of objects;
- (b) Delays or abnormal functioning in at least one (1) of the following areas, with onset prior to age three (3) years:
- 1. Social interaction;
 - 2. Language as used in social communication; or
 - 3. Symbolic or imaginative play; and
- (c) The disturbance is not better accounted for by Rett's Disorders of Childhood Disintegrative Disorder.
- (4) As used in this section, "child" means a person two (2) through twenty-one (21) years of age.

Section 3. It is the intention of the General Assembly in enacting Section 1 of this Act to resolve the substantive conflict between the provisions referenced in Section 1 of this Act. If this Act becomes law, the Reviser of Statutes is authorized and directed to effectuate Section 1 of this Act notwithstanding KRS 446.250 and 7.990.

Section 4. Whereas House Bill 315 contains an emergency effective date provision and it is necessary to resolve a conflict relating to that Bill that will exist if that Bill becomes law, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 14, 1998

CHAPTER 586

(SB 247)

AN ACT relating to tobacco growers' assistance and diversification.

WHEREAS, agriculture and tobacco are vital to the economies of local communities and to the economy of the Commonwealth; and

WHEREAS, the family farm is an important part of the agricultural community; and

WHEREAS, the future of the tobacco program is uncertain; and

WHEREAS, agricultural assistance and diversification will aid in the preservation of the family farm;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *The Agricultural Diversification and Development Council is created.*
- (2) *The council shall consist of twelve (12) members as follows:*
 - (a) *The commissioner of the Department of Agriculture;*
 - (b) *The secretary of the Economic Development Cabinet;*
 - (c) *The director of the Cooperative Extension Service;*
 - (d) *The secretary of the Finance and Administration Cabinet; and*
 - (e) *Eight (8) members to be appointed by the Governor by December 31, 1998, as follows:*
 1. *A representative of the banking industry with experience in loans to farm operations;*
 2. *Five (5) farmers who raise tobacco; and*
 3. *Two (2) individuals familiar with agricultural diversification and the tobacco programs.*
- (3) *Terms of council members shall be for four (4) years. The eight (8) members appointed by the Governor shall be for staggered terms.*
- (4) *The council shall select one (1) of its members as chair and another member as vice chair.*
- (5) *Members shall receive per diem of fifty dollars (\$50) for council work and be reimbursed for travel and expenses.*
- (6) *The council shall be attached administratively to the Finance and Administrative Cabinet for purposes of expenditure of funds.*
- (7) *The Department of Agriculture shall provide support staff for the council.*
- (8) *The council shall promulgate administrative regulations to implement the provisions of Sections 1 to 7 of this Act.*
- (9) *The council shall be activated when funds for the purposes of Sections 1 to 7 of this Act are appropriated by the General Assembly.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

There is established in the State Treasury a permanent and perpetual fund to be known as the "Agricultural Diversification and Development Fund" to which shall be credited any increase in the cigarette excise tax levied under KRS 138.140 subsequent to the effective date of this Act; gifts; bequests; endowments; grants from the United States government, its agencies and instrumentalities; any funds from the tobacco settlement agreement or related federal legislation for tobacco farmers or tobacco-dependent communities specifically appropriated to this fund by the General Assembly from the fund created in Section 3 of this Act; and funds received from any other sources, public or private. The fund shall be administered by the Agricultural Diversification and Development Council created under Section 1 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

There is established in the State Treasury a permanent and perpetual fund to be known as the "Tobacco Settlement Agreement Fund" to which shall be credited any funds designated to the Commonwealth from the tobacco settlement agreement or related federal legislation. Any funds designated to the Commonwealth from the settlement agreement or related federal legislation shall not be expended until appropriated by the General Assembly. The General Assembly's highest priority for distributing any funds from this account shall be for tobacco farmers and tobacco-impacted communities and health-related areas.

SECTION 4. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

The moneys in the agricultural diversification and development fund under Section 2 of this Act shall be distributed to one (1) or more of the following:

- (1) *The state's owners of the tobacco basic quota based on the percentage of each owner's tobacco basic quota compared to the state's total tobacco basic quota as certified by the United States Department of Agriculture;*

- (2) *The state's individuals or entities growing tobacco based on the percentage of tobacco basic quota being raised by the individual or entity, compared to the state's total tobacco basic quota as certified by the United States Department of Agriculture;*
- (3) *The Department of Agriculture to be used for marketing, agricultural diversification, and development as provided in Section 6 of this Act;*
- (4) *The Purchase of Agricultural Conservation Easement Corporation created in KRS 262.900 to 262.920;*
- (5) *The University of Kentucky and Kentucky State University extension service programs and the University of Kentucky College of Agriculture to carry out the duties and responsibilities as provided in Section 7 of this Act; and*
- (6) *Owners of tobacco quotas, tobacco growers, and tobacco-dependent communities to be determined by the Agricultural Diversification and Development Council as provided in Section 5 of this Act. These entities shall receive at least fifty percent (50%) of the funds in the form of grants or loans.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

The funds distributed for grants and loans under Section 4 of this Act shall be distributed by the council as determined by administrative regulation promulgated by the council and may be distributed:

- (1) *To tobacco quota owners and tobacco growers to assist them in growing their tobacco crop more efficiently and profitably, using the latest technology and techniques;*
- (2) *To tobacco quota owners and tobacco growers to assist them in diversifying their operations and developing alternative crops;*
- (3) *To tobacco-growing communities to help them stimulate and diversify their agricultural economies; and*
- (4) *To agricultural organizations attempting to stimulate and diversify the local agricultural economies growing tobacco.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

The funds distributed to the Kentucky Department of Agriculture under Section 4 of this Act shall be used to:

- (1) *Assist in marketing crops and agricultural products that can provide alternative income to tobacco quota owners and tobacco growers;*
- (2) *Promote alternative crops and enterprises that can provide an enhanced income to tobacco quota owners and tobacco growers; and*
- (3) *Provide an infrastructure necessary to produce and market alternative crops and other agricultural operations.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

The University of Kentucky and Kentucky State University Extension Service programs and the University of Kentucky College of Agriculture shall use the money distributed under Section 4 of this Act to:

- (1) *Assist tobacco quota owners and tobacco growers to more efficiently and profitably produce their crops;*
- (2) *Assist tobacco growers to diversify their operations; and*
- (3) *Develop alternative agricultural options and farm-related enterprises to enhance and supplement tobacco production.*

Section 8. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;~~and~~
 - (i)
 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 2. The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
 3. As used in this paragraph:

- a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code; *and*
- (j) *Exclude any amount received by a producer of tobacco or a tobacco quota owner from a national settlement agreement between the tobacco industry and the states' Attorneys General or from any federal legislation related to the agreement.*
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

- (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and
- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Approved April 14, 1998

CHAPTER 587

(SB 248)

AN ACT relating to law enforcement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

- (1) *Any public police department, sheriff's office, or the Kentucky State Police may, upon written agreement with a residential property owner or a residential property owners' association, patrol the roadways and parking lots of private residential communities within the jurisdiction of the public police department, sheriff's office, or the Kentucky State Police and enforce the traffic and motor vehicle laws of the Commonwealth of Kentucky and local traffic and motor vehicle ordinances, on that residential private property.*
- (2) *This section shall not permit a public police department, sheriff's office, or the Kentucky State Police to enforce the private rules or regulations of the residential property owner.*
- (3) *This section shall not limit any peace officer from coming on residential private property for the enforcement of the law, provided that the entry upon residential private property is consistent with the provisions of the Constitution of the United States, the Constitution of Kentucky, the Kentucky Revised Statutes, and applicable court decisions.*

Section 2. KRS 189.010 is amended to read as follows:

As used in this chapter:

- (1) "Department" means the Department of Highways.
- (2) "Crosswalk" means:
 - (a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or
 - (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

- (3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes *private residential roads and parking lots covered by an agreement under Section 1 of this Act*, off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700.
- (4) "Intersection" means:
 - (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or
 - (b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection.
- (5) "Manufactured home" has the same meaning as defined in KRS 186.650.
- (6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds.
- (7) "Operator" means the person in actual physical control of a vehicle.
- (8) "Pedestrian" means any person afoot.
- (9) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.
- (10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively.
- (11) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
- (12) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.
- (13) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit.
- (14) "Sharp curve" means a curve of not less than thirty (30) degrees.
- (15) "State Police" includes any agency for the enforcement of the highway laws established pursuant to law.
- (16) "Steep grade" means a grade exceeding seven percent (7%).
- (17) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand (1,000) pounds.
- (18) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards.
- (19) (a) "Vehicle" includes:
 1. All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and

2. All vehicles passing over or upon the highways.
- (b) "Motor vehicle" includes all vehicles, as defined in paragraph (a) of this subsection except:
 1. Road rollers;
 2. Road graders;
 3. Farm tractors;
 4. Vehicles on which power shovels are mounted;
 5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways;
 6. Vehicles that travel exclusively upon rails;
 7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality; and
 8. Vehicles propelled by muscular power.
- (20) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.
- (21) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.
- (22) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.
- (23) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area.
- (24) "All-terrain vehicle" means any motor vehicle for off-road use, which is fifty (50) inches or less in width; has a dry weight of six hundred (600) pounds or less; travels on three (3) or more low pressure tires; is designed for operator use only with no passengers; and has a seat or saddle designed to be straddled by the operator, and handle bars for steering control.

Approved April 14, 1998

CHAPTER 588

(SB 263)

AN ACT relating to the Kentucky Foundation for the Arts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 153 IS CREATED TO READ AS FOLLOWS:

- (1) ***There is hereby established a nonprofit foundation to be known as the Kentucky Foundation for the Arts. The purpose of the foundation shall be to enhance the stability of Kentucky's arts organizations and to ensure Kentuckians have access to the arts through the support of an endowment fund.***
- (2) ***Funding for the foundation shall be obtained through state appropriations, gifts, grants, and any other funds from the public and private sectors. The foundation board shall have the authority to solicit, accept, and receive contributions from the public and private sectors to match public funding. Moneys in the foundation fund shall not lapse to the general fund at the end of the fiscal year. Moneys in the foundation fund shall be invested by the Office of Financial Management and Economic Analysis consistent with the provisions of KRS Chapter 42, and interest income earned shall be credited to the foundation fund. The foundation board may use the investment income for the purpose of awarding matching grants to nonprofit arts organizations to carry out the following programs:***

- (a) *The Performing Arts and Visual Arts Touring Subsidy Program shall support tours and exhibitions for the education and enjoyment of audiences throughout the state.*
- (b) *The Institutional Stabilization Program shall provide operating funds to achieve short-term or long-term stability of arts organizations.*
- (3) *The foundation shall be governed by a board of trustees consisting of six (6) members appointed by the Governor on recommendations from the Kentucky Arts Council. For the initial appointments, the Governor shall appoint two (2) members to serve two (2) year terms; two (2) members to serve three (3) year terms; and two (2) members to serve four (4) year terms. Thereafter, the Governor shall make all appointments for a term of four (4) years. The board shall elect by majority vote a chair and other officers deemed necessary. Board members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS 44.070 and 45.101 for actual and necessary expenses incurred in the performance of their duties.*
- (4) *The foundation board shall perform duties and responsibilities deemed necessary to fulfill the purposes of this section. The foundation board shall establish by administrative regulation procedures for administration of the foundation, eligibility criteria for the award of grants, appropriate matching contributions from grant recipients, and evaluation and reporting requirements.*
- (5) *The foundation shall be attached to the office of the secretary for the Education, Arts, and Humanities Cabinet for administrative purposes only. The Kentucky Arts Council shall provide to the foundation by agreement staff support and office facilities for which reasonable charges and fees may be levied against the foundation fund.*
- (6) *The foundation board shall submit an annual report to the Governor and the Legislative Research Commission listing the sources of funds acquired and expended.*

Approved April 14, 1998

CHAPTER 589

(SB 265)

AN ACT relating to teacher certification.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.048 is amended to read as follows:

- (1) *The General Assembly hereby finds that:*
 - (a) *1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;*
 - 2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;*
 - 3. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and*
 - 4. There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers.*
- (b) *There ~~are~~^{is} hereby established ~~an~~ alternative certification program options as described in subsections (3) through (5) of this section.*
- (c) *It is the intent of the General Assembly that the Educational Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky.*
- (d) *The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section ~~for local district training programs and the approval and evaluation process for these programs~~.*

- (2) **Option 1: Certification of a person with exceptional work experience.** *An individual who has exceptional work experience and has been offered employment at the secondary level in a local school district shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the individual and the employing school district under the following conditions:*

- (a) *The application contains documentation of all education and work experience;*
- (b) *The candidate has documented ten (10) years of exceptional work experience in the area in which certification is being sought;*
- (c) *The candidate possesses a bachelor's degree, with a grade point average of two and five-tenths (2.5) on a four (4) point scale from a nationally or regionally accredited postsecondary institution; and*
- (d) *The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship, the candidate shall receive a regular provisional certificate.*

An individual employed under this alternative shall be certified for one (1) year only, and may be approved for subsequent one (1) year renewals upon request of the local board of education and approval of the Education Professional Standards Board. A teacher who successfully completes three (3) contract years under the provisions of this section shall be awarded a regular provisional certificate, and subject to certificate renewal requirements the same as any other teacher with a regular provisional certificate.

- (3) **Option 2: Certification through a local district training program.** A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification *for a teacher at any grade level*. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:

- (a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.
- (b) Pass written tests designated by the Education Professional Standards Board for ~~the~~
 - 1. ~~General knowledge;~~
 - 2. ~~Communication skills; and~~
 - 3. ~~content~~ knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the subject field or five (5) years of experience in the subject field as approved by the Education Professional Standards Board.
- (c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.
- (d) ~~(2)~~ Upon meeting the participation requirements as established in *this* subsection ~~(1) of this section~~, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.
- (e) ~~(3)~~ The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.

- (4) **Option 3: Certification of a professional from a postsecondary institution.** ~~Subsections (1) to (3) of this section notwithstanding,~~ A candidate who possesses the following qualifications may receive alternative certification for teaching at the secondary level:

- (a) A master's degree or doctoral degree in the academic subject area for which certification is sought;
 - (b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic subject area for which certification is sought in a regionally- or nationally-accredited institution of higher education; and
 - (c) Successful completion of the teacher internship requirement imposed under KRS 161.030.
- (5) ***Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under Section 2 of this Act.***
- (6) ***A teacher certified under subsections (2) to (5) of this section shall be placed on the local district salary schedule for the rank corresponding to the degree held by the teacher.***

Section 2. KRS 161.046 is amended to read as follows:

- (1) For purposes of this section, "adjunct instructor" means an individual who has training or experience in a *specific* subject area ~~where there is a critical teacher shortage on a statewide or local district basis~~ and who has met the requirements for certification as an adjunct instructor established by the Education Professional Standards Board.
- (2) The Education Professional Standards Board shall adopt administrative regulations governing the qualifications and utilization of adjunct instructors. These administrative regulations shall specify the minimum essential competencies which must be demonstrated by persons seeking an adjunct instructor certificate ~~and shall establish and require competency tests if deemed necessary~~.
- (3) Holders of an adjunct instructor certificate shall be employed on an annual contract basis and shall not be eligible for continuing service status pursuant to KRS 161.740 or for the retirement provisions of KRS 161.220 through 161.714. The granting of successive annual contracts to the holder of an adjunct instructor certificate shall not give rise to a claim of expectation of continuing employment.
- (4) Local school boards may contract with certificated adjunct instructors for part-time services on an hourly, daily or other periodic basis as best meets the needs of the board. An adjunct instructor shall not fill a position ***that will result in the displacement of*** ~~for which~~ a qualified teacher with a regular certificate ***who is already employed in the district*** ~~is available at the time of the signing of the contract~~.
- (5) An orientation program shall be developed and implemented for adjunct instructors by the local school board.

Section 3. KRS 161.049 is amended to read as follows:

- (1) As used in this section, "professional support team" means a school principal, an experienced teacher, a college or university faculty member, and an instructional supervisor. If an instructional supervisor or college or university faculty member is not available, the district shall assign a member with comparable experience. The school principal shall serve as the chairman of the team.
- (2) The Education Professional Standards Board shall establish a training program for professional support teams which shall be implemented by the Department of Education. The training shall include content and procedures for the evaluation of teacher candidates. Completion of the training shall be evidenced by successfully passing the examinations prescribed by the board.
- (3) A local school district seeking to hire a teacher pursuant to ***subsection (3) of Section 1 of this Act*** ~~KRS 161.048~~ shall submit a plan for ***a local district*** ~~an~~ alternative training program to the Department of Education and have it approved in accordance with administrative regulations established by the Education Professional Standards Board. The district shall show evidence that it has sought joint sponsorship of the program with a college or university. No local school district shall employ a teacher seeking certification in a state-approved local district training program unless it has submitted a plan and received approval by the Education Professional Standards Board.
- (4) Each state approved local district alternative training program shall provide the teacher candidate with essential knowledge and skills and include, but not be limited to, the following components:
 - (a) A full-time seminar and practicum of no less than eight (8) weeks' duration prior to the time the candidate assumes responsibility for a classroom. The content of the formal instruction shall be prescribed by the Education Professional Standards Board and shall include an introduction to basic

teaching skills through supervised teaching experiences with students, as well as an orientation on the policies, organization, and curriculum of the employing district.

- (b) A period of classroom supervision while the candidate assumes responsibility on a one-half (1/2) time basis for a classroom and continuing for eighteen (18) weeks. During this period, the candidate shall be visited and critiqued no less than one (1) time per week by one (1) or more members of a professional support team appointed by the local district and assigned according to the administrative regulations adopted by the Education Professional Standards Board. The candidate shall be formally evaluated at the end of five (5) weeks, at the end of the second five (5) weeks, and at the end of the last eight (8) weeks by the members of the team. During this period, the candidate shall continue formal instruction which emphasizes student assessment, child development, learning, curriculum, instruction of exceptional children, and school and classroom organization.
 - (c) An additional period of at least eighteen (18) weeks continued supervision of the teacher candidate who may be assigned full-time classroom duties. During this period the teacher candidate shall be critiqued at least once per month and shall be observed formally and evaluated at least twice. No more than two (2) months shall pass without a formal observation. Formal instruction shall also continue during this period. In addition, opportunities shall be provided for the teacher candidate to observe the teaching of experienced teachers.
- (5) At least two hundred fifty (250) hours of formal instruction shall be provided in all three (3) phases of the program combined.
 - (6) At the conclusion of the alternative training program, the chair of the support team shall prepare a comprehensive evaluation report on the teacher candidate's performance. This report shall be submitted to the Education Professional Standards Board and shall contain a recommendation as to whether the teacher candidate shall be issued a one (1) year certificate of eligibility to complete the internship pursuant to KRS 161.030. The support team shall make one (1) of the following recommendations:
 - 1. Approved: recommends issuance of certificate to complete the internship;
 - 2. Insufficient: recommends the candidate be allowed to seek reentry into a teacher preparation program; or
 - 3. Disapproved: recommends the candidate not be allowed to enter a teacher preparation program.

SECTION 4. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

All persons employed as teachers for gifted education shall hold an appropriate certificate endorsement for gifted education, except that all teachers having certificates initially issued for a duration period on or before July 1, 1984, or proper renewals thereof, shall remain eligible thereafter for assignment as teachers for gifted education, for the grade levels of the base certificate, provided any such assignment was valid under the original certificate at the time it was issued.

Approved April 14, 1998

CHAPTER 590

(SB 303)

AN ACT relating to classified employees in local school districts and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.011 is amended to read as follows:

- (1) (a) "Classified employee" ~~means~~^{shall mean} an employee of a local district who is not required to have certification for his position as provided in KRS 161.020; *and*
 - (b) "*Seniority*" *means total continuous months of service in the local school district, including all approved paid and unpaid leave.*
- (2) The commissioner of education shall establish by January, 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in

that position unless he holds the qualifications for the position as established by the commissioner of education.

- (3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he holds at least a high school diploma or GED certificate, or he shows progress toward obtaining a GED. To show progress toward obtaining a GED, a person shall be enrolled in a GED program and be progressing satisfactorily through the program, as defined by administrative regulations adopted by the State Board for Adult and Technical Education.
- (4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a GED certificate to enroll in a program to obtain a GED.
- (5) Local districts shall enter into written contracts with classified employees. ***Contracts with classified employees shall be renewed annually except contracts with the following employees:***
 - (a) ***An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.***
 - (b) ***An employee who has completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract is not being renewed due to one (1) or more of the reasons described in subsection (6) of this section. Upon written request within ten (10) days of the receipt of the notice of nonrenewal, the employee shall be provided with a specific and complete written statement of the grounds upon which the nonrenewal is based. The employee shall have ten (10) days to respond in writing to the grounds for nonrenewal.***
- (6) ***Nothing in this section shall prevent a superintendent from terminating a classified employee for incompetency, neglect of duty, insubordination, inefficiency, misconduct, immorality, or other reasonable grounds which are specifically contained in board policy.***
- (7) ***The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.***
 - (a) ***When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.***
 - (b) ***If it becomes necessary to reduce employees who have more than four (4) years of continuous active service, the superintendent shall make reductions based upon seniority and qualifications within each job classification affected.***
 - (c) ***Employees with more than four (4) years of continuous active service shall have the right of recall positions if positions become available for which they are qualified. Recall shall be done according to seniority with restoration of primary benefits, including all accumulated sick leave and appropriate rank and step on the current salary schedule based on the total number of years of service in the district.***
- (8) Local school boards shall develop and provide to all classified employees written policies which shall include, but not be limited to:
 - (a) Terms and conditions of employment;
 - (b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and
 - (c) Discipline guidelines and procedures that satisfy due process requirements.
- ~~(9)~~ Local school boards shall maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties. If financially feasible, local school boards may provide training opportunities for classified

employees focusing on topics to include, but not be limited to, suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR).

~~(10)(8)~~ The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

Section 2. Whereas several dates cited in this Act occur before the normal effective date for Acts of the 1998 Regular Session of the General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Approved April 14, 1998

CHAPTER 591

(SB 309)

AN ACT relating to schools.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 157.622 is amended to read as follows:

The School Facilities Construction Commission shall be governed by the following procedures in providing assistance to school districts for construction purposes:

- (1) Upon receipt of the certified statements from the Kentucky Board of Education as required by KRS 157.620, the commission shall compute the unmet needs of all eligible districts as defined by KRS 157.615;
- (2) Assistance to each eligible district shall be determined by computing the ratio of the available state funding to total unmet need statewide. Based on the computed ratio, an equivalent percentage of each eligible district's unmet need will be funded;
- (3) Each eligible district which has otherwise complied with the provisions of KRS 157.615 and 157.620 shall be offered sufficient funding to finance construction of the portion of its unmet need computed by applying the ratio determined in subsection (2) of this section to the total unmet need of the district. The funds shall be applied to the projects listed on the facility plan certified to the School Facilities Construction Commission prior to the appropriation of funds, and the funds shall be applied to projects in the priority order listed on the plan. Exceptions to the priority order of projects may be approved by the School Facilities Construction Commission when it is documented by the local board of education and approved by the Kentucky Board of Education upon the recommendation of the chief state school officer that the school district's priority order of needs has changed. The exceptions shall not alter the amount of the offer of assistance;
- (4) Any school district which met all criteria for first round funding with the School Facilities Construction Commission and which received an offer of assistance from the School Facilities Construction Commission, but which had sold bonds in the sixty (60) days prior to receiving the offer under the assumption that an offer would be made, shall be eligible to receive the assistance for which the district qualified.
- (5) The commission shall ***promulgate administrative***~~establish~~ regulations whereby an eligible district which fails in any budget period to receive an allocation of state funds that is sufficient to fund the district's priority project or portions thereof may accumulate credit, subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Accumulation and retention of credit is contingent upon the transfer of available local revenue to the restricted construction account by June 30 of each year; and
- (6) ***Except as provided in subsection (7) of this section,*** all unused state allocations accumulated according to the provisions of subsection (3) of this section shall be reallocated by the commission. The reallocation shall follow the process and intent as set forth in this section with eligible districts being those districts which contribute unused state allocations to the reallocation account. Any district which has an unused state allocation after funding its first priority project in a biennium is not eligible for consideration for additional funds from the reallocation account. Any funding received and utilized from the reallocation account by a district shall equally reduce the credit as set forth in this section.
- (7) ***Refinancing savings that have occurred since July 1, 1997, and subsequent savings to the commission generated over the life of a bond by the local district's refinancing of the bond shall be dedicated to the***

district's account by the commission. Any funds accumulated in this account shall be used toward the district's next priority, but shall not be deducted from the district's share of commission funds under subsection (3) of this section.

Section 2. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

- (1) "Average daily attendance" means the aggregate days attended by pupils in a public school, *adjusted for weather-related low attendance days if applicable*, divided by the actual number of days the school is in session;
- (2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;
- (3) "Board" means the board of education of any county or independent school district;
- (4) "District" means any school district as defined by law;
- (5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;
- (6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;
- (7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;
- (8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;
- (9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;
- (10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year.
- (11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;
- (12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;
- (13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky

Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

- (14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;
- (15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year.
- (16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board.
- (17) ***"Weather-related low attendance day" means a school day on which the district's attendance falls below the percentage of average daily attendance for the prior year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the Kentucky Board of Education in accordance with its administrative regulations.***

Approved April 14, 1998

CHAPTER 592

(SB 326)

AN ACT relating to local government.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67.705 is amended to read as follows:

- (1) Each county shall have a chief executive officer known as the county judge/executive. Only a resident of the county shall be eligible for election as county judge/executive. He shall be nominated and elected by the qualified voters of the county in the manner provided by law for the election of county officers. In case the office of county judge/executive becomes vacant by reason of death, resignation, or removal, it shall be filled with a person appointed by the Governor, in accordance with Section 152 of the Constitution, for the unexpired term. ***The Governor shall appoint a person to fill a vacancy in the office of county judge/executive not later than thirty (30) days after the date on which the vacancy occurs. If a vacancy occurs in the office of county judge/executive, the remaining members of fiscal court shall elect one (1) of their members to serve as temporary county judge/executive until the Governor fills the vacancy in the office, notwithstanding the provisions of subsection (2) of KRS 61.080 to the contrary.***
- (2) The salary of the county judge/executive shall be set by the fiscal court.
- (3) Except in urban-county governments, the minimum annual compensation paid to the county judge/executive shall be the greater of a sum not less than sixty percent (60%) of the maximum compensation certified under KRS 64.527, or not less than the annual compensation of the sheriff or county clerk or jailer in the county, except that no fiscal court shall be required under provisions of this section to approve an amount for the compensation of any one (1) official which would exceed six percent (6%) of the county's total annual general fund receipts including federal revenue sharing moneys.
- (4) In no event shall the county judge/executive, justice of the peace, magistrate, or commissioners who serve on the fiscal court holding office on January 2, 1978, receive less than the total annual compensation received by that official during calendar year 1976.

Section 2. During the 1998-1999 interim, the Interim Joint Committee on State Government shall review the organization, structure, and function of all cities, counties, and special districts in Kentucky and issue a report on their status along with any legislative recommendations. There shall be established a task force to study the structure, organization, and function of cities, counties, and special districts.

Section 3. The task force shall be composed of twenty-seven (27) members, chosen in the following manner:

- (1) Twelve (12) members of the General Assembly, six (6) to be appointed by the Speaker of the House of Representatives, and six (6) to be appointed by the President of the Senate;
- (2) Four (4) elected county officials, who shall be appointed by the Legislative Research Commission;
- (3) Four (4) elected city officials, who shall be appointed by the Legislative Research Commission;
- (4) Four (4) persons representing the area development districts who shall be appointed by the Legislative Research Commission;
- (5) The commissioner of the Department for Local Government or the commissioner's designee; and
- (6) In addition to the twelve (12) legislative members, the House and Senate co-chairs of the Interim Joint Committee on State Government shall serve as co-chairs for the task force.

The Legislative Research Commission shall appoint the members to the task force on or before August 1, 1998.

Section 4. (1) Nonlegislative members shall serve without pay, but shall be reimbursed for their reasonable and necessary expenses in connection with the performance of their duties. Legislative members of the task force shall receive their usual per diem as indicated in KRS 7.110(5) for the attendance of meetings, including reimbursement for their reasonable and necessary expenses in connection with the performance of their duties.

- (2) The full task force shall meet at times it deems necessary. The task force may hold public hearings from time to time on matters within its purview. Whenever appropriate, the task force may organize itself into subcommittees related to the subject matter under consideration, and they may meet at times they deem necessary.
- (3) The task force shall provide a report with recommendations to the Legislative Research Commission by September 1, 1999. It is intended that the General Assembly review the report, and enact any legislation deemed necessary on the basis of the report.
- (4) The nonlegislative appointments to the task force shall be as evenly distributed as possible between rural and urban areas of the Commonwealth.

Section 5. Staff services to be utilized in completing the work of the task force are estimated to cost \$50,000. These staff services shall be provided from the regular Legislative Research Commission budget and are subject to the limitations and other research responsibilities of the Legislative Research Commission.

Approved April 14, 1998

CHAPTER 593

(SB 374)

AN ACT relating to the certificate of need process.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216B.086 is amended to read as follows:

- (1) The cabinet may revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation of the cabinet; however, for projects involving long-term care beds, the cabinet may revoke any certificate granted which is not implemented within twenty-four (24) months or within any six (6) month reporting interval during which there is not satisfactory progress in meeting the project timetable and shall revoke any certificate granted which is not implemented within thirty-six (36) months except for those projects specified as an exception pursuant to Executive Order 96-129 in which case those projects shall be implemented according to the intervals and timetable set forth in this section, as of the effective date of Medicaid funding in the biennial budget for those projects. The administrative regulation for projects involving long-term care beds shall be based on project completion in twenty-four (24) months and shall specify criteria for measuring implementation of project objectives at six (6) month reporting intervals. If, at any six (6) month reporting period, the certificate holder is able to show good cause as to why a project failed to meet its timetables, an extension of six (6) months may be granted to meet that particular timetable. The burden of proof shall be on the certificate holder. ~~In no case shall~~ An extension *may* be granted beyond a total of thirty-

six (36) months, *only if the applicant requests that the cabinet grant an additional six (6) month extension beyond the initial thirty-six (36) month completion period and shows good cause. For purposes of this section, there shall be deemed to be "good cause" if the project can be completed within the additional six (6) month period. In no case shall an extension be granted beyond a total of forty-two (42) months.* The holder of the certificate of need shall file with the cabinet the name and business address of all owners, investors, and stockholders in the project whose ownership interest is greater than ten percent (10%). All reports submitted by the certificate holder under this subsection shall be considered a public record in accordance with the Kentucky Open Records Law, KRS 61.870 to 61.884.

- (2) The cabinet shall give notice to the holder of the certificate of its initial decision to revoke the certificate of need or portion thereof. The cabinet's initial decision to revoke a certificate of need or portion thereof shall become final after thirty (30) days unless a hearing is requested. The secretary shall give notice to the holder of the certificate of a decision which has become final under the provisions of this subsection.
- (3) The holder of the certificate of need to be revoked may request in writing a public hearing in respect to an initial decision by the cabinet to revoke a certificate of need within thirty (30) days of the date of notice of the initial decision. Failure to request a hearing shall constitute a waiver of any right to reconsideration or judicial appeal of a final cabinet decision to revoke a certificate of need.
- (4) The hearing shall be before a person designated by the secretary to be the hearing officer. The hearing shall be no later than thirty (30) days after the request for the hearing is filed.
- (5) If a hearing is requested, the secretary shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the cabinet.
- (6) At the hearing, any party to the proceedings shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the revocation of the certificate of need, and may conduct reasonable cross-examination under oath of persons who testify. A full and complete record shall be maintained of the hearing, and all testimony shall be recorded but not be transcribed unless the cabinet's final decision is appealed pursuant to this chapter.
- (7) After the issuance of an initial decision to revoke a certificate of need and before a final decision is made, no person shall have ex parte contacts with employees of the cabinet regarding the revocation. If an ex parte contact occurs, it shall be promptly made a part of the record.
- (8) If a hearing is requested after notice of the cabinet's initial decision to revoke a certificate of need, the cabinet shall make a final decision within thirty (30) days after the hearing. Any final decision revoking a certificate of need shall be made by the cabinet in writing. The cabinet shall notify the parties to the proceedings of the final decision.
- (9) Any final decision of the cabinet to revoke a certificate of need shall be based solely on the record established with regard to the revocation.
- (10) Except as provided in subsection (3) of this section, reconsideration pursuant to KRS 216B.090 or judicial appeal pursuant to KRS 216B.115 shall be available with regard to a final decision of the cabinet to revoke a certificate of need.

Approved April 14, 1998

CHAPTER 594

(SB 380)

AN ACT relating to marriage and family therapists.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 335.300 is amended to read as follows:

As used in KRS 335.300 to 335.399, unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of ~~Licensure~~~~[Certification]~~ of Marriage and Family Therapists;

- (2) "~~Licensed~~~~Certified~~ marriage and family therapist" means a person who has completed *all of the requirements set out in KRS 335.330 and who holds a license issued*~~[a master's or doctoral degree program in marriage and family therapy, or an equivalent course of study, from an accredited educational institution and who is certified]~~ by the board;~~[and]~~
- (3) "*Marriage and family therapy associate*" means a person who has completed all requirements set out in KRS 335.330 and who holds a permit issued by the board to practice marriage and family therapy under the conditions set out in Section 9 of this Act and the corresponding administrative regulations promulgated by the board.
- (4) "*The practice of marriage and family therapy*" means the identification and treatment of cognitive, affective, and behavioral conditions related to marital and family dysfunctions that involve the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families. Nothing in this section shall be construed to authorize any licensed marriage and family therapist or marriage and family therapy associate to administer or interpret psychological tests in accordance with the provisions of KRS Chapter 319~~["Certificate holder" means a certified marriage and family therapist certified under the provisions of KRS 335.300 to 335.399].~~

SECTION 2. A NEW SECTION OF KRS 335.300 TO 335.399 IS CREATED TO READ AS FOLLOWS:

Effective January 1, 1999, all persons authorized to use the title "certified marriage and family therapist" shall be entitled to use the title of "licensed marriage and family therapist" until the date of their second annual license renewal. On that date, the licensee shall be required to meet the conditions set forth in subsection (2) of Section 10 of this Act. First-time licensure of a person formerly certified shall be processed as a license renewal under Section 10 of this Act.

Section 3. KRS 335.305 is amended to read as follows:

- (1) *Except as provided in Section 2 of this Act and subsection (2) of this section:*
- (a) *No person shall use the title "licensed marriage and family therapist," "LMFT," or a title which is substantially the same, or hold himself or herself out as having this status, unless licensed by the board.*
- (b) *No person shall use the title "marriage and family therapy associate" or hold himself or herself out as having this status, unless holding a permit issued by the board.*
- (2) The provisions of KRS 335.300 to 335.399 shall not apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including, but not limited to, physicians, social workers, psychologists, *art therapists*, and nurses, or students within accredited training programs of these professions. Nothing in KRS 335.300 to 335.399 shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which these persons hold themselves out to the public.
- ~~{(2) No person shall use the title certified marriage and family therapist or hold himself out as having this status, unless he is certified by the board.}~~
- (3) Nothing in KRS 335.300 to 335.399 shall be construed to alter, amend, or interfere with the practice of employment counseling, job placement counseling, or school counseling.
- (4) Nothing in KRS 335.300 to 335.399 shall be construed to apply to the activities and services of a student intern or trainee in marriage and family therapy who is pursuing a program of studies in marriage and family therapy at an accredited institution of higher learning if these activities are performed under the supervision and constitute a part of the supervised program of study, and if the person is designated a counseling intern, a marriage and family therapist intern, or student in training.

Section 4. KRS 335.310 is amended to read as follows:

- (1) There is created the Kentucky Board of *Licensure*~~[Certification]~~ of Marriage and Family Therapists. *Effective January 1, 1999, it shall be*~~[]~~ composed of *seven (7)*~~[five (5)]~~ members. *Six (6) members shall be licensed marriage and family therapists. One (1) member shall be a citizen-at-large who is not associated with or financially interested in the practice or business of marriage and family therapy. All members*~~[who]~~ shall be appointed by the Governor *from a list of names of qualified persons submitted by any interested parties. The Governor may request the submission of additional names. Each member of the board shall serve for a term of four (4) years.*

- (2) *All reappointments to the board and vacancies on the board shall be filled by the Governor as described in subsection (1) of this section.*
- (3) *Each member of the board shall receive one hundred dollars (\$100) per day for each day spent performing official duties as a board member and reimbursement for actual and necessary expenses incurred in carrying out official duties.*
- (4) *The board shall annually elect a chair, a vice chair, and a secretary-treasurer.*
- (5) *The board shall hold at least two (2) meetings annually and additional meetings as the board may deem necessary. The additional meetings may be held upon call of the chairperson or upon written request of two (2) board members. Four (4) board members shall constitute a quorum.*
- (6) *Upon recommendation of the board, the Governor may remove any board member for a poor attendance record, neglect of duty, or malfeasance in office.*
- (7) *No board member shall serve more than two (2) consecutive full terms. A person who has previously served two (2) consecutive terms may be reappointed to the board if that person has not served in the preceding four (4) years*~~[Initially, four (4) members shall be appointed by the Governor from a list of eight (8) names submitted by the board of directors of the Kentucky Association for Marriage and Family Therapy. These initial appointees shall possess the qualifications for certification as a marriage and family therapist and shall be deemed certified under the provisions of KRS 335.300 to 335.399 immediately upon their appointments as members of the board. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business of marriage and family therapy. The Governor shall initially appoint one (1) member and the citizen at large member to terms of four (4) years, two (2) members to terms of three (3) years, and one (1) member to a term of two (2) years. Thereafter, each member of the board shall serve for a term of four (4) years.~~
- ~~(3) Beginning July 1, 1996, each board candidate shall be certified as a marriage and family therapist prior to nomination and shall be actively engaged in the practice or teaching of marriage and family therapy, except for the citizen at large member.~~
- ~~(4) All reappointments to the board and vacancies on the board shall be filled by the Governor from a list of three (3) names submitted from the Kentucky Association for Marriage and Family Therapy. The list submitted from the Kentucky Association for Marriage and Family Therapy shall consist of the three (3) nominees receiving the most votes in an election for each position to be filled. The election shall be administered by the Kentucky Association for Marriage and Family Therapy. In an election conducted by the Kentucky Association for Marriage and Family Therapy, nominations may be submitted by any interested party. The nominees shall be selected by all marriage and family therapists certified under KRS 335.300 to 335.399].~~

Section 5. KRS 335.320 is amended to read as follows:

The board shall:

- (1) *Administer and enforce the provisions of this chapter and shall evaluate the qualifications of license and permit applicants*~~[Approve or disapprove the granting of all certificates under KRS 335.300 to 335.399];~~
- (2) Approve the examination required of applicants for *licensure*~~[certification]~~, provide for the administration and grading of the examination, and provide for other matters relating to *licensure*~~[certification]~~ in the profession of marriage and family therapy;
- (3) Review the credentials of *licensees*~~[certificate holders]~~ to determine if they are eligible for *license renewal*~~[recertification]~~ and have paid the fee provided for in KRS 335.340;
- (4) *License*~~[Certify]~~ the marriage and family therapist applicants who satisfy the experience and educational requirements of KRS 335.330~~[and 335.335]~~ and have paid the fee provided for in KRS 335.330;
- (5) *Review and approve contracts between marriage and family therapy associates and approved supervisors for their supervision of practice during the qualifying term;*
- (6) *Issue permits to marriage and family therapy associate applicants who satisfy the requirements of Section 9 of this Act;*
- (7) Adopt a code of ethics for *licensed*~~[certified]~~ marriage and family therapists *and marriage and family therapy associates;*

- ~~(8)(6)~~ Submit an annual report to the Governor and to the Legislative Research Commission by January 1 of each year, listing all hearings conducted by the board and any decisions rendered; and
- ~~(9)(7)~~ Promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purpose and scope of KRS 335.300 to 335.399.

Section 6. KRS 335.325 is amended to read as follows:

The board may:

- (1) Employ needed personnel and contract with the Division of Occupations and Professions within the Department of Finance and Administration for the provision of administrative services;
- (2) *Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter;*
- (3) *Seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of marriage and family therapy by unlicensed persons;*
- (4) *Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of this chapter;*
- (5) *Suspend or revoke licenses or permits or impose supervisory or probationary conditions upon licensees or permit holders, or impose administrative disciplinary fines, issue written reprimands or admonishments, or any combination thereof;*
- (6) *Grant retired or inactive licensure status under conditions set forth by the board by the promulgation of administrative regulations;*
- (7) *Enter into reciprocal agreements with boards of marriage and family therapy in other states having licensure qualifications and requirements that meet or exceed those provided in this chapter;*
- (8) *Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B; and*
- (9) *Utilize mediation as a technique to resolve disciplinary matters*~~[Investigate suspected violations of KRS 335.300 to 335.399;~~
- ~~(3) Institute and maintain actions to restrain or enjoin violations of KRS 335.300 to 335.399; and~~
- ~~(4) Conduct administrative hearings in accordance with KRS Chapter 13B].~~

SECTION 7. A NEW SECTION OF KRS 335.330 TO 335.399 IS CREATED TO READ AS FOLLOWS:

- (1) *All fees and other moneys received by the board pursuant to the provisions of this chapter shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.*
- (2) *No part of this revolving fund shall revert to the general fund of this Commonwealth.*
- (3) *The compensation of board members and all of the board's employees and all expenses incurred by the board shall be paid from this revolving fund.*

Section 8. KRS 335.330 is amended to read as follows:

An applicant for *licensure*~~[certification]~~ as a marriage and family therapist shall pay the board an initial fee~~[for certification]~~ which shall be established by administrative regulation promulgated by the board. The applicant shall show the board that the applicant *has*:

- (1) ~~[Is at least eighteen (18) years of age;~~
- ~~(2) Resides in or is employed in the Commonwealth of Kentucky;~~
- ~~(3) Has]Completed a master's or doctoral degree program in marriage and family therapy, from a regionally-accredited educational institution, or a master's, post-master's, or doctoral program approved by the Commission on Accreditation for Marriage and Family Therapy Education or any of its successor~~

organizations, or an equivalent course of study as defined by the board by promulgation of administrative regulations.

- (a) *The degree or equivalent course of study shall contain specific coursework on psychopathology and the Diagnostic and Statistical Manual; and*
 - (b) In determining equivalency, the board shall use the criteria for marriage and family therapy education and clinical training approved by the United States Department of Education;
- (2) ~~and (4) — Has~~ Completed each of the following:
- (a) At least two (2) years' experience in the practice of marriage and family therapy, acceptable to the board ~~and~~ subsequent to being granted a master's degree; *and*
 - (b) A minimum of two hundred (200) hours of clinical supervision acceptable to the board *and subsequent to being granted a master's degree*; and
- (3) ~~(e)~~ Passed a written examination prescribed by the board *by promulgation of administrative regulations*.

SECTION 9. A NEW SECTION OF KRS 335.300 TO 335.399 IS CREATED TO READ AS FOLLOWS:

- (1) *A person who fills all of the requirements of KRS 335.330 shall apply to the board for a marriage and family therapist associate permit in order to practice and earn the experience required for license application.*
- (2) *A marriage and family therapy associate shall engage in the practice of marriage and family therapy while receiving qualifying experience by contracting, in writing, with an approved supervisor, as defined by the board in administrative regulations, who shall assume responsibility for and supervise the marriage and family therapy associate's practice as directed by the board by promulgation of administrative regulations. No marriage and family therapy associate shall enter into a practice of marriage and family therapy until this contract has been approved by the board, and the marriage and family therapy associate shall cease the practice of marriage and family therapy immediately upon termination of the contract. At the termination of the contract, the marriage and family therapy associate shall apply for licensure as a marriage and family therapist or request an extension of the contract from the board.*
- (3) *The fees and all other requirements for a marriage and family therapist associate permit shall be established by the board by promulgation of administrative regulations.*

Section 10. KRS 335.340 is amended to read as follows:

- (1) *Licensure*~~Certification~~ issued under KRS 335.330 shall be renewed *annually*~~every three (3) years~~ upon:
 - ~~(a) —~~ payment of a fee to be established by administrative regulation promulgated by the board not to exceed *one hundred fifty dollars (\$150)*~~three hundred dollars (\$300); and~~
 - ~~(b) —~~ Completion of continuing education requirements, as determined by administrative regulation promulgated by the board, not to exceed sixty (60) clock hours per renewal period.
- (2) *On January 1, 1999, all persons authorized to use the title "certified marriage and family therapist" shall be deemed "licensed marriage and family therapists" until the date of their second annual license renewal. As of that date, each formerly certified licensee seeking license renewal shall provide the board with verification of education or experience relating to psychopathology, as determined by administration regulations promulgated by the board, to include:*
 - (a) *Coursework in psychopathology;*
 - (b) *Supervised experience with a focus on diagnosis; or*
 - (c) *Completion of equivalent continuing education units relating to psychopathology.*

This subsection shall not apply to license renewals for those persons also licensed or certified by another mental health profession which authorizes diagnosis within its scope of practice.

- (3) *A ninety (90) day grace period shall be granted during which time licensees may continue to practice and may renew their licenses upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the board. Any license not renewed during this period shall expire.* The board ~~shall cancel any certificate not renewed within three (3) months of the renewal date but~~ may reinstate *an*

expired license within three (3) years of its expiration date ~~[the certificate]~~ upon payment of the renewal fee and satisfaction of other requirements ~~[within one (1) year of the anniversary date of issue of renewal]~~.

- (4) *A suspended license is subject to expiration and termination and shall be renewed as provided in this chapter. Renewal shall not entitle the licensee to engage in the practice of marriage and family therapy until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.*
- (5) *A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the licensee shall pay the renewal fee as set forth in subsection (1) of this section.*
- (6) *A person who fails to reinstate his or her license within three (3) years of its termination may not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements of this chapter.*
- (7) *The board shall require that a person applying for renewal or reinstatement of licensure show evidence of completion of continuing education as prescribed by the board by administrative regulations, not to exceed twenty (20) clock hours per renewal period.*

SECTION 11. A NEW SECTION OF KRS 335.300 TO 335.399 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may refuse to issue a license or permit, or may suspend, revoke, impose probationary conditions upon, impose an administrative fine, issue a written reprimand or admonishment, or any combination thereof regarding any licensee or permit holder upon proof that the licensee or permit holder has:*
 - (a) *Committed any act of dishonesty or corruption. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence are presumptive evidence at the ensuing disciplinary hearing of the guilt of the licensee or applicant. Conviction includes all instances in which a plea of no contest is the basis of the conviction;*
 - (b) *Misrepresented or concealed a material fact in obtaining a license, or in reinstatement thereof;*
 - (c) *Committed any unfair, false, misleading, or deceptive act or practice;*
 - (d) *Been incompetent or negligent in the practice of marriage and family therapy;*
 - (e) *Violated any state statute or administrative regulation governing the practice of marriage and family therapy or any activities undertaken by a marriage and family therapist;*
 - (f) *Failed to comply with an order issued by the board or an assurance of voluntary compliance;*
 - (g) *Violated the code of ethics as set forth by the board in administrative regulations; or*
 - (h) *Violated any applicable provision of any federal or state law.*
- (2) *Five (5) years from the date of a revocation, any person whose license or permit has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license or permit upon a finding that the individual has complied with any terms prescribed by the board and is again able to competently engage in the practice of marriage and family therapy.*
- (3) *If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.*
- (4) *At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the licensee which effectively deals with the complaint.*
- (5) *The board may reconsider, modify, or reverse its probation, suspensions, or other disciplinary actions.*
- (6) *The surrender of a license or permit shall not serve to deprive the board of jurisdiction to proceed with disciplinary actions pursuant to this chapter.*

SECTION 12. A NEW SECTION OF KRS 335.300 TO 335.399 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may enter into an agreement with the Kentucky Association of Marriage and Family Therapists for an Impaired Marriage and Family Therapist Committee to undertake the functions and responsibilities of an impaired marriage and family therapist program, as specified in the agreement. The functions and responsibilities may include any of the following:*
 - (a) *Receiving and evaluating reports of suspected impairment from any source;*
 - (b) *Intervening in cases of verified impairment; or*
 - (c) *Referring impaired marriage and family therapists to treatment programs.*
- (2) *Other provisions of law notwithstanding, all board and committee records pertaining to the impaired marriage and family therapist program shall be kept confidential. No person in attendance at any meeting of the committee shall be required to testify as to any committee discussions or proceedings.*
- (3) *Other provisions of law notwithstanding, no member of the board of the Kentucky Association of Marriage and Family Therapists or the Impaired Marriage and Family Therapist Committee shall be liable for damages to any person for any acts, omissions, or recommendations made in good faith while acting within the scope of responsibilities pursuant to this section.*

Section 13. KRS 335.350 is amended to read as follows:

- (1) *Before revoking, suspending, imposing probationary or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or any combination of these actions regarding any licensee or permit holder under the provisions of KRS 335.300 to 335.399, the board shall set the matter for hearing as provided by KRS Chapter 13B*~~[In every disciplinary action taken by the board under KRS 335.150, the certificate holder shall be granted the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B].~~
- (2) *After denying an application, refusing to renew a license or permit, or issuing a written admonishment regarding any applicant, licensee, or permit holder under the provisions of KRS 335.300 to 335.399, the board shall set the matter for hearing upon written request filed by the applicant, licensee, or permit holder within thirty (30) days of the date of the letter advising of the denial, refusal, or admonishment*~~[A final order of the board shall become final thirty (30) days after the conclusion of the hearing unless the certificate holder appeals the decision to the Circuit Court where the certificate holder resides. The final order shall remain in effect pending any appeals unless the board provides otherwise in the final order].~~

Section 14. KRS 335.360 is amended to read as follows:

A person whose *license or permit*~~[certificate]~~ has been revoked may apply for reinstatement no earlier than *five (5) years*~~[one (1) year]~~ from the date of revocation, in accordance with the procedures established by the board by administrative regulation.

Section 15. KRS 335.399 is amended to read as follows:

Any person who shall violate or aid in the violation of KRS 335.305(1) shall upon conviction be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or sentenced to jail for not less than ten (10) days nor more than ninety (90) days, or both so fined and imprisoned in the discretion of the jury~~[If after a hearing the board finds any applicant or certificate holder whom it regulates under KRS 335.300 to 335.399 has violated the provisions of KRS 335.300 to 335.399, or any administrative regulation promulgated thereunder, it may issue an order imposing one (1) or more of the following penalties:~~

- ~~(1) Denial of an application for certification either temporarily or permanently;~~
- ~~(2) Revocation of a certificate or an application for certification either temporarily or permanently;~~
- ~~(3) Suspension of a certificate for a period of up to five (5) years;~~
- ~~(4) Imposition of an administrative fine not to exceed one thousand dollars (\$1,000); or~~
- ~~(5) Issuance of a reprimand].~~

Section 16. The following KRS section is repealed:

335.335 Exemption from examination requirement for applicants until July 15, 1995.

Section 17. Effective January 1, 1999, the Board of Licensure of Marriage and Family Therapists shall be made up of the five (5) current members who shall continue to serve for the terms of their appointments. Two (2) additional members shall be appointed by the Governor in a manner consistent with the requirements of subsection (1) of Section 4 of this Act. The initial terms of these two members shall be three years. Thereafter, these members shall serve for a term of four years.

Section 18. This Act take effects January 1, 1999.

Approved April 14, 1998

CHAPTER 595

(SB 396)

AN ACT relating to jailers' salaries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 441.245 is amended to read as follows:

- (1) The jailer *who operates a full service jail* shall receive a monthly salary *pursuant to any salary schedule in KRS Chapter 64 applicable to jailers operating a full service jail* from the county jail operating budget.
- (2) *No jailer holding office in the Commonwealth on or after January 6, 1999, shall receive an annual salary of less than twenty thousand dollars (\$20,000).*
- (3) *The salaries of jailers who are not subject to any salary schedule in KRS Chapter 64 may be set at a higher level if the salary does not exceed the constitutional salary limit applicable to jailers. These jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to the provisions of Section 2 of this Act.* ~~[In recognition of the increased duties and responsibilities of the office of jailer, jailers holding office on July 1, 1982, shall be entitled to a level of compensation in calendar year 1982 which shall be equal to the compensation of jailer in calendar year 1981 as adjusted for the change in the consumer price index during calendar year 1981 or \$12,000, whichever is greater. The fiscal court may establish a higher level of compensation for the jailer, provided, however, that in no event shall the jailer's compensation exceed the maximum compensation allowable for county officials under KRS 64.527. In the event that a jail was closed during calendar year 1981, the secretary of finance may, upon proper documentation by the jailer, direct that a prior calendar year's level of compensation be used as a basis for setting the jailer's compensation pursuant to this section.]~~
- ~~(3) The jailer's monthly salary for the period July, 1982, through December, 1982, shall be the jailer's compensation for calendar year 1982 as provided in subsection (2) of this section less the jailer's earnings for January through June, 1982, divided by six (6).~~
- ~~(4) Except as provided in subsection (5) of this section, the jailer's compensation for 1983 and subsequent years shall equal the prior year's compensation and may be adjusted by the fiscal court for the change in the prior year's consumer price index.~~
- ~~(5) Effective January 6, 1986, the salary for jailers in any county where there is no jail and the jailer does not transport prisoners shall be twelve thousand dollars (\$12,000) per year.~~

Section 2. KRS 64.527 is amended to read as follows:

In order to equate the compensation of ~~county judges/executive, county clerks, sheriffs,~~ jailers *who do not operate full service jails*, justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the Department of Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The Department of Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the Department of Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department of Local Government.

Approved April 14, 1998

CHAPTER 596

(SCR 126)

A CONCURRENT RESOLUTION creating a Task Force on Adult Education.

WHEREAS, the 1997 Kentucky Literacy Survey found that 340,000 Kentuckians lack the basic literacy skills necessary to perform efficiently at work, at home, and in the community; and

WHEREAS, the 1997 Kentucky Literacy Survey found that 656,000 Kentuckians are functioning at such a low skill level that it will likely interfere with their ability to advance in the workplace; and

WHEREAS, literacy skills affect the economic well-being of Kentuckians with individuals who have higher literacy levels being much more likely to be employed and less likely to live in poverty and need welfare assistance; and

WHEREAS, the literacy skills of parents strongly relate to the educational future of their children with those individuals who have higher literacy skills being more likely to read to their children, help with homework, meet with teachers, participate in parent-teacher organizations, and provide printed materials in the home; and

WHEREAS, the adult literacy programs are currently serving only 5% of Kentucky's undereducated adults and many of the program's participants are dropping out prematurely; and

WHEREAS, the problem is continuing to grow as more students are now dropping out of high school than are receiving their high school equivalency diploma after passing the General Educational Development tests; and

WHEREAS, the General Assembly created the Adult Education and Literacy Initiative Fund in 1997 to research the effectiveness of different program models that can provide valuable information for addressing the problems of adult education and literacy in Kentucky; and

WHEREAS, the General Assembly recognizes the importance of public involvement in the process of finding solutions to better meet the needs of undereducated Kentuckians;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. (1) There is hereby established a Task Force on Adult Education to develop recommendations and an implementation plan for raising the literacy level and educational attainment of Kentucky's adults who have not graduated from high school or who have poor literacy skills. Its membership shall include:

- (a) Six (6) Senate members appointed by the President of the Senate;
- (b) Six (6) House of Representatives members appointed by the Speaker of the House; and
- (c) Six (6) members appointed by the Governor.

The Governor shall serve as chair.

- (2) The Task Force shall review the status of Kentuckians who have not graduated from high school or who have poor literacy skills; the adequacy of current programmatic efforts to address the problem; and recommendations to improve efforts to address the problem.
- (3) The Task Force shall be authorized to contract for consultant services.

Section 2. The Task Force shall report its findings and recommendations, including an implementation plan and timeline, with enabling legislation to the Governor and the Legislative Research Commission no later than September 1, 1999.

Section 3. Staff services to be utilized in completing this study are estimated to cost \$30,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Approved April 14, 1998

CHAPTER 597

(HB 48)

AN ACT relating to public parks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 97.590 is amended to read as follows:

- (1) For the purpose of purchasing and maintaining public parks within the ~~jurisdictional~~~~city~~ limits, cities of ***any class, counties, charter counties, and urban-county governments***~~(the fourth class)~~ may levy taxes not exceeding five cents (\$0.05) on each one hundred dollars (\$100) of all taxable property within the corporate limits. ***No city, county, charter county, or urban-county government shall levy the tax until a public referendum has been conducted in accordance with the provisions of KRS 83A.120 in the case of a city, county or charter county or in accordance with the provisions of Section 5 of this Act in the case of an urban-county government and has been adopted by the city's, county's, charter county's, or urban-county government's voters. The public referendum provisions in this section shall not apply to any city, county, charter county, or urban-county government that has in effect on the effective date of this Act a tax for park purposes in accordance with KRS 97.550 or 97.590.***
- (2) The funds derived from the levy shall be held by the treasurer of the city ***or the treasurer of the county*** in a separate and distinct fund designated the "Park Fund," and shall be paid out by the treasurer only upon order issued by the park board signed by the secretary and countersigned by the president after the bill for the withdrawal has been approved by the board. The treasurer shall not honor in any one (1) year orders for a greater sum than the amount apportioned and levied for that year for park and playground purposes.

Section 2. KRS 97.550 is amended to read as follows:

- (1) Cities of ~~any~~~~(the fourth)~~ class, ***counties, charter counties, and urban-county governments*** may acquire, by purchase or donation, property for the purpose of maintaining public parks or playgrounds within the ~~jurisdictional~~~~city~~ limits.
- (2) The city legislative body, ***the fiscal court, or the legislative body of a charter county or an urban-county government*** may appoint a park board of not more than ***eight (8)***~~five (5)~~ persons, whose qualifications shall be prescribed by the ***city*** legislative body ***or fiscal court***, and whose terms of office shall be for two (2) years and until their successors are appointed and qualified, except that three (3) members of the first board appointed shall be appointed for terms of only one (1) year. The members of the board shall not receive any salary for their services. The board shall be a corporation with perpetual succession, and may, in its corporate name, contract and be contracted with, sue and be sued, have and use a corporate seal and alter or renew it at pleasure.

Section 3. KRS 147A.028 is amended to read as follows:

- (1) In enacting a parks establishment aid law, it is the intention of the General Assembly to supplement local efforts to establish park and recreational facilities. The inadequacy of present facilities and the high cost of acquisition and establishment of park recreational facilities are hereby declared to be matters of public interest

and concern and vital to the promotion of the health, welfare and industrial development of the inhabitants of the Commonwealth.

- (2) The commissioner of the Department of Local Government shall cause to be established in the Treasury a special fund to be known as the local government parks and recreational facilities fund, to be administered by the commissioner. The fund shall be comprised of grants, contributions, appropriations and intergovernmental transfers. Moneys in the fund shall not lapse at the end of the fiscal year.
- (3) The commissioner may, when he determines that a proposed local government plan for a park or other recreational facility would serve the public interest, use moneys from the local government parks and recreational facilities fund to aid local governmental units in their acquisition and establishment of local parks and recreational facilities, provided that local governmental units must provide matching funds for the project. The Department of Local Government may grant an amount up to **five hundred thousand dollars (\$500,000)** ~~one hundred thousand dollars (\$100,000)~~ for any one (1) project, which amount shall not exceed fifty percent (50%) of the cost of the entire project. For the purposes of this section, local governmental units shall mean county governments, urban-county government, and governments of cities of any class. Title to parks and recreational facilities acquired by the use of funds authorized by this section shall vest in the local governmental unit which proposed the project and provided the matching funds.
- (4) In September of each year the commissioner shall determine the amount of funds available for distribution by December 31 of that same year. The commissioner may prescribe standards for determining the amounts to be granted for local projects and such regulations as may be necessary to implement the provisions of this section. Funds granted by the department shall be spent by the local governing authorities only for the acquisition and establishment of parks and recreational facilities or major improvements or additions to existing parks and shall not be used for operating or maintenance expenses.

SECTION 4. A NEW SECTION OF KRS CHAPTER 97 IS CREATED TO READ AS FOLLOWS:

- (1) ***For the purpose of acquiring, building, operating, and maintaining parks and green space, two (2) or more counties may form a regional park authority.***
- (2)
 - (a) ***The regional park authority may be established by a vote of the fiscal courts of the participating counties or by a vote of the majority of the voters in each participating county voting in an election. The issue shall be placed upon the ballot if supported by a petition signed by a number of people from the participating counties equal to one percent (1%) of the voters in the last regular election.***
 - (b) ***A county may join an existing regional park authority by a vote of the fiscal court of each participating county and of the fiscal court of the joining county, or by a vote of the majority of voters from each participating county and the joining county voting in an election. The issue shall be placed upon the ballot if supported by a petition signed by a number of people from the participating and joining counties equal to one per cent (1%) of the voters from each participating county, and one percent (1%) of the voters from the joining county, voting in the last regular election.***
- (3) ***A regional park authority is authorized to:***
 - (a) ***Levy taxes and issue bonds;***
 - (b) ***Accept donations, land, and equipment;***
 - (c) ***Reject unusable or unmanageable land donations;***
 - (d) ***Hire employees and contract for services; and***
 - (e) ***Enter into agreements with public and private entities under the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, and contracts authorizing the use of private facilities for public recreation.***
- (4) ***A regional park authority may levy taxes not exceeding five cents (\$0.05) on each one hundred dollars (\$100) of all taxable property within the regional park authority's boundaries. The tax shall not be levied until a public referendum has been conducted in accordance with the provisions of KRS 83A.120 and has been adopted by the majority of the voters voting in an election in each county involved.***
- (5) ***A regional park authority shall be governed by a board made up of three (3) citizens from each participating county. Board members shall be appointed by the fiscal court from a list of candidates***

provided by the cities within the county and by the county planning commission if there is one in that county.

SECTION 5. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

The procedure for a referendum authorized by Section 1 of this Act shall be as follows:

- (1) *A public parks purchase and maintenance program proposal authorized by Section 1 of this Act may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in subsection (1) of Section 1 of this Act. The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the effect or impact of the proposal.*
- (2) *Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last regular mayoral election of the urban-county government.*
- (3) *If, not later than ninety (90) days preceding the day established for a regular election, the county clerk receives a resolution adopted by a three-fifth's (3/5) vote of the legislative body of the urban-county government requesting that the question be submitted to the voters or determines that a petition submitted in accordance with this section is sufficient, the legal department of the urban-county government shall prepare to place before the voters of the urban-county government at the next regular election the question, which shall appear on the ballot in the following form:*

() **FOR RATIFICATION OF** (summary of proposed program)

() **AGAINST RATIFICATION OF** (summary of proposed program)

The county clerk shall cause to be published not fewer than three (3) times within thirty (30) days of the election, in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and a map prepared by the urban-county government showing the general location of the properties that may be purchased and the public parks that may be maintained under the program.

- (4) *The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body. If a proposed program is approved it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.*

Approved April 14, 1998

CHAPTER 598

(HB 53)

AN ACT relating to education and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

As used in this section and Sections 5, 11, and 12 of this Act, unless the context requires otherwise:

- (1) *"Accountability index" means the statistic, as provided by subsection (2) of Section 12 of this Act, that combines a school's academic and nonacademic factors;*
- (2) *"Core content for assessment" means the content identified for all students to know that is to be included on the state assessment; and*
- (3) *"Nonacademic factors" means the statistic that describes school success on:*
 - (a) *Increasing attendance and decreasing retention rates at the elementary school level;*

- (b) *Increasing attendance rates and decreasing retention and dropout rates at the middle school level; and*
- (c) *Increasing attendance rates and decreasing retention and dropout rates and improving the transition to adult life at the secondary school level.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *A permanent subcommittee of the Legislative Research Commission to be known as the Education Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members, no more than five (5) of whom shall be members of the same political party. The Legislative Research Commission shall appoint from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.*
- (2) *The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in Sections 11, 12, and 14 of this Act.*
- (3) *The subcommittee shall meet at a time and place as the chair may determine. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.*
- (4) *Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The review of administrative regulations promulgated by the Kentucky Board of Education under the authority granted by Sections 11, 12, and 14 of this Act shall comply with the provisions of Section 4 of this Act and KRS Chapter 13A.

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *Within forty-five (45) days after publication of an administrative regulation in "The Administrative Register" or within forty-five (45) days of the receipt of a statement of consideration, the Education Assessment and Accountability Review Subcommittee shall meet to review the administrative regulation.*
- (2) *The meetings shall be open to the public.*
- (3) *Public notice of the time, date, and place of the subcommittee meeting shall be given in The Administrative Register.*
- (4) *A representative of the Department of Education shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the Department of Education is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.*
- (5) *Following the meeting and before the next regularly scheduled meeting of the Legislative Research Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy shall be sent to the Department of Education. The subcommittee's findings shall be published in The Administrative Register.*
- (6)
 - (a) *After review by the subcommittee, the Commission shall at its next regularly scheduled meeting assign the matter as appropriate to the Interim Joint Committee on Education, the Senate standing Education Committee, the House standing Education Committee, or the Senate and the House standing committees meeting jointly.*
 - (b) *Upon notification of the assignment by the Commission, the Education Committee shall notify the regulations compiler:

 - 1. *Of the date, time, and place of the meeting at which it will consider the matter; or*
 - 2. *That it will not meet to consider the matter.**

- (7) *Within thirty (30) days of the assignment, the Education Committee when it plans to consider an administrative regulation shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The committee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.*
- (8) *The Department of Education shall comply with subsection (4) of this section.*
- (9) *The Education Committee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the subcommittee as provided in KRS 13A.030(2) and (3).*
- (10)
 - (a) *Upon adjournment of the meeting at which the Education Committee has considered an administrative regulation pursuant to subsection (7) of this section, the committee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.*
 - (b) *Following the meeting and before the next regularly scheduled meeting of the Commission, the committee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy shall be sent to the Department of Education. The subcommittee's findings shall be published in The Administrative Register.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *A School Curriculum, Assessment, and Accountability Council is hereby created to study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, holding schools accountable for learning, and assisting schools to improve their performance. The council shall advise the Kentucky Board of Education and the Legislative Research Commission on issues related to the development and communication of the academic expectations and core content for assessment, the development and implementation of the statewide assessment and accountability program, the distribution of rewards and imposition of sanctions, and assistance for schools to improve their performance under Sections 11, 12, 13, and 14 of this Act.*
- (2) *The School Curriculum, Assessment, and Accountability Council shall be composed of seventeen (17) voting members appointed by the Governor. On making appointments to the council, the Governor shall assure broad geographical representation and representation of elementary, middle, and secondary school levels; assure equal representation of the two (2) sexes, inasmuch as possible; and assure that appointments reflect the minority racial composition of the Commonwealth. The members shall serve terms of two (2) years with no member serving more than two (2) consecutive terms, except that seven (7) of the initial appointments shall be for four (4) year terms. The members shall be appointed as follows:*
 - (a) *Two (2) parents from recommendations submitted by organizations representing school councils and parents;*
 - (b) *Two (2) teachers from recommendations submitted by organizations representing teachers;*
 - (c) *Two (2) superintendents from recommendations submitted by organizations representing superintendents;*
 - (d) *Two (2) principals from organizations representing school administrators;*
 - (e) *Two (2) local school board members from recommendations submitted by organizations representing school boards;*
 - (f) *Two (2) school district assessment coordinators from recommendations submitted by organizations representing district assessment coordinators;*
 - (g) *Two (2) employers in the state from recommendations submitted by organizations representing business and industry;*
 - (h) *Two (2) university professors with expertise in assessment and measurement; and*
 - (i) *One (1) at-large member.*
- (3) *The School Curriculum, Assessment, and Accountability Council shall elect a chair annually from its membership.*

- (4) *The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the council or while serving as representative of the council.*
- (5) *The School Curriculum, Assessment, and Accountability Council shall meet at least four (4) times each year at times and places as it determines by resolution.*
- (6) *The School Curriculum, Assessment, and Accountability Council shall be attached to the Department of Education for administrative purposes. It shall be provided appropriate staff and resources to conduct its work.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The Legislative Research Commission shall appoint a National Technical Advisory Panel on Assessment and Accountability composed of no fewer than three (3) professionals with a variety of expertise in education testing and measurement. The panel shall advise the Commission, and, upon approval of the director of the Commission, the Kentucky Board of Education and the Department of Education, in the implementation of Sections 11 and 12 of this Act. The Commission is authorized to contract for the services and expenses of the panel members.

Section 7. KRS 13A.030 is amended to read as follows:

- (1) The Administrative Regulation Review Subcommittee shall:
 - (a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;
 - (b) *Except as provided by Sections 3 and 4 of this Act*, review and comment upon administrative regulations submitted to it by the Commission;
 - (c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and
 - (d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.
- (2) The subcommittee may make a nonbinding determination:
 - (a) That an administrative regulation:
 - 1. Is wrongfully promulgated;
 - 2. Appears to be in conflict with an existing statute;
 - 3. Appears to have no statutory authority for its promulgation;
 - 4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;
 - 5. Fails to use tiering when tiering is applicable;
 - 6. Is in excess of the administrative body's authority; or
 - 7. Appears to be deficient in any other manner;
 - (b) That an administrative regulation is needed to implement an existing statute;
 - (c) That an administrative regulation should be amended or repealed.
- (3) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

Section 8. KRS 13A.290 is amended to read as follows:

- (1) *Except as provided by Sections 3 and 4 of this Act*, within forty-five (45) days after publication of an administrative regulation in "The Administrative Register," or within forty-five (45) days of the receipt of a statement of consideration, the Administrative Regulation Review Subcommittee shall meet to review the administrative regulation.
- (2) The meetings shall be open to the public.

- (3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.
- (4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly-scheduled meeting of the subcommittee.
- (5) Following the meeting and before the next regularly-scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy thereof shall be sent to the promulgating agency. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.
- (6)
 - (a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, at its next regularly-scheduled meeting, assign the matter to a subcommittee of appropriate jurisdiction over the subject matter.
 - (b) Upon notification of the assignment by the Commission, the legislative subcommittee to which the matter is assigned shall notify the regulations compiler:
 1. Of the date, time, and place of the meeting at which it will consider the matter; or
 2. That it will not meet to consider the matter.
- (7) Within thirty (30) days of the assignment, the subcommittee shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.
- (8) An administrative body shall comply with subsection (4) of this section.
- (9) The subcommittee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee as provided in KRS 13A.030(2) and (3).
- (10)
 - (a) Upon adjournment of the meeting at which a legislative subcommittee has considered an administrative regulation pursuant to subsection (7) of this section, the subcommittee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.
 - (b) Following the meeting and before the next regularly-scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy thereof shall be sent to the promulgating agency. The subcommittee's findings shall be published in the Administrative Register.

Section 9. KRS 156.160 is amended to read as follows:

- (1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:
 - (a) Courses of study for the different grades and kinds of common schools ***identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and Section 11 of this Act and distributed to local school districts and schools. They shall include***~~subject to~~ the following~~conditions~~:
 1. a. Procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered

the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year, except as provided in subparagraph 1.b. of this paragraph. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.

- b. A school council established pursuant to KRS 160.345 or if none exists, a school may determine, based on individual student needs, that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council or school shall revise the action plan to reflect any changes in the primary program's design.
2. The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
 - (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;
 - (c) The minimum requirements for high school graduation~~[- Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements]~~ in light of the expected outcomes for students and schools set forth in KRS 158.6451. ***Student scores from any assessment administered under Section 11 of this Act that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;***
 - (d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
 - (e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
 - (f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;
 - (g) The transportation of children to and from school;
 - (h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;
 - (i) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

- (j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and
 - (k) The disposal of real and personal property owned by local boards of education.
- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:
- 1. An alternative approach will achieve the same result required by the administrative regulation;
 - 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
 - 3. There is a finding of good cause for the waiver.
- (b) Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools shall not be subject to waiver.
- (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.
- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 10. KRS 158.140 is amended to read as follows:

- (1) When a pupil in any public elementary school or any approved private or parochial school completes the prescribed elementary program of studies, he is entitled to a certificate of completion signed by the teacher or teachers under whom the program was completed. The certificate shall entitle the pupil to admission into any public high school. Any promotions or credits earned in attendance in any approved public school are valid in any other public school to which a pupil may go, but the superintendent or principal of a school, as the case may be, may assign the pupil to the class or grade to which the pupil is best suited. In case a pupil transfers from the school of one (1) district to the school of another district, an assignment to a lower grade or course shall not be made until the pupil has demonstrated that he is not suited for the work in the grade or course to which he has been promoted.
- (2) Upon successful completion of all state and local board requirements, the student shall receive a diploma indicating graduation from high school.
- (3) ***A local school board may award a diploma indicating graduation from high school to any student posthumously with the high school class the student was expected to graduate.***
- (4) The Department of Education shall establish the requirements for a vocational certificate of completion. A student who has returned to school after dropping out shall receive counseling concerning the vocational program. A student who has completed the requirements established for a vocational program shall receive a vocational certificate of completion specifying the areas of competence.

Section 11. KRS 158.6453 is amended to read as follows:

- (1) The Kentucky Board of Education shall be responsible for creating and implementing a statewide ~~performance-based~~ assessment program ***to be known as the Commonwealth Accountability Testing System*** to ensure school accountability for student achievement of the goals set forth in KRS 158.645 and ***158.6451. The board shall seek the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability in the development of the program.*** The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of

a family, work group, or community. ~~The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.~~

- (2) *The assessment program shall include the following components:*
- (a) *A customized or commercially available norm-referenced test that measures, to the extent possible, the core content for assessment. The test shall provide valid and reliable results for individual students;*
 - (b) *Open-response or multiple-choice items, or both, to assess student skills in reading, mathematics, science, social studies, the arts, the humanities, and practical living and vocational studies; and an on-demand assessment of student writing. These assessments shall measure, to the extent possible, the core content for assessment;*
 - (c) *Writing portfolios consisting of samples of student work. After receiving the advice of the Writing Advisory Committee, the Kentucky Board of Education shall, by September 1 following the effective date of the Act, file a notice of intent to promulgate an administrative regulation which reduces the teacher and student time involved in preparing a writing portfolio. Time reduction strategies included in the administrative regulation may include, but are not limited to, limiting the time spent on a single portfolio entry, limiting the number of revisions, or collecting entries at different grade levels;*
 - (d) *Performance assessment events for schools that have students enrolled in performing arts organizations sponsoring sanctioned events with an established protocol for adjudication; and*
 - (e) *A technically sound longitudinal comparison of the assessment results for the same students.* ~~Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:~~
 - ~~(a) Direct the development of the interim and full scale assessment program; and~~
 - ~~(b) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.~~
- ~~The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder.~~
- (3) *Kentucky teachers shall have a significant role in the design of the assessments. The assessments shall be designed to:*
- (a) *Measure grade appropriate core academic content, basic skills, and higher-order thinking skills and their application. The assessment shall measure the core content for assessment used by the Department of Education during the 1997-98 school year. Any revisions to the core content for assessment shall be developed through a public process involving parents; educators at the elementary, secondary, and postsecondary education levels; professional education advocacy groups and organizations; and business and civic leaders and shall be distributed to all public schools;*
 - (b) *Provide valid and reliable scores for schools. If scores are reported for students individually, they shall be valid and reliable; and*
 - (c) *Minimize the time spent by teachers and students on assessment.*
- (4) *Results from the state assessment under this section shall be reported to the school districts and schools no later than September 15 of the following school year.*
- (5) *The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation studies that shall include, but not be limited to, the consistency of student results across multiple measures, the congruence of school scores with*

documented improvements in instructional practice and the school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Commission by July 1 the first year of each biennium. A summary of the findings shall be submitted to the Legislative Research Commission by September 1 of the second year of the biennium.

- (6) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. *The continuous assessment shall provide diagnostic information to improve instruction to meet the needs of individual students.*
- (7)~~(4)~~ *The Kentucky Board of Education, after the Department of Education has received advice from the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation under KRS Chapter 13A to establish the components of a school report card that clearly communicates with parents and the public about school performance. The school report card shall be sent to the parents of the students of the districts, and a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include, but not be limited to, the following components reported by race, gender, and disability when appropriate:*
- (a) *Student academic achievement, including the results from each of the assessments administered under this section;*
 - (b) *Nonacademic achievement, including the school's attendance, retention, dropout rates, and student transition to adult life; and*
 - (c) *School learning environment, including measures of parental involvement.*~~[By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in Kentucky Board of Education administrative regulations.]~~

Section 12. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

- (1) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A to establish a system for identifying and rewarding*~~[of determining]~~ *successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.*~~[and dispensing appropriate rewards. The system shall be based on the following:~~
- ~~(a) A school shall be the unit of measure to determine success;~~
 - ~~(b) School success shall be determined by measuring a school's improvement over a two (2) year period;~~
 - ~~(c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;~~
 - ~~(d) A threshold level for school improvement shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required;~~

- (e) ~~Rewards shall be given to the school on behalf of the full time, part time, and itinerant instructional staff of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection. Substitute teachers shall not be used in calculating the reward;~~
- (f) ~~Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;~~
- (g) ~~The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent. Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and~~
- (h) ~~The Department of Education shall send the school's reward to the local district office for transmittal to the school.]~~
- (2) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate~~adopt~~ by administrative regulation in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A the formula for a school accountability index~~to be used~~ to classify~~determine successful~~ schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall~~be a calculus of factors which~~ reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.*
- (3) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:*
- (a) *A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;*
- (b) *School improvement plans;*
- (c) *Eligibility to receive Commonwealth school improvement funds under Section 13 of this Act;*
- (d) *Education assistance from highly skilled certified staff under Section 14 of this Act;*
- (e) *Evaluation of school personnel; and*
- (f) *Student transfer to successful schools.~~[A school that does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805. A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be required to meet the provisions of subsection (4) of this section.]~~*
- (4) (a) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:*

1. *Appointing and training team members. The team shall include at least a highly skilled certified educator under Section 14 of this Act, a teacher, a principal or other local district administrator, a parent, and a university faculty member;*
 2. *Reviewing a school's learning environment, efficiency, and academic performance of students;*
 3. *Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and*
 4. *Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.*
- (b) *For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal.*
- (5) (a) *Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of Sections 3 and 4 of this Act and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.*
- (b) 1. *The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).*
2. *Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under Section 13 of this Act.*
- (6) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.*
- (7) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, [A school in which the proportion of successful students declines by less than five percent (5%) shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have one (1) or more Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782. If the school does not meet its original threshold after the next biennial review or after the 1996-98 biennial review, whichever is later, the school shall be subject to the requirements of subsection (5) of this section.*
- ~~(5) A school in which the proportion of successful students declines by five percent (5%) or more in any biennium beginning with the 1994-96 biennium shall be declared by the Kentucky Board of Education to be a "school in crisis." When a school is declared to be a "school in crisis," the following actions shall be required:~~
- ~~(a) The full time and part time certified staff of that school shall be placed on probation;~~
- ~~(b) The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;~~

- ~~(c) Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the Kentucky Board of Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "school in crisis" to a successful school. If a decline in student enrollment causes overstaffing at the "school in crisis," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800.~~
- ~~(d) One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782. Notwithstanding any other statute to the contrary, at the end of six (6) months, the Kentucky distinguished educator shall evaluate and make a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the Kentucky Board of Education; and~~
- ~~(e) The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund.~~
- ~~(6) The Kentucky Board of Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) to (5) of this section. Rewards shall be given to nonschool-based staff when the district's proportion of successful students increases above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the proportion of successful students in the district declines in the same proportion used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district that does not meet its threshold shall be required to develop a district improvement plan defined in KRS 158.650.~~
- ~~(7) A school district in which the proportion of successful students declines by five percent (5%) or more in any biennium beginning with the 1994-96 biennium shall be assigned one (1) or more Kentucky distinguished educators to assist the system, evaluate personnel, and notwithstanding any other statute to the contrary, make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350. If a district has a declining proportion of successful students for two (2) consecutive biennial assessment periods, the district shall be declared an education development district pursuant to KRS 158.685, and the board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.~~
- ~~(8) The Kentucky Board of Education shall *promulgate*~~adopt~~ administrative regulations *in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A*, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.~~

Section 13. KRS 158.805 is amended to read as follows:

- (1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise the school's performance level. The Kentucky Board of Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

- (a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management;
 - (b) To assist in replicating successful programs developed in other districts;
 - (c) To encourage cooperative instructional or management approaches to specific school educational problems; and
 - (d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.
- (2) The Kentucky Board of Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools *identified by the board as needing assistance under* ~~in educationally deficient districts pursuant to KRS 158.685 through the 1993-94 school year. Beginning with the 1994-95 school year, grants shall go to schools which do not meet their threshold as defined in~~ KRS 158.6455. ~~{} The Governor shall appoint an advisory committee which shall include teachers, administrators, teacher educators, and representatives of the general public to assist in the planning and implementation of the Commonwealth school improvement fund. The members of the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the discharge of official duties. The committee shall advise the board on application procedures, review of proposals, evaluation criteria, reporting requirements, and other matters relating to the fund as requested by the board.}~~
- (3) The Kentucky Board of Education shall have the sole authority to approve grants from the fund. ~~{} The advisory committee shall review proposals for grants and make recommendations to the board relating to the merits of each proposal.}~~
- (4) The Kentucky Board of Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.
- (5) The Kentucky Board of Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the Kentucky Board of Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

Section 14. KRS 158.782 is amended to read as follows:

- (1) *After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability,* the Kentucky Board of Education shall promulgate administrative regulations *in conformity with Sections 3 and 4 of this Act and KRS Chapter 13A,* to set forth the *guidelines for providing highly skilled education assistance to schools and school districts. The program shall be designed to support improved teaching and learning and may include, but not be limited to, establishing the following:*
- (a) *Criteria for identifying successful strategies of assistance;*
 - (b) *Policies and procedures for providing education assistance, which may include training, making assignments, employing certified personnel, and setting salaries that may include supplements; and*
 - (c) *Duties of those providing education assistance, which may include personnel evaluation and recommendations concerning retention, dismissal, or transfer of personnel.*
- (2) *A district employee selected to provide assistance* ~~{criteria for the Kentucky Distinguished Educators Program which shall be implemented by July 1, 1991. The designation of "Kentucky Distinguished Educator" shall be given to the state's most outstanding and highly skilled certified educators who deserve recognition and are willing to fulfill the following purposes of the program:~~
- (a) ~~Serving as teaching ambassadors to spread the message that teaching is an important and fulfilling profession;~~

- (b) ~~Assisting the Department of Education with research projects and staff development efforts;~~
- (c) ~~Accepting assignments in schools whose percentage of successful students declined as described in KRS 158.6455. The assignments shall require the educator to:~~
1. ~~Work in a school on a full-time or part-time basis for a designated period of time to assist the school staff with implementing its school improvement plan. The educator shall have the authority in a school in crisis as defined in KRS 158.6455(5) to make decisions previously made by the school staff;~~
 2. ~~Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance; and~~
 3. ~~Evaluate and make recommendations on the retention, dismissal, or transfer of certified staff in a "school in crisis."~~
 4. ~~Complete an intensive training program, provided by the Department of Education and approved by the Kentucky Board of Education, prior to being assigned to assist a school's staff with implementing its school improvement plan. The training program shall include, but shall not be limited to instruction in the methods of personnel evaluation, school organization, school curriculum, and assessment.~~
- (2) ~~The Kentucky Distinguished Educators Program criteria shall include:~~
- (a) ~~A selection process which shall allow for self nomination, provide a broad spectrum of instructional positions, and generate statewide representation.~~
 - (b) ~~Beginning with the 1992-93 school year, special recognition shall be given to five (5) Kentucky distinguished educators each year in the form of a one (1) year sabbatical leave to work with instructional personnel across the state and to serve as teaching ambassadors to the state at large.~~
 - (c) ~~Each recipient shall receive a monetary award of two hundred fifty dollars (\$250) when selected and shall also be paid in accordance with his current salary for other program requirements which arise pursuant to subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Distinguished Educators Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky distinguished educator when he is assigned to an unsuccessful school or district.~~
 - (d) ~~Kentucky distinguished educators assigned to an unsuccessful school shall receive a salary supplement of fifty percent (50%) of his annual salary for each year of service in that capacity. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If his assigned school achieves the threshold level in the next biennial review, he shall receive his portion of the reward due to the entire staff calculated on his base salary regardless of decisions made by the school staff pursuant to KRS 158.6455(1)(e).~~
 - (e) ~~The Kentucky distinguished educator] shall be granted professional leave pursuant to KRS 161.770 though the time may exceed two (2) years if determined by the state board to be necessary. A *certified employee*[The Kentucky distinguished educator] shall not lose any employee benefits as a result of a[his] special assignment.~~
- (3) ***The Kentucky Board of Education shall annually review the paperwork required of schools receiving highly skilled certified education assistance. It shall assure that paperwork requirements are kept to a minimum, relevant to the needs of the school, and are directly related to improving teaching and learning.***
- ~~[(f) A Kentucky distinguished educator shall not be assigned to a school or to a district assignment in the district in which he is employed.]~~

Section 15. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

- (1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, member of a school council, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct

in office, incompetency, willful neglect of duty, or nonfeasance. In the case of a member of a school council, the written charges shall be provided to the local board of education.

- (2) The chief state school officer shall recommend by written charges the suspension by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, *or* nonfeasance~~, or who shall be removed pursuant to KRS 158.6455(7)~~. If the charges brought under this subsection represent an immediate threat to the public health, safety, or welfare, the Kentucky Board of Education shall summarily suspend the person against whom the charges are made. The action by the Kentucky Board of Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the Kentucky Board of Education without recommendation from the chief state school officer.
- (3) The Kentucky Board of Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if, after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the proper school authorities having immediate jurisdiction, either the superintendent or the district board of education, have refused to act, have acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.
- (4) Any officer suspended by the Kentucky Board of Education under subsection (2) of this section shall be furnished with an emergency order specifying in detail the reasons for suspension and notifying the officer of his right to appeal the action and have an emergency hearing pursuant to KRS 13B.125.
- (5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance~~, or who shall be removed pursuant to KRS 158.6455(7)~~. The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of procedural rights conferred under KRS Chapter 13B. Within twenty (20) days after receipt of the charges, the officer may notify the Kentucky Board of Education of his intention to appear and answer the charges. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the officer fails to notify the board of his intention to appear and answer the charges, the Kentucky Board of Education may remove the officer by a majority vote, and the dismissal shall be final.
- (6) The hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members.
- (7) The Kentucky Board of Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare final order specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.
- (8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district in accordance with KRS Chapter 13B. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.
- (9) If a superintendent of schools is removed from office or resigns while charges are pending pursuant to this section after July 15, 1994, any continuing contract pursuant to KRS 161.720 to 161.810 shall be terminated. If the removal is reversed upon appeal, the continuing contract shall be restored and he shall be paid his full salary for the period of suspension.

Section 16. KRS 161.790 is amended to read as follows:

- (1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:
 - (a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education or lawful rules and regulations established by

the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

- (b) Immoral character or conduct unbecoming a teacher;
 - (c) Physical or mental disability;
 - (d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.
- (2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made ~~by a Kentucky distinguished educator~~ under KRS 158.6455.
 - (3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the chief state school officer and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.
 - (4) Upon receiving the teacher's notice of his intention to answer the charge, the chief state school officer shall appoint a three (3) member tribunal, consisting of one (1) teacher, one (1) administrator, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. The chief state school officer shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.
 - (5) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the chief state school officer shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars (\$100) and travel expenses.
 - (6) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.
 - (7) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.
 - (8) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B.
 - (9) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including, suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply, except to a private reprimand. The teacher may appeal the action of the superintendent, except a private reprimand, in the same manner as established in subsections (4) to (8) of this section. Upon completion of a suspension period, the teacher may be reinstated.

SECTION 17. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The Department of Education shall develop a plan for implementing the state assessment and accountability system created under Sections 11 and 12 of this Act and shall report quarterly to the Interim Joint Committee on Education on its progress in the following areas:

- (1) *Establishing a consistent structure of test components, grade-level testing distribution, and test administration procedures;*
- (2) *Beginning a new cycle of equating procedures for which their adequacy and precision can be tested rigorously and conducting appropriate equating analyses to accommodate the new accountability system;*
- (3) *Publishing more complete and informative guides for interpreting school accountability index score changes that include information about the estimated error of the accountability index, as well as*

information about the connections between index score changes and estimated changes in student performance levels;

- (4) *Reviewing school accountability classifications to assure their construct validity in all cases where they are applied;*
- (5) *Maintaining and strengthening the annual audit of portfolio scores in ways that serve to minimize the differences between teacher-produced scores and audit-generated scores;*
- (6) *Developing and implementing a validity research plan as required under Section 11 of this Act;*
- (7) *Establishing additional routine audits of key processes in the assessment and accountability program;*
- (8) *Maintaining and cataloging a library of technical documents related to the assessment and accountability program for internal and external review purposes. In addition, the department shall produce an annual technical report for audiences that include educators, testing coordinators, parents, and legislators; and*
- (9) *Maintaining a vigorous ongoing program of research and documentation of the effects of the assessment and accountability system on Kentucky schools.*

Section 18. KRS 160.350 is amended to read as follows:

- (1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. The person appointed to serve as acting superintendent shall not be an applicant for, nor be appointed to, the position of superintendent. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.
- (2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. A superintendent candidate who is to begin his duties after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.
- (3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by a **highly skilled certified** ~~[(Kentucky distinguished)]~~ educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

Section 19. Notwithstanding any provision of Sections 11, 12, 13, and 14 of this Act to the contrary, the Kentucky Board of Education shall administer the assessment program and classify schools and districts based on the results for the 1994-98 accountability cycle according to the Kentucky Board of Education administrative regulations in force for the cycle on the effective date of this Act, with the following modifications made for distributing rewards and applying consequences for the biennium:

- (1) The Department of Education shall administer the 1997-98 KIRIS to include the following:
 - (a) Reading in grades four (4), seven (7), and eleven (11);
 - (b) Mathematics in grades five (5), eight (8), and eleven (11);
 - (c) Science in grades four (4), seven (7), and eleven (11);
 - (d) Social studies in grades five (5), eight (8), and eleven (11);
 - (e) A writing prompt in grades four (4), seven (7), and eleven (11);
 - (f) Arts and humanities and practical family living skills in grades five (5), eight (8), and eleven (11); and
 - (g) A writing portfolio in grades four (4), seven (7), and twelve (12).
- (2) Notwithstanding any provision of KRS 157.067 to the contrary, twenty-seven million dollars (\$27,000,000) shall be paid out of the Kentucky successful schools trust fund. The Kentucky Board of Education shall determine an amount to be distributed to every school that exceeds its 1994-96 baseline in the 1996-98 school years and twice that amount to every school that exceeds its threshold level for school improvement. Rewards shall be given to the school's full-time, part-time, and itinerant certified staff assigned to the school on the last working day of the accountability cycle unless a majority of the certified staff vote otherwise. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220 (10);
- (3) All schools failing to reach their school improvement goal shall develop a school improvement plan and may apply for Commonwealth school improvement funds; and
- (4) All schools in which the proportion of successful students declined in the 1996-98 school years may request highly skilled certified education assistance for advisory purposes. No school employee shall be placed on probation based upon school classification. Parents of students attending a school which would have been classified "in crisis", based upon the school classification procedure in use prior to the effective date of the Act, may request to transfer their children to another school.
- (5) Notwithstanding any provision of KRS 157.067 to the contrary, three million dollars (\$3,000,000) shall be transferred from the Kentucky successful schools trust fund to the Commonwealth school improvement fund established under Section 13 of this Act and appropriated to fund grants to schools classified as "in decline" or "in crisis".
- (6) Outstanding reward funds to qualified schools whose results changed for Accountability Cycle Two shall be distributed within two (2) weeks following the effective date of the Act.
- (7) The classification of schools as "in crisis" based on data obtained in Accountability Cycle 2, and Accountability Cycle 3 ending 1997-98 shall be void, and these schools shall be classified as "in decline."

Section 20. Whereas it is imperative that the new assessment and accountability system be implemented as expeditiously as possible to better enable the General Assembly to carry out its constitutional duty to establish an efficient system of common schools, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 14, 1998

CHAPTER 599

(HB 63)

AN ACT relating to campaign finance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 121.150 is amended to read as follows:

- (1) No contribution shall be made or received, directly or indirectly, other than an independent expenditure, to support inauguration activities or to support or defeat a candidate, slate of candidates, constitutional amendment, or public question which will appear on the ballot in an election, except through the duly appointed campaign manager, or campaign treasurer of the candidate, slate of candidates, or registered committee. Any person making an independent expenditure, shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500) in the aggregate in any one (1) election, on a form provided by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.
- (2) Except as provided in KRS 121.180(10), the solicitation from and contributions by campaign committees, political issues committees, permanent committees, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good is expressly prohibited; except that it shall not be construed as a violation of this section for a candidate to contribute to religious, civic, or charitable groups.
- (3) No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf, shall accept any anonymous contribution in excess of fifty dollars (\$50), and all anonymous contributions in excess of fifty dollars (\$50) shall be returned to the donor, if the donor can be determined. If no donor is found, the contribution shall escheat to the state and be transferred to the election campaign fund established by KRS 121A.020. No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf shall accept anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate in any one (1) election. Anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate which are received in any one (1) election shall escheat to the state and be transferred to the election campaign fund established by KRS 121A.020.
- (4) No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cash contribution in excess of fifty dollars (\$50) in the aggregate from each contributor in any one (1) election. No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cashier's check or money order in excess of the maximum cash contribution limit unless the instrument clearly identifies both the payor and the payee. A contribution made by cashier's check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section. No person shall make a cash contribution in excess of fifty dollars (\$50) in the aggregate in any one (1) election to a candidate, committee, or contributing organization, nor anyone on their behalf.
- (5) No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf, shall accept any contribution in excess of one hundred dollars (\$100) from any person who shall not become eighteen (18) years of age on or before the day of the next general election.
- (6) No candidate, campaign committee, political issues committee, nor anyone acting on their behalf, shall accept a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election; except that no candidate for school board, his campaign committee, nor anyone acting on their behalf shall accept a contribution of more than one hundred dollars (\$100) from any person or more than two hundred dollars (\$200) from any permanent committee or contributing organization in any one (1) election. No person, permanent committee, or contributing organization shall contribute more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf, in any one (1) election; except that no person shall contribute more than one hundred dollars (\$100) and no permanent committee or contributing organization shall contribute more than two hundred dollars (\$200) to any one (1) school board candidate, his campaign committee, nor anyone acting on their behalf, in any one (1) election. Limits on contributions for slates of candidates for Governor and Lieutenant Governor which may be made or received in any one (1) election shall be governed by the provisions of KRS 121A.050.
- (7) Permanent committees or contributing organizations affiliated by bylaw structure or by registration, as determined by the Registry of Election Finance, shall be considered as one (1) committee for purposes of applying the contribution limits of subsection (6) of this section.
- (8) No permanent committee shall contribute funds to another permanent committee for the purpose of circumventing contribution limits of subsection (6) of this section.

- (9) No person shall contribute funds to a permanent committee, political issues committee, or contributing organization for the purpose of circumventing the contribution limits of subsection (6) of this section.
- (10) No person shall contribute more than one thousand five hundred dollars (\$1,500) to all permanent committees and contributing organizations in any one (1) year.
- (11) No person shall contribute more than two thousand five hundred dollars (\$2,500) to the state executive committee of a political party and its subdivisions and affiliates in any one (1) year. Contributions a person makes to a political party in excess of one thousand dollars (\$1,000) in any one (1) year shall be deposited in a separate account which the state executive committee maintains for the exclusive purpose of paying administrative costs incurred by the political party.
- (12) No person shall make a payment, distribution, loan, advance, deposit, or gift of money to another person to contribute to a candidate, committee, contributing organization, or anyone on their behalf. No candidate, committee, contributing organization, nor anyone on their behalf shall accept a contribution made by one (1) person who has received a payment, distribution, loan, advance, deposit or gift of money from another person to contribute to a candidate, committee, contributing organization, or anyone on their behalf.
- (13) No candidates running as a slate for the offices of Governor and Lieutenant Governor shall make combined total personal loans to their committee in excess of fifty thousand dollars (\$50,000) in any one (1) election. No candidate for any other statewide elected state office shall lend to his committee any amount in excess of twenty-five thousand dollars (\$25,000) in any one (1) election. In campaigning for all other offices, no candidate shall lend to his committee more than ten thousand dollars (\$10,000) in any one (1) election.
- (14) ***Subject to the provisions of subsection (20) of this section,*** no candidate or slate of candidates for nomination to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for primary election expenses after the date of the primary. No person other than the candidate or slate of candidates shall contribute for primary election expenses after the date of the primary.
- (15) ***Subject to the provisions of subsection (20) of this section,*** no slate of candidates for nomination for election to the offices of Governor and Lieutenant Governor, nor its campaign committees, nor anyone on their behalf, shall solicit or accept contributions for runoff primary election expenses after the date of the runoff primary. No person other than the slated candidates shall contribute for runoff primary election expenses after the date of the runoff primary.
- (16) ***Subject to the provisions of subsection (20) of this section,*** no candidate or slate of candidates for any state, county, city, or district office at a regular election, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for regular election expenses after the date of the regular election. No person other than the candidate or slate of candidates shall contribute for regular election expenses after the date of the regular election.
- (17) ***Subject to the provisions of subsection (20) of this section,*** no candidate or slate of candidates for nomination or election to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for special election expenses after the date of the special election. No person other than the candidate or slate of candidates shall contribute for special election expenses after the date of the special election.
- (18) Nothing in subsections (14) to (17) of this section shall be deemed to prohibit a slate of candidates from receiving transfers from the election campaign fund established by KRS 121A.020 for which it is eligible for matches of qualifying contributions received prior to the date of the election but for which no transfer from the fund had been made prior to the date of the election.
- (19) The provisions of subsections (14) and (16) of this section shall apply only to those candidates in a primary or regular election which shall be conducted subsequent to January 1, 1989. The provisions of subsections (15) and (17) of this section shall apply only to those candidates or slates of candidates in a runoff primary or special election which shall be conducted subsequent to January 1, 1993.
- (20) ***A candidate, slate of candidates, or a campaign committee may solicit and accept contributions after the date of a primary election, runoff primary election, regular election, or special election to defray necessary expenses that arise after the date of the election associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry pertaining to a specific election, or other legal actions pertaining to a specific election to which a candidate, slate of candidates, or campaign committee is a party. Reports of contributions received and***

expenditures made after the date of the specific election shall be made in accordance with Section 3 of this Act.

- (21) No slate of candidates for Governor and Lieutenant Governor or their immediate families shall loan any money, service, or other thing of value to their campaign, and all moneys, services, or other things of value which are loaned shall be deemed a contribution, which may not be recovered by the slate of candidates, except to the extent of a combined total of fifty thousand dollars (\$50,000).
- ~~(22)(21)~~ No candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf, shall knowingly accept a contribution from a corporation, directly or indirectly.
- ~~(23)(22)~~ Nothing in this section shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by KRS 121.025.
- ~~(24)(23)~~ In addition to the prohibitions set forth in this section, no slate of candidates shall accept any contribution during the twenty-eight (28) days immediately preceding a primary or regular election except as provided in KRS 121A.030(5).
- ~~(25)(24)~~ No candidate, slate of candidates, or committee, nor anyone on their behalf, shall solicit a contribution of money or services from a state employee, whether or not the employee is covered by the classified service provisions of KRS Chapter 18A. However, it shall not be a violation of this subsection for a state employee to receive a solicitation directed to him as a registered voter in an identified precinct as part of an overall plan to contact voters not identified as state employees.
- ~~(26)(25)~~ (a) A candidate for elective public office, except slates of candidates for Governor and Lieutenant Governor, shall not accept contributions from permanent committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the candidate in any one (1) election or ten thousand dollars (\$10,000) in any one (1) election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate in an election that is accepted from permanent committees shall be calculated as of the day of each election. Funds in a candidate's campaign account which are carried forward from one (1) election to another shall not be considered in calculating the acceptable percentage or dollar amount of contributions which may be accepted from permanent committees for the election for which the funds are carried forward. A candidate may, without penalty, contribute funds to his campaign account not later than ~~sixty (60)(twenty (20))~~ days following the election so as not to exceed the permitted percentage or dollar amount of contributions which may be accepted from permanent committees or the candidate may, not later than ~~sixty (60)(twenty (20))~~ days after the end of the election, refund any excess permanent committee contributions on a pro rata basis to the permanent committees whose contributions are accepted after the aggregate limit has been reached.
- (b) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from executive committees of any county, district, state, or federal political party in any one (1) election.
- ~~(27)(26)~~ No candidate or slate of candidates for any office in this state shall accept a contribution, including an in-kind contribution, which is made from funds in a federal campaign account. No person shall make a contribution, including an in-kind contribution, from funds in a federal campaign account to any candidate or slate of candidates for any office in this state.

Section 2. KRS 121.170 is amended to read as follows:

- (1) Any committee, except a federally-registered out-of-state permanent committee, organized under any provisions of this chapter shall register with the registry, by filing official notice of intention at the time of organization, giving names, addresses, and positions of the officers of the organization and designating the candidate or candidates, slate of candidates, or question it is organized to support or oppose on forms prescribed by the registry; except that no campaign committee for a slate of candidates for Governor and Lieutenant Governor shall be registered prior to the filing of a joint notification and declaration by the slate of candidates pursuant to KRS 118.125 and 118.127. No entity which is excluded from the definition of "campaign committee" established in KRS 121.015(3)(a) shall be required to register as a committee with the

registry. The name of the committee shall reasonably identify to the public the sponsorship and purpose of the committee. The forms filed with the registry shall require the registrant to clearly identify the specific purpose, sponsorship, and source from which the committee originates; and the registry shall refuse to allow filing by any committee until this requirement has been satisfied.

- (2) Any person who acts as a fundraiser by directly soliciting contributions for an election campaign of a candidate or slate of candidates for statewide-elected state office or an office in a jurisdiction containing in excess of two hundred thousand (200,000) residents shall register with the registry when he raises in excess of three thousand dollars (\$3,000) in any one (1) election for the campaign committee by filing official notice giving his name, address, occupation, employer or, if he is self-employed, the name under which he is doing business, and all candidates or slates of candidates for whom he is soliciting on forms prescribed by the registry. A registered fundraiser shall comply with the campaign finance reporting requirements of KRS 121.180(3), (4), and (5) and KRS 121A.020(5).
- (3) All provisions of KRS 121.160 and 121A.070 governing the duties and responsibilities of a candidate, slate of candidates, or campaign treasurer shall apply to a registered committee, except a federally-registered out-of-state permanent committee, and a person acting as a campaign fundraiser. ***In case of the death, resignation, or removal of a campaign treasurer for a permanent committee or executive committee, the chairman of the permanent committee or executive committee shall, within three (3) days after receiving notice of the vacancy by certified mail, appoint a successor as treasurer for the committee and file the name and address of the successor with the registry. The chairman of the permanent committee or executive committee shall be accountable as the treasurer for the committee if the chairman fails to meet this filing requirement.***
- (4) The chairman of a committee and the campaign treasurer shall be separate persons.
- (5) Any federally-registered out-of-state permanent committee that contributes to a Kentucky candidate shall:
 - (a) File with the registry a copy of its federal registration (Federal Election Commission Form 1 - Committee Registration Form);
 - (b) File with the registry a copy of the Federal Election Commission finance report when a contribution is made to a Kentucky candidate; and
 - (c) Contribute not more than the maximum amount permitted for a permanent committee to make under Kentucky law to any candidate for any office in this Commonwealth.
- (6) Notwithstanding any provision of law to the contrary, a contribution made by a federally-registered permanent committee to any candidate for any office in this Commonwealth that complies with the provisions of 2 U.S.C. sec. 441b, 11 C.F.R. sec. 104.10, 11 C.F.R. sec. 106.6, and 11 C.F.R. sec. 114.1-114.12 regarding limitations on contributions by corporations shall be deemed to comply with the campaign finance laws of this Commonwealth prohibiting corporate contributions to candidates.
- (7) The organization, formation, or registration of a permanent committee by any member of the General Assembly shall be prohibited.

Section 3. KRS 121.180 is amended to read as follows:

- (1) (a) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any preelection finance reports required by subsection (3) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars (\$3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. For a candidate for judicial office who desires to be exempt from filing preelection campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (k)1. or 2. of this subsection. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed

- with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (b) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of one thousand dollars (\$1,000) in any one (1) election. For a candidate for judicial office who desires to be exempt from filing any campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (k)1. or 2. of this subsection. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (c) For a primary election, a candidate or slate of candidates shall file a request for exemption not later than the deadline for filing nomination papers and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. For a runoff primary election, a slate of candidates shall file its request for exemption not later than five (5) days after the date of the preceding primary election and shall be bound by its terms unless rescinded in writing not later than ten (10) days after the date of the preceding primary election. For a regular election, a candidate or slate of candidates shall file or rescind in writing a request for exemption not later than twenty-five (25) days after the date of the preceding primary election, or runoff primary, if one is held, except as provided in subparagraph 2. of paragraph (d) of this subsection. For a special election, a candidate or slate of candidates shall file a request for exemption not later than ten (10) days after the candidate or slate of candidates is nominated for a special election and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made. A political issues committee chairman shall file a request for exemption not later than ten (10) days after the date on which the committee registers with the registry and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the date on which the request for exemption is filed.
- (d) 1. A candidate or slate of candidates that revokes a request for exemption in a timely manner may exercise the remaining option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. If a candidate or slate of candidates elects to exercise a different option, the candidate or slate of candidates shall file the appropriate form with the officer who received the filing papers of the candidate or slate of candidates not later than the deadline for filing a revocation.
2. A candidate for any city or county office or for any school board office, who is exempted from some or all campaign finance reporting requirements pursuant to paragraph (a) or (b) of this subsection but who accepts contributions or makes expenditures in excess of the exempted amount in an election, shall file all applicable reports required for the remainder of that election, based upon the amount of contributions or expenditures the candidate accepts or receives in that election. The filing of applicable required reports by a candidate after the exempted amount is exceeded shall serve as notice to the registry that the initial exemption has been rescinded. No further notice to the registry shall be required and no penalty for exceeding the initial exempted amount shall be imposed against the candidate, except for failure to file applicable reports required after the exempted amount is exceeded.
- (e) Any candidate or slate of candidates that is subject to an August filing deadline and that intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A

candidate or slate of candidates that is covered by this paragraph shall have the same reversion rights as those provided in subparagraph 1. of paragraph (d) of this subsection.

- (f) Any candidate or slate of candidates that will appear on the ballot in a regular election that has signed either request for exemption for that election may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection if a candidate or slate of candidates that is subject to an August filing deadline subsequently files in opposition to the candidate or slate of candidates. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate or slate of candidates covered by this paragraph shall comply with the deadline for rescission provided in subparagraph 1. of paragraph (d) of this subsection.
- (g) Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate or slate of candidates that has filed a request for exemption for a regular election that later is opposed by a person who has filed a declaration of intent to receive write-in votes may rescind the request for exemption and exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (h) Any candidate or slate of candidates that has filed a request for exemption may petition the registry to determine whether another person is campaigning as a write-in candidate prior to having filed a declaration of intent to receive write-in votes, and, if the registry determines upon a preponderance of the evidence that a person who may later be a write-in candidate is conducting a campaign, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may petition the registry to permit the candidate or slate of candidates to exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (i) If the opponent of a candidate or slate of candidates is replaced due to his withdrawal because of death, disability, or disqualification, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection not later than fifteen (15) days after the party executive committee nominates a replacement for the withdrawn candidate or slate of candidates.
- (j) ***A person intending to be a write-in candidate for any office in a regular or special election may execute a request for exemption under paragraph (a) or (b) of this subsection and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline for the regular or special election. A person intending to be a write-in candidate who revokes a request for exemption in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a person intending to be a write-in candidate who elects to exercise a different exemption option shall file the appropriate form with the officer who received the initial request for exemption not later than fifteen (15) days after the filing deadline for the regular or special election.***
- (k) Except as provided in subparagraph 2. of paragraph (d) of this subsection, the campaign committee of any candidate or slate of candidates that has filed a request for exemption or a political issues committee whose chairman has filed a request for exemption shall be bound by its terms unless it is rescinded in a timely manner and no new request for exemption has been executed.
- (l)~~(k)~~
 1. Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate, slate of candidates, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b),~~(c)~~ (e), **or (j)** of this subsection that accepts contributions or makes expenditures, or whose campaign treasurer accepts contributions or makes expenditures, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in lieu of other penalties prescribed by law, pay a fine of not more than five hundred dollars (\$500) plus the amount by which the spending limit was exceeded.
 2. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate, slate of candidates, campaign committee, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b),~~(c)~~ (e), **or (j)** of this subsection that knowingly accepts contributions or makes expenditures in excess of the applicable spending limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and shall be guilty of a Class D felony.

- (2) (a) State and county executive committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, or made, since the date of the last report, including:
1. ~~(a)~~ For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. ~~(b)~~ For other contributions in excess of one hundred dollars (\$100), the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 3. ~~(c)~~ The total amount of cash contributions received during the reporting period; and
 4. ~~(d)~~ A complete statement of expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) This report shall be ***in the hands of the registry or postmarked within five (5) days after the thirtieth day following***~~made to the registry within thirty (30) days after~~ the primary, runoff primary if slates of candidates of that party participate, and regular elections. If an individual gives a reportable contribution to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on the committee report. The receipts and expenditures of funds remitted to each political party under KRS 141.071 to 141.073 shall be separately accounted for and reported to the registry in the manner required by KRS 121.230. The separate report may be made a separate section within the report required, by this subsection, to be ***in the hands of the registry or postmarked within five (5) days after the thirtieth day following***~~submitted within thirty (30) days after~~ each regular election.
- (3) (a) Except for candidates or slates of candidates, campaign committees, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars (\$3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars (\$3,000) in any one (1) election, shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, and made, since the date of the last report, including:
1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, or to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and
 3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2. or a political issues committee, the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 4. The total amount of cash contributions received during the reporting period; and

5. A complete statement of all expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) Reports of all candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:
1. Candidates as defined in KRS 121.015(8), campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate or public question shall appear on the ballot, shall file financial reports with the registry at the end of the first calendar quarter after the person becomes a candidate or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;
 2. All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;
 3. All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the fifteenth day preceding the date of the election; and
 4. All reports to the registry shall be in the hands of the registry or postmarked within five (5) days after each filing deadline.
- (4) Except for candidates, slates of candidates, and political issues committees, exempted pursuant to subsection (1)(b) of this section, all candidates, regardless of funds received or expended, campaign committees, political issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.
- (5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above from a candidate or slate of candidates for a statewide-elected state office or a campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. When any individual purchase or the aggregate purchases of any item enumerated above from any candidate or campaign committee other than a candidate or slate of candidates for a statewide-elected state office or campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age if less than the legal voting age, occupation, and employer, or if the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.
- (6) Each permanent committee, except a federally-registered out-of-state permanent committee, inaugural committee, or contributing organization shall make a full report, upon a prescribed form, to the registry of all money, loans, or other things of value, received by it from any source, and all expenditures authorized, incurred, or made, since the date of the last report, including:
- (a) For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 - (b) For other contributions in excess of one hundred dollars (\$100), the full name, address, age if under the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;

- (c) An aggregate amount of cash contributions, the amount contributed by each contributor, and the date of each contribution; and
 - (d) A complete statement of all expenditures authorized, incurred, or made, including independent expenditures. This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures made on forms prescribed by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline.
- (7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed annually, to be in the hands of the registry or postmarked not later than ten (10) days after November 1 of each year, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit, or until the year before the candidate seeks to appear on the ballot for the same office for which the funds in the campaign account were originally contributed, in which case the candidate shall file the supplemental annual report not later than ten (10) days after November 1 of that year or at the end of the first calendar quarter of that year after the candidate files his nomination papers for the next year's primary or regular election. All contributions shall be subject to KRS 121.150.
- (8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate copy of each report filed with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.
- (9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:
- (a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;
 - (b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and
 - (c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.
- (10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars (\$100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of

candidates, or public issue is on the ballot. Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.

- (11) (a) Any publisher of newspapers or magazines, owner or lessor of billboards, ~~[-a radio or television station or network,]~~ or any other person, company, corporation, or business organization offering its communications or advertising services for hire to the public who receives funds for the purchase of advertising services or material, shall file with the registry a copy of the material or communication purchased which supports or opposes any slate of candidates or committee; a copy of the receipt for the funds paid; the name and address of each purchaser; and the source of the funds for the purchase if different than the purchaser.
- (b) *A radio or television station or network that receives funds for the purchase of advertising services or material that supports or opposes a slate of candidates or committee shall file with the registry a copy of the documentation of paid political campaign advertisements that is required to be maintained by the Federal Communications Commission, along with a cover letter from the manager of the station or network or the manager's designee.*
- (c) All information *required to be reported by paragraphs (a) and (b) of this subsection* shall be *in the hands of the registry or postmarked not later than* ~~reported to the registry on the thirtieth day preceding and]~~ the thirtieth day following the primary, *runoff primary*, and regular elections *that are held* subsequent to the date that the broadcasting or printing of the advertisement occurs.
- (d) The provisions of this subsection shall apply only to purchases of advertising services or material to support or oppose a slate of candidates for election to the offices of Governor and Lieutenant Governor.
- (e) Notwithstanding KRS 121.990 and KRS 121A.990, penalties for violation of this subsection shall be assessed in accordance with the provisions of KRS 121.140(2).

Section 4. KRS 121A.060 is amended to read as follows:

- (1) The minimum threshold qualifying amount for a slate of candidates for Governor and Lieutenant Governor in a primary or regular election that elects to be eligible to receive a transfer from the fund shall be three hundred thousand dollars (\$300,000) in qualifying contributions and the maximum threshold qualifying amount for a primary or regular election shall be six hundred thousand dollars (\$600,000) in qualifying contributions for any one (1) election. Not more than fifty percent (50%) of a threshold qualifying amount shall be received from residents of the same congressional district. No qualifying slate of candidates shall accept qualifying contributions in any one (1) election which in the aggregate exceed the maximum threshold qualifying amount unless a qualifying slate of candidates has been released from expenditure limitations pursuant to KRS 121A.080(4) or (5). A qualifying slate which discovers that it has received qualifying contributions in excess of the maximum threshold qualifying amount shall, without penalty, dispose of qualifying contributions received after the maximum threshold qualifying amount was reached by returning the excess contributions to the contributors. The excess contributions returned to the contributors shall not be considered as qualifying contributions and shall not be matched by transfers from the fund. *After the expenditure limit amounts are adjusted under KRS 121A.030(1) in accordance with the consumer price index for all urban workers*, the threshold qualifying amounts shall be increased or decreased *accordingly. The adjusted maximum threshold qualifying amount shall be one-third (1/3) of the adjusted expenditure limit amount for a primary or regular election campaign, and the adjusted minimum threshold qualifying amount shall be one-half (1/2) of the adjusted maximum threshold qualifying amount. The* ~~in accordance with the consumer price index for all urban workers, and the~~ registry shall make *the adjustments in the threshold qualifying amounts* ~~that adjustment]~~ in a year in which a Governor and Lieutenant Governor are elected not later than the filing deadline for the primary election.
- (2) In order to become a qualifying slate of candidates for the purpose of receiving a transfer from the fund in a primary or regular election, or both, a slate of candidates shall request certification from the registry in a form

and in the manner which the registry shall prescribe by administrative regulations promulgated in accordance with this chapter.

- (3) The registry shall immediately review the request of a slate of candidates for certification to receive a transfer from the fund. The request for certification shall include:
 - (a) A statement of intent accepting maximum expenditure limitations;
 - (b) A copy of the slate's nomination papers;
 - (c) The financial reports filed by or on behalf of the slate of candidates as of the date of the request for certification which indicate that the slate of candidates has raised a threshold qualifying amount in individual qualifying contributions for a transfer from the fund at a two (2) for one (1) matching ratio; and
 - (d) Any other information reasonably necessary that is required by the registry.
- (4) The registry shall certify whether a slate of candidates is eligible to receive a primary election transfer no later than seven (7) working days after the slate submits the required documentation.
- (5) The registry shall certify whether a slate of candidates is eligible to receive a regular election transfer not later than seven (7) working days after the slate submits the required documentation; except that if the slate is required to take part in a primary election, the results of the primary election shall have been certified by the registry.
- (6) A separate determination and certification shall be made for a primary and a regular election.
- (7) The certification issued by the registry shall indicate:
 - (a) Whether a slate of candidates is eligible to receive a transfer; and
 - (b) The amount of fund transfers the slate of candidates is eligible to receive based on the amount of qualifying contributions that the slate has received at the time that it requests a transfer eligibility certification.
- (8) A slate of candidates may make multiple requests for fund transfer eligibility certification in the course of a primary or regular election at the times and in the manner which the registry shall prescribe by administrative regulation.
- (9) If a slate of candidates that has filed a statement of intent to accept a transfer is not eligible to receive a transfer, the certification shall:
 - (a) State the reasons why the slate of candidates is not eligible to receive a transfer; and
 - (b) What action, if any, the slate of candidates may take to qualify for a transfer.
- (10) A slate of candidates may file with the registry a written request to review the determination of the registry no later than seven (7) calendar days after the date of certification. The registry shall issue a ruling not later than ten (10) days after receiving a request to review its determination.
- (11) A slate of candidates denied certification by the registry may appeal an adverse ruling within twenty (20) days by filing a notice of appeal in the Court of Appeals in accordance with the Rules of Civil Procedure and the appeal of a ruling by the registry shall be advanced on the docket to permit a timely decision.
- (12) No threshold qualifying amount shall be required for a slate of candidates participating in a runoff primary. A qualifying slate of candidates shall be certified to receive a fund transfer for the runoff primary, if one shall be held, upon the registry's certification that the qualifying slate of candidates received the highest or next highest number of votes for its party's nomination for Governor and Lieutenant Governor at the primary election or that a qualifying slate of candidates was determined by lot to be eligible to participate in a runoff primary pursuant to KRS 118.245(6).
- (13) No qualifying slate of candidates seeking its party's nomination for Governor and Lieutenant Governor shall be eligible to receive transfers from the fund in a primary or regular election unless at least one (1) opposing slate of candidates has received and deposited in its candidate campaign account funds in an amount not less than the minimum threshold qualifying amount established in subsection (1) of this section. After this requirement has been met in a primary or regular election, qualifying slates may independently qualify for subsequent

transfers in that election without regard to the ability of another qualifying slate in that election to qualify for subsequent transfers in that election.

Section 5. KRS 121.230 is amended to read as follows:

- (1) No state or local governing authority of a political party to which funds are remitted under KRS 141.071 to 141.073 shall use such funds other than in support of the party's candidates in a general election and for the administrative costs of maintaining a political party headquarters.
- (2) Each state or local governing authority of a political party to which funds are remitted under KRS 141.071 to 141.073 shall deposit such funds in a bank account and shall report the amount of such funds received as a separate entry on its committee report. All expenditures from such remitted funds shall be by check. A copy of each canceled check written on the account of funds remitted under KRS 141.071 to 141.073 shall be retained by the state or local governing authority of the political party for a period of not less than four (4) years.
- (3) The designated official of each state or local governing authority of a political party to which funds are remitted under KRS 141.071 to 141.073 shall maintain a current record of the receipts, balance, and expenditures of the funds so remitted. In addition, the official shall, within thirty (30) days after each general election, forward to the Registry of Election Finance a report of:
 - (a) The unexpended and unobligated balance of such remitted funds; and
 - (b) An itemized listing of each expenditure authorized, incurred or made from such remitted funds, indicating the amount, date, and purpose of each expenditure, regardless of the amount, and the name, address, and occupation of each person to whom an expenditure of fifty dollars (\$50) or more was made, since the date of the last report.
- (4) The reports required by subsection (3) of this section shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry.
- (5) The Registry of Election Finance ~~may~~^{shall} annually audit the accounts and records of receipts and expenditures of funds *in the amount of one thousand five hundred dollars (\$1,500) or less that are* remitted to each state or local governing authority of a political party under KRS 141.071 to 141.073. ~~The registry~~^{The registry} ~~and~~ shall *annually audit the accounts and records of receipts and expenditures of funds in the amount of more than one thousand five hundred dollars (\$1,500) that are remitted to each state or local governing authority of a political party under KRS 141.071 to 141.073. The registry shall* report the results of each audit *conducted* to the General Assembly. In the course of such audits, the registry or its authorized agents may ascertain the amount of such remitted funds on deposit in the separate bank account, required by subsection (2) of this section, of the political party audited and may audit the account on the books of the bank. No bank shall be liable for making available to the registry any of the information required under this section.

Approved April 14, 1998

CHAPTER 600

(HB 74)

AN ACT relating to the taxation of motor vehicles and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.485 is amended to read as follows:

- (1) (a) *The registration of a motor vehicle with a county clerk in order to operate it or permit it to be operated upon the highways of the state shall be deemed consent by the registrant for the motor vehicle to be assessed by the property valuation administrator from a standard manual prescribed by the Revenue Cabinet for valuing motor vehicles for assessment unless the registrant appears before the property valuation administrator to assess the vehicle. The standard value of motor vehicles shall be the average trade-in value prescribed by the valuation manual unless information is available that warrants any deviation from the standard value.*
- (b) The registration of a ~~motor vehicle,~~ recreational vehicle~~, or mobile home~~ with the county clerk in order to operate it or permit it to be operated upon the highways shall be deemed consent by the registrant thereof for the ~~motor vehicle,~~ recreational vehicle~~, or mobile home~~ to be assessed by the

property valuation administrator at a valuation determined from a standard manual prescribed by the Revenue Cabinet for valuing ~~motor vehicles,~~ recreational vehicles ~~or mobile homes~~ for assessment unless the registrant appears in person before the property valuation administrator to assess the vehicle.

- (2) The registration of a motor vehicle on or before the date that the registration of ~~the~~ ~~such~~ vehicle is required is prima facie evidence of ownership on January 1.
- (3) This section does not apply to motor vehicles ~~or~~ ~~recreational vehicles,~~ and ~~mobile homes~~ owned and operated by public service companies, common carriers, or agencies of the state and federal governments.

Section 2. KRS 134.810 is amended to read as follows:

- (1) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes shall be due and payable on or before the earlier of the last day of the month in which registration renewal is required by law for a motor vehicle renewed or the last day of the month in which a vehicle is transferred.
- (2) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on motor vehicles shall become delinquent following the earlier of the end of the month in which registration renewal is required by law or the last day of the second calendar month following the month in which a vehicle was transferred.
- (3) Any taxes which are paid within thirty (30) days of becoming delinquent shall be subject to a penalty of three percent (3%) on the taxes due. However, this penalty shall be waived if the tax bill is paid within five (5) days of the tax bill being declared delinquent. Any taxes which are not paid within thirty (30) days of becoming delinquent shall be subject to a penalty of ten percent (10%) on the taxes due. In addition, interest at an annual rate of fifteen percent (15%) shall accrue on said taxes and penalty from the date of delinquency. ~~A~~ ~~Not~~ penalty or interest shall *not* accrue on a motor vehicle under dealer assignment pursuant to KRS 186A.220.
- (4) When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner of record on January 1 of any year shall be liable for the taxes on the motor vehicle, except as hereinafter provided.
- (5) If an owner obtains a certificate of registration for a motor vehicle valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration, all state, county, city, urban-county government, school, and special tax district ad valorem tax liabilities arising from the assessment date following initial registration shall be due and payable on or before the last day of the first birth month following the assessment date or date of transfer, whichever is earlier. Any taxes due under the provisions of this subsection and not paid as set forth above shall be considered delinquent and subject to the same interest and penalties found in subsection (3) of this section.
- (6) For purposes of the state ad valorem tax only, all motor vehicles held for sale by a licensed Kentucky dealer on January 1 of any year shall not be taxed as a motor vehicle pursuant to KRS 132.485~~(3)~~ but shall be subject to ad valorem tax as goods held for sale in the regular course of business under the provisions of KRS 132.020(9) and 132.220.
- (7) Any provision to the contrary notwithstanding, when any ad valorem tax on a motor vehicle becomes delinquent, the state and each county, city, urban-county government, or other taxing district shall have a lien on all motor vehicles owned or acquired by the person who owned the motor vehicle at the time the tax liability arose. A lien for delinquent ad valorem taxes shall not attach to any motor vehicle transferred while the taxes are due on that vehicle. For the purpose of delinquent ad valorem taxes on leased vehicles only, a lien on a leased vehicle shall not be attached to another vehicle owned by the lessor.
- (8) The lien required by subsection (7) of this section shall be filed and released by the automatic entry of appropriate information in the AVIS database. For the filing and release of each lien or set of liens arising from motor vehicle ad valorem property tax delinquency, a fee of one dollar (\$1) shall be added to the delinquent tax account. The fee shall be collected and retained by the county clerk who collects the delinquent tax.
- (9) The implementation of the automated lien system provided in this section shall not affect the manner in which commercial liens are recorded or released.

Section 3. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

- (1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, ~~if the~~ the same model and make is being offered for sale by local dealers;
- (2) "Dealer" means any person engaged in the sale of motor vehicles at retail;
- (3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;
- (4) ***"Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;***
- (5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;
- ~~(6)(5)~~ "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- ~~(7)(6)~~ "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;
- ~~(8)(7)~~ "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;
- ~~(9)(8)~~ ***"Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional, as attested to in a notarized affidavit signed by both the buyer and the seller. The signatures of the buyer and seller shall be individually notarized. "Total consideration given" shall not include:***
- (a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;***
 - (b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and***
 - (c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given away as part of a promotional sales campaign;***
- (10) ***"Trade-in allowance" means the value assigned by the seller of a motor vehicle to a motor vehicle offered in trade by the purchaser as part of the total consideration given by the purchaser and included in the notarized affidavit attesting to total consideration given;***
- (11) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;
- ~~(12)(9)~~ ~~{Except as provided in subsection (10) of this section, }~~ "Retail price" ***of motor vehicles*** shall be determined as follows:
- (a) For new, ***dealer demonstrator, previous model year*** motor vehicles ***and U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles,*** "retail price" shall be ***the total consideration given at the time of purchase or at a later date, including any trade-in allowance as attested to in a notarized affidavit. If a notarized affidavit signed by both the buyer and seller is not available to establish total consideration given, "retail price" shall be:***
 - 1. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; ~~or~~
 - 2. ***Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds; and***

- 3. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;
- (b) *For historic motor vehicles, "retail price" shall be one hundred dollars (\$100);*
- (c) For used motor vehicles *being registered by a new resident for the first time in Kentucky* whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the *average trade-in* value given in ~~the~~ reference manual;
- ~~(d)~~~~(e)~~ For the older used motor vehicles *being registered by a new resident for the first time in Kentucky* whose values no longer appear in the automotive reference manual, "retail price" shall be *one hundred dollars (\$100)* ~~determined as follows:~~

Number of Years

Removed	_____	Retail
From Manual	_____	Price

1 _____ 75% of
 _____ value of same make
 _____ vehicle last appearing
 _____ in manual

2 _____ 50% of
 _____ value of same make
 _____ vehicle last appearing
 _____ in manual

3 _____ 25% of
 _____ value of same make
 _____ vehicle last appearing
 _____ in manual

All Others _____ 10% of
 _____ value of same make
 _____ vehicle last appearing
 _____ in manual};

- (e) *For used motor vehicles previously registered in another state or country that were purchased out-of-state by a Kentucky resident who is registering the vehicle in Kentucky for the first time, "retail price" shall be the total consideration given at the time of purchase or at a later date, including the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet for any vehicle given in trade;*
- ~~(f)~~~~(d)~~ *For used motor vehicles previously registered in Kentucky that are sold in Kentucky, and U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000) miles, "retail price" means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller. The trade-in allowance shall be disclosed in the notarized affidavit signed by the buyer and the seller attesting to the total consideration given. If a notarized affidavit signed by both the buyer and the seller is not available to establish the total consideration given for a motor vehicle, "retail price" shall be established by the Revenue Cabinet through the use of the automotive reference manual prescribed by the Revenue Cabinet; and*

- (g) *Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet*~~[In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.~~
- (e) ~~If a holder of a U Drive It permit transfers a vehicle which he has registered as a U Drive It within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U Drive It, then the "retail price" of the vehicle shall be the same as the retail price determined in subsection (9)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of paragraph (d) of this subsection shall not apply.~~
- (f) ~~For dealer demonstrator motor vehicles and previous model year vehicles, "retail price" shall be eighty-five percent (85%) of the retail price as determined in paragraph (a) of this subsection or the actual sales price, exclusive of any trade-in allowance, whichever is greater. In no case shall the Retail price determined under this paragraph exceed the retail price determined in paragraph (a) of this subsection or be less than the retail price determined under paragraph (b) of this subsection.~~
- (10) ~~"Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. The retail price of a wrecked motor vehicle shall be the retail price as determined under subsection (9) of this section minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector.~~

Section 4. KRS 138.460 is amended to read as follows:

- (1) ~~[On and after July 1, 1990,]~~A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section. ~~[In the case of trucks of gross weight in excess of ten thousand (10,000) pounds, the tax shall be levied upon ninety percent (90%) of the retail price of the vehicle.]~~
- (2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be registered:
- When he collects the registration fee for registering and licensing a motor vehicle the first time it is offered for registration in this state;
 - Or upon the transfer of ownership of any motor vehicle previously registered in this state.
- (3) The tax collected by the county clerk under this section shall be reported and remitted to the Revenue Cabinet on forms provided by the cabinet and on those forms as the cabinet may prescribe. ***The cabinet shall provide each county clerk affidavit forms which the clerk shall provide to the public free of charge to carry out the provisions of Section 3 of this Act.*** The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.
- (4) ~~A~~~~No~~ county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, or transfer the ownership of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under this section in addition to the transfer, registration, and license fees.
- (5) When a person offers a motor vehicle for registration for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. ~~A~~~~No~~ credit shall ***not*** be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.
- (6) ~~A~~~~No~~ county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, unless the seller or his agent delivers to the county clerk ***a notarized affidavit, if required, and available under Section 3***

of this Act attesting to the total and actual consideration paid or to be paid for the motor vehicle. If a notarized affidavit is not available, the clerk shall follow the procedures under subsection (12)(a) of Section 3 of this Act for new vehicles, and subsection (12)(c) or (d) for used cars. ~~for other officer a certified or photostat copy of the manufacturer's price label for passenger cars or A certified or photostat copy of the itemized billing to the customer in the case of all other motor vehicles; and~~

The clerk shall attach the *notarized affidavit, if available, or other documentation attesting to the retail price of the vehicle as the Revenue Cabinet may prescribe by administrative regulation promulgated under KRS Chapter 13A* ~~certified or photostat copy~~ to the copy of the certificate of registration and ownership mailed to the cabinet.

- (7) Notwithstanding the provisions of KRS 138.450~~(9) and (10)~~, ~~in no case shall~~ the tax **shall not** be less than **six dollars (\$6)** ~~five dollars (\$5)~~ upon first registration of or any transfer of ownership of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470.
- (8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Revenue Cabinet as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.
- (9) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the first registration. ~~A~~ ~~No~~ person shall **not** be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.
- (10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the registration. ~~A~~ ~~No~~ person shall **not** be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the dealer or manufacturer identifying the vehicle that was replaced.

Section 5. KRS 138.990 is amended to read as follows:

- (1) Any person who violates any provision of KRS 138.140, 138.146, or 138.195 for which a specific penalty is not provided shall be guilty of a violation for the first offense; for each such subsequent offense, he shall be guilty of a Class A misdemeanor. These penalties shall be in addition to the civil penalties provided by KRS 138.165, 138.185, and 138.205.
- (2) Any person who fails to supply the information required by subsection (8) of KRS 138.195 shall be guilty of a violation; for each subsequent offense, he shall be guilty of a Class B misdemeanor. These penalties shall be in addition to any civil penalty provided by KRS 138.165, 138.185, and 138.205.
- (3) Any person violating subsection (10) of KRS 138.195 or any regulations adopted thereunder shall be guilty of a Class A misdemeanor. This penalty shall be in addition to any civil penalty provided by KRS 138.165, 138.185, and 138.205.
- (4) Any person who makes a false entry upon any invoices or any record relating to the purchase, possession, transportation, or sale of cigarettes, and presents any such false entry to the cabinet or any of its agents with the intent to avoid any tax imposed by KRS 138.130 to 138.205, shall be guilty of a Class D felony.
- (5) Any person who shall counterfeit any cigarette tax evidence shall be guilty of a Class D felony.
- (6) Any person who sells, offers to sell, or uses counterfeit cigarette tax evidence, affixed or unaffixed, with the intention of evading any tax imposed by KRS 138.130 to 138.205 shall be guilty of a Class D felony.
- (7) Any person who fails to remit gasoline or special fuel tax money to the state as provided in KRS 138.280 is guilty of embezzlement of state funds. Embezzlement of state funds, for the first offense, shall be a Class A misdemeanor, and for the second offense, shall be a Class D felony.

- (8) Any person who violates any of the provisions of KRS 138.300 shall be guilty of a Class A misdemeanor. This penalty shall be in addition to the penalty provided in subsection (7) of this section.
- (9) Any person who violates KRS 138.310 shall be guilty of a Class A misdemeanor. Each day or part of a day of doing business as a dealer without an uncanceled license shall be a separate offense.
- (10) (a) ***Any person who willfully and fraudulently gives a false statement as to the total and actual consideration paid for a motor vehicle under Section 3 of this Act shall be guilty of a Class D felony and shall be fined not less than two thousand dollars (\$2,000) per offense.***
- (b) Any person who violates any of the ***other*** provisions of KRS 138.460 to 138.470 shall be fined not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) ~~and~~ if the offender is an individual, he shall be guilty of a Class A misdemeanor.
- (11) Any person who violates any of the provisions of KRS 138.480 or 138.490 shall be guilty of a Class B misdemeanor.
- (12) If any offender under the provisions of subsections (1) to (9), (11) or (16) of this section is a corporation, the principal officer or the officer directly responsible for the violation, or both, may be imprisoned as provided in those subsections.
- (13) Any person who violates any provision of subsection (1) of KRS 138.354, whether or not his permit has been revoked, shall be guilty of a Class A misdemeanor.
- (14) Any person violating any provision of KRS 138.655 to 138.725 is guilty of a Class A misdemeanor.
- (15) In addition to the penalties provided in KRS 138.990(14), the motor vehicle or vehicles of any person violating any provision of KRS 138.720 shall be subject to seizure by any officer duly authorized to enforce the provisions of KRS 138.655 to 138.725.
- (16) Any person violating KRS 138.175 shall be guilty of a Class D felony.
- (17) Any person who intentionally evades payment of the tax imposed by KRS 138.460 or 138.463 shall be liable for the taxes evaded, with applicable interest and penalties, and in addition shall be guilty of:
- (a) A Class B misdemeanor if the amount of tax evaded is two hundred fifty dollars (\$250) or less; and
- (b) A Class A misdemeanor if the amount of tax evaded is greater than two hundred fifty dollars (\$250).

Section 6. KRS 186.190 is amended to read as follows:

- (1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.
- (2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the ***title, and a notarized affidavit if required and available under Section 3 of this Act attesting to the total and actual consideration paid or to be paid for the motor vehicle*** ~~current registration receipt issued on the motor vehicle and the bill of sale~~. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative regulations promulgated by the Department of Insurance pursuant to KRS Chapter 13A.
- (3) Upon delivery of the ***title, and a notarized affidavit if required and available under Section 3 of this Act attesting to the total and actual consideration paid or to be paid for the motor vehicle*** ~~registration receipt and the bill of sale~~ to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of one dollar (\$1), which shall be remitted to the Transportation Cabinet. ***If an affidavit is required, and available, the signatures on the affidavit shall be individually notarized before*** the county clerk shall issue to the purchaser a transfer of registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of three dollars (\$3) for his services.
- (4) When a county clerk issues to a purchaser a transfer of registration in a county other than the one (1) in which the motor vehicle was originally registered, the clerk shall immediately mail one (1) copy of the transfer of registration to the clerk of the county of original registration.

- (5) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar (\$1) for his services.
- (6) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.
- (7) The registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

Section 7. KRS 186.232 is amended to read as follows:

- (1) The county clerk shall not transfer the registration on any motor vehicle or trailer against which a tax lien has been filed until the taxes have been paid and the lien has been released.
- (2) The county clerk shall not transfer the registration of any motor vehicle unless the transferee presents proof of insurance in compliance with KRS 304.39-080 and KRS 186.190.
- (3) ***If a notarized affidavit is required and available under Section 3 of this Act, the county clerk shall not transfer the registration of a motor vehicle unless the notarized affidavit attesting to the total and actual consideration paid or to be paid for the motor vehicle is presented to the clerk at the time of the transfer. If a notarized affidavit is required but is not available, the county clerk shall contact the Revenue Cabinet to determine the "retail price" of the vehicle and any taxes due prior to transferring the vehicle.***

Section 8. KRS 190.990 is amended to read as follows:

- (1) ***Except as provided in subsection (5) of this section***, any person who violates or causes, aids or abets any violation of any provision of KRS 190.010 to 190.080 or any order, rule or regulation lawfully issued pursuant to authority granted by KRS 190.010 to 190.080 shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned for not more than thirty (30) days, or both. Any person who violates paragraphs (l), (m) or (n) of subsection (1) of KRS 190.040 may also be subject to a suspension or revocation sentence of not more than a year effective only in the territory formerly served by the unfairly canceled dealer, except that in a metropolitan area serviced by several dealers handling the same motor vehicle, the suspension or revocation order shall not be applicable to the remaining dealers.
- (2) Any person who willfully and intentionally violates any provision of KRS 190.090 to 190.140 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).
- (3) A willful violation of KRS 190.100 or 190.110 by any person shall bar his recovery of any finance charge, delinquency, or collection charge on the retail installment contract involved.
- (4) Any person who willfully violates KRS 190.270 to 190.320 shall be subject to a penalty of five thousand dollars (\$5,000) per violation, which may be recovered on behalf of the Commonwealth by the Attorney General.
- (5) ***Any person who willfully and fraudulently gives a false statement as to the total and actual consideration paid for a motor vehicle under Section 3 of this Act shall be guilty of a Class D felony and shall be fined not less than two thousand dollars (\$2,000) per offense.***

Section 9. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture.

Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;

- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
- (8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;
- (13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460~~[based on the vehicle's fair market value at the time of sale]~~;
- (14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;
- (16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; and
- (17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800.

Section 10. Whereas in late 1997 the Governor attempted to offer property tax relief on motor vehicle assessments to the citizens of the Commonwealth; and whereas questions of establishing policy by administrative action rather than statutory action threaten the needed tax relief on motor vehicles; and whereas it is important to support the Governor's efforts statutorily, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law with the amendments contained in Sections 1 and 2 of this Act to apply retroactively to motor vehicles assessed on or after January 1, 1998.

Section 11. The amendments contained in Sections 3 to 8 of this Act shall apply to motor vehicles sold after July 31, 1998.

Approved April 14, 1998

CHAPTER 601**(HB 226)**

AN ACT relating to check cashing and deferred deposit transactions and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 368.010 is amended to read as follows:

As used in KRS 368.010 to 368.120 and 368.990, unless the context requires otherwise:

- (1) "Check" means any check, draft, money order, personal money order, travelers' check, or other ***demand*** instrument for the transmission or payment of money.
- (2) "Commissioner" means the commissioner of the Department of Financial Institutions, or his duly designated representative.
- (3) "Consideration" includes any premium charged for the sale of goods or services in excess of the cash price of the goods or services.
- (4) ***"Deferred deposit transaction" means, for consideration, accepting a check and holding the check for a period of time prior to deposit or presentment in accordance to an agreement with or any representation made to the maker of the check, whether express or implied.***
- (5) ***"Deferred deposit service business" means a person who engages in deferred deposit transactions.***
- (6) "Department" means the Department of Financial Institutions.
- (7)~~(5)~~ "Licensee" means a person duly licensed by the commissioner ~~under~~^{pursuant to} KRS 368.010 to 368.120.
- (8)~~(6)~~ "Person" means any individual, partnership, association, joint stock association, trust, corporation, or other entity, but shall not include the United States government or the government of this Commonwealth.

Section 2. KRS 368.020 is amended to read as follows:

Except as provided in KRS 368.030, no person shall engage in the business of cashing checks ***or accepting deferred deposit transactions*** for a fee or other consideration without having first obtained a license. ***A separate license shall be required for each location from which the business of cashing checks or accepting deferred deposit transactions is conducted.*** Any person engaged in that business on the effective date of this section may continue to engage in the business without a license until the commissioner shall have acted upon his application for a license if the application is filed within sixty (60) days after ***the effective date of this Act***~~[July 14, 1992]~~.

Section 3. KRS 368.030 is amended to read as follows:

The provisions of KRS 368.010 to 368.120 shall not apply to:

- (1) Any bank, trust company, savings and loan association, savings bank, credit union, consumer loan company, ***or*** industrial loan corporation~~[, mortgage loan company, mortgage loan broker, or pawn broker]~~ which is chartered, licensed, or organized under the laws of this Commonwealth or under federal law and authorized to do business in this Commonwealth;
- (2) Any person who cashes checks without receiving, directly or indirectly, any consideration or fee therefor; and
- (3) Any person principally engaged in the retail sale of goods or services who, either as an incident to or independently of a retail sale, may from time to time cash checks for a fee or other consideration.

Section 4. KRS 368.040 is amended to read as follows:

To qualify for a license, an applicant shall satisfy the following requirements:

- (1) The applicant shall ***deposit with the commissioner one (1) of the following:***
 - (a) ***An irrevocable letter of credit in the following amounts:***

1. *If an applicant has only one (1) business location, the amount shall be fifty thousand dollars (\$50,000);*
 2. *If an applicant has two (2) to five (5) business locations, the amount shall be one hundred thousand dollars (\$100,000);*
 3. *If an applicant has six (6) to ten (10) business locations, the amount shall be one hundred fifty thousand dollars (\$150,000); and*
 4. *If an applicant has more than ten (10) business locations, the amount shall be two hundred thousand dollars (\$200,000);*
- (b) *Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required letter of credit; or*
- (c) *A savings certificate of a federally insured financial institution in this state for an amount payable that is equal to the amount of the required letter of credit and that is not available for withdrawal except by direct order of the commissioner. Interest earned on the certificate accrues to the applicant*~~*have a net worth of at least one hundred thousand dollars (\$100,000), computed according to generally accepted accounting principles.*~~
- (2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted honestly, carefully, and efficiently. In determining whether this qualification has been met, the commissioner may review and approve:
- (a) The business record and the capital adequacy of the applicant;
 - (b) The competence, experience, integrity, and financial ability of any person who:
 1. Is a director, officer, supervisory employee, or five percent (5%) or more shareholder of the applicant; or
 2. Owns or controls the applicant; and
 - (c) Any record, on the part of the applicant or any person referred to in subparagraph (b)1. and 2. of:
 1. Any criminal activity;
 2. Any fraud or other act of personal dishonesty;
 3. Any act, omission, or practice which constitutes a breach of a fiduciary duty; or
 4. Any suspension or removal, by any agency or department of the United States or any state, from participation in the conduct of any business.

Section 5. KRS 368.060 is amended to read as follows:

Each application for a license shall be accompanied by:

- (1) An investigation fee of five hundred dollars (\$500) for Kentucky residents and five hundred dollars (\$500) for nonresidents of Kentucky *for each location* which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof;
- (2) Audited financial statements prescribed by the commissioner; and
- (3) Evidence that the applicant has complied or will comply with all workers', and unemployment compensation laws of Kentucky.

Section 6. KRS 368.070 is amended to read as follows:

- (1) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in KRS 368.060, the department shall investigate to ascertain whether the qualifications prescribed by KRS 368.040 have been satisfied. If the commissioner finds that the qualifications have been satisfied, and if he approves the documents, he shall issue to the applicant a license to engage in the business of cashing checks *or deferred deposit transactions* in this Commonwealth.

- (2) The license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.
- (3) A license issued ~~under [pursuant to]~~ this section shall remain in force and effect through the remainder of the fiscal year ended June 30 following its date of issuance, unless earlier surrendered, suspended, or revoked ~~under [pursuant to]~~ KRS 368.010 to 368.120.
- (4) ***A licensee shall notify the department fifteen (15) business days before any change in the licensee's business location or name.***

Section 7. KRS 368.080 is amended to read as follows:

Each ~~licensee~~ ~~licensee~~ may be renewed for the ensuing twelve (12) months period upon the payment to the department annually on or before July 1 of each year a ~~licensee~~ ~~licensee~~ fee of five hundred dollars (\$500) ***for the first location and five hundred dollars (\$500) for each additional location.***

Section 8. KRS 368.090 is amended to read as follows:

- (1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of KRS 368.010 to 368.120.
- (2) To assure compliance with the provisions of KRS 368.010 to 368.120, the department may examine the business, books, and records of any licensee, and each licensee shall pay an examination fee ~~sufficient~~ ~~as established by administrative regulations of the department~~ ***based upon fair compensation for time and actual expense as established by administrative regulations of the department.***

Section 9. KRS 368.100 is amended to read as follows:

- (1) Each licensee shall keep and use in its business any books, accounts, and records the department may require to carry into effect the provisions of KRS 368.010 to 368.120 and the administrative regulations issued ~~under those sections~~ ~~thereunder~~. Every licensee shall preserve the books, accounts, and records for at least two (2) years.
- (2) Any fee charged by a licensee for cashing a check shall be disclosed in writing to the bearer of the check prior to cashing the check, and the fee shall be deemed a service fee and not interest. ***A licensee shall not charge a service fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15). This service fee shall be for a period of fourteen (14) days.***
- (3) Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.
- (4) No licensee shall cash a check payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the board of directors or similar governing body of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
- (5) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the department. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.
- (6) Within five (5) business days after being advised by the payor financial institution that a check, draft, or money order has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the department and the Commonwealth's attorney for the judicial circuit in which the check was received. If a check, draft, or money order is returned to the licensee by the payor financial institution for any of these reasons, the licensee shall not release the check, draft, or money order without the consent of the Commonwealth's attorney or other investigating law enforcement authority.
- (7) ***No licensee shall alter or delete the date on any check accepted by the licensee.***

- (8) *No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of the licensed business.*
- (9) *No licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.*
- (10) *A licensee shall not have more than one deferred deposit transaction from any one (1) customer at any one time, with a face value greater than five hundred dollars (\$500).*
- (11) *Each licensee shall inquire of any person seeking to present a deferred deposit transaction, whether the person has any outstanding deferred deposit transactions from any licensees. If the customer represents in writing that the customer has no more than one (1) deferred deposit transaction outstanding to any licensee and that the face value of the outstanding deferred deposit transaction issued by the customer does not equal or exceed five hundred dollars (\$500), a licensee may accept a deferred deposit transaction in an amount that, when combined with the customer's other outstanding deferred deposit transaction, does not exceed five hundred dollars (\$500). If the customer represents in writing that the customer has more than one (1) deferred deposit transaction outstanding to any licensee or if the face value of the deferred deposit transaction issued by the customer equals or exceeds five hundred dollars (\$500), a licensee shall not accept another deferred deposit transaction from that customer until the customer represents to the licensee in writing that the customer qualifies to issue a new deferred deposit transaction under the requirements set forth in this section.*
- (12) *A licensee shall not use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than are authorized in this section.*
- (13) *No licensee shall agree to hold a deferred deposit transaction for more than sixty (60) days.*
- (14) *Each deferred deposit transaction shall be made according to a written agreement that shall be dated and signed by the customer and the licensee or an authorized agent of the licensee, and made available to the department upon request. The customer shall receive a copy of this agreement.*
- (15) *A licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.*
- (16) *No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040.*
- (17) *No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.*
- (18) *Each licensee shall conspicuously display in every deferred deposit business location a sign that gives the following notice: "No person who enters into a post-dated check or deferred deposit check transaction with this business establishment will be prosecuted or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040."*

Section 10. KRS 368.110 is amended to read as follows:

- (1) The commissioner may *suspend or* revoke a license on any ground on which he may refuse to grant a license or for violation of any provision of KRS 368.010 to 368.120 or if the licensee:
 - (a)~~(1)~~ Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;
 - (b)~~(2)~~ Has violated any provisions of KRS 368.010 to 368.120 or any administrative regulation issued pursuant thereto or has violated any other law in the course of its or his dealings as a licensee;
 - (c)~~(3)~~ Has made a false statement in the application for the license or failed to give a true reply to a question in the application; *or*
 - (d)~~(4)~~ Has demonstrated his or its *incompetency*~~competency~~ or untrustworthiness to act as a licensee.
- (2) *If the reason for revocation or suspension of a licensee's license at any one location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.*

Section 11. KRS 368.120 is amended to read as follows:

No license shall be denied, *suspended*, or revoked unless the applicant or licensee is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.

SECTION 12. A NEW SECTION OF KRS 368.010 TO 368.120 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person aggrieved by the conduct of a licensee under KRS 368.010 to 368.120 in connection with the licensee's regulated activities may file a written complaint with the commissioner who may investigate the complaint.*
- (2) *In the course of the investigation initiated by a complaint or by the commissioner, the commissioner may:*
 - (a) *Subpoena witnesses;*
 - (b) *Administer oaths;*
 - (c) *Examine any individual under oath; and*
 - (d) *Compel the production of records, books, papers, contracts or other documents relevant to the investigation.*
- (3) *If any person fails to testify or to comply with a subpoena from the commissioner under this section, the commissioner may petition any court of competent jurisdiction for enforcement.*
- (4) *The license of any licensee under KRS 368.010 to 368.120 who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.*
- (5) *The commissioner shall have administrative power to investigate all complaints filed by any person if the complaints are not criminal in nature and if they relate to the check cashing or the deferred deposit service business.*

SECTION 13. A NEW SECTION OF KRS 368.010 TO 368.120 IS CREATED TO READ AS FOLLOWS:

- (1) *Each licensee shall file an annual report with the commissioner by September 1 of each year, containing the following information:*
 - (a) *The names and addresses of each person owning a controlling interest in each license;*
 - (b) *The location of all places of business operated by the licensee and the nature of the business conducted at each location;*
 - (c) *The names and addresses of all affiliated entities regulated under KRS 368.010 to 368.120 and doing business in this state;*
 - (d) *Balance sheets, statement of income and expenses, and other statistical information as may be reasonably required by the commissioner, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this chapter; and*
 - (e) *If the licensee is a corporation, the names and addressees of its principle officers and directors, or if the licensee is a partnership, the names and addresses of the partners, or if the licensee is a limited liability company, the names and addresses of the board of directors of the limited liability company.*
- (2) *If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed.*
- (3) *All reports shall be filed in a form as may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the licensee.*
- (4) *The information submitted by licensees under this section shall be held in confidence by the department and the commissioner.*

SECTION 14. A NEW SECTION OF KRS 368.010 TO 368.120 IS CREATED TO READ AS FOLLOWS:

- (1) *Each licensee who engages in deferred deposit transactions shall give the customer the disclosures required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the department upon request.*

- (2) *Each licensee shall conspicuously display a schedule of all fees, and charges for all services provided by the licensee that are authorized by KRS 368.010 to 368.120. The notice shall be posted at the office and every branch office of the licensee.*
- (3) *A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in the written disclosure.*
- (4) *Any personal check accepted from a customer must be payable to the licensee.*
- (5) *Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.*

Section 15. Whereas it is increasingly difficult to prevent the working people of the Commonwealth from being charged outrageous fees when they enter into deferred deposit transactions which has lead many to economic ruin, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 14, 1998

CHAPTER 602

(HB 272)

AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any other management personnel with procurement authority;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:

- (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Superintendent of Public Instruction;
 - (h) The Auditor of Public Accounts;
 - (i) Each Railroad Commissioner; and
 - (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;
- (11) "Lobbyist" means any person employed as a legislative agent *as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8)*~~for legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people~~;
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts~~with reference to legislative action~~; and
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

Section 2. KRS 11A.040 is amended to read as follows:

- (1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
 - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
 - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
 - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; *or*
 - (d) *Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.*
- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

- (6) *No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction.*
- (7) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, **or is regulated by**, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, **or for which he received, prior to his state employment, a professional degree or license**, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- ~~(8)(7)~~ A former public servant shall not act as a lobbyist or lobbyist's principal **in matters in which he was directly involved during the last thirty-six (36) months of his tenure** for a period of one (1) year after the latter of:
- (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- ~~(9)(8)~~ A former public servant shall not represent a person **or business**~~[in a matter]~~ before a state agency **in a matter** in which the former public servant was directly involved **during the last thirty-six (36) months of his tenure**, for a period of one (1) year after the latter of:
- (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- ~~(10)(9)~~ Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

Section 3. KRS 11A.060 is amended to read as follows:

- (1) The Executive Branch Ethics Commission is hereby established.
- (2) The commission shall be composed of five (5) members appointed by the Governor.
- (3) Members of the commission shall serve staggered terms of four (4) years. Of the initial members appointed as provided in this section, one (1) member shall serve a term of one (1) year, one (1) member shall serve a term of two (2) years, one (1) member shall serve a term of three (3) years, and two (2) members shall be appointed for terms of four (4) years. Thereafter, all appointments shall be for four (4) years.
- (4) The commission shall elect from its membership a chairman and vice chairman. In the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.
- (5) A member of the commission shall receive one hundred dollars (\$100) per day for attending meetings and shall be reimbursed for actual and necessary expenses incurred in the performance of duties.
- (6) All members shall be registered voters of the state.

- (7) Members of the commission shall be removed by the Governor for cause only, including substantial neglect of duty *and* ~~inability to discharge the powers and duties of office, and violation of KRS 11A.040(5) or (6).~~
- (8) A quorum shall consist of three (3) or more members. An affirmative vote of three (3) or more members shall be necessary for commission action.
- (9) The commission shall meet at the call of the chairman or a majority of its members.
- (10) The commission shall be attached to the office of the Governor for administrative purposes only.

Section 4. KRS 11A.990 is amended to read as follows:

- (1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:
 - (a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and
 - (b) Any person who violates KRS 11A.040(1) to (5)~~(7)~~ shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.
- (2) Any officer and public servant required to file a statement of financial disclosure pursuant to KRS 11A.050 who does not file the statement by a date specified in that section shall have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances and shall not be recoverable pursuant to Section 235 of the Constitution of Kentucky.
- (3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars (\$5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.
- (4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after two (2) years have elapsed from the date of the violation.
- (5) Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars (\$5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.
- (6) Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000).
- (7) Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.
- (8) An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.
- (9) Violation of KRS 11A.236 is a Class D felony.

Approved April 14, 1998

CHAPTER 603

(HB 273)

AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.080 is amended to read as follows:

- (1) (a) Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall **conduct a preliminary investigation of**~~investigate~~ any alleged violation of this chapter.
 - (b) **The preliminary investigation shall begin** not later than ten (10) days after the **next commission meeting following the receipt of the sworn complaint, or, if the investigation is initiated by the commission's own motion, not later than ten (10) days after the date of the adoption of the motion**~~commission receives the complaint, the commission shall initiate a preliminary inquiry into any alleged violation of this chapter~~.
 - (c) Within **ten (10)**~~sixty (60)~~ days of the commencement of the **preliminary investigation**~~inquiry~~, the commission shall forward a copy of the complaint, **if one has been filed, or a statement of possible violations being investigated**, and a general statement of the applicable law to the person alleged to have committed a violation.
- (2) All commission proceedings and records relating to a preliminary investigation shall be confidential until a final determination is made by the commission, except:
 - (a) The commission may turn over to the Attorney General, the United States Attorney, or the Commonwealth's Attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings;~~and~~
 - (b) If the~~complainant or~~ alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party.
 - (3) If the commission determines in the preliminary investigation that the~~complaint does not allege~~ facts **are not** sufficient to constitute a violation of this chapter, the commission shall immediately terminate the **investigation**~~inquiry~~ and notify in writing the complainant, **if any**, and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.
 - (4) If the commission, during the course of the preliminary investigation, finds probable cause to believe that a violation of this chapter has occurred, the commission may, upon majority vote:
 - (a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or
 - (b) Initiate an **administrative**~~adjudicatory~~ proceeding to determine whether there has been a violation.

Section 2. KRS 11A.100 is amended to read as follows:

- (1) The provisions of KRS Chapter 13B shall apply to all commission **administrative**~~adjudicatory~~ hearings.
- (2) All administrative hearings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
- (3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:
 - (a) Issue an order requiring the violator to cease and desist the violation;
 - (b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter;
 - (c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any;

- (d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; or
 - (e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars (\$2,000) for each violation of this chapter.
- (4) In addition to any other remedies provided by law, any violation of this chapter which has substantially influenced the action taken by any state agency in any particular matter shall be grounds for voiding, rescinding, or canceling the action on such terms as the interests of the state and innocent third persons require.
- (5) The commission shall refer to the Attorney General *evidence of* violations of KRS 11A.040 for prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

Section 3. KRS 11A.990 is amended to read as follows:

- (1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:
- (a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and
 - (b) Any person who violates KRS 11A.040(1) to (7) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.
- (2) Any officer, ~~and~~ public servant, *or candidate* required to file a statement of financial disclosure pursuant to KRS 11A.050 who does not file the statement by a date specified in that section shall have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances and shall not be recoverable pursuant to Section 235 of the Constitution of Kentucky. *The commission may grant a reasonable extension of time for filing a statement of financial disclosure for good cause shown.*
- (3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars (\$5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.
- (4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after *four (4)* ~~two (2)~~ years have elapsed from the date of the violation.
- ~~(5)~~ Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars (\$5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.
- ~~(5)~~~~(6)~~ Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000).
- ~~(6)~~~~(7)~~ Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.
- ~~(7)~~~~(8)~~ An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.
- ~~(8)~~~~(9)~~ Violation of KRS 11A.236 is a Class D felony.

Approved April 14, 1998

CHAPTER 604**(HB 320)**

AN ACT making appropriations for the operations, maintenance, support, and functioning of the judicial branch of the government of the Commonwealth of Kentucky and its various officers, boards, commissions, subdivisions, and other state supported activities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART I**OPERATING BUDGET**

There is appropriated out of the General Fund, restricted funds accounts, or federal funds accounts for the fiscal year beginning July 1, 1998, and ending June 30, 1999, and for the fiscal year beginning July 1, 1999, and ending June 30, 2000, in the following sums to be used for the purposes of the judicial branch of the government of the Commonwealth of Kentucky including the Supreme Court, Court of Appeals, Circuit Court, District Court, the Administrative Office of the Courts, pretrial services, juvenile services, judicial boards and commissions, the State Law Library, judicial retirement, local facilities fund and for services performed by the Circuit Clerk's offices, including both Circuit and District Court support. For column display purposes in this Act, 1999-00 represents fiscal year 1999-2000.

	1998-99	1999-00
1. Court of Justice		
a. Court operations and administration		
General Fund	118,598,100	128,152,600
Restricted Funds		4,402,000
Federal Funds		610,000
Total	123,610,100	133,036,600

Funds are included to provide a five percent (5%) salary adjustment in fiscal year 1998-99 and in fiscal year 1999-2000 for nonelected court personnel. Included are funds to provide for a five percent (5%) salary adjustment for justices, judges, and circuit clerks in fiscal year 1998-99 and a five percent (5%) adjustment for the justices, judges, and circuit clerks in fiscal year 1999-2000. Restricted funds of \$700,000 in each fiscal year are included for the Jefferson County Court technology improvement system as described in Part II, Capital Projects Budget.

b. Local facilities fund

	1998-99	1999-00
General Fund	27,091,500	32,934,100

Included in the above appropriation are moneys to compensate local units of government for providing court space and for costs incurred in the development of local court facilities as defined in KRS Chapter 26A and provided in Part II of this Act, and to perform all other acts required or authorized by KRS Chapter 26A.

Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 1997-98 shall not lapse but shall continue into fiscal year 1998-99 and any unexpended balance at the close of fiscal year 1998-99 shall not lapse, but shall be continued into fiscal year 1999-2000.

	1998-99	1999-00
Total Court of Justice		
General Fund	145,689,600	161,086,700
Restricted Funds		4,402,000
Federal Funds		610,000
Total	150,701,600	165,970,700

2. Judicial Form Retirement System

	1998-99	1999-00
General Fund	6,407,500	6,418,000

General Fund amounts are included to provide for the 1997 actuarial assessed needs of the Judicial Form Retirement System. Included in the above General Fund appropriation is \$135,000 in each fiscal year contingent upon passage of enabling legislation related to the judicial retirement plan.

TOTAL - OPERATING BUDGET

	1998-99	1999-00	
General Fund	152,097,100	167,504,700	
Restricted Funds		4,402,000	4,440,000
Federal Funds		610,000	444,000
TOTAL	157,109,100	172,388,700	

PART II

CAPITAL PROJECTS BUDGET

A. Court Facility Use Allowance Contingency Fund

	1998-99	1999-00
General Fund	500,000	1,422,500

General Fund amounts are included to provide for cost overruns in court facility projects authorized by the 1996 General Assembly and the 1998 General Assembly not to exceed fifteen percent (15%) of the use allowance. Any overrun, not to exceed fifteen percent (15%), shall be approved by the Court Facilities Standards Committee and reported to the Capital Projects and Bond Oversight Committee. The director of the Administrative Office of the Courts may authorize the transfer of funds to the Court of Justice Operating Budget as required for any authorized cost overruns.

B. Court Designated Worker Case Management System

	1998-99
General Fund	500,000

General Fund amounts are appropriated in the capital budget for implementation of the court designated worker case management system. The director of the Administrative Office of the Courts may authorize the transfer of funds to the Court of Justice Operating Budget as necessary to implement this system. Inasmuch as the identification of specific equipment cannot be ascertained with absolute certainty at this time, amounts are appropriated for specific purposes for equipment items which are not individually identified in this Act related to the implementation of the court designated worker case management system. Any individual equipment item estimated to cost over \$100,000 shall be reported to the Capital Projects and Bond Oversight Committee.

C. Jefferson County Court Technology Improvement System

	1998-99	1999-00	
Restricted Funds		700,000	700,000

Restricted Funds are included in the Operating Budget for implementation of the Jefferson County court technology improvement system. Inasmuch as the identification of specific equipment cannot be ascertained with absolute certainty at this time, amounts are appropriated for specific purposes for equipment items which are not individually identified in this Act related to the implementation for the Jefferson County court technology improvement system. Any individual equipment item estimated to cost over \$100,000 shall be reported to the Capital Projects and Bond Oversight Committee.

D. Local Facility Projects

Multiyear schedule for the use allowance payments for the capital costs for each local facility project is contained in the Judicial Branch Budget Memorandum.

1.	Bell County - Project Scope	6,393,200
2.	Christian County - Project Scope	9,560,800
3.	Project Pool - Project Scope	18,507,300
4.	Henderson County - Project Scope	8,019,800
5.	Kenton County Phase II - Project Scope	4,515,600
6.	Marshall County - Project Scope	7,383,800
7.	Harrison County - Project Scope	6,152,000
8.	Boone County - Project Scope	7,971,900
9.	Fayette County - Revised Scope	62,500,000
10.	Lyon County - Project Scope	4,758,500
11.	McCreary County - Project Scope	5,183,100
12.	ADA Pool - Project Scope	3,952,200
13.	Harlan County - Project Scope	5,857,400
14.	Lewis County - Project Scope	5,299,700
15.	McLean County - Project Scope	3,752,100
16.	Lincoln County - Revised Scope	2,260,000
17.	Mason County - Revised Scope	4,531,700
18.	Franklin County - Lease Office Space (Millcreek Park)	
19.	Franklin County - Lease Court of Appeals (Democrat Drive)	

For any facility project occupied sooner than anticipated in the multiyear schedule, the use allowance payments shall be approved from the Court Facility Use Allowance Contingency Fund. In the event funds are not available in the Court Facility Use Allowance Contingency Fund, the use allowance payments shall be deemed a necessary governmental expense.

Construction of all court projects shall be in compliance with the standards as set by the National Center for State Courts.

The Fayette County Courthouse project is expanded in scope from \$47,100,000 as authorized by the 1996 General Assembly to \$62,500,000. Use allowance payments shall be based on the expanded scope and shall be set at the annual level of \$4,000,000; of this sum, \$500,000 is appropriated in fiscal year 1999-2000 from the local facilities fund as use allowance on the Fayette County Courthouse parking garage. General Fund support in the Local Facilities Fund is reduced by \$1,342,000 in the current biennium which represents \$1,242,000 for 2 months' use allowance on the Fayette County Courthouse building, which due to delays in construction, will not be occupied in the 1998-2000 fiscal biennium, and \$106,000 reduction to bring the annual level of use allowance on the parking garage to \$500,000. Notwithstanding enabling legislation, the expanded project authorization shall not be increased to exceed the authorized project scope of \$62,500,000.

Authorization is granted for the expansion of the Kenton County Courthouse Project from \$26,494,000, as authorized by the 1996 General Assembly, to \$31,009,600. Corresponding use allowance payments and related operating expenses totaling \$696,000 shall be deferred to the next biennium.

Authorization is granted to expand the project scope of the Lincoln County Courthouse Project to \$2,260,000. The expanded project authorization shall not exceed \$2,260,000, notwithstanding any legislation enacted during the 1998 Regular Session that would otherwise permit such an increase.

New courthouse projects are authorized in Bell, Christian, Henderson, Harrison, McCreary, Marshall, Lyon, Boone, Harlan, Lewis, and McLean Counties, as well as, a project pool consisting of new or renovation projects in Allen, Bourbon, Casey, Hickman, Elliott, Menifee, and Webster Counties. General Fund support to provide use

allowance payments and related operating expense is deferred to the 2000-2002 fiscal biennium on these projects, with the exceptions of: (a) Henderson County Courthouse Project, for which use allowance/net funding requirements are provided based on a June 1, 2000 occupancy date, totaling \$491,000 in fiscal year 2000; and (b) Mason County Courthouse Project, which shall be funded from the Current Services budget in the Local Facilities Fund totaling, \$131,000 in fiscal year 1999-2000.

The unexpended balance in the Contingency Fund at the end of fiscal year 1998-99 shall not lapse and shall be continued into fiscal year 1999-2000. If the use allowance on project cost over-runs exceeds available funds in the Contingency Fund, additional use allowance funding requirements shall become a necessary governmental expense.

TOTAL - CAPITAL PROJECTS BUDGET

	1998-99	1999-00	
General Fund	1,000,000	1,422,500	
Restricted Funds		700,000	700,000
TOTAL	1,700,000	2,122,500	

TOTALS - JUDICIAL BRANCH BUDGET

	1998-99	1999-00	
General Fund	153,097,100	168,927,200	
Restricted Funds		5,102,000	5,140,000
Federal Funds		610,000	444,000
TOTAL FUNDS		158,809,100	174,511,200

PART III

GENERAL PROVISIONS

1. The director of the Administrative Office of the Courts with the approval of the Chief Justice may expend any of the funds appropriated for the court operation and administration in any lawful manner and for any legal purpose which the Chief Justice shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the judicial branch of government.

2. The Court of Justice shall not incur any obligation for any program against the General Fund appropriation contained in this Act unless that program may be reasonably determined to have been contemplated by the proposed judicial budget, as modified and enacted, and supported by the budget memorandum and other pertinent records.

3. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provisions thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

4. Any appropriation item and sum in this Act and in an appropriation provision in another act of the 1998 General Assembly which constitute a duplicate appropriation shall be governed by KRS 48.312.

5. KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

6. Notwithstanding KRS 45.229, any unexpended balance remaining in the Court's restricted funds accounts or federal accounts at the close of the fiscal years ending June 30, 1998, and June 30, 1999, shall not lapse but shall continue into the next fiscal year.

7. Proposed revisions to restricted and federal funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The director of the Administrative Office of the Courts shall notify on a timely basis the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

8. The Chief Justice shall cause the director of the Administrative Office of the Courts to prepare a final budget document reflecting the 1998-2000 biennial budget of the Court of Justice. A copy shall be provided to the

Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within sixty (60) days of the adjournment of the 1998 Regular Session of the General Assembly.

PART IV

BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The Judicial Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

Approved April 14, 1998

CHAPTER 605

(HB 393)

AN ACT relating to aviation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the context otherwise requires:

- (1) *"Division of Air Transport" includes the capital city airport;*
- (2) *"State aircraft" means aircraft owned by the Commonwealth, leased by the Commonwealth, or otherwise under the control of the Commonwealth and administratively assigned to the Division of Air Transport. It shall also include air charters by the division. However, this shall not include or apply to any and all aircraft assigned to, owned, leased, operated, or controlled by the Department of State Police, or otherwise under the control or direction of the Department of State Police. The operation, maintenance, scheduling, and care of Department of State Police aircraft shall not be included under or affected by Sections 1 to 6 of this Act; and*
- (3) *"Official business" means any activity involving travel in a state aircraft if the activity is reasonably required, expected, or appropriate, considering the nature of the using public official's job responsibilities. The activities shall include, but not be limited to, attendance by officials at nonpartisan ceremonial functions and events where their appearance is normally expected by virtue of their office or where official representation of the Commonwealth is otherwise appropriate, and to nonpolitical flights by the Governor and members of his immediate family when accompanying or representing him.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The Adjutant General of Kentucky, as executive head of the Department of Military Affairs, shall be responsible for overall policy development and supervision of the Division of Air Transport and capital city airport.*
- (2) *A division director shall head the Division of Air Transport within the Department of Military Affairs.*
- (3) *The division director shall be responsible for the management and administration of the Division of Air Transport and the capital city airport.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The functions of the Division of Air Transport shall be to:*
 - (a) *Manage and operate the capital city airport;*
 - (b) *Oversee the maintenance and care of all state aircraft;*
 - (c) *Control the scheduling and operational use of state aircraft, including air charters; and*
 - (d) *Collect from using agencies and officers the costs of operating state aircraft, including air charters.*
- (2) *Subject to the approval of the Adjutant General and in accordance with applicable state and federal statutes and regulations, the division shall promulgate administrative regulations under KRS Chapter 13A to:*
 - (a) *Establish user fees to be paid by users of the services and facilities of the capital city airport for charges including, but not limited to, hangar fees, tie-down fees, fuel, and aircraft supplies; and*

(b) Establish fees for the usage of state aircraft.

SECTION 4. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) Except as provided in subsection (2) of this section, state aircraft, including air charters, shall be used only for official business.*
- (2) State aircraft shall not be used for personal business, except when the Governor or Lieutenant Governor, for reasons of security, protocol, ceremonial functions, or overall demands of time, require travel considerations not accorded to other officials. In recognition of these realities, flights that may be solely for personal business, or partly for official business or partly for personal business, may be scheduled for the Governor or the Lieutenant Governor and their immediate families.*
 - (a) The cost of flights scheduled solely for personal business of the Governor or Lieutenant Governor shall be charged to that officer in accordance with the rate schedule set forth in the administrative regulations authorized by Section 3 of this Act.*
 - (b) If a particular flight is in part official business and part personal business, the Governor or the Lieutenant Governor shall make a reasonable allocation of the flight time between official and personal business and be responsible for paying with non-state funds to the Division of Air Transport the charge for the part of the flight that is allocable to personal business. The rate charged shall be calculated using costs that would be considered in a rate developed by a commercial air charter company. In these cases, the allocation made and the basis for the allocation shall be indicated on the aircraft request form.*
- (3) Constitutional officers, other elected state officials, members of the General Assembly, officers and employees of the cabinets, departments, and agencies of state government, officers and employees of other governmental units, and other persons traveling under the auspices of a state agency or in connection with state business deemed desirable by an agency head, including dependents of state officials, and news media representatives and other persons having an interest in the official purpose of the trip may be authorized to use state aircraft. Charges for travel in state aircraft shall be paid by the requesting state agency in accordance with the rate schedule established in administrative regulations authorized by Section 3 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) All requests for use of state aircraft shall be approved in advance by the:*
 - (a) Constitutional officer;*
 - (b) Program cabinet secretary or his designee in writing;*
 - (c) For the judicial branch, the Chief Justice of the Supreme Court or the director of the Administrative Office of the Courts; or*
 - (d) For the legislative branch, the co-chairs of the Legislative Research Commission or the director of the Legislative Research Commission.*
- (2) Verbal requests for state aircraft transportation may be honored. However, all requests for state aircraft shall be provided in writing to the division within five (5) working days of the date of the flight.*
- (3) Approving officials shall be responsible for determining that a trip is for official business, that use of state aircraft is the most appropriate means of transportation, and that the proposed passenger complement conforms to the requirements of subsection (3) of Section 4 of this Act. In determining the passenger complement, requesting agencies shall weigh the benefit to the agency of the inclusion of additional passengers against the increased costs that might be incurred if a larger aircraft is required to accommodate additional passengers on a trip.*
- (4) All requests for use of state aircraft shall be submitted on a form prescribed by the Division of Air Transport and shall contain at a minimum the following information:*
 - (a) Cabinet or agency name;*
 - (b) Department name with appropriate billing account number;*
 - (c) Purpose of the trip;*

- (d) *Destination, including any planned stopovers and the reason for them;*
- (e) *Names of all passengers on the flight; and*
- (f) *Identification of any percentage of the flight that is for personal business in cases of the Governor or Lieutenant Governor as allowed under Section 4 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The Division of Air Transport shall arrange for all trips and maintain flight cards, passenger manifests, payment documents, and interaccount bills pertaining to each flight.*
- (2) *Pilots for all state agencies shall maintain a flight manifest for all flights which shall include the passengers' names, information pertaining to points of origin and destination, and any side trips or stopovers for each flight.*
- (3) *The Division of Air Transport shall maintain original manifests for all trips using state aircraft.*
- (4) *Originals of requests for the use of state aircraft shall be kept by the Division of Air Transport, with the following exceptions:*
 - (a) *The Governor and Lieutenant Governor shall maintain originals of all requests for the use of state aircraft made by their respective offices; and*
 - (b) *In cases where the secretary of the Cabinet for Economic Development has certified in an aircraft request that disclosure of the identities of passengers or the purpose of a trip will violate needs for confidentiality required for economic development efforts, the secretary of the Cabinet for Economic Development shall maintain complete original records of the request in his office.*

Approved April 14, 1998

CHAPTER 606

(HB 455)

AN ACT relating to criminal justice matters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Juvenile Justice or a local organization approved by the Department of Juvenile Justice may form local juvenile delinquency prevention councils for the purpose of encouraging the initiation of, or supporting ongoing, interagency cooperation and collaboration in addressing juvenile crime and juvenile status offenses.*
- (2) *The membership of the local council shall be determined by the Department of Juvenile Justice and shall include representatives of law enforcement, the school system, the Department of Social Services, the Court of Justice, the Commonwealth's attorney, the county attorney, a representative of a county juvenile detention facility, and the Department for Public Advocacy. The members of the council shall be appointed as provided by the department by administrative regulation and shall be appointed for not longer than four (4) years, but members may be reappointed for a successive term. A member of the council shall receive no salary for service as a member of the council but may be reimbursed for expenses in the same manner as a state employee.*
- (3) *The duties and responsibilities of a juvenile delinquency prevention council shall include but not be limited to:*
 - (a) *Developing a local juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile Justice, the Department for Social Services, the Administrative Office of the Courts, and others in a cooperative and collaborative manner to prevent or discourage juvenile delinquency and to develop meaningful alternatives to incarceration;*
 - (b) *Entering into a written local interagency agreement specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan;*
 - (c) *Sharing of information as authorized by law to carry out the interagency agreements;*

- (d) *Applying for and receiving public or private grants to be administered by one (1) of the participating cities or counties or other public agencies; and*
 - (e) *Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreement.*
- (4) *Training of council members shall be the responsibility of the department.*
 - (5) *The Department of Juvenile Justice may provide grants to the councils to establish or enhance prevention programs.*
 - (6) *The department shall promulgate administrative regulations in accordance with KRS Chapter 13A that relate to:*
 - (a) *The formation of councils;*
 - (b) *The operation of councils;*
 - (c) *The duties of councils; and*
 - (d) *The administration and operation of the grant program.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Juvenile Justice shall, with available funds, develop and administer a statewide detention program and, as each regional facility is constructed and ready for occupancy, shall, within appropriation limitations, provide for:*
 - (a) *The operation of pre-adjudication detention facilities for children charged with public offenses; and*
 - (b) *The operation of post-adjudication detention facilities for children adjudicated delinquent or found guilty of public offenses.*

Funds appropriated for the purposes of this section shall only be used for facilities defined in KRS 15A.200.
- (2) *In each region in which the Department of Juvenile Justice operates or contracts for the operation of a detention facility, the department shall, within appropriation limitations, develop and administer a program for alternatives to detention that shall provide for:*
 - (a) *The operation of or contracting for the operation of pre-adjudication alternatives to detention and follow-up programs for children who are before the court and who enter pretrial diversion or informal adjustment programs; and*
 - (b) *The operation of or contracting for the operation of post-adjudication alternatives to detention and follow-up programs, including but not limited to community-based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of secure detention and ensure public safety.*
- (3) *The department shall, except as provided in Section 6 of this Act, charge counties and urban-county governments a per diem not to exceed ninety-four dollars (\$94) for lodging juveniles in state-owned or contracted pre-adjudication facilities.*
- (4) *Detention rates charged by contracting detention facilities shall not exceed the rate in effect on July 1, 1997, subject to increases approved by the department.*
- (5) *The Department of Juvenile Justice shall issue and enforce administrative regulations to govern the following:*
 - (a) *Administration;*
 - (b) *Intake and classification;*
 - (c) *Programs and services;*
 - (d) *Record-keeping;*
 - (e) *Rules and discipline;*

- (f) *Transfers;*
 - (g) *Reimbursement rates and conditions; and*
 - (h) *Detention facility rate increases.*
- (6) *No juvenile detention facility or juvenile holding facility shall be taken over, purchased, or leased by the Commonwealth without prior approval of the fiscal court upon consultation with the jailer in the county where the facility is located. The county, upon consultation with the jailer, may enter into contracts with the Commonwealth for the holding, detention, and transportation of juveniles.*
- (7) *Administrative regulations promulgated under subsection (5) of this section shall specifically identify new requirements of the law which increase the cost of operating a juvenile facility not operated by the Department for Juvenile Justice. The administrative regulations shall identify the amount and source of funding for compliance with the new requirements.*

Section 3. KRS 15A.067 is amended to read as follows:

- (1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent, or adjudicated delinquent.
- (2) There is established within the Department of Juvenile Justice, a Division of Educational Services, that shall be responsible for the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.
- (3) *Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.*
- (4) The Division of Educational Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:
- (a) For students identified before incarceration as having an educational disability, the Division of Educational Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.
 - (b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.
 - (c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.
- (5)~~(4)~~ The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.
- (6)~~(5)~~ The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Educational Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.
- (7)~~(6)~~ (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.
- (b) Within five (5) days after the juvenile is released, the Division of Educational Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.
- (8)~~(7)~~ The Department of Juvenile Justice shall, *after consultation*~~collaborate~~ with the Department of Education, *promulgate*~~as it promulgates~~ an administrative regulation for the effective implementation of this section.

~~{(8) The Department of Education shall administer this program in cooperation with the Justice Cabinet for the 1996-97 fiscal year. Effective July 1, 1997, the Justice Cabinet shall be responsible for the implementation of this section.}~~

Section 4. KRS 610.265 is amended to read as follows:

- (1) Any child who is accused of committing a status or public offense or of being in contempt of court may be detained in a secure juvenile detention facility or juvenile holding facility or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays.
- (2)
 - (a) Within twenty-four (24) hours of the start of the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.
 - (b) If the court orders the child detained further, ***and if the child is charged with a capital offense, Class A felony, or Class B felony, [such] detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance. Any other child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.***
 - (c) If the child is not released, the court designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian or other responsible adult.

Section 5. KRS 610.280 is amended to read as follows:

- (1)
 - (a) If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty-eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.
 - (b) If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention.
- (2) The hearing shall address the following issues:
 - (a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case; and
 - (b) In determining detention, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child. ***Any child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.***
- (3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 6. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing may:

- (1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or
- (2) Place the child on probation, home incarceration, or under supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine. A child placed on probation, home incarceration, or supervision shall be subject to the visitation and supervision of a **probation officer or an employee**~~juvenile probation officer~~ of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation, home incarceration, or supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation, home incarceration, or supervision after the person reaches the age of seventeen (17) years and six (6) months, the probation, home incarceration, or supervision shall be for a period not to exceed one (1) year; or
- (3) Commit **or recommit** the child to the custody or guardianship of the Department of Juvenile Justice, a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility, juvenile holding facility, or intermittent holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed **or recommitted** to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement **as soon as possible but not to exceed thirty-five (35)**~~within seven (7)~~ days of the time of commitment **or recommitment**. **The Department of Juvenile Justice shall pay for the cost of detention from the date of commitment or recommitment, on the current charge, until the child is removed from the detention facility and placed.** All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to **KRS 635.070 and to** the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or
- (4) ~~Effective July 1, 1997,~~ If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility, ~~or~~ juvenile holding facility, **or approved detention program as authorized by the Department of Juvenile Justice** in accordance with KRS **Chapter 15A**~~200~~ for a period of time not to exceed forty-five (45) days; or
- (5) ~~Effective July 1, 1997,~~ If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility, ~~or~~ juvenile holding facility, **or approved detention program as authorized by the Department of Juvenile Justice** in accordance with KRS **Chapter 15A**~~200~~ for a period of time not to exceed ninety (90) days; or
- (6) Any combination of the dispositions listed above.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsections (4) or (5) of this section **in accordance with the statewide detention plan and administrative regulations implementing the plan.**~~The requirement that the Department of Juvenile Justice pay for confinement of persons confined pursuant to subsections (4) and (5) of this section shall apply only to juveniles confined on or after July 1, 1997.~~

SECTION 7. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) **The Department of Juvenile Justice, the Cabinet for Human Resources, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police shall be responsible for the recording of**

those data elements for juveniles that are needed for the development of the centralized criminal history record information system.

- (2) *The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440; and*
- (3) *The Department of Juvenile Justice shall provide access to Commonwealth's attorneys, county attorneys, law enforcement agencies, the Kentucky State Police, the Department of Corrections, the Cabinet for Human Resources, and the Administrative Office of the Courts to its database.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall update its database within thirty (30) days of receipt of information. The update shall include information from the:

- (1) *Offender records;*
- (2) *Institutional records; and*
- (3) *Administrative records.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall update its database within thirty (30) days of receipt of information. The update shall include information from:

- (1) *Offender records;*
- (2) *Institutional records; and*
- (3) *Administrative records.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *The following agencies shall, subject to restrictions imposed by state or federal law, disclose and share with each other all information they maintain on a juvenile in a facility or program or informal adjustment authorized by law:*

- (a) *All sheriff's offices, police departments, and any other law enforcement agency;*
- (b) *All Commonwealth's attorneys and county attorneys;*
- (c) *The Attorney General;*
- (d) *All jails and juvenile detention facilities, public and private;*
- (e) *All courts and clerks of courts;*
- (f) *The Administrative Office of the Courts;*
- (g) *All departments within the Justice Cabinet; and*
- (h) *All departments within the Cabinet for Human Resources.*

- (2) *Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality disclosure, redisclosure, and access restrictions imposed by federal or state law.*

- (3) *All public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records specifically requested in writing, and pertaining to status offenders, public offenders, youthful offenders, juveniles remanded to detention, and any juvenile convicted by a court, to any of the agencies listed in subsection (1) of this section. The records or information provided pursuant to this subsection shall be subject to:*

- (a) *Access or other restrictions imposed by federal or state law;*
- (b) *All confidentiality restrictions imposed by federal or state law; and*
- (c) *All disclosure and redisclosure restrictions imposed by federal or state law.*

- (4) *Any request for records, the provision of records, the sharing of records, the disclosure of records, or the redisclosure of records shall be done for official purposes only, on a bona fide need to know basis, and only in connection with a legitimate investigation, prosecution, treatment program, or educational program.*

- (5) ***Information and records relating to pending litigation in Circuit Court, District Court, or a federal court and information and records relating to an ongoing investigation are not subject to disclosure or sharing under this section.***
- (6) ***Obtaining or attempting to obtain a record relating to a minor or by sharing or attempting to share a record relating to a minor with an unauthorized person is a violation of this section.***

Section 11. KRS 7.111 is amended to read as follows:

- (1) The Kentucky State Police, Department of Corrections, ***the Department of Juvenile Justice, the Cabinet for Human Resources***, and the Administrative Office of the Courts shall provide access to their databases and the centralized criminal history record information system and the data contained therein to other criminal justice agencies, including criminal justice statistical analysis centers, and to the Legislative Research Commission. The right of access granted herein shall not include the right to add to, delete, or alter data without permission of the agency holding the data.
- (2) Criminal justice agencies and the Legislative Research Commission shall not make public information on an individual person's criminal history record where such record is protected by state or federal law or regulation.
- (3) The Legislative Research Commission shall have access to information which does not identify an individual person when determined by the director of the Legislative Research Commission to be necessary for a legislative purpose.
- (4) The Legislative Research Commission shall have access to individual persons' criminal history records subject to the following provisions:
 - (a) Access shall not include information on federal offenses or convictions;
 - (b) Access shall not include information on out-of-state convictions; and
 - (c) Requests for the release of the information shall be approved by the Legislative Research Commission by vote at a meeting of the Commission.

Section 12. KRS 17.151 is amended to read as follows:

The Kentucky State Police shall, in cooperation with the Administrative Office of the Courts, ***the Department of Juvenile Justice, the Cabinet for Human Resources***, and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

- (1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;
- (2) The Kentucky State Police shall provide access to the Administrative Office of the Courts, ***the Department of Juvenile Justice, the Cabinet for Human Resources***, and the Department of Corrections to its database; and
- (3) The Kentucky State Police, ***the Department of Juvenile Justice, the Cabinet for Human Resources***, and the Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 13. KRS 17.152 is amended to read as follows:

All data supplied to the centralized criminal history record information system by the Kentucky State Police, Administrative Office of the Courts, ***the Department of Juvenile Justice, the Cabinet for Human Resources***, and the Department of Corrections shall be compatible with the system and shall contain both citation and personal identification numbers.

Section 14. KRS 17.150 is amended to read as follows:

- (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for Human Resources; Transportation Cabinet; Department of Corrections; ***Department of Juvenile Justice***; and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:
 - (a) Install and maintain records needed for reporting data required by the cabinet;

- (b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal his or his parents' identity;
 - (c) Give the cabinet or its accredited agent access for purpose of inspection; and
 - (d) Cooperate with the cabinet to the end that its duties may be properly performed.
- (2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:
- (a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;
 - (b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;
 - (c) Information which may endanger the life or physical safety of law enforcement personnel; or
 - (d) Information contained in the records to be used in a prospective law enforcement action.
- (3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.
- (4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.
- (5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.
- (6) The secretary of justice shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of State Police.
- (7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice.

SECTION 15. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall have access to all court records, active and closed, relating to or in the custody of the juvenile session of the District Court or the Administrative Office of the Courts, or both.

Section 16. KRS 27A.300 is amended to read as follows:

The Administrative Office of the Courts shall, in cooperation with the Kentucky State Police, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

- (1) The database shall at a minimum contain the information contained in KRS 27A.310 to 27A.440;
- (2) The Administrative Office of the Courts shall provide access to the Kentucky State Police, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

- (3) The Administrative Office of the Courts shall, where the number is known, assign the same identification number or other variable to each person whose name appears in the database.

Section 17. KRS 164.283 is amended to read as follows:

- (1) As used in this section unless the context otherwise requires:
- (a) "Academic" means a student's official record of academic performance, including, but not limited to transcript of grades or other action taken by the institution directly related to academic performance. The term "academic" does not include any nonacademically-related action the institution may take.
 - (b) "Universities and colleges" means all state supported postsecondary educational institutions in Kentucky.
 - (c) "Institution" means all public supported institutions of higher learning in Kentucky.
- (2) All student academic records shall be confidential and shall not require a student's Social Security number to identify the student, with the exception of the exemptions stated in subsections (3) to (9) of this section, and shall not be released by any public supported institution of higher education in Kentucky, to any person, organization, institution, group or agency, except with the express consent of the individual student. This confidentiality shall apply only to student academic records, including, but not limited to official transcript of grades.
- (3) All student academic records shall be made available upon request to any agency of the federal or state government for the purpose of determining a student's eligibility for military service, and shall include making such records available to local draft boards. This authority shall be limited only to determining the student's eligibility for military service and shall not be extended, except with the individual student's consent as specified in subsection (2) of this section.
- (4) Any institution may provide the legal parents of any student under twenty-one (21) years of age with a copy of the student's academic record.
- (5) All student academic records shall be made available to any federal, state, or local law enforcement agency, *the Department of Juvenile Justice*, and any court of law upon *written* request ~~or issuance of a subpoena~~.
- (6) All student academic records shall be made available upon request to any grantor of scholarships or loans based upon the maintenance of a satisfactory level of scholarship, but shall be for the official use of the grantors only.
- (7) All student academic records shall be made available upon request to a public or private junior college from which the individual student was graduated or to a public or private secondary school from which the individual student was graduated.
- (8) All student academic records shall be made available upon request to the Council on Postsecondary Education for professional academic research.
- (9) All student academic records shall be made available upon request to any official of the university or college in which the student is enrolled who is directly concerned with the student's academic progress. This authority shall include but is not limited to the individual student's academic adviser.
- (10) This section shall be applicable to all academic records maintained by all public postsecondary educational institutions in Kentucky.

SECTION 18. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Human Resources, the Department of Juvenile Justice, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police, shall be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system.*
- (2) *The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.*
- (3) *The Cabinet for Human Resources shall provide access to the Kentucky State Police, the Department of Corrections, the Department of Juvenile Justice, and the Administrative Office of the Courts to its database.*

Section 19. KRS 196.093 is amended to read as follows:

The Department of Corrections shall, in cooperation with the Kentucky State Police, *the Department of Juvenile Justice, the Cabinet for Human Resources*, and the Administrative Office of the Courts, be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system:

- (1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;
- (2) The Department of Corrections shall provide access to the Kentucky State Police, *the Department of Juvenile Justice, the Cabinet for Human Resources*, and the Administrative Office of the Courts to its database; and
- (3) The Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 20. KRS 605.090 is amended to read as follows:

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:
 - (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
 - (b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;
 - (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that: No child committed under the provisions of KRS 610.010(1)(b), (c), or (d) ***shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;***
 - (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
 - (e) Treated as provided in KRS Chapter 645;
 - (f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) ~~No [or any]~~ child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;
- (3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:
 - (a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;
 - (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from

the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

- (c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or
- (d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.
- ~~(4)~~~~(3)~~ The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.
- ~~(5)~~~~(4)~~ The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.
- ~~(6)~~~~(5)~~ The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 21. KRS 610.110 is amended to read as follows:

- (1) The disposition shall determine the action to be taken by the court on behalf of, and in the best interest of, the child under the provisions of KRS Chapter 630 or 635.
- (2) At the disposition, all information helpful in making a proper disposition, including oral and written reports, shall be received by the court in compliance with subsection (1) of this section and relied upon to the extent of their probative value, provided that the parties or their counsel shall be afforded an opportunity to examine and controvert the reports.
- (3) The court shall, *and the Department of Juvenile Justice may upon request*, notify the law enforcement agency of the child's *city*, county, *or urban-county* of residence *as appropriate* and the law enforcement agencies where any offense was committed of the disposition of each case and of each child committed by the court who is placed in a residential treatment facility by the Department of Juvenile Justice or the cabinet.
- (4) If any court commits a child to the Department of Juvenile Justice or the cabinet, a child-caring facility, or child-placing agency, the court shall cause to be transmitted to the Department of Juvenile Justice or the cabinet, facility, or agency, as appropriate, a certified copy of the commitment order, together with a summary of the court's information concerning the child. A certified copy of the court order shall be proof of the authority of the Department of Juvenile Justice or the cabinet, facility, or agency to hold the child. Such

certified order shall be sufficient authority for any law enforcement officer to take into custody any person named therein and deliver him to such a place as shall be directed by the Department of Juvenile Justice or the cabinet, facility, or agency given custody of him in the order.

- (5) In placing a child on probation in a home or boarding home, or in committing a child to a child-caring facility or child-placing agency, the court shall as far as practicable select a home, facility, or agency operated or governed by persons of a similar religious faith as the parents of the child.
- (6) Upon motion of the child and agreement of the Department of Juvenile Justice or the cabinet, as appropriate, the court may authorize an extension of commitment up to age twenty-one (21) for the purpose of permitting the Department of Juvenile Justice or the cabinet, as appropriate, to assist the child in establishing independent living arrangements if a return to the child's home is not in his best interest.

Section 22. KRS 610.320 is amended to read as follows:

- (1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."
- (2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, **law enforcement, the Department of Juvenile Justice**, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.
- (3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, **prosecutors, the Department of Juvenile Justice, and law enforcement agencies** or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.
- (4) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.
- (5) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.
- (6) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 23. KRS 610.340 is amended to read as follows:

- (1) (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, ~~and to the extent necessary at the proceeding to~~ victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.
- (b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (d) ***Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to the effective date of this Act.***
- (2) The provisions of this section shall not apply to public officers or employees engaged ***in the investigation of and*** in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes~~[provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case].~~
- (3) The provisions of this section shall not apply to employees of the ***Department of Juvenile Justice or*** cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes~~[provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case].~~
- (4) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative and counseling personnel, to any teacher ***or school employee with whom the student may come in contact***~~[to whose class the student has been assigned for instruction]~~, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.
- (5) No person, including school personnel, shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (6) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (7) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (8) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (9) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 24. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any

good time previously earned by the prisoner, or deny the prisoner the right to earn good time in any amount, if, during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

- (2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.
- (3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.
- (4) *Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, a sex offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. A sex offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any sex offender convicted before the effective date of this section or to any mentally retarded sex offender.*
- (5)
 - (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious or harassing, or if satisfied that the action is legally without merit or factually frivolous.
 - (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

SECTION 25. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 530.020, 530.064, or 531.310 shall be sentenced to a period of conditional discharge following release from:*
 - (a) *Incarceration upon expiration of sentence; or*
 - (b) *Completion of parole.*
- (2) *The period of conditional discharge shall be three (3) years.*
- (3) *During the period of conditional discharge, the defendant shall:*
 - (a) *Be subject to all orders specified by the Department of Corrections; and*
 - (b) *Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.*
- (4) *Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.*
- (5) *If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant for no longer than the time remaining on the conditional discharge.*
- (6) *The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after the effective date of this Act.*

Section 26. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

- (1) Office of secretary of justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the ***Criminal Justice Council***~~[Kentucky Crime Commission]~~. The Parole Board shall be attached to the Office of the Secretary for administrative ***and support*** purposes only.
- (2) Offices of deputy secretaries of justice.
- (3) Office of the general counsel.
- (4) Medical examiner service program.

Section 27. KRS 15A.040 is amended to read as follows:

- (1) The ***Criminal Justice Council***~~[Kentucky Crime Commission]~~ shall advise and recommend to the ***Governor and the General Assembly***~~[secretary]~~ policies and direction for~~[departmental]~~ long-range planning regarding all elements of the criminal justice system. ***The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:***
 - (a) ***Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;***
 - (b) ***Conduct comprehensive planning to promote the maximum benefits of grants;***
 - (c) ***Develop model criminal justice programs;***
 - (d) ***Disseminate information on criminal justice issues and crime trends;***
 - (e) ***Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;***
 - (f) ***Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;***
 - (g) ***Provide technical assistance to all criminal justice agencies; and***
 - (h) ***Review and evaluate proposed legislation affecting criminal justice; and***
 - (i) ***All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly***~~[and shall exercise supervisory authority with respect to federal and state grants as required by federal or state law].~~
- (2) ~~[Total]~~ Membership of the ***Criminal Justice Council*** shall consist of the following:
 - (a) ***The secretary of the Justice Cabinet or his designee;***
 - (b) ***The director of the Administrative Office of the Courts or his designee;***
 - (c) ***The Attorney General or his designee;***
 - (d) ***Two (2) members of the House of Representatives as designated by the Speaker of the House;***
 - (e) ***Two (2) members of the Senate as designated by the President of the Senate;***
 - (f) ***A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;***
 - (g) ***A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;***

- (h) *A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;*
 - (i) *The public advocate or his designee;*
 - (j) *The president of the Kentucky Sheriffs Association;*
 - (k) *The commissioner of state police or his designee;*
 - (l) *A person selected by the Kentucky State Lodge of the Fraternal Order of Police;*
 - (m) *The president of the Kentucky Association of Chiefs of Police;*
 - (n) *A member of the Prosecutors Advisory Council as chosen by the council;*
 - (o) *The Chief Justice or a justice or judge designated by him;*
 - (p) *One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;*
 - (q) *One (1) member of the Kentucky Jailer's Association appointed by the president of the organization;*
 - (r) *One (1) member of the Circuit Clerk's Association;*
 - (s) *Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;*
 - (t) *One (1) District Court Judge, designated by the Chief Justice;*
 - (u) *One (1) Circuit Court Judge, designated by the Chief Justice;*
 - (v) *One (1) Court of Appeals Judge, designated by the Chief Justice;*
 - (w) *One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders; and*
 - (x) *One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor*~~[Kentucky Crime Commission and the appointment of members thereto shall be determined and made by the Governor].~~
- (3) The secretary of justice shall serve ex officio as chairman of the ~~council~~~~[commission]~~. *Each member of the council shall have one (1) vote.* Members of the ~~council~~~~[commission]~~ shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.
- (4) *The council shall meet at least once every three (3) months.*
- (5) *The council may hold additional meetings:*
- (a) *On the call of the chairman;*
 - (b) *At the request of the Governor to the chairman; or*
 - (c) *At the written request of the members to the chairman, signed by a majority of the members.*
- (6) *Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.*
- (7) *Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.*
- (8) *The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:*
- (a) *Uniform Criminal Justice Information System committee;*
 - (b) *Committee on sentencing; and*
 - (c) *Penal Code committee.*

- (9) *The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established the Kentucky Unified Criminal Justice Information System, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies and the courts. Notwithstanding any statutes, administrative regulations, and policies to the contrary, if standards and technologies other than those set out in KRS 61.940 to 61.953 are required, the Commonwealth's chief information officer shall review, expedite, and grant appropriate exemptions to effectuate the purposes of the unified criminal justice information system. Nothing in this section shall be construed to hamper any public officer or official, agency, or organization of state or local government from furnishing information or data that they are required or requested to furnish and which they are allowed to procure by law, to the General Assembly, the Legislative Research Commission, or a committee of either. For the purposes of this section, "criminal justice agencies" include all departments of the Justice Cabinet, the Unified Prosecutorial System, Commonwealth's attorneys, county attorneys, the Transportation Cabinet, the Cabinet for Human Resources, and any agency with the authority to issue a citation or make an arrest.*
- (2) *The program to design, implement, and maintain the system shall be under the supervision of the uniform criminal justice information system committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the Governor's chief information officer, who shall chair the committee.*
- (3) *The committee shall be responsible for recommending standards, policies, and other matters to the secretary of justice for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the policies, standards, and other matters relating to the system and its operation.*
- (4) *The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.*
- (5) *The uniform policy shall include a system to enable the criminal justice agencies and the courts to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.*
- (6) *The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council, the Chief Justice, and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Chief Justice, the Legislative Research Commission, and appropriate committees of the General Assembly.*
- (7) *The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.*
- (8) *All criminal justice agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.*
- (9) *The committee shall review how changes to existing criminal justice agency applications impact the new integrated network. Changes to criminal justice agency applications that have an impact on the integrated network shall be coordinated through and approved by the committee.*
- (10) *Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the committee.*
- (11) *Any criminal justice agency or officer that does not participate in the criminal justice information system may be denied access to state and federal grant funds.*

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky State Police shall design, implement, and maintain an automated fingerprint identification system.*
- (2) *The automated fingerprint identification system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.*
- (3) *The Commonwealth shall provide and maintain in every detention center the automated fingerprint identification system equipment and programs required by the Kentucky State Police through administrative regulation.*

SECTION 30. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *All persons arrested or detained in any adult or juvenile detention facility shall be fingerprinted.*
- (2) *The jailer may fingerprint persons for other law enforcement agencies.*
- (3) *The jailer shall submit the fingerprints to the Kentucky State Police in the manner and at the time required by the Kentucky State Police through administrative regulation.*

Section 31. KRS 610.300 is amended to read as follows:

- (1) Physical evidence shall be obtained and utilized in the investigation of public offenses involving children in the same manner as it is obtained and utilized in the investigation of public offenses involving adults.
- (2) *Except for fingerprint records*, all records and physical evidence so obtained shall be surrendered to the court upon motion for good cause shown~~[or upon elimination of the child as a suspect in the case]~~. *All records, including fingerprint records, shall be subject to expungement in the manner provided in KRS 431.076 for circumstances specified therein.*
- (3) The court shall, upon receipt of physical evidence, return any evidence, which is not contraband and is not needed for further prosecution, to its lawful owner. *The fingerprint cards created pursuant to KRS Chapters 600 to 645 shall be transferred pursuant to KRS 17.110.*

Section 32. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines, in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of a bail bond:
 - (a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant and his financial and employment circumstances; or
 - (b) With the 10% deposit as provided in KRS 431.530; or
 - (c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;
- (4) *If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;*

- (5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;
- ~~(6)~~~~(5)~~ A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;
- ~~(7)~~~~(6)~~ A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release, shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;
- ~~(8)~~~~(7)~~ If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may: (a) order the arrest of the defendant, (b) enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed, or (c) both. A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

Section 33. KRS 431.525 is amended to read as follows:

- (1) The amount of the bail shall be:
- (a) Sufficient to insure compliance with the conditions of release set by the court;
 - (b) Not oppressive;
 - (c) Commensurate with the nature of the offense charged;
 - (d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and
 - (e) Considerate of the financial ability of the defendant.
- (2) When a person is charged with an offense punishable by fine only, the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs.~~{}~~
- (3) When a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed double the amount of the fine.
- (4) ***The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.***

SECTION 34. A NEW SECTION OF KRS CHAPTER 30A IS CREATED TO READ AS FOLLOWS:

- (1) ***The council shall direct the design of an automated warrant system.***
- (2) ***The automated warrant system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.***

Section 35. KRS 30A.080 is amended to read as follows:

- (1) Every clerk shall maintain ~~all~~~~such~~ records, files, dockets, and indexes as are prescribed by statute or rule.
- (2) All necessary record books and all necessary supplies required by the clerk's office shall be procured through the Administrative Office of the Courts and paid for by the Court of Justice.
- (3) No clerk shall permit the records or papers of his office to be taken out of his office except in case of invasion or insurrection, or other catastrophe, or pursuant to rule or order of court, and then he shall cause them to be returned as soon as the necessity for the removal ceases to exist.
- (4) Records may be permanently transferred from the clerk's office by rule or order of the Supreme Court.

Section 36. KRS 346.030 is amended to read as follows:

- (1) There is hereby created a board, to be known as the Crime Victims Compensation Board. ~~The~~~~Such~~ board shall consist of five (5) members not all of whom shall be engaged in the same occupation or profession, **at least one (1) of whom shall be a victim as defined in KRS 421.500(1) or a victim advocate as defined in KRS 421.570(1)**, and the ~~said~~ board shall be appointed by the Governor.
- (2) The term of office of each such member shall be four (4) years, except that of the members first appointed two (2) shall serve for terms of four (4) years, two (2) shall serve for terms of three (3) years and one (1) shall serve for a term of two (2) years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.
- (3) The Governor shall designate one (1) member of the board as chairman thereof, to serve as such at the pleasure of the Governor.
- (4) The Governor shall establish the compensation of the members of the board pursuant to the provisions of KRS 64.640.
- (5) ***Each new board member shall receive training on the dynamics of domestic violence, child abuse, sexual assault, homicide, and other violent crimes and the criminal justice process.***

Section 37. KRS 346.060 is amended to read as follows:

- (1) A claim form may be filed by a person eligible to receive an award, as provided in KRS 346.050, or, if such person is a minor, by his parent or guardian.
- (2) A claim form must be filed by the claimant not later than **five (5) years**~~one (1) year~~ after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than **five (5) years**~~one (1) year~~ after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing if, in a particular case, the interest of justice so requires.
- (3) Claims shall be filed in the office of the board in person or by mail. Only printed claim forms supplied by the board shall be accepted. The board shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the board.
- (4) Upon filing of a claim pursuant to this chapter, the board shall promptly notify the United States attorney (if a federal offense is involved), the Commonwealth's attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such United States attorney, Commonwealth's attorney or county attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded and shall so notify such United States attorney, Commonwealth's or county attorney, and the claimant. When such criminal prosecution has been concluded such United States attorney, Commonwealth's or county attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 346.120.

Section 38. KRS 346.130 is amended to read as follows:

- (1) No award shall be made unless the board or board member, as the case may be, finds that:
 - (a) Criminally injurious conduct occurred;

- (b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and
 - (c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.
- (2) The board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.
 - (3) Any award made pursuant to this chapter shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the board stating what treatment is planned and for what period of time. ~~[-A six (6) months' progress report will also be required by the board.]~~ The board shall have the power to discontinue mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were broken or damaged during the crime.
 - (4) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter be in an amount equal to the actual loss sustained; provided, however, that no such award shall exceed one hundred fifty dollars (\$150) for each week of lost earnings or support. The claimant or victim must have been employed at the time the crime occurred. Said employment shall be verified by the staff of the board after information is provided by the claimant or victim. Should the claimant or victim fail to supply the board with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the board among the claimants.
 - (5) The board is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed **five thousand** ~~thirty-five hundred~~ dollars **(\$5,000)** ~~(\$3,500)~~.
 - (6) Any award made under this chapter shall not exceed twenty-five thousand dollars (\$25,000).
 - (7) No award shall be made for any type of property loss or damage.

SECTION 39. A NEW SECTION OF KRS 421.500 TO 421.575 IS CREATED TO READ AS FOLLOWS:

- (1) ***In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.***
- (2) ***The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.***
- (3) ***Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.***

Section 40. KRS 421.500 is amended to read as follows:

- (1) As used in KRS **421.500 to 421.575** ~~[421.510 to 421.550]~~, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as ***stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness,*** criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS **421.500 to 421.575** ~~[421.510 to 421.540]~~:
 - (a) The spouse;

- (b) An adult child if paragraph (a) of this subsection does not apply;
 - (c) A parent if paragraphs (a) and (b) of this subsection do not apply;
 - (d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and
 - (e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.
- (2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS **421.500 to 421.575**~~[421.510 to 421.540]~~. Communication between the victim and the special advocate shall be privileged.
- (3) Law enforcement personnel shall ensure that victims receive information on available *protective*, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:
- (a) Availability of crime victim compensation where applicable;
 - (b) Community based treatment programs;
 - (c) The criminal justice process as it involves the participation of the victim or witness;
 - (d) The arrest of the accused; and
 - (e) How to **register to be notified when**~~find out if~~ a person has been released from *prison*, jail, ~~or~~ a juvenile detention facility, **or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.**
- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:
- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
 - (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including the defendant's release on bond **and any special conditions of release**; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and
 - (c) The victim knows how to **register to be notified when**~~find out if~~ a person has been released from *a prison*, jail, ~~or~~ a juvenile detention facility, **or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;**
 - (d) **The victim receives information on available:**
 - 1. **Protective, emergency, social, and medical services;**
 - 2. **Crime victim compensation, where applicable;**
 - 3. **Restitution, where applicable;**
 - 4. **Assistance from a victim advocate; and**
 - 5. **Community-based treatment programs; and**

- (e) *The victim of crime may pursuant to Section 50 of this Act receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.*
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, **any conditions of release**, a negotiated plea, and entry into a pretrial diversion program.
 - (7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.
 - (8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.
 - (9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.
 - (10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 41. KRS 421.510 is amended to read as follows:

- (1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, ~~530.064~~, 530.065, 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.
- (2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.
- (3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Section 42. KRS 346.185 is amended to read as follows:

- (1) There is established in the State Treasury the "Crime Victims' Compensation Fund," hereinafter referred to as the "fund," to be administered by the Crime Victims' Compensation Board. In all cases in which defendants plead or are found guilty of a crime as defined in KRS 500.080(2), there shall be imposed as an additional cost the sum of ~~twenty~~ ~~ten~~ dollars (~~\$20~~)(~~\$10~~). This sum shall not be suspended or probated. This sum shall be collected in its entirety and shall not be prorated. The clerk of the court shall collect the cost and forward it monthly to the State Treasurer, to be deposited in the fund. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.
- (2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; payments by the defendant pursuant to subsection (1) of this section and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the board shall be used to provide assistance to programs for victims and the board shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the Crime Victims' Compensation Board.
- (3) When judgment is entered against a defendant as provided in this section and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the State of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. The amount shall be paid to the crime victims' compensation fund and satisfaction of the judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for judgment.

Section 43. KRS 23A.205 is amended to read as follows:

- (1) Court costs for a criminal case in the Circuit Court shall be ~~seventy-five~~^{fifty-five} dollars (\$75), **which shall include the fee mandated in KRS 346.185**~~[((\$55)]~~.
- (2) **Except as provided in KRS 346.185**, taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court.
- (3) Additional fees shall be charged in Circuit Court criminal matters as follows:
 - (a) Preparing a certification \$1.00
 - (b) Preparing a copy of a document (per page) . \$0.15
- (4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.
- (5) The circuit clerk shall monthly pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

SECTION 44. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) ***The Court shall collect the crime victim compensation fee specified in KRS 346.185 when court costs are collected. The fee shall be forwarded by the Circuit Clerk to the State Treasurer at the time costs are transferred to the State Treasurer.***
- (2) ***The collection of crime victim compensation fees shall be accounted for as a separate item to the State Treasurer and the Administrative Office of the Courts.***

SECTION 45. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) ***Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and Sections 46, 47, 48, and 49 of this Act in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.***
- (2) ***If pretrial diversion is granted, restitution shall be a part of the diversion agreement.***
- (3) ***If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.***
- (4) ***If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.***

SECTION 46. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

When a judge orders restitution, the judge shall:

- (1) ***Order the restitution to be paid to a specific person or organization through the circuit clerk, who shall disburse the moneys as ordered by the court;***
- (2) ***Be responsible for overseeing the collection of restitution;***
- (3) ***Set the amount of restitution to be paid;***
- (4) ***Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;***
- (5) ***Monitor the payment of the restitution to assure that payment is being made;***
- (6) ***If restitution is not being paid as ordered, hold a hearing to determine why the restitution is not being paid;***
- (7) ***If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and***
- (8) ***Not release the defendant from probation supervision until restitution has been paid in full and all other aspects of the probation order have been successfully completed.***

SECTION 47. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

- (1) *When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.*
- (2) *When the Parole Board orders restitution, the board shall:*
 - (a) *Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;*
 - (b) *The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;*
 - (c) *Set the amount of restitution to be paid, if not already set;*
 - (d) *Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;*
 - (e) *Monitor the payment of the restitution to assure that payment is being made;*
 - (f) *If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;*
 - (g) *If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and*
 - (h) *Not release the defendant from parole supervision until restitution has been paid in full.*
- (3) *The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.*
- (4) *Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.*
- (5) *Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.*

Section 48. KRS 533.020 is amended to read as follows:

- (1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.
- (2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.
- (3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.
- (4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years, *or the time necessary to complete restitution, whichever is longer*, upon conviction of a felony nor two (2) years, *or the time necessary to complete restitution, whichever is longer*, upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an

alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

- (5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

Section 49. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
- (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and
 - (l) If the defendant's record indicates a controlled substance or alcohol problem, submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, said fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. For good cause shown, the testing fee may be waived by the court.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Human Resources, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person

performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- ~~(a)~~ Restitution by payment may be ordered in a lump sum or in specified payments;
- ~~(b)~~ Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;
- ~~(e)~~ Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
- ~~(d)~~ Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;
- ~~(b)~~~~(e)~~ The circuit clerk shall assess an additional fee of **five**~~two~~ percent (5%)~~(2%)~~ to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall enure to **a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk and office personnel salaries, or combination thereof**~~the general fund of the State Treasury~~;
- ~~(c)~~~~(f)~~ When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court.~~The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation~~; and
- ~~(d)~~~~(g)~~ An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

- (4) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.
- (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed **twelve (12)**~~six (6)~~ months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2), or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

SECTION 50. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families.***
- (2) ***Within the limits of the administrative regulations, guidelines, and appropriations for this purpose, the program shall provide funding to the State Police or to a sheriff's office or city or county police department agreeing to provide protection to crime victims and witnesses and their families.***
- (3) ***Any Commonwealth's attorney or county attorney may apply to the Attorney General for funding for protection of crime victims, witnesses, and their families.***
- (4) ***No protective service shall be rendered to the same person for more than six (6) months.***
- (5) ***Protective services funded by this program shall be limited to:***

- (a) *Physical protection of the person;*
 - (b) *Physical security measures for the person's residence, vehicle, workplace, or combination thereof; or*
 - (c) *Short-term relocation.*
- (6) *The Attorney General shall promulgate administrative regulations under KRS Chapter 73A for the operation of the program.*
 - (7) *Nothing in this statute shall be construed to create a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.*
 - (8) *No court shall order a law enforcement agency to protect crime victim witnesses or their immediate families.*
 - (9) *No record that may lead to the identity of a person seeking or given protection under this section shall be an open record. This protection shall extend even to the question of whether such a record exists.*

SECTION 51. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *A person may be found by the sentencing judge to have committed an offense specified below as a result of a hate crime if the person intentionally because of race, color, religion, sexual orientation, or national origin of another individual or group of individuals, violates a provision of any one (1) of the following:*
 - (a) *KRS 508.010, 508.020, or 508.025;*
 - (b) *KRS 508.050 or 508.060;*
 - (c) *KRS 508.100 or 508.110;*
 - (d) *KRS 509.020;*
 - (e) *KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;*
 - (f) *KRS 512.020, 512.050, or 512.060;*
 - (g) *KRS 513.020, 513.030, or 513.040; or*
 - (h) *KRS 525.020, 525.050, 525.060, 525.070, or 525.080.*
- (2) *At sentencing, the sentencing judge shall determine if, by a preponderance of the evidence presented at the trial a hate crime was a primary factor in the commission of the crime by the defendant. If so, the judge shall make a written finding of fact and enter that in the court record and in the judgment rendered against the defendant.*
- (3) *The finding that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the sentencing judge as the sole factor for denial of probation, shock probation, conditional discharge, or other form of nonimposition of a sentence of incarceration.*
- (4) *The finding by the sentencing judge that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the Parole Board in delaying or denying parole to a defendant.*

SECTION 52. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of institutional vandalism when he, because of race, color, religion, sexual orientation, or national origin of another individual or group of individuals, knowingly vandalizes, defaces, damages, or desecrates objects defined in KRS 525.110.*
- (2) *Institutional vandalism is a Class D felony.*

SECTION 53. A NEW SECTION OF KRS CHAPTER 346 IS CREATED TO READ AS FOLLOWS:

A person who suffers personal injury as a result of conduct in violation of Section 51 of this Act is a victim of criminally injurious conduct as defined in KRS 346.020 and is eligible for awards pursuant to KRS Chapter 346.

SECTION 54. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of filing an illegal lien when he files a document or lien that he knows or should have known was forged, groundless, contained a material misstatement, or was a false claim. It shall be an affirmative defense that any material misstatement was not intentional.*

- (2) ***Filing an illegal lien is a Class D felony for the first offense, a Class C felony for any second offense, and a Class B felony for any subsequent offense.***

Section 55. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

- (1) "Local unit of government" means any city or county, ~~or any~~ combination of cities and counties, ***state or public university, or county sheriff's office*** of the Commonwealth.
- (2) "Police officer" means a full-time member of a lawfully organized police department of county, ***urban-county*** or city government, ***a sheriff or full-time deputy sheriff, including any providing court security or appointed under KRS 70.030, or a state or public university police officer*** who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any ***sheriff who earns the maximum constitutional salary for this office, any special*** ~~electe~~ ~~officer, sheriff,~~ deputy sheriff ***appointed under KRS 70.045, any*** constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
- (3) "Council" means the Kentucky Law Enforcement Council.

Section 56. KRS 15.460 is amended to read as follows:

- (1) Beginning ***on the effective date of this Act*** ~~July 1, 1982~~, an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ~~seven~~ ~~five~~ hundred ***fifty*** dollars ~~(\$2,750)~~ ~~(\$2,500)~~ for each qualified police officer it employs, ***and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified police officer it employs***, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.
- (2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.
- (3) (a) ***Each qualified sheriff who receives the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527 shall not receive a supplement.***
- (b) ***Each qualified sheriff who does not receive the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527, excluding the expense allowance provided by KRS 70.170 shall upon final settlement with the fiscal court under KRS 134.310, receive that portion of the supplement that will not cause his compensation to exceed the maximum salary.***
- (c) ***Each qualified sheriff who seeks to participate in the fund shall forward a copy of the final settlement prepared under KRS 134.310 to the fund. The sheriff shall reimburse the fund if an audit of the final settlement reflects that the sheriff received all or a portion of the supplement in violation of this section. A sheriff who fails to provide a copy of the final settlement to the fund or to reimburse the fund after correction by audit, if required, shall not be qualified to participate in the fund for a period of two (2) years.***
- (d) ***Each qualified deputy sheriff shall receive the supplement from the sheriff if the sheriff administers his own budget or from the county treasurer if the sheriff pools his fees. The failure of a sheriff to comply with the provisions of this section shall not affect the qualification of his deputies to participate in the fund.***

Section 57. KRS 70.030 is amended to read as follows:

- (1) The sheriff may appoint his own deputies, and may revoke the appointment at his pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a city of the first

class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his office, he shall take the oath required to be taken by the sheriff.

- (2) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him in the performance of the duties of his office. All nonsworn personnel shall serve at the pleasure of the sheriff.
- (3) No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.
- (4) *A sheriff's office may, upon the written request of the sheriff, participate in the Kentucky Law Enforcement Foundation Fund Program authorized by KRS 15.410 to 15.510, without the county establishing a deputy sheriff merit board. This subsection shall not prohibit the sheriff from requesting the fiscal court to establish a deputy sheriff merit board.*

SECTION 58. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

As used in Sections 58 to 61 of this Act, the following definitions apply:

- (1) *"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, or possession with intent to manufacture, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, except that this term does not include activities:*
 - (a) *By a practitioner incident to administering or dispensing of a controlled substance in the course of his professional practice; or*
 - (b) *By a practitioner, or by his authorized agent under his supervision, for the purpose of, or incident to, research, teaching, or chemical analysis; or*
 - (c) *By a pharmacist incident to dispensing of a controlled substance in the course of his professional practice.*
- (2) *"Methamphetamine" means any substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.*
- (3) *"Traffic" means to distribute, dispense, sell, transfer, or possess with intent to distribute, dispense, or sell methamphetamine.*

SECTION 59. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of manufacturing methamphetamine when he knowingly and unlawfully:*
 - (a) *Manufactures methamphetamine; or*
 - (b) *Possesses the chemicals or equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine.*
- (2) *Manufacture of methamphetamine is a Class B felony for the first offense and a Class A felony for a second or subsequent offense.*

SECTION 60. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of trafficking in methamphetamine when he knowingly and unlawfully sells, transfers, distributes, dispenses, or possesses with intent to distribute methamphetamine.*
- (2) *Trafficking in methamphetamine is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.*

SECTION 61. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) *Pay the costs of disposal of the controlled substances;*

- (2) *Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;*
- (3) *Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and*
- (4) *Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.*

Section 62. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner.
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.
- (3) "Controlled substance" means *methamphetamine*, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.
- (4) (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:
 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
 (b) Such term does not include:
 1. Any substance for which there is an approved new drug application;
 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.
- (5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- (6) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (7) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (8) "Drug" means:

- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
- (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
- (d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories.

- (9) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
- (10) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.
- (11) "Manufacture", *except as provided in Section 58 of this Act*, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
 - (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.
- (12) "Marijuana" means all parts of the plant *Cannabis sp.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.
- (13) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection (13)(a) of this section, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f).
- (14) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

- (15) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- (16) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (17) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (18) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.
- (19) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- (20) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (21) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.
- (22) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.
- (23) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.
- (24) "Traffic", *except as provided in Section 58 of this Act*, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.
- (25) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.
- (26) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Section 63. KRS 218A.1412 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance, *except a substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is* classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
 - (a) For the first offense be guilty of a Class C felony.
 - (b) For a second or subsequent offense be guilty of a Class B felony.

Section 64. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:

- (a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; *or specified in KRS 218A.1412*; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana; or
 - (b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
 - 1. Enhancing performance in an exercise, sport, or game; or
 - 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
- (a) For the first offense be guilty of a Class D felony.
 - (b) For a second or subsequent offense be guilty of a Class C felony.

Section 65. KRS 218A.1415 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance *that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is* classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.
- (2) Possession of a controlled substance in the first degree is:
 - (a) For a first offense a Class D felony.
 - (b) For a second or subsequent offense a Class C felony.

Section 66. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; *or specified in KRS 218A.1415*; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
 - (a) For a first offense a Class A misdemeanor.
 - (b) For a second or subsequent offense a Class D felony.

Section 67. KRS 218A.070 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Human Resources, the controlled substances listed in this section are included in Schedule II:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
 - (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone-Intermediate; 4-cyano-2-dimethylamino-4; 4-diphenyl butane; Moramide-Intermediate; 2-methyl-3-morpholino-1; 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) ~~Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~
- ~~(e)}~~ Phenmetrazine and its salts;
- ~~(c){(d)}~~ Methylphenidate.

Section 68. KRS 218A.180 is amended to read as follows:

- (1) Except when dispensed directly by a practitioner to an ultimate user, no *methamphetamine or* controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. No controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.
- (2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written or oral prescription by a practitioner. All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute compliance with this subsection. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written or oral shall be required.
- (3) All written prescriptions for controlled substances shall be dated as of and signed by the practitioner on the date when issued and shall bear the full name and address of the patient and the name, address and registration number of the practitioner. All prescriptions for controlled substances shall be retained for a period of two (2) years.
- (4) The pharmacist filling a written or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

Section 69. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two

thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars (\$60) nor more than five hundred dollars (\$500).

- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
 - (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
 - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.

- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100), and upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
 - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
 - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be **guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor**~~[punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty five dollars (\$35) nor more than five hundred dollars (\$500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars (\$60) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment]~~.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
 - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Section 70. KRS 532.060 is amended to read as follows:

- (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.
- (2) The authorized maximum terms of imprisonment for felonies are:
 - (a) For a Class A felony, not less than twenty (20) years nor more than *fifty (50) years, or* life imprisonment;
 - (b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;
 - (c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and
 - (d) For a Class D felony, not less than one (1) year nor more than five (5) years.
- (3) ***For any felony specified in KRS Chapter 510, KRS 530.020, 530.064, or 531.310 the sentence shall include an additional three (3) year period of conditional discharge which shall be added to the maximum sentence rendered for the offense. During this period of conditional discharge, if a defendant violates the provisions of conditional discharge, the defendant may be reincarcerated for:***
 - (a) ***The remaining period of his initial sentence, if any is remaining; and***
 - (b) ***The entire period of conditional discharge, or if the initial sentence has been served, for the remaining period of conditional discharge.***
- (4) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

Section 71. KRS 532.030 is amended to read as follows:

- (1) When a person is convicted of a capital offense he shall have his punishment fixed at death, ***or at a term of imprisonment for life without benefit of probation or parole***, or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.
- (2) When a person is convicted of a Class A felony he shall have his punishment fixed at imprisonment in accordance with KRS 532.060.
- (3) When a person is convicted of an offense other than a capital offense or Class A felony, he shall have his punishment fixed at:
 - (a) A term of imprisonment authorized by this chapter; or
 - (b) A fine authorized by KRS Chapter 534; or
 - (c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.
- (4) In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, ***or at a term of imprisonment for life without benefit of probation or parole***, or a term of imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, or a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

Section 72. KRS 532.025 is amended to read as follows:

- (1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult shall be

admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or IV-B of the Federal Social Security Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

- (b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.
- (2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:
- (a) Aggravating circumstances:
1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
 2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
 3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a destructive device, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
 4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;
 5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
 6. The offender's act or acts of killing were intentional and resulted in multiple deaths;~~and~~
 7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties; *and*
 8. *The offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.*

- (b) Mitigating circumstances:
1. The defendant has no significant history of prior criminal activity;
 2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
 3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;
 4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;
 5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
 6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;
 7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and
 8. The youth of the defendant at the time of the crime.

- (3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, **or imprisonment for life without benefit of probation or parole**, or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty, **or imprisonment for life without benefit of probation or parole**, or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

Section 73. KRS 533.010 is amended to read as follows:

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider~~[the possibility of]~~ probation, probation with an alternative sentencing plan, or conditional discharge. **Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge**, after due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation~~[, probation with an alternative sentencing plan,]~~ or conditional discharge **shall**~~[should]~~ be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
 - (a) There is substantial risk that during a period of probation~~[, probation with an alternative sentencing plan,]~~ or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) **In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:**

- (a) *There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;*
 - (b) *The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or*
 - (c) *A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.*
- (4) *The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the fact that:*
- (a) *The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;*
 - (b) *If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or*
 - (c) *The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.*
- (5) *In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.*
- (6) *Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:*
- (a) *To a halfway house for no more than twelve (12) months;*
 - (b) *To home incarceration with or without work release for no more than twelve (12) months;*
 - (c) *To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;*
 - (d) *To a residential treatment program for the abuse of alcohol or controlled substances; or*
 - (e) *To any other specified counseling program, rehabilitation or treatment program, or facility.*
- (7) *If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence, and commit the defendant to an institution.*
- (8) *In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:*
- (a) *A defendant sentenced to a halfway house shall:*
 - 1. *Be working or pursuing his or her education, or be enrolled in a full-time treatment program;*
 - 2. *Pay restitution during the term of probation; and*
 - 3. *Have no contact with the victim of the defendant's crime;*
 - (b) *A defendant sentenced to home incarceration shall:*
 - 1. *Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;*
 - 2. *Pay restitution during the term of home incarceration;*
 - 3. *Enter a treatment program, if appropriate;*

4. *Pay all or some portion of the cost of home incarceration as determined by the court;*
 5. *Comply with other conditions as specified; and*
 6. *Have no contact with the victim of the defendant's crime;*
- (c) *A defendant sentenced to jail with community service shall:*
1. *Pay restitution during all or some part of the defendant's term of probation; and*
 2. *Have no contact with the victim of the defendant's crime; or*
- (d) *A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:*
1. *Undergo mandatory drug screening during term of probation;*
 2. *Be subject to active, supervised probation for a term of five (5) years;*
 3. *Undergo aftercare as required by the treatment program;*
 4. *Pay restitution during the term of probation; and*
 5. *Have no contact with the victim of the defendant's crime.*
- (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.
- (10) *Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).*
- (11) *The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.*
- (12) *When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.*
- (13) *The jailer in each county incarcerating Class D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.*
- (14) *The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.*
- (15) *The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.*

Section 74. KRS 532.020 is amended to read as follows:

- (1) Any offense defined outside this code for which a law outside this code provides a sentence to a term of imprisonment in the state~~[penitentiary or reformatory]~~ for:
 - (a) At least one (1) but not more than five (5) years shall be deemed a Class D felony;
 - (b) At least five (5) but not more than ten (10) years shall be deemed a Class C felony;
 - (c) At least ten (10) but not more than twenty (20) years shall be deemed a Class B felony;
 - (d) For *at least* twenty (20) *but not*~~or~~ *more than fifty (50) years or for life* shall be deemed a Class A felony.
- (2) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A misdemeanor.
- (3) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum of less than ninety (90) days shall be deemed a Class B misdemeanor.

- (4) Any offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment shall be deemed a violation.

Section 75. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.
- (2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. ***A copy of the evaluation shall be furnished to the Commonwealth and to the defendant.*** If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the evaluation or treatment.
- (5) ***The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.***
- (6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 76. KRS 532.080 is amended to read as follows:

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.
- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, ***unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.***

- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:
- (a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than **fifty (50) years, or** life imprisonment; or
 - (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) ~~If the offense the person presently stands convicted of is a Class A, B, or C felony,]~~A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, **unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible** ~~for~~ parole until ~~the persons has~~ **having** served a minimum term of incarceration of not less than ten (10) years. **A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.**
- (8) **No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.**
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

Section 77. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim **or serious physical injury to a victim**, or rape in the first degree or sodomy in the first degree of the victim~~, or serious physical injury to a victim].~~ **The court shall designate in its judgment if the victim suffered death or serious physical injury.**
- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole **or imprisonment for life without benefit of probation or parole**), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on parole until he has served at least **twenty (20)**~~twelve (12)~~ years in the penitentiary. **Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.**
- (3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on parole until he has served at least **eighty-five percent (85%)**~~fifty percent (50%)~~ of the sentence imposed.
- (4) **A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.**
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- ~~(6)(5)~~ This section shall apply only to those persons who commit offenses after July 15, ~~1998~~**1986**.
- (7) **For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.**

Section 78. KRS 439.3405 is amended to read as follows:

- (1) Notwithstanding any statute eliminating **parole** or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(10), 439.3401, 532.080(7), and 533.060, the board, with

the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year *or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility due to paralysis as a result of stroke or trauma; or is dependent on external life support systems* and would not pose a threat to society if paroled.

- (2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year *or because of the conditions set forth in subsection (1) of this section he is totally dependent on others for the activities of daily living.*
- (3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the warden of the institution who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and warden's recommendation, shall be submitted to the board.
- (4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.

Section 79. KRS 15.315 is amended to read as follows:

The Kentucky Law Enforcement Council is hereby established as an independent administrative body of state government to be made up as follows:

- (1) The Attorney General of Kentucky, the commissioner of the Department of State Police, *directors of the Southern Police Institute*~~the dean of the School of Police Administration~~ of the University of Louisville, the dean of the *College*~~School~~ of Law Enforcement of Eastern Kentucky University, the president of the Kentucky Peace Officers Association, the president of the Kentucky Association of Chiefs of Police, and the Kentucky president of the Fraternal Order of Police, shall be ex officio members of the council, as full voting members of the council by reason of their office. The Kentucky special agent in charge of the Federal Bureau of Investigation shall serve on the council in an advisory capacity only without voting privileges. Each ex officio member may designate in writing a person to represent him and vote on his behalf.
- (2) Nine (9) members shall be appointed by the Governor for terms of four (4) years from the following classifications: a city manager or mayor, one (1) Kentucky sheriff, a member of the Kentucky State Bar Association, five (5) chiefs of police, and a citizen of Kentucky not coming within the foregoing classifications. No person shall serve beyond the time he holds the office or employment by reason of which he was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and the successor shall be appointed for the unexpired term. Any member may be appointed for additional terms.
- (3) No member may serve on the council with the dual membership as the representative of more than one (1) of the aforementioned groups or the holder of more than one (1) of the aforementioned positions. In the event that an existing member of the council assumes a position entitling him to serve on the council in another capacity the Governor shall appoint an additional member from the group concerned to prevent dual membership.
- (4) Membership on the council does not constitute a public office and no member shall be disqualified from holding public office by reason of his membership.

SECTION 80. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *When a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 is discharged or transferred from the facility, the administrator shall notify the law enforcement agency in the county to which the person is to be released, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.*
- (2) *If a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 escapes from the facility, the administrator shall notify the law enforcement agency in the county in which the facility is*

located, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

- (3) *The administrator of a psychiatric facility or forensic psychiatric facility, or the administrator's designee, who acts in good faith in making the notifications required in this section or is unable to provide the release information required, is immune from any civil liability.*
- (4) *The Department of Corrections shall notify, or contract with a private entity to notify, victims of crime who have made a notification request of the discharge or escape of a patient from a psychiatric facility or forensic psychiatric facility.*
- (5) *The Department of Corrections and the Cabinet for Human Resources shall each promulgate administrative regulations under KRS Chapter 13A to carry out the duties set forth in this statute.*

Section 81. KRS 532.210 is amended to read as follows:

- (1) Any misdemeanor *or a felon who has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony offense* may petition the sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration. Such petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the *defendant's*~~misdemeanant's~~ sentence.
- (2) The sentencing judge shall study the record of all persons petitioning for home incarceration and, in his discretion, may:
 - (a) Cause additional background or character information to be collected or reduced to writing by the county jailer or misdemeanor supervision department;
 - (b) Conduct hearings on the desirability of granting home incarceration;
 - (c) Impose on the home incarcerated such conditions as are fit, including restitution;
 - (d) Order that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration at whatever time or intervals, consecutive or nonconsecutive, as the court shall determine. The time actually spent in home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to this chapter whichever is the shorter;
 - (e) Issue warrants for persons when there is reason to believe they have violated the conditions of home incarceration, conduct hearings on such matters, and order reimprisonment in the county jail upon proof of violation; and
 - (f) Grant final discharge from incarceration.
- (3) All home incarcerated shall execute a written agreement with the court setting forth all of the conditions of home incarceration. The order of home incarceration shall incorporate that agreement and order compliance with its terms. The order and agreement shall be transmitted to the supervising authority and to the appropriate jail official.
- (4) Time spent in home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to this chapter.
- (5) Home incarcerated shall be under the supervision of the county jailer except in counties establishing misdemeanor supervision departments, wherein they shall be under the supervision of such departments. Home incarcerated shall be subject to the decisions of such authorities during the period of supervision. Fees for supervision or equipment usage shall be paid directly to the supervising authority.

SECTION 82. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

- (1) *No person, who at the time of the commission of the offense was acting or collaborating to engage on a continuing basis in furtherance of criminal gang activity, shall commit any of the following offenses:*
 - (a) *Any felony offense named in KRS 439.3401;*
 - (b) *Any offense under Section 83 of this Act; or*
 - (c) *Any illegal trafficking in destructive devices or booby traps as defined in KRS Chapter 237.*

- (2) *Other provisions of law notwithstanding, any person who is convicted of any of the offenses enumerated in subsection 1(a) to (c) of this section who was acting in furtherance of criminal gang activity at the time of the commission of the offense shall be penalized an additional one (1), two (2), or three (3) years, at the discretion of the judge.*
- (3) *As used in this section, "criminal gang activity" means a group of five (5) or more persons having four (4) or more of the following:*
- (a) *Self-proclamation;*
 - (b) *A common name;*
 - (c) *Common identifying hand or body signs or signals;*
 - (d) *A common identifying mode, style, or color of dress;*
 - (e) *An identifying tattoo or body marking;*
 - (f) *An organizational structure, overt or covert;*
 - (g) *A de facto claim of territory or jurisdiction; or*
 - (h) *An initiation ritual.*
- (4) *As used in this section, "continuing basis" means the commission, attempted commission, solicitation, or conviction of at least two (2) crimes, one (1) of which occurred after the effective date of this chapter and the last of which occurred within two (2) years, excluding any period of imprisonment, after the commission of a prior criminal act.*

SECTION 83. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of criminal gang recruitment when he solicits or entices another person to join a gang, or intimidates or threatens another person because the other person:*
- (a) *Refuses to join a criminal gang;*
 - (b) *Has withdrawn or is attempting to withdraw from a criminal gang; or*
 - (c) *Refuses to submit to a demand made by a criminal gang.*
- (2) *Criminal gang recruitment is a Class A misdemeanor for the first offense, and a Class D felony for a second or subsequent offense.*

SECTION 84. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

- (1) *It is no defense to prosecution under Section 82 or 83 of this Act that:*
- (a) *One (1) or more members of the gang are not criminally responsible for the offense;*
 - (b) *One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;*
 - (c) *A person has been charged with, acquitted, or convicted of any offense under Section 82 or 83 of this Act;*
 - (d) *The participants may not know each other's identity;*
 - (e) *The membership in the criminal gang may change from time to time; or*
 - (f) *The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.*
- (2) *Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing course of conduct constituting a violation of Section 82 or 83 of this Act.*

Section 85. KRS 635.020 is amended to read as follows:

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) Any other provision of KRS Chapters ~~600~~~~640~~ to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm was used in the commission of the offense or had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony.

If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, unless released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence.

- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

SECTION 86. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's Attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:*
 - (a) *The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense.*
 - (b) *The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.*

- (c) *No person shall be eligible for pretrial diversion more than once in a five (5) year period.*
 - (d) *Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program.*
 - (e) *Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion.*
- (2) *The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.*
 - (3) *The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.*

SECTION 87. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

When considering an application for pretrial diversion the attorney for the Commonwealth shall:

- (1) *Have a criminal record check made to ascertain if the person is eligible for pretrial diversion.*
- (2) *Interview the victim of the crime, if there is an identified victim, and, when the victim of the crime is deceased or the attorney for the Commonwealth deems it necessary, interview a member of the family of the victim of the crime. The attorney for the Commonwealth shall explain to the victim the diversion program, the proposed diversion conditions, and any other matters that the attorney for the Commonwealth deems to be appropriate. The results of the interview and recommendations of the victim may be presented to the court when it is considering the application for pretrial diversion. If the application for diversion is approved by the court, the approval shall be in open court and may be attended by the victim and the victim's family. The attorney for the Commonwealth shall attempt to notify them of this fact and the time, date, and place of the hearing.*
- (3) *Conduct any other investigation that the attorney for the Commonwealth determines may be necessary with regard to the defendant and the circumstances of the crime so as to enable him or her to set proper conditions of pretrial diversion, or to make a decision whether to recommend pretrial diversion.*

SECTION 88. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion except that supervision of the participants in the programs shall be done by the Division of Probation and Parole.*
- (2) *The provisions of KRS 533.030 relating to conditions of probation and restitution shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be ordered in all cases where a victim has suffered monetary damage as a result of the alleged crime. Restitution to the state, or the victim, or both, may be ordered in any pretrial diversion program.*

SECTION 89. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *If the defendant fails to complete the provisions of the pretrial diversion agreement within the time specified, or is not making satisfactory progress toward the completion of the provisions of the agreement, the Division of Probation and Parole, the victim, or a peace officer may inform the attorney for the Commonwealth of the alleged violation or noncompliance, and the attorney for the Commonwealth, may apply to the court for a hearing to determine whether or not the pretrial diversion agreement should be voided and the court should proceed on the defendant's plea of guilty in accordance with the law.*
- (2) *In making a determination as to whether or not a pretrial diversion agreement should be voided, the court shall use the same criteria as for the revocation of probation, and the defendant shall have the same rights as he or she would if probation revocation was sought.*
- (3) *Making application for a pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied.*

Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.

- (4) *If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor, in writing, that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not to proceed on the plea of guilty in accordance with the law.*

SECTION 90. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be listed as "dismissed-diverted" and shall not constitute a criminal conviction.*
- (2) *The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.*
- (3) *Pretrial diversion records shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the defendant.*

SECTION 91. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Supreme Court of Kentucky shall, by rule, determine all forms and other matters necessary for the proper administration of the pretrial diversion program.

SECTION 92. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *The pretrial diversion program authorized by Sections 86 to 91 of this Act shall be the sole program utilized in the Circuit Courts of the Commonwealth.*
- (2) *As of the effective date of this section, the only other pretrial diversion programs utilized by the Commonwealth shall be those authorized by the Kentucky Supreme Court and providing for the pretrial diversion of misdemeanants. Programs existing as of the effective date of this section may continue for the purpose of supervising persons granted pretrial diversion prior to the effective date of this section, however no new persons shall be admitted to these programs.*
- (3) *A person who is in a pretrial diversion program as of the effective date of this section may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier.*

Section 93. KRS 197.500 is amended to read as follows:

As used in KRS 197.505 to 197.525, unless the context otherwise requires:

- (1) "Department" means the Department of Corrections;
- (2) "Adult correctional facility" means *any minimum or medium adult penal or correctional facility operated for the purpose of housing convicted felons for the department*~~{an adult penal or correctional facility for the exclusive confinement of sentenced adult felons who have been classified by the department to be minimum security and restricted custody inmates and shall include any prison, reformatory, farm center, forestry camp, or similar institution which houses minimum security sentenced adult felons. For purposes of KRS 197.505 to 197.525, a county or regional jail shall not be considered an adult correctional facility}~~; and
- (3) "Private provider" means a private legal entity authorized to do business in the Commonwealth and which is in the business of establishing, operating, and managing adult correctional facilities.

SECTION 94. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

All persons, while acting for a private provider pursuant to the provisions of KRS 197.505 to 197.525 in any capacity entailing the maintenance of custody over any prisoners, shall have the power and authority of peace officers, including the authority granted to Department of Corrections employees pursuant to KRS 196.037(2).

SECTION 95. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

- (1) *When KRS 197.510 or any other statute relating to contracting for the private operation of prisons requires a performance bond, an irrevocable letter of credit or a performance bond in a form satisfactory to the Commonwealth may be substituted.*

- (2) *The contract shall also protect the state's interest in providing a continual level of prison beds available without a sudden drop in the number of prison beds available or the need to release inmates or provide for their transfer to other facilities.*

Section 96. KRS 197.170 is amended to read as follows:

- (1) The wardens of the state penitentiaries upon the release of any prisoner or inmate from confinement, shall immediately notify the Circuit Court, the Commonwealth's attorney of the district, the county attorney and sheriff of the county, the chief of police of the city and county, to which the inmate is released, and any victim, as defined in KRS 421.500, who has requested that he be notified on release of a particular inmate who victimized him and who has forwarded a current address and telephone number to the Department of Corrections, giving the residence of the person released and the name of the person to whom he was released. The provisions of KRS Chapter 202A notwithstanding, the Department of Corrections may release to the public the information that a petition to involuntarily hospitalize a prisoner has been filed concerning any inmate who is scheduled to be released from custody.
- (2) If the Circuit Court notified pursuant to subsection (1) of this section is a court other than the court which sentenced the inmate, the warden shall also notify the sentencing court.
- (3) Notices received by sheriffs and chiefs of police shall be posted in a conspicuous location where personnel employed by the department may see it. *Notices posted pursuant to this subsection shall remain posted for not less than seven (7) days.*

SECTION 97. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

In the event of a charge for a violation of KRS 514.040 with an amount of one hundred dollars (\$100) or less, a summons shall be issued prior to an arrest warrant. An arrest warrant shall not be issued until the person charged fails to respond to the summons; unless the issuing judge determines that, based upon previous offenses or charges, an arrest of the person is necessary in order to reasonably assure his or her appearance in court.

Section 98. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990 and 15.992, unless the context otherwise requires:

- (1) *"Basic training course" means the peace officer basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440;*
- (2) *"Certified peace officer" means a peace officer who is certified under Sections 99 to 110 of this Act;*
- (3) *"Certification" means the act by the council of issuing certification to a peace officer who successfully completes the training requirements established or approved by the Kentucky Law Enforcement Council pursuant to KRS 15.440 and the requirements set forth within this chapter;*
- (4) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990 and 15.992;
- (5)~~(2)~~ "Department" means the Department of Criminal Justice Training of the Justice Cabinet;
- (6)~~(3)~~ "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;~~and~~
- (7) *"Peace officer" means a person defined in KRS 446.010;*
- (8)~~(4)~~ "Secretary" means the secretary of the Justice Cabinet; *and*
- (9) *"Validated job task analysis" means the minimum entry level qualifications and training requirements for peace officers in the Commonwealth based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.*

SECTION 99. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:*
 - (a) *State Police officers;*
 - (b) *City, county, and urban-county police officers;*
 - (c) *Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);*
 - (d) *State or public university safety and security officers appointed pursuant to KRS 164.950;*
 - (e) *School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;*
 - (f) *Airport safety and security officers appointed under KRS 183.880;*
 - (g) *Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and*
 - (h) *Division of Insurance Fraud Investigators appointed under KRS 304.47-040.*
- (2) *The requirements of Sections 99 to 110 of this Act for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.*
- (3) *Additional training in excess of the standards set forth in Sections 99 to 110 of this Act for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.*
- (4) *The following officers may, upon request of the employing agency, be certified by the council:*
 - (a) *Deputy coroners;*
 - (b) *Deputy constables;*
 - (c) *Deputy jailers;*
 - (d) *Deputy sheriffs under KRS 70.045 and 70.263(3);*
 - (e) *Officers appointed under KRS 61.360;*
 - (f) *Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;*
 - (g) *Private security officers; and*
 - (h) *Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080.*
- (5) *The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:*
 - (a) *Sheriffs;*
 - (b) *Coroners;*
 - (c) *Constables; and*
 - (d) *Jailers.*
- (6) *Federal peace officers cannot be certified under Sections 99 to 110 of this Act.*

SECTION 100. A NEW SECTION OF KRS 15.310 TO 15.510 IS CREATED TO READ AS FOLLOWS:

A person certified after December 1, 1998, under Sections 99 to 110 of this Act shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) *Be a citizen of the United States;*
- (2) *Be at least twenty-one (21) years of age;*
- (3) *Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;*

- (4) *Possess a valid license to operate a motor vehicle;*
- (5) *Be fingerprinted for a criminal background check;*
- (6) *Not have been convicted of any felony;*
- (7) *Not be prohibited by federal or state law from possessing a firearm;*
- (8) *Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;*
- (9) *Have received an honorable discharge if having served in any branch of the armed forces of the United States;*
- (10) *Have passed a medical examination by the council to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;*
- (11) *Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council which shall accept them as complying with KRS 15.315 to 15.510;*
- (12) *Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.315 to 15.510;*
- (13) *Have been interviewed by the employing agency;*
- (14) *Not have had certification as a peace officer permanently revoked in another state;*
- (15) *Have taken a psychological examination administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;*
- (16) *Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and*
- (17) *Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.*

SECTION 101. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *The council shall administer the physical agility, polygraph, psychological, and drug screen tests at cost for those agencies requesting council-administered tests. Agencies may petition the council for waiver of the costs of these tests upon a showing of undue financial hardship.*
- (2) *An agency may, at its own expense, administer its own physical agility, polygraph, psychological, medical, and drug screen tests, as well as additional tests.*

SECTION 102. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

The following certification categories shall exist:

- (1) *Precertification status. The officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in Section 100 of this Act, but has not successfully completed a basic training course, except those officers covered by Section 109 of this Act. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his enforcement powers shall automatically terminate, and he shall not exercise peace officer powers in the Commonwealth until he has successfully completed a basic training course.*
- (2) *Certification status. Unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.*
- (3) *Inactive status.*
 - (a) *The person has been separated from the agency by which he was employed or appointed and has no peace officer powers;*
 - (b) *The person has been employed by another agency in a non-peace officer position; or*
 - (c) *The person is on military active duty for a period exceeding three hundred sixty-five (365) days.*

The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he has not committed an act for which his certified status may be revoked pursuant to Sections 99 to 110 of this Act and by successfully completing forty (40) hours of in-service training as prescribed by the council.

- (4) *Revoked or denied status. The officer has no enforcement powers and has been separated from an enforcement agency for any one (1) of the following reasons:*
 - (a) *Failure to meet or maintain training requirements;*
 - (b) *Willful falsification of information to obtain or maintain certified status;*
 - (c) *Certification was the result of an administrative error;*
 - (d) *Plea of guilty to, conviction of, or entering of an Alford plea to any felony;*
 - (e) *Prohibition by federal or state law from possessing a firearm.*
- (5) *The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.*

SECTION 103. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of Section 100 of this Act.*
- (2) *If the person is certified, the council shall continue certified status.*
- (3) *If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked as provided by Sections 99 to 110 of this Act.*
- (4) *If the person is not certified and not on inactive status, the council shall designate the person as being in precertification status.*
- (5) *A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.*
- (6) *A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under Sections 99 to 110 of this Act.*
- (7) *If the certified officer has successfully completed the basic training required by KRS 95.955 and transfers from a peace officer position from a current employer to a peace officer position for another employer, and*

both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

SECTION 104. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

Any person who is aggrieved by a determination by the employing agency or by the council that he fails to meet the requirements for precertification status may:

- (1) *If the determination was made by the employing agency, appeal the decision in the same manner as other employment appeals within the agency, if an appeals procedure has been established by the employing agency; or*
- (2) *If the determination was made by the council, appeal the decision to the local Circuit Court having jurisdiction over the employing agency.*

SECTION 105. A NEW SECTION OF KRS CHAPTER 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *Within ten (10) working days from separation from service, the chief executive officer of the employing agency, or his designee, shall file with the council a summary report that provides the relevant information about the person's separation from service.*
- (2) *If the person has been separated for having pled guilty to, been convicted of, or entered an Alford plea to a felony, the council shall revoke the person's certification.*
- (3) *If the person has been separated for any other reason other than death, the council shall place the certification on inactive status. If the person has been separated due to death, the certification shall be retired.*
- (4) *The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.*
- (5) *The council shall not accept or hear complaints.*

SECTION 106. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file a declaratory action in Franklin Circuit Court to declare the job task analysis invalid.*
- (2) *Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.*

SECTION 107. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *An agency may be required to pay for all training received by a person from the Department of Criminal Justice Training or any other facility approved by the Kentucky Law Enforcement Council if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 99 of this Act and if that person fails to achieve certified status as required by Sections 99 to 110 of this Act.*
- (2) *The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 99 of this Act and if that person:*
 - (a) *Fails to meet those minimum qualifications set forth in Section 110 of this Act;*
 - (b) *Fails to achieve certified status as required by Sections 99 to 110 of this Act; or*
 - (c) *Fails to maintain the minimum training requirements set forth in KRS 95.955.*

SECTION 108. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to Sections 99 to 110 of this Act shall not be superseded by the provisions of Sections 99 to 110 of this Act, and in all instances the provisions of all statutes specified below shall prevail:*
 - (a) *KRS Chapter 16, relating to Kentucky State Police Officers;*

- (b) *KRS Chapter 70, relating to sheriffs, and deputy sheriffs;*
- (c) *KRS Chapter 78, relating to county police;*
- (d) *KRS Chapters 15 and 95, relating to city and urban-county police;*
- (e) *KRS Chapter 183, relating to airport safety and security officers;*
- (f) *KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;*
- (g) *KRS Chapter 18A, relating to all state peace officers;*
- (h) *KRS 241.090, relating to Department of Alcoholic Beverage Control field representatives and investigators;*
- (i) *KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and*
- (j) *Any other statutes affecting peace officers not specifically cited herein.*

SECTION 109. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *The effective date of Sections 99 to 110 of this Act shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of Sections 99 to 110 of this Act and shall be granted certified status as long as they remain in continuous employment of the agency by which they were employed as of the effective date of this Act, or shall have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(4) when seeking employment with another law enforcement agency.*
- (2) *Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in Sections 99 to 110 of this Act. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.*
- (3) *The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, social security number, background investigation, medical examination, psychological examination, and polygraph examination conducted pursuant to his statute shall not be subject to disclosure.*

SECTION 110. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

No provisions of Sections 99 to 110 of this Act shall preclude an appointing or employing agency from having requirements that are in excess of or in addition to any requirements specified by this Act or an administrative regulation promulgated under Sections 99 to 110 of this Act.

Section 111. KRS 532.055 is amended to read as follows:

- (1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.
 - (a) Evidence may be offered by the Commonwealth relevant to sentencing including:
 - 1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;
 - 2. The nature of prior offenses for which he was convicted;
 - 3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;
 - 4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;
 - 5. The defendant's status if on probation, parole, conditional discharge, or any other form of legal release; ~~and~~
 - 6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be

admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; *and*

7. *The impact of the crime upon the victim, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim;*

- (b) The defendant may introduce evidence in mitigation *or in support of leniency*~~[- For purposes of this section, mitigating evidence means evidence that the accused has no significant history of criminal activity which may qualify him for leniency. This section shall not preclude the introduction of evidence which negates any evidence introduced by the Commonwealth]; and~~
 - (c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.
- (3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080.~~{ This section shall not apply to sentencing hearings provided for in KRS 532.025.}~~
- (4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

Section 112. KRS 439.315 is amended to read as follows:

- (1) A person placed by a releasing authority on probation, parole, or other form of release subject to supervision by the Department of Corrections and all persons supervised pursuant to KRS 439.560 shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release.
- (2) The fees shall be as follows:
 - (a) For a felony, not less than ten dollars (\$10) per month while on active supervision nor more than two thousand five hundred dollars (\$2,500) *per year*.
 - (b) For a misdemeanor, not less than ten dollars (\$10) per month while on active supervision nor more than five hundred dollars (\$500) *per year*, except as provided in subsection (13) of this section.
- (3) The releasing authority shall order the fee paid in a lump sum or installments. If the fee is to be paid in a lump sum, the person shall not be released from custody until the fee is paid in full.
- (4) Upon the failure of a person to pay an installment on a fee set forth in a release agreement, the releasing authority shall hold a hearing to determine why the installment has not been paid. Failure without good cause to pay an installment pursuant to a release agreement shall be grounds for the revocation of probation, parole, conditional release, or other form of release upon which the person has been released as provided in KRS 533.050.
- (5) The releasing authority shall hold a hearing to determine the ability of the defendant to make the payments; and in making this determination, the releasing authority shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. In counties containing a city of the first class or an urban-county form of government, the releasing authority may waive the payment of the fee in whole or in part for defendants placed under the supervision of the adult misdemeanor probation and work release program, if it finds that any of the factors in subsection (6) of this section exist.
- (6) The releasing authority shall not waive any fee unless the commissioner of the Department of Corrections or his designee petitions the releasing authority in written form for the waiver. The Department of Corrections shall not petition unless:

- (a) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of student status shall be supplied to the releasing authority by the educational institution in which the offender is enrolled. In such case, the fee may be postponed until completion of education but shall be paid thereafter.
 - (b) The offender has an employment disability, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the releasing authority.
- (7) At any time during the pendency of the judgment or order rendered according to the terms of this section, a defendant may petition the releasing authority to modify or vacate its previous judgment or order on the grounds of change of circumstances with regard to the defendant's ability to pay the fee. The releasing authority shall advise the defendant of this right at the time of the rendering of the judgment or order placing the defendant on probation, parole, or other supervised release.
 - (8) All sums paid by the defendant pursuant to this section shall be paid into the general fund, except as provided in subsection (13) of this section.
 - (9) When granting a release of any defendant by way of probation, parole, or otherwise, the releasing authority shall make the payment of this fee a condition of release, unless the fee has been waived, reduced, or delayed as provided in this section. Nonpayment shall be grounds for revocation of the release as provided in KRS 533.050.
 - (10) The releasing authority, if the Department of Corrections petitions the releasing authority to modify the fee, shall consider the petition and may waive the payment of the fee in whole or in part, delay payment of the fee, increase the fee, or deny the petition.
 - (11) All fees fixed under the provisions of this section shall be collected by the circuit clerk of the county where the defendant is supervised, except as provided in subsection (13) of this section.
 - (12) The Department of Corrections and the Division of Probation and Parole shall, for each person released under its supervision, keep an account of all payments made and report delinquencies to the releasing authority.
 - (13) In counties containing a city of the first class or an urban-county form of government, persons placed by a releasing authority on probation, parole, or other release subject to supervision by the adult misdemeanor probation and work release program of the county containing a city of the first class or urban-county government shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release. The fees shall be assessed by the releasing authority in accordance with the provisions of this section. The fee for a misdemeanor defendant placed under the supervision of an adult misdemeanor probation and work release program of a county containing a city of the first class or an urban-county government shall be not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) *per year*. All sums paid by the defendant under this subsection shall be paid into the general fund of the county containing a city of the first class or urban-county government in lieu of the payment specified in subsection (8) of this section. All fees fixed under this subsection shall be collected by the circuit clerk of the county containing a city of the first class or urban-county involved. The adult misdemeanor probation and work release program of the county containing a city of the first class or urban-county government shall, for each person released under its supervision, keep an account of all payments made, maintain copies of all receipts issued by the circuit clerk, and report delinquencies to the court.

Section 113. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Commissioner" means commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;
 - (b) "Department" means Department of Workplace Standards in the Labor Cabinet;
 - (c) "Wages" include any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;

- (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
 - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
 - 1. Any individual employed in agriculture;
 - 2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
 - 3. Any individual employed by the United States;
 - 4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
 - 5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
 - 6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;
 - 7. Any individual employed as a babysitter in employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
 - 8. Any individual engaged in the delivery of newspapers to the consumer;
 - 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the commissioner of the Department of Personnel shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
 - 10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year; or
 - 11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Human Resources under KRS 199.640 to 199.670.
 - (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

- (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
 - (d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
 - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
 - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
 - (c) 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but, if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
 - 2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;
 - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly-owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, **and any "private provider", as defined in Section 93 of this Act, which enters into any contract for the construction of an "adult correctional facility", as defined in Section 93 of this Act;** and
 - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, **including "adult correctional facilities", as defined in Section 93 of this Act,** constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

Section 114. KRS 532.110 is amended to read as follows:

- (1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:

- (a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term;
 - (b) The aggregate of consecutive definite terms shall not exceed one (1) year; and
 - (c) The aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class of crime for which any of the sentences is imposed. ***In no event shall the aggregate of consecutive indeterminate terms exceed seventy (70) years.***
- (2) If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve.
 - (3) When a defendant is sentenced to imprisonment for a crime committed while on parole in this state, the term of imprisonment and any period of reimprisonment that the board of parole may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.
 - (4) Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.
 - (5) Notwithstanding any provision in this chapter to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, the sentence imposed for that offense may, upon order of the trial court, be served in that institution. The person may be transferred to another institution pursuant to administrative regulations of the Department of Corrections.

SECTION 115. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) ***When a person is convicted of, pleads guilty to, or enters an Alford plea to a felony offense and is sentenced to jail as a condition of conditional discharge, or as a condition of probation, the Department of Corrections shall pay for the incarceration of that person in a county jail at the same rate and under the same conditions as for a Class D felon who is incarcerated in the county jail under KRS 532.100.***
- (2) ***If a person incarcerated in a county jail on conditional discharge or probation under subsection (1) of this section is granted work release, he shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a prisoner shall be deducted from the amount which the Department of Corrections shall pay for the incarceration of that prisoner.***

Section 116. KRS 640.010 is amended to read as follows:

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), ~~(4),~~ (5), (6), (7), ~~(8)~~ ***or (9)***, the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.
- (2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2), (3), ~~(6), (7), (8),~~ ***or (9)***, the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.
 - (a) At the preliminary hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.
 - (b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:
 - 1. The seriousness of the alleged offense;
 - 2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;

3. The maturity of the child as determined by his environment;
 4. The child's prior record;
 5. The best interest of the child and community;
 6. The prospects of adequate protection of the public;~~and~~
 7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; **and**
 8. ***Evidence of a child's participation in a gang.***
- (c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.
- (d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.
- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), ~~(5)~~~~(4)~~, ~~(6)~~~~and~~ (7), **and (8)**, but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

Section 117. KRS 15.330 is amended to read as follows:

- (1) The council is vested with the following functions and powers:
- (a) To prescribe standards for the approval and continuation of approval of schools at which law enforcement training courses required under KRS 15.310 to 15.510 and KRS 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;
 - (b) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;
 - (c) To prescribe qualifications for attendance and conditions for expulsion from such schools;
 - (d) To approve, to issue and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;
 - (e) To approve law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;
 - (f) To inspect and evaluate schools at any time and to require of schools, instructors and persons approved or to be approved under the provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992, any information or documents;
 - (g) To recommend reasonable rules and regulations to the secretary to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992;
 - (h) To monitor the Law Enforcement Foundation Program as prescribed in KRS 15.410 to 15.510;~~and~~
 - (i) To adopt bylaws for the conduct of its business not otherwise provided for; **and**
 - (j) ***The council shall have the authority to certify police officers as set out in this chapter.***
- (2) The provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992 do not apply to the Department of State Police ***except for the certification requirement established by this chapter.***

Section 118. KRS 532.045 is amended to read as follows:

- (1) As used in this section:

- (a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, counselor, staff or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;
 - (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
 - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
 - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
 - (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
 - (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
 - (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
 - (f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
 - (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
 - (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
 - (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years conditional discharge required by Section 25 of this Act.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.

- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

SECTION 119. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created a program for prerelease probation of inmates confined in correctional facilities under the jurisdiction of or under contract to the Department of Corrections.*
- (2) *Any inmate who is in a prerelease program or eligible for a prerelease program as specified by administrative regulations of the Department of Corrections may apply to the sentencing court for prerelease probation.*
- (3) *The court, upon favorable recommendation of the Department of Corrections, may place the inmate on probation under those terms and conditions the court deems necessary, which may include but not need to be limited to those specified in KRS 533.030.*
- (4) *In particular, the court may require that an inmate placed on prerelease probation remain in a half-way house approved by the Department of Corrections and that the probationer pay the cost of his or her lodging in the half-way house and the costs of probation supervision in accordance with applicable statutes for probation supervision and persons granted work release from jail.*
- (5) *An inmate placed on prerelease probation shall no longer be considered as an inmate of the Department of Corrections but shall be considered as a defendant placed on probation, subject to supervision by the Division of Probation and Parole, or other agency approved by the court, and the orders of the court.*
- (6) *A person placed on prerelease probation by the court who violates the conditions of his or her probation may be dealt with by the court in the same manner as any other person who violates the conditions of probation.*
- (7) *The period of probation under this section shall not exceed the maximum expiration date of the inmate applying for the probation.*

Section 120. KRS 15.440 is amended to read as follows:

Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:

- (1) Employs one (1) or more police officers;
- (2) Pays every police officer *at least the*~~[a]~~ *minimum federal wage*~~[annual salary of four thousand three hundred fifty dollars (\$4,350)]~~;
- (3) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972, *and for all sheriffs appointed or elected on or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed after the effective date of this Act*; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection, *and that all sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to the effective date of this Act shall be deemed to have met the requirements of this subsection*;
- (4) Requires all police officers employed on or after July 1, 1972, *and all sheriffs appointed or elected on or after the effective date of this Act, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998*, to successfully complete a basic training course of at least four hundred (400) hours'

duration within one year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council. *All sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998, shall be deemed to have met the requirements of this subsection. The council may, by promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than four hundred (400) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis* ~~[- notwithstanding the authority of any department or administrative agency of state government to promulgate administrative regulations, no such department or administrative agency may, by administrative action, increase the minimum number of hours for a basic training course specified in this subsection];~~

- (5) Requires all police officers, whether originally employed before or after July 1, 1972, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council;
- (6) Requires compliance with all provisions of law applicable to local police, *state or public university police, or sheriffs and their deputies*, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;
- (7) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, *state or public university police department, or sheriff's office*, issued by the Justice Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;
- (8) Provided, however, that no local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department, *state or public university police department, or sheriff's office* actually begins and continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department, *state or public university police department, or sheriff's office* has substantially complied with subsections (6) and (7) of this section.

Section 121. KRS 197.170 is amended to read as follows:

- (1) The wardens of the state penitentiaries upon the release of any prisoner or inmate from confinement, shall immediately notify the Circuit Court, the Commonwealth's attorney of the district, the county attorney and sheriff of the county, the chief of police of the city and county, to which the inmate is released, and any victim, as defined in KRS 421.500, who has requested that he be notified on release of a particular inmate who victimized him and who has forwarded a current address and telephone number to the Department of Corrections, giving the residence of the person released and the name of the person to whom he was released. The provisions of KRS Chapter 202A notwithstanding, the Department of Corrections may release to the public the information that a petition to involuntarily hospitalize a prisoner has been filed concerning any inmate who is scheduled to be released from custody.
- (2) If the Circuit Court notified pursuant to subsection (1) of this section is a court other than the court which sentenced the inmate, the warden shall also notify the sentencing court.
- (3) Notices received by sheriffs and chiefs of police shall be posted in a conspicuous location where personnel employed by the department may see it. *Notices posted pursuant to this subsection shall remain posted for not less than seven (7) days.*

Section 122. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), *hepatitis A, B, and C, and tuberculosis.*

- (2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

SECTION 123. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO READ AS FOLLOWS:

- (1) ***A person is guilty of disarming a peace officer when he intentionally:***
 - (a) ***Removes a firearm or other deadly weapon from the person of a peace officer when the peace officer is acting within the scope of his official duties; or***
 - (b) ***Deprives a peace officer of the officer's use of a firearm or deadly weapon when the peace officer is acting within the scope of his official duties.***
- (2) ***Disarming a peace officer is a Class D felony.***
- (3) ***The provisions of this section shall not apply when:***
 - (a) ***The defendant does not know or could not reasonably have known that the person disarmed was a peace officer; or***
 - (b) ***The peace officer was, at the time of the disarming or incident thereto, engaged in felonious conduct.***

SECTION 124. A NEW SECTION OF KRS CHAPTER 16 IS CREATED TO READ AS FOLLOWS:

- (1) ***Subject to the duty to return confiscated firearms to innocent owners pursuant to Section 127 of this Act, all firearms confiscated by the Kentucky State Police and not retained for official use pursuant to Section 127 of this Act shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearm sold. The Kentucky State Police shall transfer firearms that are to be sold to the Department of Finance, Division of Surplus Property, for sale. Proceeds of the sale shall be transferred to the account of the Department for Local Government for use as provided in subsection (2) of this section. Prior to the sale of any firearm, the Kentucky State Police shall make an attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law.***
- (2) ***The proceeds of firearms sales shall be utilized by the Department for Local Government to provide grants to city, county, charter county, and urban-county police and sheriff's departments for the purchase of body armor for sworn peace officers of those departments. Body armor purchased by the department receiving grant funds shall meet or exceed the standards issued by the National Institute of Justice for body armor. No police or sheriff's department shall apply for a grant to replace existing body armor unless that body armor has been in actual use for a period of five (5) years or longer.***

Section 125. KRS 16.210 is amended to read as follows:

- (1) Property taken by the Kentucky State Police shall be placed with the property officer of the post to which the officer is assigned.
- (2) Property which is forfeited may be disposed of as provided by KRS 500.090; however, the proceeds of any sale shall go to the state ***or be distributed as otherwise provided by law.***
- (3) All other property may be disposed of as provided in KRS 67.592 and 67.594 except that all proceeds from any sale shall go to the state.

Section 126. KRS 237.090 is amended to read as follows:

Any firearm or ammunition forfeited pursuant to KRS 237.060 to 237.090 shall, upon order of a court of competent jurisdiction, be ~~disposed of [destroyed, sold,]~~ or retained as provided in KRS 500.090.

Section 127. KRS 500.090 is amended to read as follows:

- (1) All property which is subject to forfeiture under any section of the Kentucky Penal Code shall be disposed of in accordance with this section.
- (a) Property *other than firearms* which is forfeited under any section of this code may, upon order of the trial court, be destroyed by the sheriff of the county in which the conviction was obtained.
- (b) Property *other than firearms* which is forfeited under any section of this code may, upon order of the trial court, be sold at public auction. The expenses of keeping and selling such property and the amount of all valid recorded liens that are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid to:
1. The state if the property was seized by an agency of the state or peace officer thereof;
 2. The county, if the property was seized by the sheriff or an agency or peace officer of the county;
 3. The Department of Fish and Wildlife Resources, if the property was seized by a peace officer of the Department of Fish and Wildlife or was seized by any other officer for violation of KRS Chapter 150;
 4. The city, if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the city property clerk;
 5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten percent (10%) of the proceeds) if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the sheriff or the county police; or
 6. The state, if the property was seized by any combination of agencies listed above.
- (c) *Subject to the duty to return confiscated firearms to innocent owners pursuant to this section, all firearms confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms coming into the custody of a state or local law enforcement agency and not retained for official use shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearms sold. Prior to the sale of any firearm, the law enforcement agency shall make a bona fide attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law. This subsection relating to auction of firearms shall not apply to firearms auctioned by the Department of Fish and Wildlife that may be sold to individual purchasers residing in Kentucky who are eligible under federal law to purchase firearms of the type auctioned.*
- (d) *Proceeds from firearms sales shall be utilized by the law enforcement agency for the purchase of body armor meeting National Institute of Justice Standards for sworn officers of the law enforcement agency or for the purchase of firearms, ammunition, or range facilities, or a combination thereof, by the law enforcement agency. This subsection shall not apply to the Department of Fish and Wildlife.*
- (e) If property which is forfeited under any section of this code is determined by the trial court to be worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset, the court may abandon any interest in such property. Property which is abandoned pursuant to this section shall be returned to the lawful claimant upon payment of expenses for keeping the property.
- ~~(f)(4)~~ Property which is forfeited under any section of this code may, upon order of the trial court, be retained for official use in the following manner. Property which has been seized by an agency of the state may be retained for official state use. Property which has been seized by an agency of county, city, or urban-county government may be retained for official use by the government whose agency seized the property or for official state use. Property seized by any other unit of government may be retained

only for official state use. The expenses for keeping and transferring such property shall be paid by the unit of government by which the property is retained.

- (2) Money which has been obtained or conferred in violation of any section of this code shall, upon conviction, be forfeited for the use of the state. This subsection shall not apply when, during the course of the proceeding in which the conviction is obtained, the person from whom said money was unlawfully acquired is identified.
- (3) Property forfeited under any section of this code shall be disposed of in accordance with this section only after being advertised pursuant to KRS Chapter 424. This subsection shall not apply to property which is designed and suitable only for criminal use or to money forfeited under subsection (2) of this section.
- (4) The trial court shall remit the forfeiture of property when the lawful claimant:
 - (a) Asserts his claim before disposition of the property pursuant to this section;
 - (b) Establishes his legal interest in the property; and
 - (c) Establishes that the unlawful use of the property was without his knowledge and consent. Subsection (4) shall not apply to a lienholder of record when the trial court elects to dispose of the property pursuant to subsection (1)(b) of this section.
- (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.
- (6) Before property which has had its identity obscured in violation of KRS 514.120 may be sold or retained for official use as provided in this section, the court shall cause a serial or other identifying number to be placed thereon and a record of the number assigned shall be placed in the court order authorizing the sale or retention of the property. This number shall be assigned, whenever applicable, in consultation with the Kentucky State Police and any other state or federal regulatory agency. The purchaser of the property shall be given a document stating that the property had been forfeited pursuant to law and that a number, shown on the document, has been assigned which shall be deemed as compliance of the owner with KRS 514.120. When property is returned to an owner pursuant to this section and its identity has been obscured by another person in violation of KRS 514.120 the court shall provide a document to the owner relieving him of liability for its continued possession. This document shall serve as evidence of compliance with KRS 514.120 by the owner or any person to whom he lawfully disposes of the property. This section shall not apply to any person after property has been sold or returned in compliance with this section, who violates the provisions of KRS 514.120 with respect to that property.
- (7) Before forfeiture of any property under this section it shall be the duty of the trial court to determine if a lawful owner or claimant to the property has been identified or is identifiable. If a lawful owner or claimant has been identified or is identifiable the court shall notify the owner or claimant that the property is being held and specify a reasonable period of time during which the claim may be made, or may, in lieu thereof, order the return of the property to the lawful owner or claimant. If the lawful owner or claimant does not assert his claim to the property after notification or if he renounces his claim to the property, the property shall be disposed of as provided in this section. It shall be the duty of all peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture to report the same to the trial court before the act of forfeiture occurs.

SECTION 128. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *When a police department, sheriff's department, or other agency of city, county, urban-county, or charter county government or other unit of local government disposes of firearms or ammunition owned by that unit of local government, the disposition shall be by:*
 - (a) *Public auction to persons eligible under federal law to purchase the type of firearm or ammunition being offered for sale;*
 - (b) *Trade to the federally licensed firearms dealer providing new firearms or ammunition to the agency;*
or
 - (c) *Transfer to another government agency or government-operated museum in Kentucky for official use or display.*
- (2) *If the firearms or ammunition are sold, the proceeds of the sale shall be utilized solely for the purchase of body armor meeting or exceeding National Institute of Justice standards, firearms, ammunition, or range facilities, or a combination thereof, by the agency of government.*

SECTION 129. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *When an agency of Kentucky state government disposes of firearms or ammunition owned by that agency, the disposition shall be by:*
 - (a) *Public auction to persons who are eligible under federal law to purchase the type of firearm or ammunition;*
 - (b) *Trade to the federally licensed firearms dealer providing new firearms or ammunition to the agency;*
 - (c) *Transfer to another government agency or government-operated museum in Kentucky for official use or display; or*
 - (d) *Sale to a retiring employee as authorized by law.*
- (2) *If the firearms or ammunition are sold, the proceeds of the sale shall be utilized solely for the purchase of body armor meeting or exceeding National Institute of Justice standards, firearms, ammunition, or range facilities, or a combination thereof, by the agency of government. The provisions of this subsection shall not apply to the Department of Fish and Wildlife.*

Section 130. KRS 95.435 is amended to read as follows:

- (1) The police department in cities of the second class, and urban-county government shall take charge of property, within their jurisdiction, alleged to be or suspected of being the proceeds of crime, property taken from the person of a prisoner, lost or abandoned property taken into the custody of any member of the police force or criminal court, and property taken from persons supposed to be insane, intoxicated or otherwise incapable of taking care of themselves. The officer or court having custody of such property shall as soon as practicable deliver it into the custody of the police department.
- (2) All such property shall be particularly described and registered by the police department in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom taken, with the general circumstances, the date of its receipt, the name of the officer recovering the property, the names of all claimants thereto, and any final disposition of the property. The police department shall advertise the property pursuant to KRS Chapter 424 for the information of the public as to the amount and disposition of the property.
- (3) If any property in the custody of the police department is desired as evidence in any criminal court, such property shall be delivered to any officer who presents an order to that effect from the court. Such property shall not be retained in the court, but shall be returned to the police department.
- (4) All property *except firearms* that remains in the custody of the police department for three (3) months, without any lawful claimant thereto, may be sold at public auction in a suitable room designated for that purpose, after having been advertised pursuant to KRS Chapter 424. The proceeds of such sales shall be paid into the police and firefighters' pension fund of said city or urban-county government. *Firearms shall be disposed of as provided by KRS 500.090.*

SECTION 131. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

- (1) *The administrator for each facility operated by the Department of Corrections or under contract to the department is encouraged to work with local religious leaders to provide a voluntary chaplain program.*
- (2) *An inmate shall be allowed at least one (1) visit per week by a minister, priest, or rabbi of the inmate's choice.*

SECTION 132. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *Each local jailer is encouraged to work with local religious leaders to provide a voluntary chaplain program.*
- (2) *An inmate shall be allowed at least one (1) visit per week by a minister, priest, or rabbi of the inmate's choice.*

SECTION 133. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

Subject to restrictions for violations of rules, any inmate of a facility operated by or under contract to the department who requests religious publications or other religious instructional materials may receive them provided:

- (1) *They have been purchased by or donated to the inmate; or*
- (2) *Donated to the institution for use by inmates; and*
- (3) *Do not constitute a threat to the security of the institution.*

SECTION 134. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

Subject to restrictions for violations of rules, an inmate of a facility operated by or under contract to a local jail who requests religious publications or other religious instructional materials may receive them provided:

- (1) *They have been purchased by or donated to the inmate; or*
- (2) *Donated to the institution for use by inmates; and*
- (3) *Do not constitute a threat to the security of the institution.*

SECTION 135. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

- (1) *Each facility operated by the Department of Corrections or under contract to the department shall maintain reports of all grievances by inmates during a calendar year. A grievance report shall be an open public record and made available to any person who requests to see the file at the site as long as the inmate has signed a waiver of confidentiality.*
- (2) *Each grievance report shall contain the date the grievance was filed, the nature of the grievance, the name of the individual filing the grievance as well as the name of the person preparing the report, the residence, the county, actions taken by the facility, and the date the report was filed. The report shall be signed by an administrator or officer of the facility.*
- (3) *With the written permission of the inmate, a photo copy of the file may be made and the content may be released to the public. The facility may require a ten cent (\$0.10) per page copying fee .*
- (4) *All grievance reports may be destroyed after December 31 of the following year.*

Section 136. KRS 237.110 is amended to read as follows:

- (1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. Licenses shall be valid throughout the state for a period of three (3) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court.
- (2) The Department of State Police shall issue a license if the applicant:
 - (a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;
 - (b) Is twenty-one (21) years of age or older;
 - (c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(g) or KRS 527.040;
 - (d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;
 - (e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

- (f) Demonstrates competence with a firearm by any one (1) of the following:
1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of Fish and Game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;
 2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or approved by the Department of Criminal Justice Training;
 3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or
 4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and de-certification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be deemed to have met the training requirement;

- (g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and
- (h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.
- (3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.
- (4) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars (\$60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of

State Police within five (5) working days. Twenty dollars (\$20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars (\$20) shall be sent to the Department of State Police with the application. Ten dollars (\$10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars (\$10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:

- (a) The name, address, place and date of birth, gender, and Social Security number of the applicant;
 - (b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;
 - (c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;
 - (d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and
 - (e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.
- (5) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:
- (a) A completed application as described in subsection (4) of this section;
 - (b) A recent color photograph of the applicant, as prescribed by administrative regulation; and
 - (c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.
- (6) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (5) of this section, either:
- (a) Issue the license; or
 - (b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence.
- (7) The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.

- (8) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the district court.
- (9) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars (\$15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.
- (10) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.
- (11) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars (\$15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (4), (5), and (6) of this section.
- (12) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:
 - (a) Any police station or sheriff's office;
 - (b) Any detention facility, prison, or jail;
 - (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;
 - (d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;
 - (e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;
 - (f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;
 - (g) An area of an airport to which access is controlled by the inspection of persons and property;
 - (h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose; or
 - (i) Any place where the carrying of firearms is prohibited by federal law.

- (13) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. ~~A private but not a public~~ employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee, ***except that the Justice Cabinet may prohibit an employee from carrying any weapons, other than the weapons issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction.*** Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.
- (14) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.
- (15) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.
- (16) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state and whose state grants to Kentucky residents the right to carry a concealed deadly weapon in the state of the licensee without requiring a separate license to carry a concealed deadly weapon issued by that state, may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.
- (b) A person who holds a valid license issued by another state of the United States whose home state permits Kentucky residents to obtain a license to carry a concealed deadly weapon in that state may apply directly to the Department of State Police for a license to carry concealed deadly weapons in Kentucky. The Department of State Police shall take whatever steps are necessary to verify that the person applying has a valid license to carry a concealed deadly weapon issued by his home state.
- (17) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

Section 137. KRS 61.365 is amended to read as follows:

The following persons who are employed by the federal government as law enforcement or investigative officers who have the power of arrest and who are residents of the Commonwealth of Kentucky shall be deemed peace officers and shall have the same powers and duties of any other peace officer in the Commonwealth, except that they shall not be required to serve process unless permitted to do so by their respective agencies:

- (1) Federal Bureau of Investigation special agents;
- (2) United States Secret Service special agents;
- (3) United States Marshal's service deputies;

- (4) Drug Enforcement Administration special agents;
- (5) Bureau of Alcohol, Tobacco, and Firearms special agents;
- (6) United States Forest Service special agents and law enforcement officers;
- (7) *Special agents and law enforcement officers of the Office of the Inspector General of the United States Department of Agriculture.*

Section 138. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a sex offender registration system which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) ~~Beginning January 1, 1995, } Any person eighteen (18) years of age or older at the time of the offense *or any youthful offender* who *has committed or attempted* ~~is released on probation, shock probation, conditional discharge by the court, parole, or a final discharge from a penal institution for committing or attempting~~ to commit a sex crime shall, within *ten (10)* ~~fourteen (14)~~ days after his release, *by the court, the parole board, or the cabinet*, register with the *appropriate* local probation and parole office in the county in which he resides.~~
- (3) ~~Beginning January 1, 1995, } Any person *required to register pursuant to subsection (2) of this section* ~~who is discharged, paroled, or released on shock probation from a jail, prison, or other institution where he was confined because of the commission or attempt to commit a sex crime~~ shall ~~prior to discharge, parole, or release,~~ be informed of the duty to register under this section by the *court at the time of sentencing and by the official in charge of the place of confinement upon release*. The *court and the* official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained to the person. The *court and the* official in charge of the place of confinement shall require the releasee to complete the *acknowledgment* ~~registration~~ form *and the court or the official shall retain the original completed form*. The official shall then send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.~~
- (4) *The court or the official shall order the person to register with the appropriate local probation and parole office.*
- (5) ~~Beginning January 1, 1995, any person who is sentenced in this state pursuant to a guilty plea or a jury verdict of conviction of the commission or attempt to commit a sex crime and who is released on probation or conditional discharge shall prior to release or discharge be informed by the court in which the person has been convicted of the duty to register with the local probation and parole office in the county in which he resides. The court shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained and order the person to register with the local probation and parole office. Upon completion of the registration form, } The *appropriate* probation and parole office shall send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.~~
- (6) ~~(5) Beginning January 1, 1995, } Any person who has pled guilty or been convicted in *a court of* another state, *of a court of the United States, or a court martial of the United States Armed Forces* of the commission or attempt to commit a sex crime ~~and who remains under active probation or parole supervision at the time of his relocation to Kentucky~~ shall be informed *at the time of his relocation to Kentucky* of the duty to register under this section by the interstate compact officer of the Department of Corrections *or the Department of Juvenile Justice*. The officer shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained. The officer shall ~~require~~ *order* the person to complete the registration form. The officer shall then send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.~~
- (7) *If a person is required to register as a sex offender under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration under this section if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an*

aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

- (8)~~(6)~~ The registration form shall be a written statement signed by the person which shall include sex offender information.
- (9) *For purposes of this section, and Sections 140 to 155 of this Act, a post office box number shall not be considered an address.*
- (10)~~(7)~~ If the residence address of any registrant changes, the person shall register, within *ten (10)*~~fourteen (14)~~ days of the change of address, with the *appropriate* local probation and parole office in the county of his new residence. The *appropriate* local probation and parole office shall send this information to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.
- (11)~~(8)~~ Any person required to register under this section who violates any of the provisions of this section is guilty of a Class A misdemeanor.
- (12)~~(9)~~ Any person required to register under this section who knowingly provides false, misleading, or incomplete information is guilty of a Class A misdemeanor.
- (13)~~(10)~~ The appropriate court, parole authority, or corrections agency shall be immediately notified to consider revocation of the parole, probation, or conditional discharge of any person released under its authority who has failed to register within the prescribed time period as required by this section.
- (14)~~(11)~~ The statement required by subsection (6)~~(5)~~ of this section shall not be open to inspection by the public and may only be accessible to law enforcement agencies.
- (15)~~(12)~~ Any person who disseminates, receives, or otherwise uses or attempts to use information in the registry database, knowing the dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

Section 139. KRS 17.520 is amended to read as follows:

- (1) *Persons classified as high risk sex offenders as provided by subsection (3) of Section 140 of this Act shall remain registered for the lifetime of the offender, unless redesignated pursuant to Section 154 of this Act.*
- (2) *Persons classified as low or moderate risk sex offenders*~~required to register pursuant to the provisions of KRS 17.510~~ shall remain registered for a period of ten (10) years following their discharge from confinement or ten (10) years following their maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.
- (3) *If a sex offender is re-incarcerated for another offense or as the result of having violated the terms of probation parole, or conditional discharge the registration requirements are tolled during the subsequent incarceration.*

SECTION 140. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

As used in Sections 140 to 155 of this Act, the following definitions shall apply:

- (1) *"The board" means the Sex Offender Risk Assessment Advisory Board created under Section 142 of this Act;*
- (2) *"Sex offender" means a person who has been convicted of a sex crime as defined in KRS 17.500 who suffers from a mental or behavioral abnormality or personality disorder characterized by a pattern or repetitive, compulsive behavior that makes the offender a threat to public safety;*
- (3) *"High risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a high risk of recommitting a sex crime. This term means the same as a sexually violent predator as defined by 42 U.S.C. sec. 14071. A person determined to be a sexually violent predator in a federal jurisdiction or in another state will be classified as a high risk sex offender for the purpose of this section;*

- (4) *"Moderate risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Advisory Board that have been demonstrated to correlate with a moderate risk of recommitting a sex crime;*
- (5) *"Low risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a low risk of recommitting a sex crime;*
- (6) *"Mental or behavioral abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that individual to the commission of a sex crime;*
- (7) *"Personality disorder" means a condition where a person exhibits personality traits which are inflexible and maladaptive and cause either significant functional impairment or subjective distress;*
- (8) *"Certified provider" means a mental health professional certified by the Sex Offender Risk Assessment Advisory Board to conduct sexual offender risk assessments pursuant to Sections 140 to 155 of this Act, or presentence assessment pursuant to KRS 532.050 or assessments related to probation or conditional discharge pursuant to KRS 439.265, KRS 439.267, and KRS 532.045; and*
- (9) *"Victim" means victim as defined by KRS 421.500.*

SECTION 141. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

No person shall conduct sexual offender risk assessments pursuant to Sections 140 to 155 of this Act, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, KRS 439.267, and KRS 532.045, without first obtaining a certification from the Sex Offender Risk Assessment Advisory Board.

SECTION 142. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *A Sex Offender Risk Assessment Advisory Board is hereby created. The board shall certify providers who shall conduct sexual offender risk assessments pursuant to Sections 140 to 155 of this Act, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, KRS 439.267, and KRS 532.045.*
- (2) *The board shall develop a risk assessment procedure that shall be used by certified providers in assessing the risk of recommitting a sex crime by a sex offender and the threat posed to public safety. The procedure shall be based upon, but not limited to the following factors:*
 - (a) *Criminal history;*
 - (b) *Nature of the offense;*
 - (c) *Conditions of release that minimize risk;*
 - (d) *Physical conditions that minimize risk;*
 - (e) *Psychological or psychiatric profiles;*
 - (f) *Recent behavior that indicates an increased risk of recommitting a sex crime;*
 - (g) *Recent threats or gestures against persons or expressions of an intent to commit additional offenses; and*
 - (h) *Review of the victim impact statement.*

SECTION 143. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

The board shall consist of the members named in subsections (1) and (2) of this section:

- (1) (a) *The commissioner of the Department of Corrections, or the commissioner's designee;*
- (b) *The commissioner of the Department of Juvenile Justice, or the commissioner's designee;*
- (c) *The program administrator of the Sex Offender Treatment Program created pursuant to KRS 197.400; and*

- (d) *The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee.*
- (2) *The following members, appointed by the Governor:*
- (a) *One (1) probation and parole officer;*
- (b) *Four (4) mental health professionals licensed or certified pursuant to KRS Chapter 309, 311, 314, 319, or 335 who demonstrated expertise in working with sex offenders;*
- (c) *One (1) professional working in an agency which provides services to adult or child victims of sex offenses; and*
- (d) *One (1) representative of an advocacy group with a demonstrated interest in the welfare of victims of sex offenses.*
- (3) *The Governor shall appoint the first chair of the board who shall serve for a term of two (2) years after which the chair shall be elected by the members of the board.*
- (4) *The probation and parole officer and the members identified in subsection (2) of this section shall serve for the remainder of the term of office of the Governor during whose incumbency they were appointed, unless removed sooner for cause, but they shall remain on the board until their successors are appointed or until they are reappointed.*
- (5) *No member appointed pursuant to subsection (4) of this section may be represented by a designee.*
- (6) *No member appointed pursuant to subsection (4) of this section shall serve more than four (4) years unless reappointed.*
- (7) *All members identified under subsection (1) of this section shall serve during their terms of office.*
- (8) *All members of the board shall be reimbursed for their necessary travel and other expenses actually incurred in the discharge of their duties on the board.*
- (9) *The board shall be empowered to create committees for the purpose of carrying out its statutory duties.*
- (10) *The board shall be attached to the Department of Corrections for administrative purposes.*

SECTION 144. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may issue, refuse to issue, reissue, or renew a provider certificate, or may probate, suspend, or revoke the certificate of a provider who conducts sexual offender assessments.*
- (2) *The board shall revoke the certificate of a provider who conducts sexual offender assessments while his certification is suspended.*

SECTION 145. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to the refusal to issue, renew, probate, suspend, or revoke the certificate of a provider, the board shall conduct a hearing in accordance with the provisions of this chapter and KRS Chapter 13B.*
- (a) *The hearing may be conducted by a hearing officer;*
- (b) *The hearing officer may only issue a recommended order, and the recommended order shall be subject to review by a majority of the full board, which shall issue a final order.*
- (2) *The board may proceed against a certified provider on its own initiative, on the basis of either information contained in its own records, or information obtained through its informal investigation.*
- (3) *If a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization containing allegations that if true would warrant action, the board may proceed against the certified provider.*
- (4) *Any final order of the board may be appealed to the Franklin Circuit Court in accordance with KRS Chapter 13B.*

SECTION 146. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

A quorum of the board shall consist of at least six (6) members. The concurring votes of five (5) members shall be considered as the action of the board, except in the case of revoking a certificate, in which case the concurring votes of at least seven (7) members shall be required.

SECTION 147. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may promulgate all reasonable administrative regulations not inconsistent with this chapter that are necessary to carry into effect the purposes of Sections 140 to 155 of this Act.*
- (2) *The board may promulgate administrative regulations requiring mandatory continuing education for certified providers to continue conducting sexual offender risk assessments pursuant to Sections 140 to 155 of this Act, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, KRS 439.267, and KRS 532.045, as a condition for obtaining their renewal certificates.*

SECTION 148. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

Only persons certified under Sections 140 to 155 of this Act may be known as certified providers in the Commonwealth of Kentucky, or use any words or letters or assume any titles or description tending to convey the impression that they are certified providers who conduct sexual offender risk assessments pursuant to Sections 140 to 155 of this Act, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, KRS 439.267, and KRS 532.045.

SECTION 149. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

Whenever in the judgment of the board any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of Sections 140 to 155 of this Act, the board may apply to the Franklin Circuit Court for an order enjoining these acts or practices.

- (1) *Upon a showing by the board that a person has engaged, or is about to engage, in any of these acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.*
- (2) *Any order of the Franklin Circuit Court shall be enforceable and shall be valid anywhere in this state and the order of the court shall be reviewable as provided in the Rules of Civil Procedure in the case of other injunctions and restraining orders.*

SECTION 150. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon conviction of a "sex crime" as defined in KRS 17.500, and within sixty (60) calendar days prior to the discharge, release, or parole of a sex offender, the sentencing court shall order a sex offender risk assessment by a certified provider for the following purposes:*
 - (a) *To determine whether the offender should be classified as a high, moderate or low risk sex offender;*
 - (b) *To designate the length of time a sex offender shall register pursuant to KRS 17.500 to 17.540; and*
 - (c) *To designate the type of community notification that shall be provided upon the release of the sex offender pursuant to KRS 17.500 to 17.540.*
- (2) *The sex offender shall pay for any assessment required pursuant to Sections 140 to 155 of this Act up to the offender's ability to pay, but not more than the actual cost of the assessment.*
- (3) *In making the determination of risk, the sentencing court shall review the recommendations of the certified provider along with any statement by a victim or victims and any materials submitted by the sex offender.*
- (4) *The court shall conduct a hearing in accordance with the Rules of Criminal Procedure and shall allow the sex offender to appear and be heard.*
- (5) *The court shall inform the sex offender of the right to have counsel appointed in accordance with KRS 31.070 and KRS 31.110.*
- (6) *The sentencing court shall issue findings of fact and conclusions of law and enter an order designating the level of risk.*
- (7) *The order designating risk shall be subject to appeal.*
- (8) *Upon release, either by probation, conditional discharge, parole, or serve-out, the sentencing court or the official in charge of the place of commitment shall forward the risk determination that the sentencing court has issued for that sex offender to the sheriff of the county to which the offender is to be released.*

SECTION 151. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *If the offender is determined to be a high risk sex offender, the notification shall include offender information as defined in KRS 17.500 and any special conditions imposed by the court or the Parole Board. The Social Security number of the offender shall not be released to those persons identified in paragraphs (c), (d), and (f) of this subsection. The following individuals shall be notified by the sheriff of the county to which the offender is to be released:*
 - (a) *The law enforcement agency having jurisdiction;*
 - (b) *The law enforcement agency having had jurisdiction at the time of the offender's conviction;*
 - (c) *Victims who have requested to be notified;*
 - (d) *The Information Services Center, Kentucky State Police;*
 - (e) *Any agency, organization, or group serving individuals who have similar characteristics to the previous victims of the offender, if the agency, organization, or group has filed a request for notification with the local sheriff; and*
 - (f) *The general public through statewide media outlets and by any other means as technology becomes available.*
- (2) *Upon a finding by the sentencing court that the offender is a high risk sexual offender, the designation shall continue until the sentencing court determines that the individual is no longer a high risk sex offender.*
- (3) *An offender who has been designated by the sentencing court to be a high risk sex offender shall upon his release by the court, parole board, or the cabinet, be required to register for his lifetime in accordance with the provisions of KRS 17.510 and shall be subject to community notification pursuant to this section and Section 152 of this Act.*
- (4) *If the offender is determined to be a moderate risk sex offender, the notification shall include offender information as defined under KRS 17.500, the zip code in which the offender resides, and any special conditions imposed by the court or the Parole Board. The Social Security number, personal residential address, and vehicle registration shall not be disclosed to the individuals identified in paragraphs (c) and (e) of this subsection. The following individuals shall be notified by the sheriff of the county to which the offender is released:*
 - (a) *The law enforcement agency having jurisdiction;*
 - (b) *The law enforcement agency having had jurisdiction at the time of the offender's conviction;*
 - (c) *Victims who have requested to be notified;*
 - (d) *The Information Services Center, Kentucky State Police; and*
 - (e) *Any agency, organization, or group serving individuals who have similar characteristics to the previous victim or victims of the sexual offender, if the agency, organization, or group has filed a request for notification with the local sheriff.*
- (5) *If the offender is determined to be a low risk sex offender, the notification shall include offender information as defined in KRS 17.500. The Social Security number, personal residential address, and vehicle registration shall not be disclosed to the persons identified in paragraph (c) of this subsection. The following individuals shall be notified by the sheriff of the county to which the offender is released:*
 - (a) *The law enforcement agency having jurisdiction;*
 - (b) *The law enforcement agency having had jurisdiction at the time of the offender's conviction;*
 - (c) *Victims who have requested to be notified, and*
 - (d) *The Information Services Center, Kentucky State Police.*

SECTION 152. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *Any statutes to the contrary notwithstanding, all state or local detention or correctional facilities, hospitals, or institutions shall forward all relevant information pertaining to a sex offender to be discharged, paroled,*

or released to the certified provider for review prior to the release or discharge for consideration in making recommendations to the sentencing court. The relevant information shall include but is not limited to:

- (a) The institutional record;*
 - (b) The medical record including all psychological records; and*
 - (c) The treatment record.*
- (2) All confidential records provided pursuant to this section shall remain confidential, unless otherwise ordered by a court, or by another person duly authorized to release the information.*

SECTION 153. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

Communications made in the course of sexual offender risk assessments pursuant to Sections 140 to 155 of this Act, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, KRS 439.267, or KRS 532.045 to the certified provider and any employee of the certified provider who is assigned to assist in the assessments, shall be privileged from disclosure in any civil or criminal proceeding, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The sexual offender shall be informed in writing of the limits of the privilege created in this section.

SECTION 154. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) A person designated a "high risk sex offender" and who is required to register for his lifetime pursuant to the provisions of this chapter may be relieved of any further duty to register upon the grant of a petition for relief by the sentencing court entered no earlier than ten (10) years after the date of discharge from probation, parole, or release from incarceration, whichever is most recent. If the petition is denied, the person may petition for relief from the high risk designation every five (5) years thereafter.*
- (2) Upon receipt of the petition for relief, the sentencing court shall request an updated assessment to a certified provider.*
- (3) The sentencing court shall conduct a second hearing as provided in Section 150 of this Act.*

SECTION 155. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

Any person who violates Section 141 of this Act shall be fined not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) and said fine shall be paid to the Crime Victim Compensation Fund as established in KRS Chapter 346.

SECTION 156. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

As used in Sections 157 and 158 of this Act:

- (1) "Condemned person" means a person for whom a specific day of execution is fixed by a mandate from the Kentucky Supreme Court or a warrant signed by the Governor.*
- (2) "Insane" means the condemned person does not have the ability to understand:*
 - (a) That the person is about to be executed; and*
 - (b) Why the person is to be executed.*

Section 157. KRS 431.240 is amended to read as follows:

- (1) Unless the execution is stayed by due process of law or under authority of subsection (2) of this section, the warden of the penitentiary or his deputy shall proceed, on the day and at the place named in the judgment of conviction, to cause the condemned person to be electrocuted. The execution shall take place before sunrise on the day designated in the judgment.*
- (2) If the condemned person is insane, as defined in Section 156 of this Act or pregnant with child on the day designated for the execution, the execution shall be suspended until the condemned is restored to sanity or is delivered of child. The execution shall then take place under the warrant of the Governor and at the time designated by him, unless stayed by due process of law. If execution is suspended on the ground of insanity, the commissioner of the Department of Corrections shall ~~may~~ transfer the condemned person to the **Kentucky Correctional Psychiatric Center** ~~[state forensic psychiatric facility operated by the Department of Corrections]~~*

until the time he is restored to sanity. Any administrative hearings authorized under authority of this section shall be conducted in accordance with KRS Chapter 13B.

- (3) If the condemned person escapes from custody and is recaptured after the expiration of the date fixed for the execution, the Governor, upon receiving written notice of the recapture from the warden of the penitentiary, shall send his warrant of execution to the warden by special messenger and shall name therein the day of execution. The warden shall then proceed to the execution thereof according to the provisions of KRS 431.215 to 431.270.
- (4) When a judgment of death has not been executed on the day appointed therefor by the court, from any cause, the Governor, by a warrant under his hand and the seal of the Commonwealth, shall fix the day of the execution, which warrant shall be obeyed by the warden of the penitentiary.

SECTION 158. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

This section shall provide the exclusive procedure for challenging a condemned person's sanity, unless the Supreme Court of Kentucky expressly adopts a rule of court providing otherwise.

- (1) *A condemned person or the person's attorney may file a motion for stay of execution on the grounds that the condemned person is insane. The motion shall be filed in the Circuit Court of the county where the condemned person is incarcerated, or the county in which the condemned person was convicted, and shall be supported by at least two (2) affidavits. The Attorney General shall file a response within the time ordered by the court.*
- (2) *Upon receiving a motion under subsection (1) of this section, the court shall order the condemned person to be evaluated by at least two (2) licensed mental health professionals and shall order the mental health professionals to submit their written evaluation to the court within ten (10) days of the evaluation. The court shall then schedule and conduct a hearing as soon as possible to determine whether the condemned person is insane.*
- (3) *The court shall base its determination of insanity on a preponderance of the evidence. The court's determination may be appealed to the Supreme Court by the condemned person or the Attorney General.*
- (4) *If the condemned person is determined to be insane, he or she shall be committed to the Kentucky Correctional Psychiatric Center. The treating psychiatrist shall then report, once each month or more frequently if the court orders, to the court and the condemned person's counsel on the progress the condemned person has made and whether there is a substantial probability that the person will become sane. If at any time a psychiatrist treating or evaluating the person determines the person to be sane, the psychiatrist shall immediately report that fact to the court.*
- (5) *Upon receiving a report that a condemned person has become sane, the court shall schedule an evaluation and conduct a hearing in accordance with subsections (2) and (3) of this section to determine sanity. The court's determination may be appealed to the Supreme Court by the condemned person or the Attorney General.*

Section 159. KRS 24A.175 is amended to read as follows:

- (1) Court costs for a criminal case in the District Court shall be:
 - (a) For an offense for which prepayment is permitted under KRS 189.394, 431.451, or 431.452 and for which prepayment has been made prior to trial as required by law \$42.00
 - (b) For an offense for which prepayment is not permitted or has not been made ~~\$67.00~~[\$47.00]
 - (c) *Court costs designated in paragraph (b) of this subsection shall include the fee mandated by KRS 346.185.*
- (2) There shall be no court costs for a parking citation when:
 - (a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and
 - (b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.

- (3) Additional costs shall be assessed in District Court criminal matters as follows:
 - (a) Preparing an attestation \$0.50
 - (b) Preparing a certification \$1.00
 - (c) Preparing a copy of a document (per page) \$0.25
- (4) Taxation of costs against a defendant, upon conviction, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be probated or suspended.
- (5) The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the county treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.
- (6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars (\$10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.
- (7) The circuit clerk shall monthly pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 160. KRS 189.393 is amended to read as follows:

No operator of a vehicle, after having received a visual or audible signal from ~~an~~ ~~a traffic~~ officer **directing traffic** ~~or marked police vehicle,~~ shall knowingly **or wantonly** ~~flee or attempt to elude any traffic officer by willful or wanton~~ disregard ~~the~~ ~~of such~~ signal so as to interfere with or endanger the operation of ~~the police vehicle, or~~ the traffic officer or other vehicles or pedestrians~~, nor shall he increase the speed of his vehicle or extinguish the lights of his vehicle in an attempt to elude or flee.~~

SECTION 161. A NEW SECTION OF KRS CHAPTER 520 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of fleeing or evading police in the first degree when, while operating a motor vehicle with intent to elude or flee, the person knowingly or wantonly disobeys a direction to stop his or her motor vehicle, given by a person recognized to be a police officer, and at least one (1) of the following conditions exists:*
 - (a) *The person is fleeing immediately after committing an act of domestic violence as defined in KRS 403.720;*
 - (b) *The person is driving under the influence of alcohol or any other substance or combination of substances in violation of KRS 189A.010;*
 - (c) *The person is driving while his or her driver's license is suspended for violating KRS 189A.010; or*
 - (d) *By fleeing or eluding, the person is the cause, or creates substantial risk, of serious physical injury or death to any person or property; or*
- (2) *When, as a pedestrian, and with intent to elude or flee, the person knowingly or wantonly disobeys an order to stop, given by a person recognized to be a peace officer, and at least one (1) of the following conditions exists:*
 - (a) *The person is fleeing immediately after committing an act of domestic violence as defined in KRS 403.720; or*
 - (b) *By fleeing or eluding, the person is the cause of, or creates a substantial risk of, serious physical injury or death to any person or property.*
- (3) *Fleeing or evading police in the first degree is a Class D felony.*

Section 162. KRS 520.100 is amended to read as follows:

- (1) A person is guilty of **fleeing or evading police in the second degree** ~~resisting an order to stop a motor vehicle,~~ when, **while operating a motor vehicle with intent to elude or flee, the person** ~~he~~ knowingly **or wantonly**

disobeys~~[fails to obey]~~ a recognized direction to stop his vehicle, given by a person recognized to be a peace officer.

- (2) No offense is committed under this section when the conduct involved constitutes a failure to comply with a directive of a traffic control officer.
- (3) **Fleeing or evading police in the second degree**~~[Resisting an order to stop a motor vehicle]~~ is a Class A misdemeanor.

Section 163. KRS 519.050 is amended to read as follows:

- (1) A person is guilty of impersonating a public servant, **other than a peace officer**, if he pretends to be a public servant, **other than a peace officer**, or to represent a public agency, **other than a law enforcement agency**, or act with the authority or approval of a public agency, **other than a law enforcement agency**, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.
- (2) Impersonating a public servant, **other than a peace officer**, is a Class A misdemeanor.

SECTION 164. A NEW SECTION OF KRS CHAPTER 519 IS CREATED TO READ AS FOLLOWS:

- (1) **A person is guilty of impersonating a peace officer if he pretends to be a peace officer, or to represent a law enforcement agency or act with the authority or approval of law enforcement agency, with intent to induce another to submit to the pretended official authority or otherwise to act in reliance upon the pretense to his prejudice.**
- (2) **Impersonating a peace officer is a Class D felony.**
- (3) **As used in this section, the phrase "peace officer" means a peace officer as defined in KRS 446.010.**

SECTION 165. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

- (1) **In the event of the conviction of a defendant for the violation of any offense proscribed by KRS Chapter 510 or 531, the person who was the victim of the offense may bring an action in damages against the defendant in the criminal case.**
- (2) **If the plaintiff prevails, he shall be entitled to attorney's fees and all other costs incurred in the bringing of the action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act.**
- (3) **Any award of nominal damages shall support an award of attorneys fees and costs to the prevailing party.**
- (4) **Punitive damages as well as compensatory damages shall be awardable in cases brought under this section.**
- (5) **The provisions of this section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or of any statutory or common law right of action but shall be construed as ancillary and supplemental thereto.**

SECTION 166. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

Whenever a statute mentions an alternative to incarceration, that alternative may include a community-based, faith-based, charitable, church-sponsored, or nonprofit residential or nonresidential counseling and treatment program, and, upon petition by the defendant, the court may sentence or permit the defendant to attend that program. This program may also be used for pretrial diversion.

Section 167. KRS 439.335 is amended to read as follows:

In considering the granting of a parole the parole board is authorized to use **computer voice stress analysis**, the polygraph, truth serum and any other scientific means for personality analysis that may hereafter be developed, before granting a parole.

SECTION 168. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) **A person shall not take or attempt to take wildlife with a firearm, bow, or crossbow, if the person is manifestly under the influence of alcohol or any controlled substance, and the person:**
 - (a) **May endanger himself or herself or other persons or property; or**
 - (b) **Is engaging in any behavior specified in subsection (1)(a) to (d) of KRS 525.060.**

(2) ***A peace officer may arrest a person for violating subsection (1) of this section.***

Section 169. KRS 150.990 is amended to read as follows:

- (1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any regulation adopted by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.
- (2) Any person who violates any of the provisions of this chapter or any regulations adopted by the commission thereunder may, in addition to the penalties provided in subsection (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license, and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any regulation which has been or may be adopted by the commission under any provisions of this chapter or which is adopted to supplement, explain, carry out, or limit any provision of this chapter, shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the regulation is adopted or which the regulation supplements, explains, carries out, or limits.
- (3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.603, subsection (1) of KRS 150.235, subsection (2) of KRS 150.330 or 150.470, or any of the provisions of this chapter or any regulation adopted by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).
- (4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.445, 150.485, 150.600, 150.630, 150.660, ***subsection (1) of Section 168 of this Act***, subsection (1) of KRS 150.450, 150.470, the provisions of KRS 150.195(5) to (8), or subsection (3) of KRS 150.660 shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700.
- (5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, subsection (1) of KRS 150.330, or subsections (2), (3), or (4) of KRS 150.235 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months or both.
- (7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed.
- (8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall, for the first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000); and shall for a second offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1500); and for any subsequent offense, be fined two thousand dollars (\$2000).
- (9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of subsection (9) shall be in addition to the penalties for violation of subsection (8).
- (10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates any of the provisions of KRS 150.390, or subsection (4) of KRS 150.092 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a

period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (4) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages.

- (12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.
- (13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be subject to the penalties specified for such offense under KRS Chapter 507 or 508, as appropriate.
- (14) A person shall be guilty of a Class B misdemeanor upon the first violation of KRS 150.710. A subsequent violation shall be a Class A misdemeanor.
- (15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); for the second offense, be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and for subsequent offenses, shall forfeit the license, or if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars (\$1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions.

Section 170. KRS 520.010 is amended to read as follows:

The following definitions apply in this chapter, unless the context otherwise requires:

- (1) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, departmental regulation, or posted institutional rule or order;
- (2) "Custody" means restraint by a public servant pursuant to a lawful arrest, detention, or an order of court for law enforcement purposes, but does not include supervision of probation or parole or constraint incidental to release on bail;
- (3) "Dangerous contraband" means contraband which is capable of use to endanger the safety or security of a detention facility or persons therein, including, but not limited to, dangerous instruments as defined in KRS 500.080, any controlled substances, *any quantity of an alcoholic beverage*, and any quantity of marijuana, and saws, files, and similar metal cutting instruments;
- (4) "Detention facility" means any building and its premises used for the confinement of a person:
 - (a) Charged with or convicted of an offense;
 - (b) Alleged or found to be delinquent;
 - (c) Held for extradition or as a material witness; or
 - (d) Otherwise confined pursuant to an order of court for law enforcement purposes;
- (5) "Escape" means departure from custody or the detention facility in which a person is held or detained ~~when with knowledge that~~ the departure is unpermitted, or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period; and
- (6) As used in this section and KRS 520.015, "penitentiary" includes any facility operated by the Department of Corrections and the confines of any work detail or other detail, whether under guard or not, under the custody and control of the Department of Corrections.

Section 171. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) While the alcohol concentration in his blood or breath is 0.10 or more based on the definition of alcohol concentration in KRS 189A.005;
 - (b) While under the influence of alcohol;

- (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
 - (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
 - (e) While the alcohol concentration in his blood or breath is 0.02 or more based on the definition of alcohol concentration in KRS 189A.005 if the person is under the age of twenty-one (21).
- (2) In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood, or breath shall give rise to the following presumptions:
- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
 - (b) If there was an alcohol concentration of 0.05 or greater but less than 0.10 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

- (3) The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- (4) Any person who violates the provisions of paragraphs (a), (b), (c) or (d) of subsection (1) of this section shall:
 - (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. ***If the person has a blood or breath alcohol concentration of 0.18 or higher, he or she shall be sentenced to at least seven (7) days' imprisonment, but the court may probate five (5) of those days.*** Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both.
 - (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months.
 - (c) ***If the alcohol concentration is below 0.18***, for a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. ***If the alcohol concentration is 0.18 or above, he or she shall be guilty of a Class D felony.***
 - (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony.
 - (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.

- (5) Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6)

months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection (4) of this section or any other penalty established pursuant to KRS Chapter 189A.

- (6) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.10 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (4) of this section.
- (7) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
- (8) When sentencing persons under subsection (4)(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
- (9) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

SECTION 172. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *The sentencing court may issue a criminal garnishment order for all fines under KRS Chapter 534 or KRS 346.185, and for court costs, restitution, and reimbursement charges in this chapter.*
- (2) *A criminal garnishment applies to any of the following:*
 - (a) *A convicted person's earnings as defined in KRS 427.005;*
 - (b) *Indebtedness that is owed to a convicted person by a garnishee for amounts that are not earnings;*
 - (c) *Money that is held by a garnishee on behalf of a convicted person;*
 - (d) *The convicted person's personal property that is in the possession of a garnishee; or*
 - (e) *If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a convicted person.*
- (3) *The debt associated with a criminal garnishment shall constitute a charge against the estate of any decedent owing moneys under this chapter.*
- (4) *The sentencing court shall combine all fines, court costs, restitution, and reimbursement charges in a single order of garnishment.*
- (5) *The sentencing court shall require payment of restitution to the victim of the offense before payments of any moneys to the government or a government agency.*

SECTION 173. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *If the criminal garnishment is made upon the convicted person's earnings, the order of garnishment shall be a lien upon the earnings from the date of service on the garnishee until an order discontinuing the lien is entered. A convicted person may challenge the garnishment by filing a challenge to the garnishment with the sentencing court. The challenge shall be heard within ten (10) days of its filing or the nearest court date thereafter. Before the hearing, garnishment shall continue. Any moneys which the court determines were improperly garnished shall be repaid to the garnishee not later than thirty (30) days after the determination.*
- (2) *The circuit clerk's office shall disburse all collected reimbursement, restitution, and fees to the victim or the local government, whichever is appropriate. The clerk shall be entitled to collect a fee of two dollars and fifty cents (\$2.50) from each account for which a disbursement is made at the time of disbursement. In the event of challenge to a garnishment, the appropriate clerk's office shall not disburse those sums associated with the challenged garnishment until determination by the sentencing court regarding the propriety of the garnishment.*

SECTION 174. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *Any convicted person owing fines, court costs, restitution, or reimbursement before or after his release from incarceration shall be subject to a lien upon his interest, present or future, in any real property.*
- (2) *The real property lien shall be filed in the circuit clerk's office of the county in which the person was convicted and shall also be filed by the Commonwealth in any county in which the convicted person is known to own property or reside.*
- (3) *The lien may be foreclosed upon in the manner prescribed in KRS Chapter 426 and shall remain valid until satisfied. The lien shall constitute a charge against the estate of any decedent owing moneys under this chapter.*
- (4) *The attorney for the Commonwealth, and not the crime victim, shall prepare and file lien documents for moneys to be restored to the crime victim. The manner of filing, recording, and releasing the lien shall be consistent with the provisions of KRS Chapter 376.*
- (5) *The attorney for the commonwealth shall pay to the county clerk five dollars (\$5) which shall be assessed as court costs for the filing of any lien upon real estate. The filing fee shall constitute payment for both filing and release of the lien. The attorney for the Commonwealth shall notify the appropriate county clerk that the lien has been satisfied within ten (10) days of satisfaction.*
- (6) *A lien under this section shall bear interest at the same rate as for a civil judgment unless the court orders that interest not be awarded. In considering whether interest shall be awarded, the court shall consider the following factors, among others:*
 - (a) *The defendant's ability to pay the amount of the interest;*
 - (b) *The hardship likely to be imposed on the defendant's dependents by paying the amount of the interest and the time and method of paying it;*
 - (c) *The impact that the amount of the interest will have on the defendant's ability to make reparation or restitution to the victim; and*
 - (d) *The amount of the defendant's gain, if any, derived from the commission of the offense.*

SECTION 175. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *If the garnishee holds property or moneys of the defendant, the garnishee shall immediately transfer the property or moneys to the person or official named in the garnishment.*
- (2) *If the garnishee holds personal property or stock of the defendant, the court shall hold the personal property or stock of the defendant pending an order of the court.*
- (3) *The party who obtains the garnishment shall deliver by personal service or by first class mail a copy of the order to the garnishee and to the defendant.*
- (4) *A bank deposit in the name of two (2) or more persons, one (1) of whom is the convicted person, is subject to garnishment.*

SECTION 176. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

If a garnishee fails to comply with the terms of the order of criminal garnishment within thirty (30) days after its issuance, the attorney for the Commonwealth may move the court to order the garnishee to show cause why he should not be held in contempt. If the court finds that the failure was willful or grossly negligent, the court shall find the garnishee in contempt and shall award reasonable attorney's fees and costs, in addition to any contempt sanction it imposes.

SECTION 177. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

- (1) (a) *"Restitution" means any form of compensation paid by a convicted person to a victim for counseling, medical expenses, lost wages due to injury, or property damage and other expenses suffered by a victim because of a criminal act;*
- (b) *"Reimbursement" means payment of expenses associated with incarceration, including but not limited to medical expenses, food, and lodging;*

- (c) *"Sinking fund" means the fund created and used by local governments to provide maintenance of jail facilities and capital construction; improvement of law enforcement, jail, and judicial facilities; and other long-term expenditures associated with those areas; and*
- (d) *"Local government" means any county, urban-county, or charter county government.*

(2) *Definitions in KRS 441.005 apply to this chapter.*

SECTION 178. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *The sentencing court may order a person who is sentenced to a term of incarceration for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense to reimburse the state or local government for the costs of his incarceration. The reimbursements paid under this subsection shall be credited to the local government sinking fund.*
- (2) *The sentencing court shall determine the amount of incarceration costs to be paid based on the following factors:*
 - (a) *The actual per diem, per person, cost of incarceration;*
 - (b) *The cost of medical services provided to a prisoner less any copayment paid by the prisoner; and*
 - (c) *The prisoner's ability to pay all or part of his incarceration costs.*

SECTION 179. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *A local government may require prisoners to make a reasonable copayment in advance of medical treatment received through a regional jail facility. No prisoner shall be denied medical treatment by reason of indigency, but a prisoner may be required to pay for medical treatment as part of any reimbursement order entered by the sentencing court.*
- (2) *Any copayment shall be collected by the jailer or his designee and, after it is properly accounted for, shall be paid to the appropriate local government authority.*

SECTION 180. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon a person's conviction and sentencing for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense, the court shall impose the following sanctions in addition to any imprisonment, fine, court cost, or community service:*
 - (a) *Reimbursement to the state or local government for the person's incarceration, determined by the per person, per diem, expenses of each prisoner incarcerated by the respective local government, times the number of days he has spent or shall spend in confinement, plus any medical services received by the prisoner, less copayments paid by the prisoner. The convicted person's ability to pay all or part of the reimbursement shall be considered by the sentencing court in imposing the sanction; and*
 - (b) *Restitution to the crime victim as set out in Sections 45 to 47 of this Act.*
- (2) *Sanctions imposed by the sentencing court shall become a judgment of the court.*

SECTION 181. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

Any prisoner who has completed his sentence in a county or regional jail shall, from the day incarceration ceases and within the time and amount designated by the sentencing court, pay restitution to his victim and reimbursement for his incarceration to the state or local government, in addition to any other monetary and community service sanctions imposed by the sentencing court. The sentencing court may use its contempt sanctions to enforce its orders.

Section 182. KRS 610.345 is amended to read as follows:

- (1) When a child is adjudicated guilty of an offense which classifies him as a youthful offender ~~under KRS Chapter 640~~, the court in which the matter was tried shall notify the principal of any public or private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of facts in the case.

- (2) When a child is adjudicated guilty of an offense which would classify him as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if committed by an adult, but which would not classify him as a youthful offender ~~under KRS Chapter 640~~, the court in which the matter was tried shall notify the principal of any public or private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of facts in the case.
- (3) *When a petition is filed against a child, or a child is adjudicated guilty of an offense that would be a felony or misdemeanor if committed by an adult, and the misdemeanor involves a controlled substance or the possession, carrying, or use of a deadly weapon, or physical injury to another person, the court in which the matter is considered shall notify the principal of any public or private elementary or secondary school that the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of the facts in the case, not to include the complainant's name.*
- (4) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to public or private elementary and secondary school administrative and counseling personnel, and to any teacher *or school employee with whom the student may come in contact* ~~to whose class the student has been assigned for instruction~~. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.
- (5) ~~(4)~~ Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

SECTION 183. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

Any person who was found guilty of a felony offense under KRS Chapters 218A, 507, 508, 509, 511, or 513, or KRS 237.040, 514.100, 525.020, 525.030, 527.040, 527.070, 527.100, or theft of a motor vehicle under KRS 514.030, and who was wearing body armor and was armed with a deadly weapon at the time of the offense shall not be granted probation, shock probation, parole, conditional discharge, or any other form of early release.

Section 184. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he knowingly induces, assists, or causes a minor to engage in illegal sexual activity, *or in illegal controlled substances activity other than activity involving marijuana*, except those offenses involving minors in KRS Chapter 531 and KRS 529.030.
- (2) Unlawful transaction with a minor is a:
- Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - Class A felony if the minor so used incurs physical injury thereby.

Section 185. KRS 530.065 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the second degree when he knowingly induces, assists, or causes a minor to engage in illegal controlled substances activity *involving marijuana*, illegal gambling activity, or any other criminal activity constituting a felony.
- (2) Unlawful transaction with a minor in the second degree is a Class D felony.

Section 186. KRS 197.410 is amended to read as follows:

- (1) A person is considered to be a "sexual offender" as used in this chapter when he:
- Has been adjudicated guilty of any felony described in KRS Chapter 510; or

- (b) Has been adjudicated guilty of any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510; or
 - (c) Has been adjudicated guilty of any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510; or
 - (d) Has been adjudicated guilty of a felony offense under KRS 530.020; or
 - (e) Has been adjudicated guilty of a felony offense *relating to sexual activity* under KRS 530.064; or
 - (f) Has been adjudicated guilty of a felony offense under KRS 531.310.
- (2) A sexual offender becomes an "eligible sexual offender" when the sentencing court or department officials, or both, determine that the offender:
- (a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or mental retardation; and
 - (b) Is likely to benefit from the program.
- (3) "Department" is the Department of Corrections.

Section 187. KRS 640.040 is amended to read as follows:

- (1) No youthful offender who has been convicted of a capital offense who was under the age of sixteen (16) years at the time of the commission of the offense shall be sentenced to capital punishment. A youthful offender may be sentenced to capital punishment if he was sixteen (16) years of age or older at the time of the commission of the offense. A youthful offender convicted of a capital offense regardless of age may be sentenced to a term of imprisonment appropriate for one who has committed a Class A felony and may be sentenced to life imprisonment without benefit of parole for twenty-five (25) years.
- (2) No youthful offender shall be subject to persistent felony offender sentencing under the provisions of KRS 532.080 for offenses committed before the age of eighteen (18) years.
- (3) No youthful offender shall be subject to limitations on probation, parole or conditional discharge as provided for in KRS 533.060.
- (4) Any youthful offender convicted of a misdemeanor or any felony offense which would exempt him from KRS 635.020(2), (3), (4), (5), (6), ~~(7)~~, **or (8)** shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.

Section 188. KRS 64.092 is amended to read as follows:

Compensation of sheriffs and other law enforcement officers or agencies for attending court shall be as follows:

- (1) Compensation shall be provided only for the actual time for which the sheriff or other officer is ordered to be physically present in the courtroom or is ordered to be physically present to discharge a duty ordered by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate.
- (2) Compensation shall not be provided for more than one (1) sheriff or other officer per courtroom unless the need for additional personnel is certified in writing by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate, and the utilization of additional personnel is approved by the Chief Justice, or his designee. In the event of an emergency of such nature precluding contacting the Chief Justice or his designee, the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals may authorize such assignment of additional personnel for a period not to exceed twenty-four (24) hours.
- (3) Where a single sheriff or other law enforcement officer serves more than one (1) court or courtroom during a single day he shall be paid as if he had served only one (1) courtroom during that day. Dual compensation for service during a single day shall not be permitted.
- (4) Time, for compensation purposes, shall be computed as the actual time spent in the courtroom pursuant to court direction or order and the actual time spent in other service to the court as directed or ordered by the appropriate judge.
- (5) Time spent in court service by a sheriff or other law enforcement officer shall be certified by the judge of the court which the officer attended and by the Chief Judge of the Circuit Court, if the service was to the Circuit Court, or by the Chief Judge of the District Court, if the service was to the District Court.

- (6) *The sheriff or other law enforcement officer serving a Circuit or District Court* ~~[Compensation]~~ shall be *compensated* at the rate of eight dollars (\$8) per hour of service. If service is for a part of an hour, then compensation for such service shall be prorated for the actual number of minutes' service within a given hour.
- (7) The sheriff shall receive five dollars (\$5) from each court cost collected pursuant to KRS 23A.205, 23A.215, 24A.175, and 24A.180 to help defray the cost of providing security services and related activities to the court. The moneys received by the sheriff under this subsection are authorized official expenses to be considered operating expenses of the sheriff's office and shall not be considered as part of his compensation.

Section 189. KRS 403.7527 is amended to read as follows:

A court of this state shall enforce a foreign protective order ~~[filed and]~~ authenticated pursuant to KRS 403.737, 403.7521, and 403.7524, including an order which grants relief to a person who is not eligible for a protective order in this state. A court of this state shall enforce all provisions of a foreign protective order including provisions which grant relief that is not available in this state. Any foreign protective order **that has been properly authenticated and that comes within the purview of** ~~[authenticated pursuant to]~~ KRS 403.7524 shall be effective for the period of time fixed by the issuing court.

Section 190. KRS 403.7529 is amended to read as follows:

- (1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.
- (2) All peace officers shall treat a foreign protective order as a legal document, valid in Kentucky, and ~~shall~~ ~~may~~ make arrests for a violation thereof in the same manner as for a violation of an emergency protective order or domestic violence order issued in Kentucky.
- (3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.
- (4) In the event that the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.

Section 191. KRS 403.7539 is amended to read as follows:

- (1) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2) If criminal proceedings for violation of a foreign protective order are undertaken, the following shall apply:
- (a) A person is guilty of violation of a foreign protective order when the person intentionally violates the provisions of **a foreign protective** ~~[an]~~ order **properly** ~~[filed and]~~ authenticated, or filed and awaiting authentication, pursuant to KRS 403.7521 and 403.7524.
- (b) Violation of a foreign protective order is a violation of KRS 403.763.
- (3) If civil proceedings for violation of a foreign protective order are undertaken, intentional violation of the foreign protective order by the person against whom it was issued shall constitute contempt of court.

Section 192. The following KRS section is repealed:

610.115 Circumstances permitting court to order further detention of child in custody of Department of Juvenile Justice or cabinet.

Section 193. The Criminal Justice Council is directed to study the costs and benefits to the corrections system and to public safety by the creation of a Class E felony for certain crimes against property. The Council shall report its findings to the Legislative Research Commission by September 1, 1999.

Section 194. The Criminal Justice Council is directed to study the fiscal and public safety effects of involuntary civil commitments for convicted sexual predators. The Council may use the language of 1996 Senate Bill 131 for guidance. The Council shall report its findings to the Legislative Research Commission by September 1, 1999.

Section 195. (1) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, each reference to the Cabinet for Human Resources in the following sections shall be codified as the Cabinet for Health Services: Sections 7, 9, 11, 12, 13, 14, 16, 18, 19, 28, and 80 of this Act.

(2) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (1)(h) of Section 10 of this Act shall be codified as both the Cabinet for Families and Children and the Cabinet for Health Services.

Section 196. The Criminal Justice Council shall study the matter of hate crime during the interim period prior to the next regular session of the General Assembly and make recommendations to the Interim Joint Committee on Judiciary with regard to recommendations for amendment of the statutes no later than July 1, 1999.

Section 197. Sections 24, 25, 70, and 121 of this Act may be cited as the Sarah Hansen Act.

Section 198. Sections 99 to 110 of this Act take effect December 1, 1998.

Section 199. The provisions of Sections 138 through 155 of this Act shall apply to persons individually sentenced or incarcerated after the effective date of this Act.

Section 200. Sections 139, 141, 150, 151, 152, 153, 154, and 155 of this Act take effect January 15, 1999.

Approved April 14, 1998

CHAPTER 607

(HB 468)

AN ACT relating to the transportation of persons.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 96A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following words or terms shall mean as follows:

- (1) "City" means any incorporated city in the Commonwealth;
- (2) "County" means any county in the Commonwealth wherein there is located an incorporated city and for the purpose of this chapter shall also mean a county which has adopted an urban-county government;
- (3) "State" means the Commonwealth;
- (4) "Transit authority" or "authority" means a transit authority created pursuant to this chapter;
- (5) "Board" means the board of a transit authority;
- (6) "Public body" means any city or county of the Commonwealth;
- (7) "Governing body" means, as to a county, the fiscal court thereof; and as to a city, the legislative body thereof, howsoever the same may be denominated according to law;
- (8) "Proceedings" means, in the case of a county, a resolution of its fiscal court; and in the case of a city, an ordinance adopted and made effective according to law by its governing body;
- (9) "Joint proceedings" relates only to the establishment of a transit authority by two (2) or more public bodies acting in concert or by agreement, and means the proceedings, taken collectively, by the governing bodies of the public bodies, participating in the creation and establishment of a transit authority;
- (10) "Appointing authority" means, as to a county, the county judge/executive thereof; and as to any city, the elected chief officer thereof, whether designated as its mayor or the chairman of its board of trustees or otherwise;

- (11) "Area" or "transit area" means the geographical area which may be encompassed from time to time within the lawful boundaries of such cities and counties as may be involved in the creation and establishment of an authority; and of any cities or counties within any single unified metropolitan area which may subsequently become participants as provided in this chapter;~~{-}~~
- (12) "Mass transit," or "mass transportation," means the transportation of persons and their baggage within or without a transit area, but shall not include the for-hire operation of a taxicab, or industrial bus as defined by KRS Chapter 281;
- (13) ***"Human service transportation delivery" means the provision of transportation for an eligible recipient in one of the following state programs:***
- (a) ***Nonemergency medical transportation under KRS Chapter 205;***
 - (b) ***Mental health, mental retardation, or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;***
 - (c) ***Kentucky Works Program under KRS Chapter 194 or 205;***
 - (d) ***Aging services under KRS Chapter 205, 209, 216, or 273;***
 - (e) ***Vocational rehabilitation under KRS 151B or 157; or***
 - (f) ***Blind industries or rehabilitation under KRS Chapter 151B or 163; and***
- (14) ***"Human service transportation delivery area" means one (1) of the regions established by the Transportation Cabinet for the purpose of providing human service transportation delivery in that region.***

Section 2. KRS 96A.095 is amended to read as follows:

- (1) The Transportation Cabinet ~~may~~~~{is authorized and empowered to}~~ receive and accept from the Commonwealth or any of its agencies, ***including the Cabinet for Human Resources and Workforce Development Cabinet,*** and from federal agencies appropriations or grants to accomplish the promotion and development of mass transit services ***and human service transportation delivery*** in Kentucky, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value to promote mass transit services. Subject to the provisions of Section 230 of the Constitution of the Commonwealth of Kentucky, any ***of these***~~{such}~~ funds, property, or things of value received by the Transportation Cabinet may be given directly to ***any of the following entities in order to accomplish the purposes of this section:***
- (a) A local transit authority as created under this chapter;~~{-or to}~~
 - (b) A city;~~{or}~~
 - (c) A county;~~{or}~~
 - (d) Other public mass transit providers;
 - (e) ***A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or***
 - (f) ***An entity providing human service transportation delivery***~~{, in order to accomplish the purposes of this section}.~~
- (2) The Transportation Cabinet is authorized and directed to apply for any available federal funds for operating subsidies, either on a matching basis or otherwise and to make any ***of these***~~{said}~~ funds received available to ***any of the following entities in order to accomplish the purposes of this section:***
- (a) ***A local transit authority as***~~{authorities}~~ created under this chapter;~~{-or to}~~
 - (b) A city;~~{or}~~
 - (c) A county;~~{or}~~
 - (d) Other public mass transit providers;
 - (e) ***A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or***
 - (f) ***An entity promoting or providing transit services such as safety, planning, research, coordination, or training activities.***~~{ in order to accomplish the purposes of this section; or}~~

In ~~such~~ cases where federal laws or regulations preclude the Transportation Cabinet from direct application for *this type of* ~~such~~ federal funds, the cabinet is authorized and directed to provide assistance to *any of the entities listed in this subsection* ~~local transit authorities or a city or a county or other public mass transit providers~~ as necessary to enable it to apply for and obtain *this type of* ~~such~~ federal funds, in order to accomplish the purposes of this section.

- (3) The Transportation Cabinet is authorized to assist cities and counties in the formation of local transit authorities in conformance with this chapter, but nothing in this chapter shall be construed as preventing the Transportation Cabinet from providing such assistance as authorized in this chapter to cities or counties where local transit authorities do not exist.
- (4) *The Transportation Cabinet is authorized to contract, in accordance with the provisions of KRS Chapter 45A, with a transportation provider or broker to provide human services transportation delivery within a specific human service transportation delivery area.*
- (5) *The Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this section. The administrative regulations shall include, but not be limited to, the following:*
 - (a) *Establishment of the human service transportation delivery areas, including the counties in each area;*
 - (b) *Safety and other physical operating requirements for all mass transit operations and human service transportation deliveries;*
 - (c) *The minimum conditions and requirements of a subcontract between the Transportation Cabinet's human service transportation provider or broker contractor and an entity providing the means of the human services transportation;*
 - (d) *Compliance with the requirements of the United States Federal Transit Administration; and*
 - (e) *A mechanism for ensuring that each human services transportation provider contractor or subcontractor:*
 1. *Has appropriate operating authority issued under KRS Chapter 281;*
 2. *Is a transit authority operating under the provisions of KRS Chapter 96A; or*
 3. *Has been approved by the Transportation Cabinet to operate under the provisions of 49 U.S.C. sec. 5310 or 5311.*
- (6) *All willing providers or entities who meet the applicable requirements of subsection (5) of this section shall be provided by the broker with an application for enrollment as a subcontractor for the human service transportation delivery programs.*

Section 3. KRS 96A.170 is amended to read as follows:

An authority created and established under this chapter, together with its ownership, financing, operation, rates and charges for use of its services and facilities, rules and regulations, routes, schedules, size and character of its equipment and quality of service shall be exempt from all jurisdiction of the Transportation Cabinet of the Commonwealth, provided, however, that no new service may be instituted within or outside of the authority's transit area in competition with an existing certificated bus company without an application to and a grant of authority from the Transportation Cabinet as provided by KRS Chapter 281 *or subsection (4) of Section 2 of this Act*, provided further that nothing in this section shall deny the Transportation Cabinet the authority to render such advice and assistance, including financial aid, engineering, planning and technical assistance, as it deems advisable, to enable an authority as created under this chapter to acquire, construct, expand, maintain, and operate a mass transit system as defined in this chapter and to establish regulations to promote local transit authorities *and to ensure compliance with the requirements of the United States Federal Transit Administration.*

Section 4. KRS 281.013 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) (a) A "city bus certificate" means a certificate granting authority only for the operation of motor vehicles transporting passengers for hire between points within the corporate limits of a city and over regular routes;

- (b) A "city bus" is a motor vehicle operated under one or more city bus certificates;
- (c) The term "city bus license" means a license plate issued for a bus authorizing its operation under one or more city bus certificates or a combination of city bus certificates and suburban bus certificates;
- (2) (a) A "suburban bus certificate" means a certificate granting authority only for the operation of motor vehicles carrying passengers for hire within the confines of either one or more cities and their suburban area, or a suburban area, over regular routes but not granting authority to engage in intracity transportation;
- (b) A "suburban bus" is a motor vehicle operated under one or more suburban bus certificates;
- (c) The term "suburban bus license" means a license plate issued for a bus authorizing its operation under one or more suburban bus certificates;
- (3) (a) An "industrial bus certificate" means a certificate granting authority only for the operation of motor vehicles which are not exempt under subsection (10)~~(11)~~ of KRS 281.605 and which are used exclusively for transporting employees of a given industry or industries for hire to and from their place of employment;
- (b) An "industrial bus" is a motor vehicle operated under an industrial bus certificate;
- (c) The term "industrial bus license" means a license plate issued for a bus authorizing its operation under an industrial bus certificate.

Section 5. KRS 281.605 is amended to read as follows:

The provisions of this chapter shall not apply, except as to safety regulations, to:

- (1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;
- (2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:
 - (a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill;
 - (b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;
 - (c) For both the purposes described in paragraphs (a) and (b) of this subsection;
 - (d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or
 - (e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;
- (3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;
- (4) ~~Motor vehicles to the extent such are used or operated in transportation programs pursuant to grants of funds in furtherance of and governed by the provisions of Title III and Title VII of the Federal Older Americans Act of 1965, Public Law 89-73, including all amendments thereto, and to the extent such are used or operated to transport persons whose fares are reimbursed or paid through programs in furtherance of and governed by the provisions of Title XIX and Title XX of the Federal Social Security Act, including all amendments thereto;~~
- ~~(5)~~ Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;

- ~~(5)(6)~~ Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;
- ~~(6)(7)~~ Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;
- ~~(7)(8)~~ Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tippel where the railhead or tippel is located at a point not more than fifty (50) air miles from the point at which the coal is mined;
- ~~(8)(9)~~ Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in KRS 211.950;
- ~~(9)(10)~~ Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities, through contractual agreement, shall be included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;
- ~~(10)(11)~~ Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;
- ~~(11)(12)~~ Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;
- ~~(12)(13)~~ Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate of public convenience and necessity or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and-ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section; or
- ~~(13)(14)~~ Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet *in accordance with 49*, Department of Highways pursuant to C.F.R. Title VI.

Section 6. KRS 281.635 is amended to read as follows:

Notwithstanding anything contained in this chapter:

- (1) All cities of the Commonwealth are vested with the power to sell franchises or, where no franchise is sold, grant authorizations for the operation of city buses over their streets and highways; provided, however, no person shall apply for or obtain any such franchise or authorization from any city without a prior finding by the Department of Vehicle Regulation, after a hearing, conducted pursuant to KRS 281.625, that there is a demand and necessity for the service sought to be rendered, which finding shall be valid and effective for a period of one (1) year from and after the date thereof, exclusive of any delay due to the order of any court. Upon certification by the department to a city that there is a demand and necessity for the service sought to be rendered, any city may award any duly qualified person a franchise or authorization covering the proposed operation. Upon acquiring a franchise or authorization, the holder thereof shall apply to the Department of Vehicle Regulation for a city bus certificate which shall be issued to the holder of the franchise or authorization without a hearing. The governing body of any city of the first five (5) classes which does not have a city bus

service may determine that there is a demand and necessity for a city bus service, and may thereafter apply to the Department of Vehicle Regulation for a city bus certificate to be operated by the city which may be issued without a hearing, if the department determines that it will be in the public interest. Unless a certificate is exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court, the authority conferred by the issuance of the certificate of convenience and necessity shall be void.

- (2) The applicant for a certificate or renewal of a certificate to operate a city bus shall at the time of application file with the department a map or maps showing the route or routes and territory proposed to be served, together with a time schedule, and shall thereafter, during the license year, file only those additional maps or time schedules that the commissioner may require.
- (3) The governing body of any city of the first four (4) classes in the Commonwealth in which city buses operate shall have supervisory and regulatory power over city buses, while operating in the city, and shall have authority to enforce all ordinances or regulations pertaining to routes, services, time schedules, and operation of the city buses and the drivers thereof, but any interested party may appeal to the department from any action, finding, or order of any city within thirty (30) days after the entry of the action, finding, or order, and a hearing shall be held before the department in the same manner as other hearings are held as provided for in this chapter; however, any action, finding, or order of any city shall be sustained if there is substantial evidence or reason to support it; otherwise the department shall make the orders as it deems necessary and proper. However, where a carrier's entire operation is confined to intracity transportation within the corporate limits of a single city, there shall be no appeal to the department from the actions, findings, or orders of the city. Provided further, that where any city bus is subject to the regulatory powers of more than one (1) city and the regulations are in conflict or such as to impede the transportation facilities serving the cities, or the carrier is failing to furnish safe, adequate and convenient service to the public, the department may, upon complaint or on its own initiative, call a hearing and enter orders as are necessary and proper.
- (4) The governing body of any city of the first five (5) classes in the Commonwealth in which taxicabs operate shall have supervisory and regulatory power over taxicabs certificated to operate in the city, and while operating in the city, and shall have authority to enforce all ordinances or regulations pertaining to the number and operation of taxicabs, but any interested party may appeal to the department from any action, finding, or order of any city within thirty (30) days after the entry of the action, finding, or order, and a hearing shall be held before the department in the same manner as other hearings are held as provided for in this chapter; however, any action, finding, or order of any city shall be sustained if there is substantial evidence or reason to support it; otherwise, the department shall make any orders that it deems necessary and proper. However, where a carrier's entire operation is confined to intracity transportation within the corporate limits of a single city, there shall be no appeal to the department from the actions, findings, or orders of the city.
- (5) The governing body of any city of the first five (5) classes in the Commonwealth is hereby vested with the exclusive power to prescribe the qualifications with respect to the health, vision, sobriety, intelligence, ability, moral character, and experience of the drivers of taxicabs certificated to operate in the city, and while operating in the city, and may issue permits for qualified drivers. However, any taxicab driver must also possess a Kentucky operator's license.
- (6) Until any city of the Commonwealth enacts ordinances or prescribes rules and regulations as may be reasonably necessary to exercise the prior powers delegated in this section to the cities respecting the supervision and regulation of city buses, taxicabs, and taxicab drivers, the department shall possess the powers and may promulgate administrative regulations reasonably necessary to supervise and control city buses, taxicabs, and taxicab drivers, having regard for the public safety and the public need for service.
- (7) If any city fails to exercise any of the authority granted it in this section, the authority shall be vested in the department.
- (8) The department may, under the provisions of this chapter, originate, establish, change, promulgate, and enforce any rate that has or may be fixed by any contract, franchise, or agreement between the holder of any city bus certificate and any city, and all rights and obligations arising out of any contract regulating any rate shall be subject to the jurisdiction and supervision of the department, but no rate shall be changed nor any contract, franchise, or agreement affecting it be abrogated or changed until a hearing has been conducted.
- (9) ***The governing body of a city shall not have authority over a motor vehicle that is being operated as a human service transportation delivery vehicle under a contract with the Transportation Cabinet in accordance with subsection (4) of Section 2 of this Act.***

Section 7. KRS 281.6185 is amended to read as follows:

- (1) *For human service transportation delivery programs, any disabled persons carrier transporting persons with disabilities requiring the use of specialized equipment shall comply with the provisions of KRS 281.014(5)(a). A carrier operating under a disabled person certificate may provide service to any person not requiring the use of the specialized equipment. A person requiring the use of specialized equipment may be accompanied by a companion*~~[A carrier operating pursuant to a disabled persons certificate shall not provide service to any person not requiring the use of a disabled persons vehicle. A companion may accompany the person requiring the use of the disabled persons vehicle.~~
- ~~(2) Irregular route common carrier certificates shall describe in general the territory where the holder shall have the right to operate or originate if less than statewide].~~
- (2)~~(3)~~ Any person or his predecessor in interest engaged as of *January 1, 1998*~~[July 1, 1996]~~, in the transportation of disabled persons, pursuant to a valid *taxicab certificate or a taxicab*~~[taxi]~~ certificate limited to wheelchair equipped vans issued by the department, authorizing this activity, shall, *upon application*, be issued a certificate as a disabled persons carrier to authorize a continuation of the same operation, except the origin of the trip may be anywhere in the authorized county rather than restricted to the city and its suburban area. *Any person or the person's predecessor in interest with a pending taxicab application filed prior to January 1, 1998, may elect to amend the pending taxicab application so as to designate all or a portion of the application as an application for approval to operate disabled person vehicles.*

Approved April 14, 1998

CHAPTER 608

(HB 471)

AN ACT relating to animal control and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

- (1) *The Animal Control Advisory Board is hereby created for the purposes of making recommendations to the commissioner relating to evaluating applications for and reviewing disbursements from the animal control and care fund, establishing shelter standards, creating training programs, and other duties relating to animal control and care in the counties of the Commonwealth.*
- (2) *The advisory board shall be attached to the Kentucky Department of Agriculture for administrative purposes.*
- (3) *The advisory board shall be composed of the following members appointed by the Governor as specified:*
 - (a) *Two (2) members selected from a list of three (3) submitted by the Kentucky Animal Control Association;*
 - (b) *Two (2) members selected from a list of three (3) submitted by the Kentucky Veterinary Medical Association;*
 - (c) *Two (2) members selected from a list of three (3) submitted by the Kentucky Farm Bureau;*
 - (d) *Two (2) members selected from a list of three (3) submitted by the Kentucky Association of Counties;*
 - (e) *Two (2) members selected from a list of three (3) submitted by the Kentucky Houndsmen Association; and*
 - (f) *Two (2) members selected from a list of three (3) submitted by the Kentucky League of Cities.*
- (4) *Appointed members shall serve for a term of four (4) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term.*
- (5) *Members of the advisory board shall receive one hundred dollars (\$100) per day for attendance at meetings and shall be entitled to reimbursement for expenses incurred for travel. No per diem or travel expenses shall be paid except for meetings of the full advisory board.*
- (6) *The advisory board shall elect one (1) of its members to serve as chair for a term of two (2) years.*

- (7) *The advisory board shall meet quarterly.*
- (8) *The commissioner shall carry out the recommendations of the advisory board.*

SECTION 2. A NEW SECTION OF KRS 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

- (1) *The "Animal Control and Care Fund" is hereby created as a special fund in the State Treasury. The fund may also receive gifts, grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.*
- (2) *Moneys shall be allocated for distribution from the fund as follows:*
 - (a) *Fifty percent (50%) of the fund balance shall be allocated annually for distribution to eligible counties. Each eligible county shall receive an equal allotment from the fund. To be eligible for an annual allotment, a county shall have an established animal control and care program meeting the requirements provided in subsection (3) of this section, or an approved plan to establish an animal control and care program as provided in subsection (4) of this section; and*
 - (b) *Fifty percent (50%) of the fund balance shall be transferred annually to the Department of Agriculture. This money shall be used by the Animal Control Advisory Board for board expenses, for the creation and support of statewide programs related to animal control and care, and for training dog wardens and animal control officers. "Statewide programs" includes, but is not limited to, the reimbursement of costs for preexposure rabies vaccinations for all animal control and care workers. Based on recommendations of the Animal Control Advisory Board, any moneys not expended under this paragraph may be distributed annually as grants to counties with an established animal control and care program meeting the requirements of subsection (3) of this section or approved plan to establish an animal control and care program under subsection (4) of this section.*
- (3) *As used in this section, "animal control and care program" means a program in which the county:*
 - (a) *Employs a dog warden or an animal control officer as required by KRS 258.195, who is a high school graduate and has completed the training requirements set forth by the Animal Control Advisory Board; and*
 - (b) *Maintains a dog pound or animal shelter, or contracts with an adjoining county, to provide services that:*
 - 1. *Segregate male and female animals in runs and holding areas;*
 - 2. *Provide separate runs or holding areas for ill or injured animals;*
 - 3. *Provide quarantine for dogs and cats presented to the shelter when quarantine by the owner is not feasible or desirable, the cost of quarantine to be borne by the animal owner at the shelter's regular housing costs and fees. Quarantined dogs and cats shall be held in isolation for observation of symptoms of rabies for a period of ten (10) days from the date the dog or cat bit or scratched a person. If the dog or cat dies or is euthanized while in quarantine, it shall be submitted to the local health department for testing for the presence of the rabies virus. The cost of the testing shall be borne by the animal owner or the local health department may bear the cost at its discretion;*
 - 4. *Provide holding areas with protection from the weather, including heated quarters during cold weather;*
 - 5. *Provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material or a minimum of three (3) inches of gravel;*
 - 6. *Provide access to the public for no less than twenty-four (24) hours in one (1) week, with the hours that the facility is open to the public posted in a visible location;*
 - 7. *Employ euthanasia methods recommended by the American Veterinary Medical Association; and*

8. *Provide other minimum standards as developed by the Animal Control Advisory Board and approved by the commissioner.*
- (4) *To be eligible for moneys distributed under paragraph (a) of subsection (2) of this section, counties shall submit documentation to the Animal Control Advisory Board, on a form prescribed by the Department of Agriculture, of an established animal control and care program or an approved plan to establish an animal control and care program. Counties submitting plans proposing to establish an animal control and care program for approval by the Animal Control Advisory Board shall comply with the requirements of:*
- (a) *Paragraph (a) of subsection (3) of this section within twelve (12) months of the date the documentation is submitted; and*
- (b) *Paragraph (b) of subsection (3) of this section within twenty-four (24) months of the date the documentation is submitted.*
- (5) *To be eligible for any moneys distributed as grants to counties under paragraph (b) of subsection (2) of this section, counties shall submit an application to the commissioner, on a form prescribed by the Department of Agriculture, by July 15 of each year. Moneys shall be used for construction, equipment, educational supplies, and other uses or programs approved by the advisory board, but shall not be used to increase wages of dog wardens or other personnel. Counties receiving money from the Department of Agriculture shall comply with the terms of the plan or program. If the terms of the plan or program are not complied with, the county shall refund the money to the Department of Agriculture.*
- (6) *The commissioner shall promulgate administrative regulations that relate to the animal control and care fund provisions of this section.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

- (1) *The "Animal Shelter Trust Fund" is hereby established and created as a special fund in the State Treasury. The fund may also receive state appropriations, gifts, grants from private and public sources, and federal funds. Any unallotted or unencumbered balances in the trust fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (2) *Moneys shall be allocated for distribution from the trust fund as follows:*
- (a) *Fifty percent (50%) of the interest on the fund shall be transferred annually to the animal control and care fund created by Section 2 of this Act; and*
- (b) *Fifty percent (50%) of the interest on the fund shall remain in the trust fund for the purpose of accruing interest.*

Section 4. Notwithstanding subsection (4) of Section 1 of this Act, initial appointments to the Animal Control Advisory Board shall be made by the Governor in such a way that:

- (1) Three members are appointed for one-year terms; three members are appointed for two-year terms; three members are appointed for three-year terms; and three members are appointed for four-year terms; and
- (2) No two members appointed from the same paragraph of subsection (3) of Section 1 of this Act shall have terms of the same number of years.

Section 5. There is appropriated out of the General Fund of the State Treasury for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the sum of \$10.00, and for the fiscal year beginning July 1, 1999, and ending June 10, 2000, the sum of \$10.00 to effectuate the purposes of this Act. In each fiscal year, fifty percent of the amount appropriated by this section shall be deposited into the animal control and care fund created by Section 2 of this Act, and fifty percent of the amount appropriated by this section shall be deposited into the animal shelter trust fund created by Section 3 of this Act.

Approved April 14, 1998

CHAPTER 609

(HB 536)

AN ACT relating to professional development.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.095 is amended to read as follows:

- (1) The Kentucky **Department**~~[Board]~~ of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator ***who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include planning and evaluation assistance or coordination activities.***
 - (a) The manner of appointment, qualifications, and ***other*** duties of the professional development coordinator shall be~~[-as]~~ established by Kentucky Board of Education ***through promulgation of administrative regulations.***
 - ~~(b)(3)~~ The ***local district professional development coordinator shall participate in the*** Kentucky **Department**~~[Board]~~ of Education~~[- shall provide an]~~ annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment ***and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information***~~[- instruction in methods to involve both teachers and administrators in actively planning, delivering, and evaluating programs; presenting options for meeting professional development needs, especially through individualized programs; and identification of resources needed for quality, motivational professional development programs].~~
- ~~(3)(4)~~ The Kentucky **Department**~~[Board]~~ of Education shall provide ***or facilitate optional***~~[for a series of state sponsored]~~, professional development programs for certified personnel throughout the Commonwealth ***that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs may include, but not be limited to,***~~[shall]~~ focus on the following areas~~[- during the 1990-91 and 1991-92 school years]~~:
 - (a) ***Curriculum content and methods of instruction for each content area***~~[The Kentucky Education Reform Act of 1990]~~;
 - (b) School-based decision making;
 - (c) Performance-based student assessment;
 - (d) Nongraded primary programs;
 - (e) Research-based instructional practices;
 - (f) Instructional uses of technology;~~[-and]~~

- (g) *Curriculum design to serve the needs of students with diverse learning styles and skills and of ~~Effective awareness and sensitivity training so teachers can motivate and nurture~~ students of diverse cultures;*
 - (h) *Instruction of phonics; and*
 - (i) *Educational leadership.*
- (4)~~(5)~~ *The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to provide local district personnel with access to high quality programming. The department ~~of Education~~ shall assist school personnel in assessing the impact of ~~provide~~ professional development on their instructional practices and student learning ~~activities at times and locations which are convenient for school personnel. During the 1990-91 and 1991-92 school years, school districts shall use the four (4) days designated for professional development in KRS 158.070 to acquire skills and knowledge in the areas listed in subsection (4) of this section. The master professional development plan shall reflect the districts' choices from the required areas for the 1990-91 and 1991-92 school years. A district's master professional development plan which has been developed in conjunction with the district improvement plan pursuant to KRS 158.685, shall be exempt from the requirements of this subsection.~~*
- (5)~~(6)~~ *The department shall assist districts with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.*
- (a) *Professional development strategies may include, but are not limited to, participation in teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.*
 - (b) *In planning the use of the four (4) days for professional development under Section 2 of this Act, priority shall be given to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. Up to one (1) day may be used to provide training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.*
 - (c) *State funds allocated for professional development may be used to support professional development initiatives that are consistent with local plans, throughout the year for all staff, including classified and certified staff and parents on school councils or committees.*
- (6) *The Department of Education shall contract with an outside agency to complete an analysis of the current status of the statewide professional development program. The analysis shall include a comparison of models of professional development used in high-performing and award-winning schools. The analysis shall include specific recommendations regarding:*
- (a) *The effective advancement of a supply and demand system for vendors and consumers of professional development; and*
 - (b) *The development and dissemination through the Internet and other appropriate means of consumer information concerning specific professional development opportunities.*

A written report shall be provided to the Department of Education by October 30, 1998. The Department of Education shall publicly report its actions within six (6) months of the release of the recommendations and subsequently issue annual reports of the status of the statewide professional development program ~~Local school districts with an enrollment of twenty thousand (20,000) or more students shall be exempt from the requirements of this section if they meet the standards for professional development established by the Kentucky Board of Education.~~

Section 2. KRS 158.070 is amended to read as follows:

- (1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.

- (2) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:
- (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
 - (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
 - (c) No teacher shall be required to teach more than the minimum term during the school year.
- (3) (a) Each local board of education shall use four (4) days of the minimum school term for professional development and *collegial* planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095.
- (b) *A local board may approve a school's flexible professional development plan that permits teachers, or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred and eighty-five (185) days that a teacher shall be employed. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.*
- (c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays, provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.
 - (d) Each local board may use two (2) days for planning activities without the presence of pupils.
 - (e) Each local board may use the number of days deemed necessary for:
 - 1. ~~(a)~~ National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
 - 2. ~~(b)~~ Local disaster which would endanger the health or safety of children; and
 - 3. ~~(c)~~ Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the chief state school officer.
- (4) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in *paragraph (e)2. of* subsection (3)~~(b)~~ of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.
- (5) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and that day may be used for professional development activities, professional meetings, or parent-teacher conferences.
- (6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.
- (7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term

in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451.

- (8) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section. ~~However, for the school years 1994-95 and 1995-96, local school districts may use up to five (5) instructional days or up to thirty (30) hours during instructional days for additional professional development for teachers if the following conditions are met:~~
- ~~(a) The local board determines the number of additional days or hours to be used for professional development and designates them in the school calendar; and~~
 - ~~(b) A plan for the use of the additional days or hours is developed by each school and approved by the district superintendent. The plan shall consist of training selected from a list approved by the Kentucky Department of Education.~~

Section 3. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:
- (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.
 - (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:
 1. Exclusively vocational-technical, special education, or preschool programs;
 2. Instructional programs operated in institutions or schools outside of the district; or
 3. Alternative schools designed to provide services to at-risk populations with unique needs.
 - (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.
 - (d) "Parent" means:
 1. A parent, stepparent, or foster parent of a student; or
 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:
- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.

- (b)
 - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.
 - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
 - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
 - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.
- (c)
 - 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
 - 2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.
- (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
 - 1. Determination of curriculum, including needs assessment and curriculum development;
 - 2. Assignment of all instructional and noninstructional staff time;
 - 3. Assignment of students to classes and programs within the school;
 - 4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
 - 5. Determination of use of school space during the school day;
 - 6. Planning and resolution of issues regarding instructional practices;
 - 7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
 - 8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
 - 9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.
- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
 - (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
 - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
 - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;
 - (d) Professional development plans developed pursuant to KRS 156.095 ~~and 156.0951~~;
 - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
 - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
 - (g) Requirements for waiver of district policies;
 - (h) Requirements for record keeping by the school council; and
 - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board

shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.
- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
 - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
 - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
 - (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
 - (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 4. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is

a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
 - (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Human Resources, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.
 - (b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
 - (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
 1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
 2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children ~~pursuant to KRS 156.0951~~;
 3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
 4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
 5. The funding for school services for state agency children authorized by KRS 158.135; and
 6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.
 - (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
 1. Provide for the development and implementation of interagency agreements that:
 - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
 - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.
- (e) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 5. The following KRS section is repealed:

156.0951 District consortia for professional development -- Withdrawal by school district.

Approved April 14, 1998

CHAPTER 610

(HB 810)

AN ACT relating to public officials.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly of the Commonwealth of Kentucky hereby finds and determines that county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs in all counties are officers whose duties or jurisdictions are coextensive with that of the Commonwealth within the meaning of Section 246 of the Constitution of Kentucky.*
- (2) *Effective on the first Monday in January of 1999, the maximum salary of county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs shall be fixed by the Department of Local Government according to a salary schedule in accordance with Section 246 of the Kentucky Constitution. The salary schedule provides that these officials, as officers whose jurisdiction or duties are coextensive with the Commonwealth, shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum as adjusted for any increase or decrease in the consumer price index and as described in subsection (4) of this section.*
- (3) *The salary schedule for county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs in all counties provides for nine (9) levels of salary based upon the population of the county in the year prior to the election of county officials as determined by the United States Department of Commerce, Bureau of the Census annual estimates. To implement the salary schedule, the Department of Local Government shall, by November 1 of each year preceding the election of county officials, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. For the purposes of this section, the salary schedule for county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs shall remain as determined by the Department of Local Government pursuant to this section, regardless of changes in the population estimates or the actual census count that may occur during the term for which the official has been elected or appointed. The salary schedule provides four (4) steps for yearly increments within each population group. County officers named in this section shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each officer, on January 1 of each subsequent year, shall be advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. Prior to assuming office on the first Monday in January, 1999, or thereafter, any person assuming any of the offices for which the salary is determined by this section must certify to the commissioner of the Department of Local Government the total number of years, not to exceed four (4) years, that the person has previously served in the office. The department shall place the officer in the proper step based upon a formula of one (1) incremental step per full calendar year of service:*

SALARY SCHEDULE

<i>County Population by Group</i>	<i>Steps and Salary for Affected Officers</i>			
	<i>Step 1</i>	<i>Step 2</i>	<i>Step 3</i>	<i>Step 4</i>
<i>Group I</i>				
<i>0-4,999</i>	\$ 6,600	\$ 6,800	\$ 7,000	\$ 7,200
<i>Group II</i>				
<i>5,000-9,999</i>	7,200	7,400	7,600	7,800
<i>Group III</i>				
<i>10,000-19,999</i>	7,800	8,000	8,200	8,400
<i>Group IV</i>				
<i>20,000-29,999</i>	8,100	8,400	8,700	9,000
<i>Group V</i>				
<i>30,000-44,999</i>	8,700	9,000	9,300	9,600
<i>Group VI</i>				
<i>45,000-59,999</i>	9,000	9,400	9,800	10,200
<i>Group VII</i>				
<i>60,000-89,999</i>	9,600	10,000	10,400	10,800
<i>Group VIII</i>				
<i>90,000-499,999</i>	9,900	10,400	10,900	11,400
<i>Group IX</i>				
<i>500,000 and up</i>	10,500	11,000	11,500	12,000

- (4) *Upon publication of the annual consumer price index by the United States Department of Commerce, the Department of Local Government shall fix the salary of the county judge/executive, county clerk, jailer who operates a full service jail, and sheriff at an annual rate of salary to which the county official is entitled pursuant to the increase in the Consumer Price Index and the salary schedule contained in this section. This salary determination shall be retroactive to the preceding January 1.*
- (5) *Notwithstanding any provision contained in Section 1 of this Act, no county official holding office on the effective date of this Act, shall receive any reduction in salary or reduction in adjustment to salary otherwise allowable by the statutes in force on the effective date of this Act.*
- (6) *In addition to the step increases based on service in office, each officer shall be paid an increase of one hundred dollars (\$100) for each forty (40) hour training unit successfully completed. Each training unit shall be approved and certified by the Department of Local Government. Each unit shall be available to officials in each office based on continuing service in that office.*
- (7) *Except in counties that contain an urban-county form of government, justices of the peace who serve on fiscal courts and county commissioners shall also be eligible for the training and resulting one hundred dollars (\$100) per forty (40) hour unit increase.*

Section 2. KRS 64.345 is amended to read as follows:

- (1) The county clerk and sheriff of each county having a population of seventy thousand (70,000) or over shall receive an annual salary *pursuant to the salary schedule in Section 1 of this Act* ~~of fourteen thousand three hundred dollars (\$14,300)~~.
- (2) In counties containing a city of the first class and in counties having an urban-county form of government, the amount, if any, allowed for the necessary office expenses of each officer shall be approved by the fiscal court in counties containing a city of the first class and by the legislative body in counties containing an urban-county form of government. This approval shall be signed by the county judge/executive in a county containing a city of the first class and by the executive authority in a county having an urban-county form of government. Approval by the fiscal court or urban-county legislative body under this subsection shall not include oversight of expenditure of the funds. This oversight shall be retained by the Office of the Controller created pursuant to

KRS 42.0201. In counties containing a city of the first class, each sheriff's deputy who uses his own automobile in the performance of official duties shall be authorized an allotment for expenses incurred, up to a maximum of three hundred dollars (\$300) per month, to be paid out of the fees and commissions of the sheriff's office. In all other counties with a population of seventy thousand (70,000) or more, the amount, if any, allowed for the necessary office expenses of each officer shall be fixed by the fiscal court by an order entered upon the fiscal court order book no later than January 15 of each year. A certified copy of the orders, and of any subsequent changes made therein, shall, as soon as entered, be forwarded to the Finance and Administration Cabinet.

- (3) Each officer shall, on the first day of each month, send to the Finance and Administration Cabinet a statement, subscribed and sworn to by him, showing the amount of money received or collected by or for him the preceding month, as fees or compensation for official duties, and shall, with these statements, send to the Finance and Administration Cabinet the amount so collected or received. The Finance and Administration Cabinet may extend the time for filing the statement and making the payment for a period not exceeding ten (10) days in any month.
- (4) The salary of each officer and his deputies and assistants and his office expenses shall be paid semimonthly by the State Treasurer upon the warrant of the Finance and Administration Cabinet made payable to the officer. If seventy-five percent (75%) of the amount paid into the State Treasury in any month by any of such officers is not sufficient to pay the salaries and expenses of his office for that month, the deficit may be made up out of the amount paid in any succeeding month; but in no event shall the amount allowed by the Finance and Administration Cabinet to any officer for salaries and expenses exceed seventy-five percent (75%) of the amount paid to the Finance and Administration Cabinet by the officer during his official term.
- (5) In counties containing a city of the first class and in counties having an urban-county form of government, the number of deputies and assistants allowed to each officer and the compensation allowed to each deputy and assistant shall be approved at reasonable amounts upon motion of each officer by the fiscal court in counties containing a city of the first class and by the legislative body in counties containing an urban-county form of government. This approval shall be signed by the county judge/executive in a county containing a city of the first class and by the executive authority in a county having an urban-county form of government. Approval by the fiscal court or urban-county legislative body under this subsection shall not include oversight of expenditure of the funds. This oversight shall be retained by the Office of the Controller. In all other counties with a population of seventy thousand (70,000) or more, the number of deputies and assistants allowed to each officer and the compensation allowed to each deputy and assistant shall be fixed at reasonable amounts upon motion of each officer by the fiscal court by an order entered upon the fiscal court order book no later than January 15 of each year. A certified copy of the orders, and of any subsequent changes made therein, shall, as soon as entered, be forwarded to the Finance and Administration Cabinet.

Section 3. KRS 64.347 is amended to read as follows:

The population of a county shall, for the purposes of KRS ~~64.345 and~~ 64.346, be determined by the most recent federal decennial census enumeration, provided however that the provisions of those sections and subsections shall not become operative to such officers mentioned therein during their term, in counties determined to have acquired, since the last census, a population of more than 75,000.

Section 4. KRS 64.527 is amended to read as follows:

In order to equate the compensation of ~~county judges/executive, county clerks, sheriffs, jailers,~~ justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the Department of Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The Department of Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the Department of Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department of Local Government.

Section 5. KRS 64.535 is amended to read as follows:

The county *judge/executive, clerk, jailer who operates a full service jail, and sheriff shall each receive a monthly salary of one-twelfth (1/12) of the amount indicated by the salary schedule in Section 1 of this Act*~~{clerk, county judge/executive and sheriff of each county shall receive a maximum monthly salary of one twelfth (1/12) of fourteen thousand three hundred dollars (\$14,300) to be paid solely out of the statutory fees and salaries received by him during the calendar year}~~.

Section 6. KRS 67.705 is amended to read as follows:

- (1) Each county shall have a chief executive officer known as the county judge/executive. Only a resident of the county shall be eligible for election as county judge/executive. He shall be nominated and elected by the qualified voters of the county in the manner provided by law for the election of county officers. In case the office of county judge/executive becomes vacant by reason of death, resignation, or removal, it shall be filled with a person appointed by the Governor, in accordance with Section 152 of the Constitution, for the unexpired term.
- (2) The ~~{salary of the}~~ county judge/executive shall *receive an annual salary pursuant to the salary schedule in Section 1 of this Act, except in counties that contain an urban-county form of government, where the county judge/executive shall receive the salary set by the legislative body*~~{be set by the fiscal court}~~.
- (3) ~~{Except in urban-county governments, the minimum annual compensation paid to the county judge/executive shall be the greater of a sum not less than sixty percent (60%) of the maximum compensation certified under KRS 64.527, or not less than the annual compensation of the sheriff or county clerk or jailer in the county, except that no fiscal court shall be required under provisions of this section to approve an amount for the compensation of any one (1) official which would exceed six percent (6%) of the county's total annual general fund receipts including federal revenue sharing moneys.~~
- ~~{4}~~ In no event shall the county judge/executive, justice of the peace, magistrate, or commissioners who serve on the fiscal court holding office on January 2, 1978, receive less than the total annual compensation received by that official during calendar year 1976.

Section 7. KRS 441.245 is amended to read as follows:

- (1) The jailer *who operates a full service jail* shall receive a monthly salary *pursuant to the salary schedule in Section 1 of this Act* from the county jail operating budget.
- ~~{2}~~~~{In recognition of the increased duties and responsibilities of the office of jailer, jailers holding office on July 1, 1982, shall be entitled to a level of compensation in calendar year 1982 which shall be equal to the compensation of jailer in calendar year 1981 as adjusted for the change in the consumer price index during calendar year 1981 or \$12,000, whichever is greater. The fiscal court may establish a higher level of compensation for the jailer, provided, however, that in no event shall the jailer's compensation exceed the maximum compensation allowable for county officials under KRS 64.527. In the event that a jail was closed during calendar year 1981, the secretary of finance may, upon proper documentation by the jailer, direct that a prior calendar year's level of compensation be used as a basis for setting the jailer's compensation pursuant to this section.~~
- ~~{3}~~~~{The jailer's monthly salary for the period July, 1982, through December, 1982, shall be the jailer's compensation for calendar year 1982 as provided in subsection (2) of this section less the jailer's earnings for January through June, 1982, divided by six (6).~~
- ~~{4}~~~~{Except as provided in subsection (5) of this section, the jailer's compensation for 1983 and subsequent years shall equal the prior year's compensation and may be adjusted by the fiscal court for the change in the prior year's consumer price index.~~
- ~~{5}~~ Effective January 6, 1986, the salary for jailers in any county where there is no jail and the jailer does not transport prisoners shall be twelve thousand dollars (\$12,000) per year.

Approved April 14, 1998

CHAPTER 611**(HB 900)**

AN ACT relating to students.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 159.010 is amended to read as follows:

- (1) Except as provided in KRS 159.030, each parent, guardian, or other person residing in the state and having in custody or charge any child who has entered the primary school program or any child between the ages of six (6) and sixteen (16) shall send the child to a regular public day school for the full term that the public school of the district in which the child resides is in session, or to the public school that the board of education of the district makes provision for the child to attend. A child's age is between six (6) and sixteen (16) when the child has reached his sixth birthday and has not passed his sixteenth birthday.
- (2) An unmarried child between the ages of sixteen (16) and eighteen (18) who wishes to terminate his public or nonpublic education prior to graduating from high school shall do so only after a conference with the principal or his designee, and the principal shall request a conference with the parent, guardian, or other custodian. Written notification of withdrawal must be received from his parent, guardian, or other person residing in the state and having custody or charge of him. ~~[- sixty (60) days prior to withdrawal. The written notification shall be dated and the signature witnessed by the principal of the school or his designee, where the child is in attendance. During the sixty (60) day period,]~~ The parent(s) and child shall be required to attend a one (1) hour counseling session *with a school counselor* ~~[where they shall view a media presentation prepared by the Department of Education which shows economic statistics and other information]~~ on potential problems of nongraduates.
- (3) A child's age is between sixteen (16) and eighteen (18) when the child has reached his sixteenth birthday and has not passed his eighteenth birthday. Written permission for withdrawal shall not be required after the child's eighteenth birthday. Every child actually resident in this state is subject to the laws relating to compulsory attendance, and neither he nor the person in charge of him shall be excused from the operation of those laws or the penalties under them on the ground that the child's residence is seasonable or that his parent is a resident of another state.
- ~~{(4) The commissioner of education shall make a recommendation to the 1992 Regular Session of the General Assembly on raising the compulsory school age to eighteen (18) years of age for students who have not earned a diploma.}~~

Section 2. KRS 159.150 is amended to read as follows:

Any child who has been absent from school without valid excuse for three (3) or more days, or tardy *without valid excuse* on three (3) or more days, is a truant. Any child who has been reported as a truant three (3) or more times is an habitual truant. Being absent for less than half of a school day shall be regarded as being tardy. *A local board of education may adopt reasonable policies that require students to comply with compulsory attendance laws, that require truants and habitual truants to make up unexcused absences, and that impose sanctions for noncompliance.*

Approved April 14, 1998

CHAPTER 612**(HCR 11)**

A CONCURRENT RESOLUTION confirming the appointment of Jennifer Jones to the Governor's Postsecondary Education Nominating Committee and declaring an emergency.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Jennifer Jones as a member of the Governor's Postsecondary Education Nominating Committee for a term expiring April 14, 1998; and

WHEREAS, appointments to the Governor's Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has submitted Jennifer Jones' name for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Jennifer Jones meets the requirements established in KRS 164.005 for membership on the Governor's Postsecondary Education Nominating Committee;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and Senate hereby confirm the appointment of Jennifer Jones to the Governor's Postsecondary Education Nominating Committee for a term ending April 14, 1998.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and Jennifer Jones, 145 Horseshoe Drive, Pineville, Kentucky 40977, in writing, of the General Assembly's action.

Section 3. Whereas, Jennifer Jones has been serving on the Governor's Postsecondary Education Nominating Committee pending her confirmation and her term is to expire on April 14, 1998, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 14, 1998

CHAPTER 613

(HJR 92)

A JOINT RESOLUTION establishing the additional four (4) year highway construction plan outlined in the Recommended FY 1999 - FY 2004 Six Year Road Plan presented to the 1998 General Assembly.

WHEREAS, the statutes of the Commonwealth require a highway construction plan to be presented to the General Assembly that details those projects that will be presented for construction by the Department of Highways in future years; and

WHEREAS, the General Assembly recognizes the importance of planning and the assurance that once projects are initiated that they are completed; and

WHEREAS, in previous years shifting of projects has diminished the confidence of the General Assembly and the public that roads in the Six Year Road Plan will be constructed in a timely fashion; and

WHEREAS, the first major step in assuring that road projects are planned and built in a conscientious manner is to adopt projects scheduled for funding during the biennium in the budget memorandum and the projects scheduled for funding in the last four (4) years of the road plan in a joint resolution; and

WHEREAS, the General Assembly in adoption of this resolution is committed to working with the Department of Highways to develop a balanced and workable six (6) year road plan;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The projects authorized by the General Assembly in this Resolution constitute the official four (4) year highway construction plan outlined in the Recommended FY 1999 - FY 2004 Six Year Road Plan presented to the 1998 General Assembly. The following projects shall be the 2001-2004 additional four (4) year highway construction plan with project phases not scheduled for completion until after Fiscal Year 2000:

COUNTY	ITEM #	ROUTE	FUND	PHASE	ESTIMATE	FY
ADAIR	08- 159.00	KY-55	STP	CONSTRUCTION	\$11,925,000	2001
ADAIR	08- 5005.00	KY-6172	SP	DESIGN	\$35,000	2002
ADAIR	08- 5005.00	KY-6172	SP	RIGHT OF WAY	\$10,000	2003
ALLEN	03- 146.11	US-231	STP	CONSTRUCTION	\$7,000,000	2001
ALLEN	03- 146.40	US-231	STP	RIGHT OF WAY	\$4,000,000	2001

ALLEN	03-	146.40	US-231	STP	UTILITIES	\$3,500,000	2002
ALLEN	03-	146.41	US-231	STP	CONSTRUCTION	\$8,000,000	2003
ANDERSON	07-	304.01	US-127	SP	RIGHT OF WAY	\$1,500,000	2001
ANDERSON	07-	304.01	US-127	SP	UTILITIES	\$1,000,000	2002
ANDERSON	07-	346.00	KY-44	STP	CONSTRUCTION	\$2,000,000	2001
ANDERSON	07-	2008.00	BG-9002	SP	DESIGN	\$60,000	2002
ANDERSON	07-	2008.00	BG-9002	SP	CONSTRUCTION	\$3,750,000	2004
BALLARD	01-	23.00	I-66	NH	DESIGN	\$500,000	2002
BALLARD	01-	115.00	US-60	SP	DESIGN	\$750,000	2003
BALLARD	01-	185.00	US-51	NH	CONSTRUCTION	\$2,500,000	2003
BARREN	03-	185.00	KY-70	KYD	CONSTRUCTION	\$7,870,000	2002
BARREN	03-	192.01	-	SP	RIGHT OF WAY	\$2,000,000	2002
BARREN	03-	192.01	-	SP	UTILITIES	\$2,000,000	2004
BARREN	03-	192.20	-	SP	CONSTRUCTION	\$10,000,000	2001
BARREN	03-	2002.00	I-65	IM	CONSTRUCTION	\$2,500,000	2002
BARREN	03-	7000.00	-	SP	RIGHT OF WAY	\$1,200,000	2001
BARREN	03-	7000.00	-	SP	UTILITIES	\$800,000	2002
BATH	09-	127.00	KY-36	SP	DESIGN	\$400,000	2003
BATH	09-	2001.00	I-64	IM	DESIGN	\$80,000	2001
BATH	09-	2001.00	I-64	IM	CONSTRUCTION	\$5,000,000	2003
BATH	09-	2002.00	I-64	IM	DESIGN	\$180,000	2003
BATH	09-	5002.00	I-64	SP	DESIGN	\$40,000	2001
BATH	09-	5002.00	I-64	SP	CONSTRUCTION	\$400,000	2002
BATH	09-	5003.00	I-64	SP	DESIGN	\$60,000	2001
BATH	09-	5003.00	I-64	SP	CONSTRUCTION	\$900,000	2002
BELL	11-	57.00	US-119	NH	RIGHT OF WAY	\$125,000	2001
BELL	11-	57.00	US-119	NH	UTILITIES	\$60,000	2001
BELL	11-	57.00	US-119	NH	CONSTRUCTION	\$2,000,000	2002
BELL	11-	135.00	KY-92	SP	DESIGN	\$300,000	2002
BELL	11-	214.40	US-25E	SP	CONSTRUCTION	\$1,250,000	2001
BELL	11-	214.50	US-25E	SP	CONSTRUCTION	\$1,250,000	2002
BELL	11-	214.51	US-25E	SP	CONSTRUCTION	\$1,250,000	2003
BELL	11-	214.52	US-25E	SP	CONSTRUCTION	\$1,250,000	2004
BELL	11-	217.00	KY-66	SP	DESIGN	\$40,000	2001
BELL	11-	217.00	KY-66	STP	RIGHT OF WAY	\$1,500,000	2003
BELL	11-	1033.00	KY-2013	BRZ	CONSTRUCTION	\$450,000	2001
BELL	11-	1034.00	KY-988	BRZ	CONSTRUCTION	\$450,000	2001
BELL	11-	1044.00	CR-1212	BRZ	CONSTRUCTION	\$250,000	2001
BELL	11-	1050.00	KY-1491	BRX	RIGHT OF WAY	\$52,000	2002
BELL	11-	1050.00	KY-1491	BRX	UTILITIES	\$10,000	2002

ACTS OF THE GENERAL ASSEMBLY

BOONE	06-	12.23	I-275	IM	CONSTRUCTION	\$2,000,000	2001
BOONE	06-	64.01	US-42	STP	UTILITIES	\$1,550,000	2001
BOONE	06-	64.01	US-42	STP	CONSTRUCTION	\$8,000,000	2002
BOONE	06-	101.00	KY-536	SAF	CONSTRUCTION	\$3,600,000	2001
BOONE	06-	116.00	-	SP	CONSTRUCTION	\$1,400,000	2001
BOONE	06-	146.00	-	SP	CONSTRUCTION	\$500,000	2001
BOONE	06-	316.01	KY-1017	SP	RIGHT OF WAY	\$1,500,000	2001
BOONE	06-	316.01	KY-1017	SP	UTILITIES	\$1,000,000	2003
BOONE	06-	331.01	-	CM	CONSTRUCTION	\$500,000	2001
BOONE	06-	331.02	-	CM	CONSTRUCTION	\$1,700,000	2004
BOONE	06-	351.00	US-25	STP	DESIGN	\$750,000	2002
BOONE	06-	351.00	US-25	STP	RIGHT OF WAY	\$2,000,000	2004
BOONE	06-	1039.00	-	CM	CONSTRUCTION	\$50,000	2001
BOONE	06-	1044.02	-	CM	CONSTRUCTION	\$1,250,000	2001
BOONE	06-	1044.03	-	CM	CONSTRUCTION	\$1,500,000	2002
BOONE	06-	1044.04	-	CM	CONSTRUCTION	\$1,700,000	2003
BOONE	06-	1044.05	-	CM	CONSTRUCTION	\$1,500,000	2004
BOONE	06-	2002.00	I-275	IM	CONSTRUCTION	\$12,100,000	2001
BOONE	06-	2004.00	I-71	IM	CONSTRUCTION	\$2,600,000	2001
BOONE	06-	5001.00	US-42	SP	CONSTRUCTION	\$512,500	2001
BOURBON	07-	310.01	US-68	NH	CONSTRUCTION	\$14,000,000	2001
BOURBON	07-	310.02	US-68	NH	CONSTRUCTION	\$8,000,000	2001
BOURBON	07-	310.03	US-68	NH	CONSTRUCTION	\$4,000,000	2002
BOYD	09-	112.00	US-23S	NH	CONSTRUCTION	\$2,000,000	2004
BOYD	09-	129.00	-	STP	DESIGN	\$1,000,000	2001
BOYD	09-	141.00	KY-5	SP	DESIGN	\$300,000	2004
BOYD	09-	176.00	US-23	NH	UTILITIES	\$100,000	2001
BOYD	09-	176.00	US-23	NH	CONSTRUCTION	\$720,000	2002
BOYD	09-	212.31	-	SP	CONSTRUCTION	\$5,000,000	2004
BOYD	09-	275.00	US-60	STP	CONSTRUCTION	\$2,900,000	2001
BOYD	09-	5005.00	US-23	SP	DESIGN	\$50,000	2002
BOYD	09-	5005.00	US-23	SP	RIGHT OF WAY	\$15,000	2003
BOYD	09-	5005.00	US-23	SP	UTILITIES	\$20,000	2003
BOYLE	07-	210.00	KY-2168	SP	DESIGN	\$600,000	2002
BOYLE	07-	210.00	KY-2168	SP	RIGHT OF WAY	\$3,600,000	2004
BOYLE	07-	211.00	US-150B	SP	RIGHT OF WAY	\$800,000	2002
BOYLE	07-	211.00	US-150B	SP	UTILITIES	\$300,000	2003
BRACKEN	06-	355.03	-	SP	CONSTRUCTION	\$125,000	2001
BRACKEN	06-	355.04	-	SP	CONSTRUCTION	\$125,000	2002
BRACKEN	06-	355.05	-	SP	CONSTRUCTION	\$125,000	2003
BRACKEN	06-	355.06	-	SP	CONSTRUCTION	\$125,000	2004

BREATHITT	10- 270.11	KY-15	NH	CONSTRUCTION	\$4,000,000	2002
BREATHITT	10- 270.12	KY-15	NH	CONSTRUCTION	\$9,000,000	2003
BREATHITT	10- 270.20	KY-15	SP	UTILITIES	\$1,500,000	2001
BREATHITT	10- 285.01	KY-15	NH	RIGHT OF WAY	\$7,310,000	2001
BREATHITT	10- 285.01	KY-15	NH	UTILITIES	\$925,000	2003
BREATHITT	10- 286.01	KY-15	NH	RIGHT OF WAY	\$10,500,000	2001
BREATHITT	10- 286.01	KY-15	NH	UTILITIES	\$1,700,000	2003
BREATHITT	10- 5007.00	KY-1812	SP	DESIGN	\$100,000	2003
BREATHITT	10- 5007.00	KY-1812	SP	RIGHT OF WAY	\$40,000	2004
BRECKINRIDGE04-	1048.00	KY-992	BRX	CONSTRUCTION	\$300,000	2002
BULLITT	05- 117.00	KY-61	STP	RIGHT OF WAY	\$5,000,000	2001
BULLITT	05- 117.00	KY-61	STP	UTILITIES	\$2,000,000	2003
BULLITT	05- 117.00	KY-61	STP	CONSTRUCTION	\$10,000,000	2004
BULLITT	05- 347.50	KY-44	STP	DESIGN	\$1,000,000	2004
BULLITT	05- 2008.00	I-65	IM	CONSTRUCTION	\$600,000	2002
BULLITT	05- 5004.00	KY-44	SP	DESIGN	\$65,000	2001
BULLITT	05- 5004.00	KY-44	SP	RIGHT OF WAY	\$75,000	2002
BULLITT	05- 5004.00	KY-44	SP	CONSTRUCTION	\$500,000	2003
BUTLER	03- 5000.00	US-231	SP	CONSTRUCTION	\$180,000	2002
CALDWELL	02- 2011.00	WK-9001	SP	DESIGN	\$70,000	2003
CALDWELL	02- 2011.00	WK-9001	SP	CONSTRUCTION	\$4,000,000	2004
CALDWELL	02- 5005.00	WK-9001	SP	RIGHT OF WAY	\$50,000	2001
CALDWELL	02- 5005.00	WK-9001	SP	UTILITIES	\$10,000	2001
CALDWELL	02- 5005.00	WK-9001	SP	CONSTRUCTION	\$1,100,000	2002
CALLOWAY	01- 181.11	US-68	SP	CONSTRUCTION	\$16,000,000	2001
CALLOWAY	01- 181.14	US-68	SP	CONSTRUCTION	\$16,000,000	2002
CALLOWAY	01- 181.21	KY-80	SP	UTILITIES	\$1,210,000	2002
CALLOWAY	01- 181.22	KY-80	SP	UTILITIES	\$3,300,000	2002
CALLOWAY	01- 181.22	KY-80	SP	CONSTRUCTION	\$6,000,000	2004
CALLOWAY	01- 181.30	KY-80	SP	UTILITIES	\$2,870,000	2001
CALLOWAY	01- 181.30	KY-80	SP	CONSTRUCTION	\$12,000,000	2003
CALLOWAY	01- 181.31	KY-80	SP	UTILITIES	\$3,300,000	2001
CALLOWAY	01- 181.31	KY-80	SP	CONSTRUCTION	\$6,000,000	2003
CALLOWAY	01- 181.35	KY-80	SP	CONSTRUCTION	\$14,000,000	2004
CALLOWAY	01- 314.00	US-641	SP	DESIGN	\$1,800,000	2002
CALLOWAY	01- 1127.00	KY-280	BRX	CONSTRUCTION	\$450,000	2002
CALLOWAY	01- 1128.00	KY-1824	BRX	RIGHT OF WAY	\$55,000	2001
CALLOWAY	01- 1128.00	KY-1824	BRX	UTILITIES	\$200,000	2002
CALLOWAY	01- 1128.00	KY-1824	BRX	CONSTRUCTION	\$700,000	2003
CALLOWAY	01- 1129.00	KY-1824	BRX	RIGHT OF WAY	\$55,000	2001

CALLOWAY	01- 1129.00	KY-1824	BRX	UTILITIES	\$200,000	2002
CALLOWAY	01- 1129.00	KY-1824	BRX	CONSTRUCTION	\$1,000,000	2003
CAMPBELL	06- 6.00	I-471	IM	CONSTRUCTION	\$3,000,000	2002
CAMPBELL	06- 46.20	US-27	SP	CONSTRUCTION	\$12,000,000	2002
CAMPBELL	06- 125.00	KY-2938	SP	DESIGN	\$600,000	2003
CAMPBELL	06- 352.00	KY-536	SP	DESIGN	\$600,000	2001
CAMPBELL	06- 352.00	KY-536	STP	RIGHT OF WAY	\$7,000,000	2003
CAMPBELL	06- 1029.00	KY-1120	BRO	UTILITIES	\$500,000	2001
CAMPBELL	06- 1029.00	KY-1120	BRO	CONSTRUCTION	\$2,800,000	2002
CAMPBELL	06- 5003.00	KY-8	SP	RIGHT OF WAY	\$100,000	2002
CAMPBELL	06- 5003.00	KY-8	SP	CONSTRUCTION	\$3,000,000	2003
CAMPBELL	06- 5004.00	I-275	SP	DESIGN	\$180,000	2001
CAMPBELL	06- 5004.00	I-275	SP	CONSTRUCTION	\$1,500,000	2002
CAMPBELL	06- 5005.00	I-275	SP	DESIGN	\$210,000	2001
CAMPBELL	06- 5005.00	I-275	NH	CONSTRUCTION	\$1,750,000	2002
CAMPBELL	06- 5006.00	I-471	SP	DESIGN	\$100,000	2001
CAMPBELL	06- 5006.00	I-471	SP	CONSTRUCTION	\$1,000,000	2002
CARLISLE	01- 183.00	US-51	STP	DESIGN	\$600,000	2002
CARLISLE	01- 1119.00	US-62	BRO	RIGHT OF WAY	\$150,000	2001
CARLISLE	01- 1119.00	US-62	BRO	UTILITIES	\$160,000	2001
CARLISLE	01- 1119.00	US-62	BRO	CONSTRUCTION	\$600,000	2003
CARROLL	06- 12.25	I-71	IM	CONSTRUCTION	\$700,000	2001
CARROLL	06- 147.00	US-42	SP	CONSTRUCTION	\$5,000,000	2001
CARROLL	06- 347.00	KY-389	BRX	RIGHT OF WAY	\$100,000	2001
CARROLL	06- 347.00	KY-389	BRX	UTILITIES	\$75,000	2001
CARROLL	06- 347.00	KY-389	BRX	CONSTRUCTION	\$850,000	2002
CARROLL	06- 5009.00	I-71	SP	DESIGN	\$90,000	2003
CARTER	09- 144.00	-	SP	DESIGN	\$225,000	2003
CARTER	09- 159.00	US-60	STP	UTILITIES	\$300,000	2001
CARTER	09- 159.00	US-60	STP	CONSTRUCTION	\$3,375,000	2003
CARTER	09- 1041.00	KY-1947	BRX	RIGHT OF WAY	\$50,000	2001
CARTER	09- 1041.00	KY-1947	BRX	UTILITIES	\$45,000	2001
CARTER	09- 1041.00	KY-1947	BRX	CONSTRUCTION	\$345,000	2003
CARTER	09- 2003.00	I-64	IM	DESIGN	\$50,000	2004
CARTER	09- 5004.00	US-60	SP	DESIGN	\$65,000	2001
CARTER	09- 5004.00	US-60	SP	RIGHT OF WAY	\$20,000	2002
CARTER	09- 5004.00	US-60	SP	UTILITIES	\$40,000	2002
CARTER	09- 5004.00	US-60	SP	CONSTRUCTION	\$800,000	2003
CASEY	08- 142.00	KY-70	SP	DESIGN	\$500,000	2004
CASEY	08- 164.00	US-127	STP	DESIGN	\$150,000	2001
CASEY	08- 164.00	US-127	STP	RIGHT OF WAY	\$200,000	2002

CASEY	08- 164.00	US-127	STP	UTILITIES	\$100,000	2002
CASEY	08- 164.00	US-127	STP	CONSTRUCTION	\$600,000	2003
CASEY	08- 5002.00	US-127	SP	DESIGN	\$50,000	2001
CASEY	08- 5002.00	US-127	SP	RIGHT OF WAY	\$12,000	2002
CASEY	08- 5002.00	US-127	SP	CONSTRUCTION	\$280,000	2002
CHRISTIAN	02- 100.00	PE-9004	NH	RIGHT OF WAY	\$5,000,000	2002
CHRISTIAN	02- 100.00	PE-9004	NH	UTILITIES	\$2,000,000	2003
CHRISTIAN	02- 100.00	PE-9004	NH	CONSTRUCTION	\$19,000,000	2004
CHRISTIAN	02- 213.00	I-24	IM	DESIGN	\$500,000	2001
CHRISTIAN	02- 213.00	I-24	IM	RIGHT OF WAY	\$1,000,000	2003
CHRISTIAN	02- 213.00	I-24	IM	UTILITIES	\$750,000	2004
CHRISTIAN	02- 308.00	US-41A	NH	CONSTRUCTION	\$10,000,000	2001
CHRISTIAN	02- 311.00	US-41A	NH	CONSTRUCTION	\$11,000,000	2002
CHRISTIAN	02- 311.01	UA-41A	NH	UTILITIES	\$2,000,000	2001
CHRISTIAN	02- 2000.00	I-24	IM	CONSTRUCTION	\$2,500,000	2002
CHRISTIAN	02- 7000.00	-	SP	CONSTRUCTION	\$8,000,000	2001
CHRISTIAN	02- 7010.00	-	SP	CONSTRUCTION	\$2,000,000	2001
CLARK	07- 314.00	KY-1958	SP	DESIGN	\$200,000	2003
CLARK	07- 331.01	-	SP	RIGHT OF WAY	\$3,000,000	2001
CLARK	07- 331.01	-	SP	UTILITIES	\$2,635,000	2002
CLARK	07- 331.01	-	SP	CONSTRUCTION	\$10,000,000	2003
CLARK	07- 1080.00	CR-1210	BRZ	CONSTRUCTION	\$350,000	2001
CLARK	07- 2001.00	I-64	IM	CONSTRUCTION	\$2,000,000	2002
CLARK	07- 2002.00	I-64	IM	CONSTRUCTION	\$3,100,000	2002
CLARK	07- 2010.00	KY-9000	SP	DESIGN	\$150,000	2003
CLARK	07- 2010.00	KY-9000	SP	CONSTRUCTION	\$7,360,000	2004
CLAY	11- 273.01	US-421	SP	RIGHT OF WAY	\$5,600,000	2002
CLAY	11- 273.01	US-421	SP	UTILITIES	\$2,700,000	2004
CLAY	11- 1035.00	US-421	BRO	CONSTRUCTION	\$800,000	2002
CLAY	11- 2005.00	DB-9006	SP	DESIGN	\$90,000	2002
CLAY	11- 2006.00	DB-9006	SP	DESIGN	\$50,000	2002
CLAY	11- 2006.00	DB-9006	SP	CONSTRUCTION	\$5,000,000	2003
CLAY	11- 4087.00	CR-1118	SP	CONSTRUCTION	\$800,000	2001
CLAY	11- 5000.00	KY-11	SP	RIGHT OF WAY	\$10,000	2001
CLAY	11- 5000.00	KY-11	SP	UTILITIES	\$10,000	2001
CLAY	11- 5000.00	KY-11	SP	CONSTRUCTION	\$420,500	2002
CLAY	11- 5005.00	KY-66	SP	DESIGN	\$80,000	2003
CLAY	11- 5005.00	KY-66	SP	RIGHT OF WAY	\$20,000	2004
CLAY	11- 5005.00	KY-66	SP	UTILITIES	\$20,000	2004
CLAY	11- 5006.00	KY-80	SP	DESIGN	\$50,000	2004

ACTS OF THE GENERAL ASSEMBLY

CLINTON	08- 165.00	US-127	SP	UTILITIES	\$2,500,000	2001
CLINTON	08- 165.00	US-127	SP	CONSTRUCTION	\$7,000,000	2002
CLINTON	08- 260.02	US-127	SP	CONSTRUCTION	\$7,000,000	2001
CLINTON	08- 260.10	US-127	STP	RIGHT OF WAY	\$2,500,000	2001
CLINTON	08- 260.10	US-127	STP	UTILITIES	\$3,000,000	2003
CLINTON	08- 260.10	US-127	STP	CONSTRUCTION	\$8,500,000	2004
CLINTON	08- 1015.00	KY-1076	BRX	RIGHT OF WAY	\$250,000	2003
CLINTON	08- 1015.00	KY-1076	BRX	UTILITIES	\$150,000	2004
CRITTENDEN	01- 187.00	US-641	SP	DESIGN	\$400,000	2001
CRITTENDEN	01- 250.01	US-60	SP	RIGHT OF WAY	\$2,000,000	2001
CRITTENDEN	01- 250.01	US-60	SP	UTILITIES	\$1,000,000	2002
CRITTENDEN	01- 250.01	US-60	SP	CONSTRUCTION	\$14,000,000	2004
CRITTENDEN	01- 267.01	US-60	SP	RIGHT OF WAY	\$1,200,000	2002
CRITTENDEN	01- 267.01	US-60	SP	UTILITIES	\$1,520,000	2003
CRITTENDEN	01- 325.00	KY-91	SP	CONSTRUCTION	\$262,000	2001
CRITTENDEN	01- 326.00	KY-91	SP	CONSTRUCTION	\$262,000	2002
CRITTENDEN	01- 326.01	KY-91	SP	CONSTRUCTION	\$262,000	2003
CRITTENDEN	01- 326.02	KY-91	SP	CONSTRUCTION	\$262,000	2004
CUMBERLAND	08- 158.04	KY-61	SP	RIGHT OF WAY	\$8,000,000	2001
CUMBERLAND	08- 158.04	KY-61	SP	UTILITIES	\$7,000,000	2002
DAVISS	02- 179.00	US-231	STP	CONSTRUCTION	\$2,500,000	2004
DAVISS	02- 221.00	KY-2121	SP	DESIGN	\$750,000	2002
DAVISS	02- 221.00	KY-2121	SP	RIGHT OF WAY	\$780,000	2004
DAVISS	02- 287.00	US-60	STP	RIGHT OF WAY	\$4,000,000	2003
DAVISS	02- 287.00	US-60	STP	UTILITIES	\$2,500,000	2004
DAVISS	02- 2012.00	US-60B	SP	CONSTRUCTION	\$3,600,000	2001
EDMONSON	03- 140.00	KY-101	SP	RIGHT OF WAY	\$750,000	2002
EDMONSON	03- 140.00	KY-101	SP	UTILITIES	\$500,000	2002
EDMONSON	03- 140.00	KY-101	SP	CONSTRUCTION	\$5,000,000	2004
EDMONSON	03- 141.00	KY-70	SP	RIGHT OF WAY	\$300,000	2001
EDMONSON	03- 141.00	KY-70	SP	UTILITIES	\$200,000	2001
EDMONSON	03- 141.00	KY-70	SP	CONSTRUCTION	\$2,000,000	2002
EDMONSON	03-7010.00	KY-259	SP	DESIGN	\$300,000	2002
EDMONSON	03-7010.00	KY-259	SP	RIGHT OF WAY	\$400,000	2003
EDMONSON	03-7030.00	KY-259	SP	DESIGN	\$6,300,000	2003
ELLIOTT	09- 126.00	KY-7	SP	RIGHT OF WAY	\$2,000,000	2001
ELLIOTT	09- 126.00	KY-7	SP	UTILITIES	\$850,000	2001
ELLIOTT	09- 126.00	KY-7	SP	CONSTRUCTION	\$8,000,000	2002
ELLIOTT	09- 126.50	KY-7	STP	RIGHT OF WAY	\$3,500,000	2001
ELLIOTT	09- 126.50	KY-7	STP	UTILITIES	\$1,000,000	2002
ELLIOTT	09- 293.01	KY-7	SP	DESIGN	\$400,000	2002

ELLIOTT	09- 293.01	KY-7	SP	RIGHT OF WAY	\$1,000,000	2004
ELLIOTT	09- 293.01	KY-7	SP	UTILITIES	\$750,000	2004
ELLIOTT	09- 1039.00	KY-706	BRX	RIGHT OF WAY	\$20,000	2001
ELLIOTT	09- 1039.00	KY-706	BRX	UTILITIES	\$20,000	2001
ELLIOTT	09- 1039.00	KY-706	BRX	CONSTRUCTION	\$230,000	2002
ESTILL	10- 363.00	KY-89	SP	RIGHT OF WAY	\$2,200,000	2001
ESTILL	10- 363.00	KY-89	SP	UTILITIES	\$1,000,000	2003
ESTILL	10- 364.00	KY-82	SP	RIGHT OF WAY	\$100,000	2002
ESTILL	10- 364.00	KY-82	SP	UTILITIES	\$100,000	2002
ESTILL	10- 364.00	KY-82	SP	CONSTRUCTION	\$800,000	2004
ESTILL	10- 1040.00	KY-594	BRX	RIGHT OF WAY	\$100,000	2001
ESTILL	10- 1040.00	KY-594	BRX	UTILITIES	\$75,000	2001
ESTILL	10- 1040.00	KY-594	BRX	CONSTRUCTION	\$250,000	2002
ESTILL	10- 1045.00	CR-5323	BRZ	CONSTRUCTION	\$275,000	2001
ESTILL	10- 1053.00	KY-594	BRX	CONSTRUCTION	\$150,000	2001
ESTILL	10- 5001.00	KY-89	SP	CONSTRUCTION	\$262,700	2001
FAYETTE	07- 122.00	US-25	STP	RIGHT OF WAY	\$4,300,000	2001
FAYETTE	07- 122.00	US-25	STP	UTILITIES	\$3,000,000	2002
FAYETTE	07- 125.20	KY-4	STP	DESIGN	\$200,000	2003
FAYETTE	07- 144.00	US-68	SP	DESIGN	\$400,000	2004
FAYETTE	07- 325.01	US-25	SP	UTILITIES	\$3,090,000	2001
FAYETTE	07- 325.01	US-25	SP	CONSTRUCTION	\$2,500,000	2002
FAYETTE	07- 329.00	KY-922	STP	CONSTRUCTION	\$9,200,000	2003
FAYETTE	07- 356.00	KY-169	SP	CONSTRUCTION	\$125,000	2001
FAYETTE	07- 357.00	KY-169	SP	CONSTRUCTION	\$125,000	2002
FAYETTE	07- 357.01	KY-169	SP	CONSTRUCTION	\$125,000	2003
FAYETTE	07- 357.02	KY-169	SP	CONSTRUCTION	\$125,000	2004
FAYETTE	07- 362.00	KY-4	STP	DESIGN	\$250,000	2002
FAYETTE	07- 996.05	-	SLX	CONSTRUCTION	\$5,800,000	2001
FAYETTE	07- 996.06	-	SLX	CONSTRUCTION	\$5,800,000	2002
FAYETTE	07- 996.07	-	SLX	CONSTRUCTION	\$5,800,000	2003
FAYETTE	07- 996.08	-	SLX	CONSTRUCTION	\$5,800,000	2004
FAYETTE	07- 1071.00	CR-9999	BRO	CONSTRUCTION	\$715,000	2001
FAYETTE	07- 1088.00	KY-1970	BRX	RIGHT OF WAY	\$100,000	2002
FAYETTE	07- 1088.00	KY-1970	BRX	UTILITIES	\$40,000	2002
FAYETTE	07- 1088.00	KY-1970	BRX	CONSTRUCTION	\$200,000	2004
FAYETTE	07- 5004.00	US-421	SP	DESIGN	\$80,000	2002
FAYETTE	07- 5004.00	US-421	SP	CONSTRUCTION	\$750,000	2003
FLEMING	09- 174.50	KY-11	STP	RIGHT OF WAY	\$750,000	2001
FLEMING	09- 174.50	KY-11	STP	UTILITIES	\$500,000	2001

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FLEMING	09-	174.50	KY-11	STP	CONSTRUCTION	\$10,500,000	2003
FLOYD	12-	108.00	US-23	SP	DESIGN	\$150,000	2004
FLOYD	12-	282.00	KY-122	SP	UTILITIES	\$200,000	2001
FLOYD	12-	282.00	KY-122	SP	CONSTRUCTION	\$2,250,000	2002
FLOYD	12-	293.00	KY-1428	STP	CONSTRUCTION	\$3,000,000	2001
FLOYD	12-	301.00	KY-979	SP	UTILITIES	\$2,000,000	2001
FLOYD	12-	301.00	KY-979	SP	CONSTRUCTION	\$11,000,000	2003
FLOYD	12-	301.10	KY-680	SP	RIGHT OF WAY	\$3,500,000	2001
FLOYD	12-	301.10	KY-680	SP	UTILITIES	\$3,500,000	2001
FLOYD	12-	301.20	KY-979	SP	DESIGN	\$1,200,000	2002
FLOYD	12-	301.20	KY-979	SP	RIGHT OF WAY	\$3,500,000	2003
FLOYD	12-	402.00	KY-3384	SP	CONSTRUCTION	\$2,100,000	2001
FLOYD	12-	1039.00	KY-550	BRO	CONSTRUCTION	\$1,000,000	2002
FLOYD	12-	1040.00	KY-1428	BRX	CONSTRUCTION	\$1,000,000	2001
FLOYD	12-	1041.00	KY-1428	BRX	CONSTRUCTION	\$1,000,000	2001
FLOYD	12-	1047.00	CR-1390	BRZ	CONSTRUCTION	\$600,000	2001
FLOYD	12-	1060.00	CR-1265	BRZ	DESIGN	\$100,000	2001
FLOYD	12-	1060.00	CR-1265	BRZ	RIGHT OF WAY	\$60,000	2003
FLOYD	12-	1060.00	CR-1265	BRZ	UTILITIES	\$200,000	2003
FLOYD	12-	5004.00	KY-80	SP	RIGHT OF WAY	\$20,000	2001
FLOYD	12-	5004.00	KY-80	SP	CONSTRUCTION	\$800,000	2002
FLOYD	12-	5007.00	KY-80	SP	DESIGN	\$210,000	2002
FLOYD	12-	5007.00	KY-80	SP	RIGHT OF WAY	\$45,000	2003
FLOYD	12-	5009.00	KY-321	SP	DESIGN	\$200,000	2004
FRANKLIN	05-	97.50	US-60	STP	RIGHT OF WAY	\$800,000	2002
FRANKLIN	05-	97.50	US-60	STP	UTILITIES	\$500,000	2004
FRANKLIN	05-	305.01	US-421	STP	RIGHT OF WAY	\$800,000	2001
FRANKLIN	05-	305.01	US-421	STP	UTILITIES	\$600,000	2003
FRANKLIN	05-	305.01	US-421	STP	CONSTRUCTION	\$8,000,000	2004
FRANKLIN	05-	372.00	US-460	STP	RIGHT OF WAY	\$4,500,000	2001
FRANKLIN	05-	372.00	US-460	STP	UTILITIES	\$1,000,000	2003
FRANKLIN	05-	372.00	US-460	STP	CONSTRUCTION	\$11,500,000	2004
FRANKLIN	05-	2005.00	I-64	IM	DESIGN	\$210,000	2001
FRANKLIN	05-	2005.00	I-64	IM	CONSTRUCTION	\$13,900,000	2003
FRANKLIN	05-	2023.00	US-60	SP	DESIGN	\$50,000	2004
FRANKLIN	05-	5002.00	US-421	SP	DESIGN	\$80,000	2001
FRANKLIN	05-	5002.00	US-421	SP	CONSTRUCTION	\$750,000	2002
FRANKLIN	05-	5007.00	KY-1900	SP	DESIGN	\$60,000	2004
FULTON	01-	319.00	KY-1354	SP	CONSTRUCTION	\$125,000	2001
FULTON	01-	320.00	KY-1354	SP	CONSTRUCTION	\$125,000	2002
FULTON	01-	320.01	KY-1354	SP	CONSTRUCTION	\$125,000	2003

FULTON	01-	320.02	KY-1354	SP	CONSTRUCTION	\$125,000	2004
FULTON	01-	1118.00	US-45	BRO	RIGHT OF WAY	\$200,000	2001
FULTON	01-	1118.00	US-45	BRO	UTILITIES	\$605,000	2001
FULTON	01-	1118.00	US-45	BRO	CONSTRUCTION	\$1,200,000	2003
FULTON	01-	2008.00	PU-9003	SP	CONSTRUCTION	\$900,000	2001
GALLATIN	06-	202.00	US-42	SP	RIGHT OF WAY	\$250,000	2001
GALLATIN	06-	202.00	US-42	SP	UTILITIES	\$100,000	2002
GALLATIN	06-	202.00	US-42	SP	CONSTRUCTION	\$5,700,000	2003
GALLATIN	06-	333.01	-	STP	CONSTRUCTION	\$10,000,000	2001
GALLATIN	06-	333.02	-	STP	CONSTRUCTION	\$10,000,000	2004
GALLATIN	06-	2005.00	I-71	IM	CONSTRUCTION	\$3,300,000	2004
GALLATIN	06-	2006.00	I-71	IM	CONSTRUCTION	\$2,000,000	2004
GALLATIN	06-	2007.00	I-71	IM	CONSTRUCTION	\$2,000,000	2004
GARRARD	07-	26.01	US-27	NH	RIGHT OF WAY	\$3,500,000	2001
GARRARD	07-	26.01	US-27	NH	UTILITIES	\$1,500,000	2002
GARRARD	07-	26.01	US-27	NH	CONSTRUCTION	\$12,000,000	2003
GARRARD	07-	26.02	US-27	NH	CONSTRUCTION	\$4,000,000	2004
GARRARD	07-	302.03	KY-52	STP	CONSTRUCTION	\$3,800,000	2002
GARRARD	07-	302.04	KY-52	STP	CONSTRUCTION	\$7,453,000	2001
GRANT	06-	72.02	I-75	IM	CONSTRUCTION	\$12,000,000	2001
GRANT	06-	72.03	I-75	NH	CONSTRUCTION	\$9,000,000	2001
GRANT	06-	72.04	I-75	IM	CONSTRUCTION	\$6,000,000	2002
GRANT	06-	72.05	I-75	NH	CONSTRUCTION	\$17,000,000	2002
GRANT	06-	72.12	I-75	IM	CONSTRUCTION	\$16,000,000	2004
GRANT	06-	72.13	I-75	NH	CONSTRUCTION	\$10,000,000	2004
GRANT	06-	339.00	I-75	STP	CONSTRUCTION	\$7,000,000	2002
GRANT	06-	345.00	-	SP	CONSTRUCTION	\$9,200,000	2001
GRANT	06-	345.10	-	SP	UTILITIES	\$250,000	2001
GRANT	06-	345.10	-	SP	CONSTRUCTION	\$2,500,000	2003
GRANT	06-	5000.00	US-25	SP	CONSTRUCTION	\$282,000	2001
GRAYSON	04-	122.00	KY-259	SP	DESIGN	\$500,000	2004
GRAYSON	04-	193.00	US-62	SP	RIGHT OF WAY	\$500,000	2001
GRAYSON	04-	193.00	US-62	SP	UTILITIES	\$300,000	2002
GRAYSON	04-	193.00	US-62	SP	CONSTRUCTION	\$3,000,000	2004
GRAYSON	04-	308.00	-	STP	DESIGN	\$1,200,000	2003
GRAYSON	04-	1013.01	KY-259	STP	CONSTRUCTION	\$10,700,000	2001
GRAYSON	04-	2005.00WK-9001		NH	DESIGN	\$25,000	2002
GRAYSON	04-	2005.00WK-9001		NH	CONSTRUCTION	\$1,200,000	2003
GRAYSON	04-	2008.00WK-9001		STP	DESIGN	\$70,000	2003
GRAYSON	04-	2008.00WK-9001		STP	CONSTRUCTION	\$4,100,000	2004

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GRAYSON	04- 2009.00WK-9001		STP	DESIGN	\$70,000	2003
GRAYSON	04- 2009.00WK-9001		STP	CONSTRUCTION	\$4,000,000	2004
GREEN	04- 310.00	-	STP	DESIGN	\$800,000	2003
GREENUP	09- 109.00	KY-8S	STP	CONSTRUCTION	\$2,500,000	2004
GREENUP	09- 132.00	KY-2	SP	DESIGN	\$500,000	2004
GREENUP	09- 212.11	-	SP	CONSTRUCTION	\$20,000,000	2001
GREENUP	09- 212.20	-	SP	CONSTRUCTION	\$8,000,000	2001
GREENUP	09- 212.21	-	SP	CONSTRUCTION	\$12,000,000	2002
GREENUP	09- 212.30	-	SP	CONSTRUCTION	\$19,000,000	2003
GREENUP	09- 1028.00	KY-503	BRO	CONSTRUCTION	\$630,000	2002
GREENUP	09- 1038.00	KY-2541	BRX	RIGHT OF WAY	\$70,000	2002
GREENUP	09- 1038.00	KY-2541	BRX	UTILITIES	\$30,000	2002
GREENUP	09- 5001.00	KY-503	SP	RIGHT OF WAY	\$100,000	2001
GREENUP	09- 5001.00	KY-503	SP	CONSTRUCTION	\$570,000	2002
GREENUP	09- 5006.00	KY-1	SP	DESIGN	\$35,000	2003
GREENUP	09- 5006.00	KY-1	SP	RIGHT OF WAY	\$10,000	2004
GREENUP	09- 5006.00	KY-1	SP	UTILITIES	\$20,000	2004
HANCOCK	02- 125.00	US-60	STP	DESIGN	\$150,000	2004
HANCOCK	02- 216.00	CR-1102	BRZ	DESIGN	\$50,000	2001
HANCOCK	02- 216.00	CR-1102	BRZ	RIGHT OF WAY	\$50,000	2003
HANCOCK	02- 216.00	CR-1102	BRZ	UTILITIES	\$50,000	2003
HANCOCK	02- 216.00	CR-1102	BRZ	CONSTRUCTION	\$200,000	2004
HANCOCK	02- 2022.00	US-60	SP	CONSTRUCTION	\$1,210,000	2004
HARDIN	04- 189.00	US-31W	SP	CONSTRUCTION	\$500,000	2001
HARDIN	04- 190.00	US-31W	SP	UTILITIES	\$1,750,000	2001
HARDIN	04- 190.00	US-31W	SP	CONSTRUCTION	\$1,720,000	2002
HARDIN	04- 297.10	KY-313	STP	RIGHT OF WAY	\$4,500,000	2001
HARDIN	04- 2001.00	I-65	IM	CONSTRUCTION	\$1,800,000	2002
HARDIN	04- 2003.00	US-31W	SP	DESIGN	\$100,000	2002
HARDIN	04- 2003.00	US-31W	SP	CONSTRUCTION	\$4,400,000	2004
HARDIN	04- 2007.00	US-31WB	SP	DESIGN	\$85,000	2003
HARDIN	04- 5002.00	US-31W	SP	CONSTRUCTION	\$750,000	2002
HARDIN	04- 5003.00	BG-9002	SP	DESIGN	\$65,000	2002
HARDIN	04- 5003.00	BG-9002	SP	CONSTRUCTION	\$500,000	2003
HARDIN	04- 5004.00	BG-9002	SP	DESIGN	\$65,000	2002
HARDIN	04- 5004.00	BG-9002	SP	RIGHT OF WAY	\$25,000	2002
HARDIN	04- 5004.00	BG-9002	SP	CONSTRUCTION	\$750,000	2003
HARDIN	04- 5005.00	I-65	SP	DESIGN	\$100,000	2003
HARLAN	11- 254.00	US-421	SP	UTILITIES	\$500,000	2001
HARLAN	11- 254.00	US-421	SP	CONSTRUCTION	\$21,000,000	2002
HARLAN	11- 264.20	US-421	SP	CONSTRUCTION	\$14,200,000	2001

HARLAN	11- 264.30	US-421	SP	CONSTRUCTION	\$10,000,000	2001
HARLAN	11- 264.31	US-421	SP	CONSTRUCTION	\$19,000,000	2002
HARLAN	11- 267.11	US-421	SP	DESIGN	\$500,000	2003
HARLAN	11- 269.00	US-421	SP	RIGHT OF WAY	\$5,500,000	2002
HARLAN	11- 269.00	US-421	SP	UTILITIES	\$300,000	2004
HARLAN	11- 1036.00	KY-215	BRX	CONSTRUCTION	\$470,000	2001
HARLAN	11- 1038.00	KY-215	BRX	CONSTRUCTION	\$700,000	2001
HARLAN	11- 1049.00	KY-1601	BRX	RIGHT OF WAY	\$50,000	2002
HARLAN	11- 1049.00	KY-1601	BRX	UTILITIES	\$50,000	2002
HARLAN	11- 5003.00	KY-38	SP	DESIGN	\$180,000	2002
HARLAN	11- 5003.00	KY-38	SP	RIGHT OF WAY	\$40,000	2003
HARLAN	11- 5003.00	KY-38	SP	UTILITIES	\$15,000	2003
HARLAN	11- 5003.00	KY-38	SP	CONSTRUCTION	\$1,500,000	2004
HARLAN	11- 5004.00	KY-38	SP	DESIGN	\$180,000	2002
HARLAN	11- 5004.00	KY-38	SP	RIGHT OF WAY	\$50,000	2003
HARLAN	11- 5004.00	KY-38	SP	UTILITIES	\$20,000	2003
HARLAN	11- 7020.00	-	SP	CONSTRUCTION	\$500,000	2002
HARRISON	06- 119.02	US-27	SP	RIGHT OF WAY	\$2,400,000	2001
HARRISON	06- 119.02	US-27	SP	UTILITIES	\$1,000,000	2002
HARRISON	06- 1043.00	CR-1062	BRZ	DESIGN	\$200,000	2002
HART	04- 11.00	I-65	IM	CONSTRUCTION	\$4,500,000	2001
HART	04- 11.10	I-65	IM	CONSTRUCTION	\$4,500,000	2001
HART	04- 194.00	US-31W	SP	RIGHT OF WAY	\$150,000	2001
HART	04- 194.00	US-31W	SP	UTILITIES	\$100,000	2002
HART	04- 194.00	US-31W	SP	CONSTRUCTION	\$600,000	2004
HENDERSON	02- 69.00	I-69	SP	DESIGN	\$600,000	2002
HENDERSON	02- 79.10	US-60	SP	DESIGN	\$1,200,000	2002
HENDERSON	02- 79.10	US-60	STP	RIGHT OF WAY	\$2,500,000	2003
HENDERSON	02- 79.02	US-60	STP	RIGHT OF WAY	\$4,000,000	2002
HENDERSON	02- 79.02	US-60	STP	UTILITIES	\$2,000,000	2003
HENDERSON	02- 101.00	US-60	SAF	CONSTRUCTION	\$3,500,000	2002
HENDERSON	02- 126.00	US-60	STP	DESIGN	\$200,000	2001
HENDERSON	02- 126.00	US-60	STP	RIGHT OF WAY	\$1,000,000	2003
HENDERSON	02- 380.00	US-60	SP	CONSTRUCTION	\$600,000	2001
HENDERSON	02- 5000.00	AU-9005	SP	CONSTRUCTION	\$285,500	2001
HENDERSON	02- 5001.00	AU-9005	SP	CONSTRUCTION	\$350,000	2001
HENDERSON	02- 5004.00	AU-9005	SP	RIGHT OF WAY	\$10,000	2001
HENDERSON	02- 5004.00	AU-9005	SP	CONSTRUCTION	\$248,500	2002
HENRY	05- 2010.00	I-71	IM	CONSTRUCTION	\$1,000,000	2002
HENRY	05- 5000.00	KY-389	SP	CONSTRUCTION	\$628,700	2002

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HICKMAN	01- 182.00	US-51	STP	DESIGN	\$700,000	2002
HICKMAN	01- 1114.00	KY-1698	BRZ	CONSTRUCTION	\$300,000	2002
HOPKINS	02- 215.00	KY-70	SP	RIGHT OF WAY	\$2,800,000	2001
HOPKINS	02- 215.00	KY-70	SP	UTILITIES	\$2,650,000	2002
HOPKINS	02- 2007.00	PE-9004	SP	DESIGN	\$80,000	2001
HOPKINS	02- 2007.00	PE-9004	STP	CONSTRUCTION	\$5,500,000	2003
HOPKINS	02- 2010.00	PE-9004	SP	DESIGN	\$200,000	2003
JACKSON	11- 113.00	US-421	STP	DESIGN	\$200,000	2003
JEFFERSON	05- 15.00	I-264	IM	CONSTRUCTION	\$3,500,000	2004
JEFFERSON	05- 21.00	I-265	IM	UTILITIES	\$1,000,000	2002
JEFFERSON	05- 21.00	I-265	IM	CONSTRUCTION	\$20,000,000	2003
JEFFERSON	05- 23.00	I-64	IM	DESIGN	\$1,500,000	2001
JEFFERSON	05- 23.00	I-64	IM	CONSTRUCTION	\$7,000,000	2003
JEFFERSON	05- 41.00	I-265	IM	RIGHT OF WAY	\$2,000,000	2002
JEFFERSON	05- 41.00	I-265	IM	UTILITIES	\$1,000,000	2003
JEFFERSON	05- 52.00	I-64	IM	RIGHT OF WAY	\$2,500,000	2003
JEFFERSON	05- 52.00	I-64	IM	UTILITIES	\$300,000	2003
JEFFERSON	05- 52.00	I-64	IM	CONSTRUCTION	\$8,000,000	2004
JEFFERSON	05- 48.01	I-71	NH	RIGHT OF WAY	\$4,000,000	2002
JEFFERSON	05- 48.01	I-71	NH	UTILITIES	\$2,000,000	2004
JEFFERSON	05- 76.01	-	STP	CONSTRUCTION	\$1,500,000	2002
JEFFERSON	05- 76.02	-	SLO	CONSTRUCTION	\$4,750,000	2001
JEFFERSON	05- 91.02	-	SLO	CONSTRUCTION	\$4,000,000	2003
JEFFERSON	05- 110.00	US-31	NH	CONSTRUCTION	\$2,500,000	2004
JEFFERSON	05- 118.02	-	SP	DESIGN	\$3,000,000	2001
JEFFERSON	05- 118.10	-	SP	DESIGN	\$6,000,000	2002
JEFFERSON	05- 118.11	-	SP	DESIGN	\$6,000,000	2003
JEFFERSON	05- 118.20	-	SP	RIGHT OF WAY	\$6,000,000	2004
JEFFERSON	05- 136.00	I-265	NH	CONSTRUCTION	\$3,500,000	2004
JEFFERSON	05- 247.10	KY-1450	SP	UTILITIES	\$3,700,000	2003
JEFFERSON	05- 247.20	KY-1450	SP	DESIGN	\$300,000	2002
JEFFERSON	05- 322.00	-	SLO	CONSTRUCTION	\$3,750,000	2001
JEFFERSON	05- 322.02	-	SLO	CONSTRUCTION	\$10,087,000	2002
JEFFERSON	05- 323.01	KY-1931	SP	UTILITIES	\$3,500,000	2002
JEFFERSON	05- 325.01	KY-1447	SP	UTILITIES	\$6,500,000	2001
JEFFERSON	05- 325.01	KY-1447	STP	CONSTRUCTION	\$15,000,000	2002
JEFFERSON	05- 342.02	-	CM	CONSTRUCTION	\$1,800,000	2002
JEFFERSON	05- 344.00	KY-1747	SP	DESIGN	\$1,500,000	2003
JEFFERSON	05- 381.00	-	SLO	CONSTRUCTION	\$444,000	2001
JEFFERSON	05- 382.00	-	SLO	CONSTRUCTION	\$511,000	2002
JEFFERSON	05- 383.00	-	SLO	CONSTRUCTION	\$588,000	2003

JEFFERSON	05-	384.00	-	SLO	CONSTRUCTION	\$676,000	2004
JEFFERSON	05-	385.00	-	SLO	CONSTRUCTION	\$2,000,000	2003
JEFFERSON	05-	386.00	-	SLO	RIGHT OF WAY	\$250,000	2001
JEFFERSON	05-	386.00	-	SLO	UTILITIES	\$375,000	2003
JEFFERSON	05-	386.00	-	SLO	CONSTRUCTION	\$1,500,000	2004
JEFFERSON	05-	387.00	-	SLO	CONSTRUCTION	\$1,000,000	2003
JEFFERSON	05-	430.02	KY-1020	SLO	CONSTRUCTION	\$4,300,000	2003
JEFFERSON	05-	430.03	KY-1020	SP	CONSTRUCTION	\$1,000,000	2001
JEFFERSON	05-	435.10	-	SP	CONSTRUCTION	\$5,000,000	2001
JEFFERSON	05-	965.08	-	SLO	CONSTRUCTION	\$14,300,000	2004
JEFFERSON	05-	972.00	KY-42	SP	RIGHT OF WAY	\$250,000	2002
JEFFERSON	05-	972.00	KY-42	SP	UTILITIES	\$300,000	2002
JEFFERSON	05-	982.00	-	SLO	RIGHT OF WAY	\$150,000	2003
JEFFERSON	05-	982.00	-	SLO	UTILITIES	\$100,000	2004
JEFFERSON	05-	982.00	-	SLO	CONSTRUCTION	\$400,000	2004
JEFFERSON	05-	1006.00	CR-9999	BRZ	CONSTRUCTION	\$275,000	2002
JEFFERSON	05-	1012.05	-	CM	CONSTRUCTION	\$5,000,000	2001
JEFFERSON	05-	1012.06	-	CM	CONSTRUCTION	\$1,500,000	2002
JEFFERSON	05-	1012.07	-	CM	CONSTRUCTION	\$5,000,000	2003
JEFFERSON	05-	1012.08	-	CM	CONSTRUCTION	\$3,400,000	2004
JEFFERSON	05-	1018.00	CR-9999	BRZ	RIGHT OF WAY	\$100,000	2001
JEFFERSON	05-	1018.00	CR-9999	BRZ	UTILITIES	\$75,000	2001
JEFFERSON	05-	2000.00	I-264	IM	DESIGN	\$300,000	2001
JEFFERSON	05-	2000.00	I-264	IM	CONSTRUCTION	\$10,000,000	2002
JEFFERSON	05-	2000.01	I-264	IM	CONSTRUCTION	\$10,000,000	2003
JEFFERSON	05-	2001.00	I-264	IM	CONSTRUCTION	\$8,700,000	2001
JEFFERSON	05-	2002.00	I-265	IM	DESIGN	\$20,000	2002
JEFFERSON	05-	2002.00	I-265	IM	CONSTRUCTION	\$6,200,000	2004
JEFFERSON	05-	2004.00	I-265	IM	CONSTRUCTION	\$2,000,000	2001
JEFFERSON	05-	2007.00	I-64	IM	CONSTRUCTION	\$5,000,000	2001
JEFFERSON	05-	2024.00	KY-841	SP	CONSTRUCTION	\$1,820,000	2001
JEFFERSON	05-	2026.00	US-31W	SP	CONSTRUCTION	\$350,000	2001
JEFFERSON	05-	2027.00	KY-1020	SP	CONSTRUCTION	\$500,000	2001
JESSAMINE	07-	87.02	-	STP	RIGHT OF WAY	\$2,500,000	2001
JESSAMINE	07-	87.02	-	STP	UTILITIES	\$1,000,000	2002
JESSAMINE	07-	318.01	US-68	STP	RIGHT OF WAY	\$2,500,000	2003
JESSAMINE	07-	318.01	US-68	STP	UTILITIES	\$1,000,000	2004
JESSAMINE	07-	1078.00	KY-29	BRX	CONSTRUCTION	\$850,000	2001
JESSAMINE	07-	5006.00	US-68	SP	DESIGN	\$60,000	2003
JOHNSON	12-	294.00	KY-40	SP	CONSTRUCTION	\$3,600,000	2001

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JOHNSON	12- 1036.00	KY-40	BRO	CONSTRUCTION	\$2,500,000	2002
JOHNSON	12- 5002.00	KY-1100	SP	CONSTRUCTION	\$350,000	2002
JOHNSON	12- 5008.00	KY-321	SP	DESIGN	\$220,000	2002
JOHNSON	12- 5008.00	KY-321	SP	RIGHT OF WAY	\$60,000	2003
KENTON	06- 71.03	KY-1303	SNK	RIGHT OF WAY	\$4,000,000	2002
KENTON	06- 71.03	KY-1303	SNK	UTILITIES	\$1,000,000	2004
KENTON	06- 273.00	KY-1120	SNK	CONSTRUCTION	\$4,500,000	2001
KENTON	06- 286.01	-	SP	RIGHT OF WAY	\$250,000	2001
KENTON	06- 286.01	-	SP	UTILITIES	\$200,000	2002
KENTON	06- 286.01	-	SP	CONSTRUCTION	\$9,000,000	2004
KENTON	06- 300.00	-	STP	DESIGN	\$2,100,000	2001
KENTON	06- 300.00	-	STP	CONSTRUCTION	\$14,000,000	2002
KENTON	06- 313.10	KY-17	SP	UTILITIES	\$1,000,000	2001
KENTON	06- 313.10	KY-17	SP	CONSTRUCTION	\$10,000,000	2002
KENTON	06- 344.00	KY-16	SP	RIGHT OF WAY	\$7,900,000	2001
KENTON	06- 344.00	KY-16	SNK	UTILITIES	\$8,300,000	2001
KENTON	06- 1030.00	KY-8	BRO	UTILITIES	\$1,300,000	2001
KENTON	06- 1030.00	KY-8	BRO	CONSTRUCTION	\$2,800,000	2002
KENTON	06- 2003.00	I-275	IM	CONSTRUCTION	\$1,000,000	2002
KENTON	06- 5002.00	KY-1072	SP	RIGHT OF WAY	\$20,000	2001
KENTON	06- 5002.00	KY-1072	SP	CONSTRUCTION	\$450,000	2002
KENTON	06- 5007.00	I-275	SP	DESIGN	\$150,000	2002
KENTON	06- 5007.00	I-275	SP	CONSTRUCTION	\$1,500,000	2004
KENTON	06- 5008.00	I-275	SP	DESIGN	\$175,000	2002
KNOTT	12- 2000.00	KY-80	SP	DESIGN	\$25,000	2004
KNOTT	12- 5000.00	KY-80	SP	CONSTRUCTION	\$417,000	2001
KNOTT	12- 5001.00	KY-550	SP	RIGHT OF WAY	\$5,000	2001
KNOTT	12- 5001.00	KY-550	SP	CONSTRUCTION	\$173,900	2002
KNOTT	12- 5006.00	KY-80	SP	DESIGN	\$210,000	2002
KNOTT	12- 5006.00	KY-80	SP	RIGHT OF WAY	\$30,000	2003
KNOTT	12- 5006.00	KY-80	SP	CONSTRUCTION	\$1,750,000	2004
KNOX	11- 112.00	-	SP	DESIGN	\$400,000	2003
KNOX	11- 218.00	KY-11	SP	RIGHT OF WAY	\$150,000	2001
KNOX	11- 218.00	KY-11	SP	UTILITIES	\$50,000	2001
KNOX	11- 218.00	KY-11	SP	CONSTRUCTION	\$405,000	2002
LARUE	04- 121.01	KY-210	STP	CONSTRUCTION	\$8,000,000	2001
LARUE	04- 121.02	KY-210	STP	CONSTRUCTION	\$12,000,000	2002
LARUE	04- 1047.00	KY-470	BRX	CONSTRUCTION	\$350,000	2002
LARUE	04- 5006.00	KY-84	SP	DESIGN	\$60,000	2004
LAUREL	11- 8.00	I-75	NH	CONSTRUCTION	\$14,000,000	2003
LAUREL	11- 9.01	I-75	NH	CONSTRUCTION	\$10,000,000	2003

LAUREL	11- 9.02	I-75	NH	CONSTRUCTION	\$5,000,000	2004
LAUREL	11- 15.00	I-75	STP	CONSTRUCTION	\$16,000,000	2003
LAUREL	11- 15.01	I-75	SP	CONSTRUCTION	\$7,500,000	2003
LAUREL	11- 15.02	I-75	SP	CONSTRUCTION	\$13,500,000	2004
LAUREL	11- 278.10	KY-30	SP	CONSTRUCTION	\$10,000,000	2001
LAUREL	11- 278.12	KY-30	SP	CONSTRUCTION	\$7,000,000	2003
LAUREL	11- 278.20	KY-30	SP	DESIGN	\$2,500,000	2001
LAUREL	11- 278.20	KY-30	SP	RIGHT OF WAY	\$4,000,000	2003
LAUREL	11- 1047.00	KY-1305	BRX	CONSTRUCTION	\$200,000	2002
LAUREL	11- 2004.00	DB-9006	SP	CONSTRUCTION	\$7,500,000	2002
LAUREL	11- 2004.01	DB-9006	SP	CONSTRUCTION	\$8,700,000	2004
LAUREL	11- 2007.00	US-25E	SP	DESIGN	\$50,000	2003
LAWRENCE	12- 3.00	US-23	NH	RIGHT OF WAY	\$1,700,000	2001
LAWRENCE	12- 3.00	US-23	NH	UTILITIES	\$750,000	2003
LAWRENCE	12- 3.00	US-23	NH	CONSTRUCTION	\$8,500,000	2004
LAWRENCE	12- 284.00	KY-32	STP	DESIGN	\$600,000	2004
LAWRENCE	12- 1033.00	KY-707	BRZ	CONSTRUCTION	\$250,000	2002
LAWRENCE	12- 1034.00	KY-707	BRZ	CONSTRUCTION	\$250,000	2002
LAWRENCE	12- 1063.00	CR-1124	BRZ	CONSTRUCTION	\$500,000	2001
LEE	10- 292.00	KY-11	SP	DESIGN	\$1,200,000	2002
LEE	10- 1056.00	CR-1147	BRZ	DESIGN	\$75,000	2002
LEE	10- 1056.00	CR-1147	BRZ	RIGHT OF WAY	\$50,000	2004
LEE	10- 1056.00	CR-1147	BRZ	UTILITIES	\$50,000	2004
LESLIE	11- 12.00	US-421	STP	DESIGN	\$500,000	2002
LESLIE	11- 119.00	DB-9006	SP	DESIGN	\$400,000	2003
LETCHER	12- 121.00	KY-15	SP	DESIGN	\$150,000	2003
LETCHER	12- 311.10	US-119	APD	CONSTRUCTION	\$10,000,000	2001
LETCHER	12- 311.11	US-119	APD	CONSTRUCTION	\$15,000,000	2003
LETCHER	12- 311.12	US-119	APD	CONSTRUCTION	\$21,000,000	2004
LETCHER	12- 314.00	US-119	APD	DESIGN	\$3,500,000	2001
LETCHER	12- 314.00	US-119	APD	RIGHT OF WAY	\$4,152,000	2003
LETCHER	12- 314.00	US-119	APD	UTILITIES	\$1,725,000	2004
LETCHER	12- 1059.00	CR-1371	BRZ	CONSTRUCTION	\$550,000	2002
LETCHER	12- 1061.00	KY-113	BRX	CONSTRUCTION	\$600,000	2002
LETCHER	12- 5003.00	KY-588	SP	CONSTRUCTION	\$400,000	2002
LINCOLN	08- 161.00	US-150	STP	UTILITIES	\$200,000	2001
LINCOLN	08- 161.00	US-150	STP	CONSTRUCTION	\$4,500,000	2002
LINCOLN	08- 163.00	US-150	SP	DESIGN	\$1,500,000	2001
LINCOLN	08- 163.00	US-150	STP	RIGHT OF WAY	\$3,000,000	2003
LINCOLN	08- 5006.00	US-27	SP	DESIGN	\$60,000	2003

LINCOLN	08- 5006.00	US-27	SP	RIGHT OF WAY	\$50,000	2004
LINCOLN	08- 5006.00	US-27	SP	UTILITIES	\$60,000	2004
LIVINGSTON	01- 184.00	US-60	SP	DESIGN	\$750,000	2002
LIVINGSTON	01- 184.00	US-60	STP	RIGHT OF WAY	\$1,250,000	2004
LIVINGSTON	01- 330.00	US-60	SP	DESIGN	\$850,000	2003
LIVINGSTON	01- 1123.00	KY-952	BRX	CONSTRUCTION	\$750,000	2001
LIVINGSTON	01- 2003.00	I-24	IM	CONSTRUCTION	\$800,000	2002
LIVINGSTON	01- 5001.00	US-60	SP	RIGHT OF WAY	\$10,000	2001
LIVINGSTON	01- 5001.00	US-60	SP	CONSTRUCTION	\$350,000	2001
LOGAN	03- 148.00	-	SP	RIGHT OF WAY	\$1,500,000	2002
LOGAN	03- 148.00	-	SP	UTILITIES	\$500,000	2004
LYON	01- 307.01	US-62	SP	RIGHT OF WAY	\$4,000,000	2002
LYON	01- 307.01	US-62	SP	UTILITIES	\$4,000,000	2004
LYON	01- 5002.00	KY-295	SP	RIGHT OF WAY	\$20,000	2001
LYON	01- 5002.00	KY-295	SP	UTILITIES	\$15,000	2001
LYON	01- 5002.00	KY-295	SP	CONSTRUCTION	\$450,000	2002
MADISON	07- 28.10	CR-1206	SP	RIGHT OF WAY	\$350,000	2001
MADISON	07- 28.10	CR-1206	SP	UTILITIES	\$2,400,000	2001
MADISON	07- 28.10	CR-1206	SP	CONSTRUCTION	\$3,000,000	2002
MADISON	07- 214.00	KY-169	SP	RIGHT OF WAY	\$1,500,000	2001
MADISON	07- 214.00	KY-169	SP	UTILITIES	\$1,500,000	2003
MADISON	07- 214.00	KY-169	SP	CONSTRUCTION	\$6,500,000	2004
MADISON	07- 309.00	KY-52	STP	UTILITIES	\$1,710,000	2001
MADISON	07- 309.00	KY-52	STP	CONSTRUCTION	\$9,250,000	2002
MADISON	07- 5003.00	KY-52	SP	DESIGN	\$150,000	2001
MADISON	07- 5003.00	KY-52	SP	CONSTRUCTION	\$1,250,000	2002
MAGOFFIN	10- 121.00	US-460	SP	DESIGN	\$1,000,000	2003
MAGOFFIN	10- 280.00	US-460	STP	CONSTRUCTION	\$4,500,000	2001
MAGOFFIN	12- 1.10	KY-114	NH	RIGHT OF WAY	\$2,000,000	2001
MAGOFFIN	12- 1.10	KY-114	NH	UTILITIES	\$1,500,000	2003
MAGOFFIN	12- 1.10	KY-114	NH	CONSTRUCTION	\$15,000,000	2004
MARION	04- 192.00	US-68	SP	DESIGN	\$1,200,000	2001
MARION	04- 192.00	US-68	SP	RIGHT OF WAY	\$2,000,000	2003
MARION	04- 309.00	KY-49	STP	RIGHT OF WAY	\$300,000	2001
MARION	04- 309.00	KY-49	STP	UTILITIES	\$200,000	2001
MARSHALL	01- 180.70	US-68	BRO	UTILITIES	\$150,000	2001
MARSHALL	01- 180.70	US-68	BRO	CONSTRUCTION	\$7,000,000	2004
MARSHALL	01- 1117.00	KY-58	BRO	RIGHT OF WAY	\$250,000	2001
MARSHALL	01- 1117.00	KY-58	BRO	UTILITIES	\$1,275,000	2001
MARSHALL	01- 1117.00	KY-58	BRO	CONSTRUCTION	\$2,000,000	2003
MARSHALL	01- 1121.00	US-68	BRO	CONSTRUCTION	\$2,500,000	2002

MARSHALL	01- 1130.00	KY-1824	BRX	RIGHT OF WAY	\$75,000	2001
MARSHALL	01- 1130.00	KY-1824	BRX	UTILITIES	\$295,000	2001
MARSHALL	01- 1130.00	KY-1824	BRX	CONSTRUCTION	\$500,000	2003
MARSHALL	01- 5000.00	KY-80	SP	CONSTRUCTION	\$150,000	2001
MARSHALL	01- 5003.00	PU-9003	SP	DESIGN	\$60,000	2001
MARSHALL	01- 5003.00	PU-9003	SP	RIGHT OF WAY	\$10,000	2002
MARSHALL	01- 5003.00	PU-9003	SP	CONSTRUCTION	\$450,000	2004
MARTIN	12- 154.01	KY-40	SP	CONSTRUCTION	\$4,000,000	2001
MARTIN	12- 154.02	KY-40	STP	CONSTRUCTION	\$11,000,000	2001
MARTIN	12- 154.03	KY-40	STP	CONSTRUCTION	\$25,000,000	2002
MARTIN	12- 154.04	KY-40	STP	CONSTRUCTION	\$15,000,000	2003
MARTIN	12- 154.10	KY-40	STP	RIGHT OF WAY	\$3,000,000	2001
MARTIN	12- 154.10	KY-40	STP	UTILITIES	\$3,000,000	2003
MARTIN	12- 285.00	KY-40	SP	DESIGN	\$250,000	2004
MARTIN	12- 1052.00	CR-9999	BRZ	CONSTRUCTION	\$450,000	2002
MASON	09- 108.00	US-62	STP	CONSTRUCTION	\$6,000,000	2002
MASON	09- 124.01	US-68	NH	RIGHT OF WAY	\$4,000,000	2001
MASON	09- 124.01	US-68	NH	UTILITIES	\$3,500,000	2001
MASON	09- 124.01	US-68	NH	CONSTRUCTION	\$17,000,000	2002
MASON	09- 145.00	-	SP	CONSTRUCTION	\$1,150,000	2001
MCCRACKEN	01- 115.10	US-60	SP	DESIGN	\$400,000	2001
MCCRACKEN	01- 115.10	US-60	SP	RIGHT OF WAY	\$1,250,000	2003
MCCRACKEN	01- 186.00	US-45	STP	CONSTRUCTION	\$2,500,000	2004
MCCRACKEN	01- 260.00	US-62	STP	UTILITIES	\$3,400,000	2001
MCCRACKEN	01- 260.00	US-62	STP	CONSTRUCTION	\$3,000,000	2002
MCCRACKEN	01- 310.01	-	SP	RIGHT OF WAY	\$3,000,000	2002
MCCRACKEN	01- 310.01	-	SP	UTILITIES	\$2,000,000	2004
MCCRACKEN01-	1115.00	US-60	BRO	RIGHT OF WAY	\$5,000,000	2001
MCCRACKEN01-	1115.00	US-60	BRO	UTILITIES	\$3,000,000	2003
MCCRACKEN01-	1124.00	KY-998	BRX	RIGHT OF WAY	\$500,000	2001
MCCRACKEN01-	1124.00	KY-998	BRX	UTILITIES	\$1,000,000	2001
MCCRACKEN01-	1124.00	KY-998	BRX	CONSTRUCTION	\$2,000,000	2002
MCCREARY	08- 262.01	US-27	SP	CONSTRUCTION	\$3,500,000	2001
MCCREARY	08- 1012.00	CR-5236	BRZ	RIGHT OF WAY	\$200,000	2001
MCCREARY	08- 1012.00	CR-5236	BRZ	UTILITIES	\$150,000	2001
MCLEAN	02- 9.00	US-431	STP	RIGHT OF WAY	\$600,000	2002
MCLEAN	02- 9.00	US-431	STP	UTILITIES	\$400,000	2004
MCLEAN	02- 1049.00	KY-136	BRO	RIGHT OF WAY	\$50,000	2002
MCLEAN	02- 1049.00	KY-136	BRO	UTILITIES	\$50,000	2002
MCLEAN	02- 1049.00	KY-136	BRO	CONSTRUCTION	\$250,000	2004

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MEADE	04-	53.00	KY-313	SP	DESIGN	\$1,800,000	2001
MEADE	04-	53.01	KY-313	STP	RIGHT OF WAY	\$6,500,000	2003
MEADE	04-	2006.00	US-31W	SP	DESIGN	\$30,000	2001
MEADE	04-	2006.00	US-31W	SP	CONSTRUCTION	\$1,200,000	2003
MEADE	04-	5001.00	KY-230	SP	CONSTRUCTION	\$325,000	2002
MENIFEE	10-	117.01	US-460	STP	RIGHT OF WAY	\$2,000,000	2002
MENIFEE	10-	117.01	US-460	STP	UTILITIES	\$1,500,000	2004
MENIFEE	10-	1054.00	KY-713	BRX	RIGHT OF WAY	\$600,000	2001
MENIFEE	10-	1054.00	KY-713	BRX	UTILITIES	\$75,000	2001
MENIFEE	10-	1054.00	KY-713	BRX	CONSTRUCTION	\$360,000	2002
MENIFEE	10-	5008.00	KY-1274	SP	DESIGN	\$100,000	2004
MERCER	07-	1075.00	KY-152	BRO	RIGHT OF WAY	\$150,000	2001
MERCER	07-	1075.00	KY-152	BRO	UTILITIES	\$75,000	2001
MERCER	07-	1089.00	KY-1988	BRX	RIGHT OF WAY	\$50,000	2002
MERCER	07-	1089.00	KY-1988	BRX	UTILITIES	\$30,000	2003
MERCER	07-	1089.00	KY-1988	BRX	CONSTRUCTION	\$150,000	2004
METCALFE	03-	1050.00	KY-640	BRX	CONSTRUCTION	\$350,000	2002
MONROE	03-	276.01	KY-163	SP	DESIGN	\$800,000	2001
MONROE	03-	276.01	KY-163	STP	RIGHT OF WAY	\$2,500,000	2003
MONROE	03-	7020.00	-	SP	RIGHT OF WAY	\$1,500,000	2001
MONROE	03-	7020.00	-	SP	UTILITIES	\$500,000	2002
MONTGOMERY	07-	83.00	US-60	STP	CONSTRUCTION	\$600,000	2001
MONTGOMERY	07-	124.00	US-460	SP	RIGHT OF WAY	\$500,000	2003
MONTGOMERY	07-	124.00	US-460	SP	UTILITIES	\$300,000	2003
MONTGOMERY	07-	317.00	KY-11	SP	RIGHT OF WAY	\$2,000,000	2002
MONTGOMERY	07-	317.00	KY-11	SP	UTILITIES	\$1,500,000	2002
MONTGOMERY	07-	1079.00	KY-599	BRX	CONSTRUCTION	\$350,000	2002
MONTGOMERY	07-	2000.00	I-64	IM	DESIGN	\$250,000	2001
MONTGOMERY	07-	2000.00	I-64	IM	CONSTRUCTION	\$10,000,000	2001
MONTGOMERY	07-	2000.01	I-64	IM	CONSTRUCTION	\$7,000,000	2002
MORGAN	10-	130.00	US-460	SP	RIGHT OF WAY	\$650,000	2002
MORGAN	10-	130.00	US-460	SP	UTILITIES	\$120,000	2004
MORGAN	10-	291.00	KY-7	SP	CONSTRUCTION	\$7,000,000	2001
MORGAN	10-	1037.00	US-460	BRO	CONSTRUCTION	\$425,000	2002
MUHLENBERG	02-	313.00	KY-181	SP	DESIGN	\$800,000	2002
MUHLENBERG	02-	1015.00	CR-1412	BRZ	CONSTRUCTION	\$225,000	2001
MUHLENBERG	02-	2005.00	WK-9001	SP	CONSTRUCTION	\$4,000,000	2001
MUHLENBERG	02-	2006.00	WK-9001	SP	CONSTRUCTION	\$3,500,000	2002
MUHLENBERG	02-	5006.00	US-431	SP	RIGHT OF WAY	\$20,000	2001
MUHLENBERG	02-	5006.00	US-431	SP	UTILITIES	\$10,000	2001
MUHLENBERG	02-	5006.00	US-431	SP	CONSTRUCTION	\$120,000	2002

NELSON	04-	184.00	US-62	STP	RIGHT OF WAY	\$1,000,000	2002
NELSON	04-	184.00	US-62	STP	UTILITIES	\$400,000	2003
NELSON	04-	191.00	BG-9002	NH	CONSTRUCTION	\$590,000	2002
NELSON	04-	285.00	US-31E	SP	RIGHT OF WAY	\$750,000	2002
NELSON	04-	285.00	US-31E	SP	UTILITIES	\$500,000	2002
NELSON	04-	287.00	US-31E	SP	UTILITIES	\$1,950,000	2001
NELSON	04-	287.00	US-31E	SP	CONSTRUCTION	\$23,000,000	2002
NELSON	04-	295.10	KY-245	SP	UTILITIES	\$200,000	2001
NELSON	04-	295.10	KY-245	SP	CONSTRUCTION	\$1,000,000	2002
NELSON	04-	311.00	US-31E	STP	CONSTRUCTION	\$3,000,000	2002
NELSON	04-	1049.00	KY-509	BRX	CONSTRUCTION	\$400,000	2003
NELSON	04-	2004.00	BG-9002	NH	DESIGN	\$60,000	2002
NELSON	04-	2004.00	BG-9002	NH	CONSTRUCTION	\$5,250,000	2002
OHIO	02-	5003.00	WN-9007	SP	CONSTRUCTION	\$82,300	2002
OLDHAM	05-	230.00	KY-393	STP	CONSTRUCTION	\$4,000,000	2001
OLDHAM	05-	230.01	KY-393	STP	CONSTRUCTION	\$6,300,000	2002
OLDHAM	05-	304.01	KY-22	STP	RIGHT OF WAY	\$3,300,000	2001
OLDHAM	05-	304.01	KY-22	STP	UTILITIES	\$1,600,000	2002
OLDHAM	05-	367.00	-	STP	UTILITIES	\$3,000,000	2003
OLDHAM	05-	5005.00	KY-1793	SP	DESIGN	\$75,000	2002
OWSLEY	10-	279.50	KY-30	SP	DESIGN	\$500,000	2001
OWSLEY	10-	1034.00	KY-30	BRO	CONSTRUCTION	\$2,800,000	2001
OWSLEY	10-	5003.00	KY-847	SP	CONSTRUCTION	\$265,600	2001
OWSLEY	10-	5004.00	KY-28	SP	DESIGN	\$180,000	2001
OWSLEY	10-	5004.00	KY-28	SP	RIGHT OF WAY	\$25,000	2002
OWSLEY	10-	5004.00	KY-28	SP	CONSTRUCTION	\$1,500,000	2003
PENDLETON	06-	276.00	US-27	STP	CONSTRUCTION	\$4,500,000	2001
PENDLETON	06-	1042.00	CR-1117	BRZ	RIGHT OF WAY	\$160,000	2001
PENDLETON	06-	1042.00	CR-1117	BRZ	UTILITIES	\$100,000	2001
PENDLETON	06-	1042.00	CR-1117	BRZ	CONSTRUCTION	\$1,000,000	2002
PERRY	10-	114.00	KY-7	STP	RIGHT OF WAY	\$1,000,000	2001
PERRY	10-	114.00	KY-7	STP	UTILITIES	\$750,000	2002
PERRY	10-	114.00	KY-7	STP	CONSTRUCTION	\$13,100,000	2003
PERRY	10-	114.02	KY-7	STP	CONSTRUCTION	\$6,000,000	2004
PERRY	10-	122.00	DB-9006	SP	DESIGN	\$500,000	2003
PERRY	10-	269.01	KY-15	STP	CONSTRUCTION	\$11,500,000	2002
PERRY	10-	269.02	KY-15	NH	CONSTRUCTION	\$17,000,000	2001
PERRY	10-	1021.00	-	BRZ	RIGHT OF WAY	\$696,000	2002
PERRY	10-	1021.00	-	BRZ	UTILITIES	\$250,000	2002
PERRY	10-	5000.00	KY-476	SP	CONSTRUCTION	\$307,600	2001

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PERRY	10- 5002.00	KY-476	SP	CONSTRUCTION	\$63,400	2001
PERRY	10- 5005.00	KY-7	SP	RIGHT OF WAY	\$50,000	2001
PERRY	10- 5005.00	KY-7	SP	CONSTRUCTION	\$1,750,000	2003
PERRY	10- 5006.00	KY-80	SP	DESIGN	\$210,000	2002
PERRY	10- 5006.00	KY-80	SP	RIGHT OF WAY	\$30,000	2003
PERRY	10- 5006.00	KY-80	SP	CONSTRUCTION	\$1,750,000	2004
PIKE	12- 131.00	US-23	NH	DESIGN	\$400,000	2001
PIKE	12- 131.00	US-23	NH	RIGHT OF WAY	\$1,000,000	2003
PIKE	12- 131.00	US-23	NH	UTILITIES	\$1,000,000	2004
PIKE	12- 131.01	US-23	NH	DESIGN	\$400,000	2002
PIKE	12- 263.10	US-460	SP	CONSTRUCTION	\$13,500,000	2002
PIKE	12- 263.11	US-460	SP	CONSTRUCTION	\$10,000,000	2003
PIKE	12- 263.15	US-460	SP	RIGHT OF WAY	\$4,000,000	2001
PIKE	12- 263.15	US-460	APD	UTILITIES	\$2,000,000	2003
PIKE	12- 263.22	US-460	APD	DESIGN	\$1,000,000	2001
PIKE	12- 263.22	US-460	APD	RIGHT OF WAY	\$5,000,000	2003
PIKE	12- 263.24	US-460	APD	DESIGN	\$1,000,000	2003
PIKE	12- 264.21	US-119	NH	CONSTRUCTION	\$11,000,000	2002
PIKE	12- 264.22	US-119	NH	CONSTRUCTION	\$4,000,000	2003
PIKE	12- 281.00	KY-194	SP	DESIGN	\$200,000	2003
PIKE	12- 298.00	KY-199	SP	RIGHT OF WAY	\$2,500,000	2002
PIKE	12- 298.00	KY-199	SP	UTILITIES	\$300,000	2002
PIKE	12- 308.12	US-119	NH	CONSTRUCTION	\$11,000,000	2001
PIKE	12- 308.21	US-119	APD	CONSTRUCTION	\$11,000,000	2002
PIKE	12- 308.30	US-119	APD	CONSTRUCTION	\$7,000,000	2001
PIKE	12- 308.31	US-119	APD	CONSTRUCTION	\$13,000,000	2002
PIKE	12- 308.32	US-119	APD	CONSTRUCTION	\$14,000,000	2003
PIKE	12- 308.33	US-119	STP	CONSTRUCTION	\$20,000,000	2004
PIKE	12- 308.40	US-119	APD	CONSTRUCTION	\$20,000,000	2004
PIKE	12- 1037.00	KY-1499	BRO	CONSTRUCTION	\$700,000	2003
PIKE	12- 1042.00	KY-2061	BRX	CONSTRUCTION	\$425,000	2002
PIKE	12- 1043.00	KY-3419	BRX	CONSTRUCTION	\$350,000	2002
PIKE	12- 1050.00	CR-1559	BRZ	CONSTRUCTION	\$300,000	2001
PIKE	12- 1051.00	CR-5116	BRZ	RIGHT OF WAY	\$50,000	2001
PIKE	12- 1051.00	CR-5116	BRZ	UTILITIES	\$100,000	2001
PIKE	12- 1057.00	KY-292	BRO	RIGHT OF WAY	\$200,000	2002
PIKE	12- 1057.00	KY-292	BRO	UTILITIES	\$300,000	2002
PIKE	12- 1057.00	KY-292	BRO	CONSTRUCTION	\$1,400,000	2004
PIKE	12- 1062.00	KY-199	BRX	CONSTRUCTION	\$375,000	2002
PIKE	12- 5005.00	US-23	SP	DESIGN	\$250,000	2001
PIKE	12- 5005.00	US-23	SP	RIGHT OF WAY	\$80,000	2002

PIKE	12- 5005.00	US-23	SP	CONSTRUCTION	\$2,500,000	2003
PIKE	12- 5010.00	KY-1426	SP	DESIGN	\$300,000	2001
POWELL	10- 118.01	KY-213	STP	UTILITIES	\$750,000	2001
POWELL	10- 118.01	KY-213	STP	CONSTRUCTION	\$1,720,000	2002
POWELL	10- 1055.00	KY-1639	BRX	CONSTRUCTION	\$363,000	2002
PULASKI	08- 55.10	US-27	NH	UTILITIES	\$3,000,000	2001
PULASKI	08- 55.10	US-27	NH	CONSTRUCTION	\$10,000,000	2002
PULASKI	08- 55.11	US-27	NH	CONSTRUCTION	\$10,000,000	2003
PULASKI	08- 138.03	US-27	BRO	CONSTRUCTION	\$9,000,000	2001
PULASKI	08- 259.01	-	STP	RIGHT OF WAY	\$5,500,000	2001
PULASKI	08- 259.01	-	STP	UTILITIES	\$2,500,000	2003
PULASKI	08- 268.01	-	SP	CONSTRUCTION	\$2,500,000	2001
PULASKI	08- 270.00	KY-1247	SP	RIGHT OF WAY	\$3,750,000	2002
PULASKI	08- 270.00	KY-1247	SP	UTILITIES	\$970,000	2004
PULASKI	08- 1009.01	KY-90	BRO	CONSTRUCTION	\$5,000,000	2001
PULASKI	08- 1009.02	KY-90	BRO	CONSTRUCTION	\$12,000,000	2002
PULASKI	08- 1009.03	KY-90	BRO	CONSTRUCTION	\$13,000,000	2003
PULASKI	08- 5003.00	US-27	SP	DESIGN	\$70,000	2001
PULASKI	08- 5003.00	US-27	SP	RIGHT OF WAY	\$200,000	2002
PULASKI	08- 5003.00	US-27	SP	UTILITIES	\$75,000	2002
PULASKI	08- 5003.00	US-27	SP	CONSTRUCTION	\$1,600,000	2003
PULASKI	08- 5004.00	CU-9008	SP	DESIGN	\$50,000	2001
PULASKI	08- 5004.00	CU-9008	SP	RIGHT OF WAY	\$20,000	2002
PULASKI	08- 5004.00	CU-9008	SP	CONSTRUCTION	\$2,350,000	2004
ROBERTSON	06- 121.00	KY-165	SP	RIGHT OF WAY	\$500,000	2001
ROBERTSON	06- 121.00	KY-165	SP	UTILITIES	\$300,000	2001
ROBERTSON	06- 348.00	CR-1302	BRZ	RIGHT OF WAY	\$35,000	2001
ROBERTSON	06- 348.00	CR-1302	BRZ	UTILITIES	\$30,000	2001
ROCKCASTLE	08- 4.00	I-75	IM	CONSTRUCTION	\$4,000,000	2002
ROCKCASTLE	08- 4.01	I-75	NH	CONSTRUCTION	\$10,000,000	2002
ROCKCASTLE	08- 163.10	US-150	STP	DESIGN	\$1,000,000	2002
ROCKCASTLE	08- 163.10	US-150	STP	RIGHT OF WAY	\$3,000,000	2004
ROWAN	09- 142.00	KY-32	SP	CONSTRUCTION	\$2,500,000	2001
ROWAN	09- 156.01	KY-519	STP	RIGHT OF WAY	\$2,000,000	2001
ROWAN	09- 156.01	KY-519	STP	UTILITIES	\$1,500,000	2002
ROWAN	09- 156.01	KY-519	STP	CONSTRUCTION	\$12,500,000	2004
ROWAN	09- 300.00	I-64	STP	DESIGN	\$280,000	2001
ROWAN	09- 300.00	I-64	STP	CONSTRUCTION	\$7,000,000	2001
ROWAN	09- 301.00	-	STP	RIGHT OF WAY	\$1,000,000	2001
ROWAN	09- 301.00	-	STP	UTILITIES	\$1,000,000	2001

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ROWAN	09- 301.00	-	STP	CONSTRUCTION	\$4,400,000	2004
ROWAN	09- 1026.00	KY-32	BRO	CONSTRUCTION	\$500,000	2002
ROWAN	09- 1040.00	CR-1222	BRZ	CONSTRUCTION	\$1,000,000	2004
ROWAN	09- 5007.00	I-64	SP	DESIGN	\$60,000	2004
ROWAN	09- 7010.00	-	SP	CONSTRUCTION	\$1,100,000	2001
ROWAN	09- 7030.00	KY-519	SP	RIGHT OF WAY	\$100,000	2002
ROWAN	09- 7030.00	KY-519	SP	UTILITIES	\$100,000	2002
ROWAN	09- 7030.00	KY-519	SP	CONSTRUCTION	\$3,000,000	2004
RUSSELL	08- 54.01	US-127	SP	DESIGN	\$300,000	2001
RUSSELL	08- 54.01	US-127	STP	RIGHT OF WAY	\$5,500,000	2003
RUSSELL	08- 5007.00	US-127	SP	DESIGN	\$35,000	2004
SCOTT	06- 72.21	I-75	NH	UTILITIES	\$500,000	2001
SCOTT	07- 86.00	US-460	STP	UTILITIES	\$700,000	2001
SCOTT	07- 86.00	US-460	STP	CONSTRUCTION	\$5,000,000	2002
SCOTT	07- 102.01	-	STP	RIGHT OF WAY	\$6,000,000	2004
SCOTT	07- 209.20	-	SP	CONSTRUCTION	\$3,675,000	2001
SCOTT	07- 212.00	US-460	SP	DESIGN	\$300,000	2001
SCOTT	07- 212.00	US-460	STP	RIGHT OF WAY	\$750,000	2003
SCOTT	07- 298.00	US-62	SP	UTILITIES	\$750,000	2001
SCOTT	07- 298.00	US-62	STP	CONSTRUCTION	\$9,000,000	2002
SCOTT	07- 1042.00	CR-1218	BRZ	CONSTRUCTION	\$500,000	2001
SCOTT	07- 1076.00	KY-32	BRO	UTILITIES	\$75,000	2001
SCOTT	07- 1076.00	KY-32	BRO	CONSTRUCTION	\$200,000	2002
SCOTT	07- 5000.00	KY-620	SP	CONSTRUCTION	\$342,000	2001
SHELBY	05- 172.00	KY-395	STP	RIGHT OF WAY	\$4,000,000	2002
SHELBY	05- 172.00	KY-395	STP	UTILITIES	\$800,000	2003
SHELBY	05- 326.01	-	SP	RIGHT OF WAY	\$5,000,000	2002
SHELBY	05- 326.01	-	SP	UTILITIES	\$2,000,000	2003
SHELBY	05- 326.01	-	SP	CONSTRUCTION	\$18,000,000	2004
SHELBY	05- 1021.00	US-60	BRO	RIGHT OF WAY	\$50,000	2002
SHELBY	05- 1021.00	US-60	BRO	UTILITIES	\$50,000	2002
SHELBY	05- 1021.00	US-60	BRO	CONSTRUCTION	\$200,000	2004
SHELBY	05- 2006.00	I-64	IM	DESIGN	\$150,000	2002
SHELBY	05- 2011.00	KY-53	SP	CONSTRUCTION	\$4,000,000	2001
SHELBY	05- 2012.00	US-60	SP	CONSTRUCTION	\$100,000	2001
SIMPSON	03- 8.00	US-31W	STP	RIGHT OF WAY	\$5,500,000	2001
SIMPSON	03- 8.00	US-31W	STP	UTILITIES	\$2,500,000	2001
SIMPSON	03- 197.00	KY-100	SP	CONSTRUCTION	\$1,000,000	2001
SIMPSON	03- 1052.00	KY-73	BRO	RIGHT OF WAY	\$75,000	2002
SIMPSON	03- 1052.00	KY-73	BRO	UTILITIES	\$50,000	2002
SIMPSON	03- 1052.00	KY-73	BRO	CONSTRUCTION	\$300,000	2004

SPENCER	05- 307.00	KY-2450	SP	CONSTRUCTION	\$2,500,000	2001
SPENCER	05- 347.00	KY-44	STP	DESIGN	\$1,000,000	2003
SPENCER	05- 5001.00	KY-44	SP	CONSTRUCTION	\$250,000	2002
SPENCER	05- 5006.00	KY-55	SP	DESIGN	\$45,000	2003
TAYLOR	04- 114.00	KY-210	SP	DESIGN	\$350,000	2004
TAYLOR	04- 1037.00	CR-1210	BRZ	CONSTRUCTION	\$200,000	2002
TAYLOR	04- 1053.00	KY-70	BRO	RIGHT OF WAY	\$50,000	2002
TAYLOR	04- 1053.00	KY-70	BRO	UTILITIES	\$50,000	2002
TAYLOR	04- 1053.00	KY-70	BRO	CONSTRUCTION	\$500,000	2004
TAYLOR	04- 5000.00	US-68	SP	CONSTRUCTION	\$550,000	2001
TODD	03- 2003.00	US-79	SP	CONSTRUCTION	\$3,000,000	2002
TODD	03- 2004.00	KY-346	SP	CONSTRUCTION	\$1,400,000	2001
TRIGG	01- 180.51	US-68	STP	RIGHT OF WAY	\$4,900,000	2001
TRIGG	01- 180.51	US-68	STP	UTILITIES	\$7,745,000	2002
TRIGG	01- 180.51	US-68	STP	CONSTRUCTION	\$8,000,000	2004
TRIGG	01- 180.52	US-68	SP	RIGHT OF WAY	\$50,000	2001
TRIGG	01- 180.52	US-68	SP	UTILITIES	\$1,250,000	2001
TRIGG	01- 180.52	US-68	SP	CONSTRUCTION	\$14,000,000	2003
TRIGG	01- 180.53	US-68	SP	RIGHT OF WAY	\$50,000	2001
TRIGG	01- 180.53	US-68	SP	UTILITIES	\$500,000	2001
TRIGG	01- 180.53	US-68	SP	CONSTRUCTION	\$10,500,000	2003
TRIGG	01- 180.60	US-68	BRO	UTILITIES	\$150,000	2001
TRIGG	01- 180.60	US-68	BRO	CONSTRUCTION	\$8,000,000	2003
TRIGG	01- 180.61	US-68	STP	CONSTRUCTION	\$11,000,000	2004
TRIGG	01- 1120.00	KY-139	BRO	RIGHT OF WAY	\$250,000	2001
TRIGG	01- 1120.00	KY-139	BRO	UTILITIES	\$260,000	2001
TRIGG	01- 1120.00	KY-139	BRO	CONSTRUCTION	\$1,780,000	2003
TRIGG	01- 1131.00	KY-272	BRX	RIGHT OF WAY	\$300,000	2002
TRIGG	01- 1131.00	KY-272	BRX	UTILITIES	\$300,000	2002
TRIMBLE	05- 5003.00	US-42	SP	DESIGN	\$65,000	2001
TRIMBLE	05- 5003.00	US-42	SP	CONSTRUCTION	\$500,000	2002
UNION	02- 79.20	US-60	SP	DESIGN	\$1,800,000	2004
UNION	02- 102.00	KY-56	STP	CONSTRUCTION	\$2,500,000	2002
UNION	02- 122.01	US-60	STP	RIGHT OF WAY	\$1,500,000	2001
UNION	02- 122.01	US-60	STP	UTILITIES	\$1,000,000	2002
UNION	02- 122.01	US-60	STP	CONSTRUCTION	\$15,000,000	2003
UNION	02- 123.01	US-60	STP	RIGHT OF WAY	\$1,000,000	2001
UNION	02- 123.01	US-60	STP	UTILITIES	\$750,000	2003
UNION	02- 123.01	US-60	STP	CONSTRUCTION	\$10,500,000	2004
UNION	02- 294.01	US-60	STP	CONSTRUCTION	\$4,750,000	2001

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UNION	02-	1048.00	KY-948	BRX	CONSTRUCTION	\$130,000	2002
UNION	02-	2023.00	KY-109	SP	CONSTRUCTION	\$1,210,000	2001
WARREN	03-	5.00	I-65	IM	CONSTRUCTION	\$12,000,000	2004
WARREN	03-	6.00	I-65	NH	CONSTRUCTION	\$5,000,000	2004
WARREN	03-	6.01	I-65	IM	CONSTRUCTION	\$4,000,000	2004
WARREN	03-	11.00	I-65	STP	CONSTRUCTION	\$15,000,000	2004
WARREN	03-	11.01	I-65	SP	CONSTRUCTION	\$14,000,000	2004
WARREN	03-	53.00	-	NH	CONSTRUCTION	\$7,000,000	2002
WARREN	03-	53.01	-	NH	CONSTRUCTION	\$10,000,000	2003
WARREN	03-	146.31	US-231	STP	CONSTRUCTION	\$5,000,000	2001
WARREN	03-	252.10	KY-234	STP	CONSTRUCTION	\$6,000,000	2001
WARREN	03-	290.01	KY-880	SP	RIGHT OF WAY	\$4,500,000	2001
WARREN	03-	290.01	KY-880	SP	UTILITIES	\$2,500,000	2003
WARREN	03-	310.00	-	SP	UTILITIES	\$750,000	2002
WARREN	03-	310.00	-	SP	CONSTRUCTION	\$3,200,000	2004
WARREN	03-	312.00	US-31W	STP	RIGHT OF WAY	\$2,500,000	2001
WARREN	03-	312.00	US-31W	STP	UTILITIES	\$2,000,000	2003
WARREN	03-	316.00	KY-2158	SP	RIGHT OF WAY	\$2,000,000	2001
WARREN	03-	316.00	KY-2158	SP	UTILITIES	\$2,500,000	2003
WARREN	03-	317.00	US-31W	STP	DESIGN	\$500,000	2003
WASHINGTON04-	103.05	US-150	STP	CONSTRUCTION	\$4,200,000	2001	
WASHINGTON04-	284.01	KY-555	STP	UTILITIES	\$1,000,000	2001	
WASHINGTON04-	284.01	KY-555	STP	CONSTRUCTION	\$19,600,000	2003	
WASHINGTON04-	307.00	US-150	STP	DESIGN	\$500,000	2001	
WASHINGTON04-	307.00	US-150	STP	RIGHT OF WAY	\$2,000,000	2003	
WEBSTER	02-	128.00	US-41A	SP	DESIGN	\$250,000	2003
WEBSTER	02-	5007.00	PE-9004	SP	CONSTRUCTION	\$650,000	2001
WHITLEY	11-	14.00	I-75	NH	DESIGN	\$3,000,000	2001
WHITLEY	11-	14.01	I-75	IM	DESIGN	\$3,000,000	2001
WHITLEY	11-	120.00	US-25W	SP	UTILITIES	\$450,000	2001
WHITLEY	11-	120.00	US-25W	SP	CONSTRUCTION	\$4,000,000	2002
WHITLEY	08-	261.10	KY-92	SP	RIGHT OF WAY	\$3,000,000	2001
WHITLEY	08-	261.10	KY-92	SP	UTILITIES	\$2,000,000	2003
WHITLEY	11-	1042.00	KY-628	BRX	UTILITIES	\$25,000	2001
WHITLEY	11-	1042.00	KY-628	BRX	CONSTRUCTION	\$300,000	2002
WHITLEY	11-	1048.00	KY-779	BRX	RIGHT OF WAY	\$40,000	2002
WHITLEY	11-	1048.00	KY-779	BRX	UTILITIES	\$60,000	2002
WHITLEY	11-	5001.00	US-25W	SP	CONSTRUCTION	\$125,000	2002
WHITLEY	11-	5002.00	US-25W	SP	RIGHT OF WAY	\$30,000	2001
WHITLEY	11-	5002.00	US-25W	SP	UTILITIES	\$20,000	2001
WHITLEY	11-	5002.00	US-25W	SP	CONSTRUCTION	\$1,500,000	2002

WHITLEY	11- 5007.00	US-25W	SP	DESIGN	\$50,000	2004
WOLFE	10- 11.00	KY-15	SP	DESIGN	\$2,000,000	2003
WOLFE	10- 126.10	KY-9009	SP	DESIGN	\$600,000	2001
WOLFE	10- 126.10	KY-9009	NH	RIGHT OF WAY	\$2,000,000	2003
WOLFE	10- 126.20	KY-9009	SP	DESIGN	\$600,000	2003
WOODFORD	07- 347.00	-	SP	CONSTRUCTION	\$7,948,000	2001
WOODFORD	07- 5005.00	KY-1964	SP	DESIGN	\$80,000	2002
WOODFORD	07- 5005.00	KY-1964	SP	CONSTRUCTION	\$750,000	2003
ZVARIOUS	99- 24.00	I-64	IM	CONSTRUCTION	\$3,500,000	2002
ZVARIOUS	99- 41.00	I-24	IM	CONSTRUCTION	\$2,500,000	2002
ZVARIOUS	99- 42.00	-	IM	CONSTRUCTION	\$3,500,000	2003
ZVARIOUS	99- 86.05	-	SP	CONSTRUCTION	\$35,000,000	2001
ZVARIOUS	99- 86.06	-	SP	CONSTRUCTION	\$35,000,000	2002
ZVARIOUS	99- 86.07	-	SP	CONSTRUCTION	\$35,000,000	2003
ZVARIOUS	99- 86.08	-	SP	CONSTRUCTION	\$35,000,000	2004
ZVARIOUS	99- 121.00	-	NH	CONSTRUCTION	\$1,000,000	2002
ZVARIOUS	99- 124.00	-	BRZ	CONSTRUCTION	\$875,000	2001
ZVARIOUS	99- 195.03	-	TE	CONSTRUCTION	\$12,700,000	2001
ZVARIOUS	99- 195.04	-	TE	CONSTRUCTION	\$12,700,000	2002
ZVARIOUS	99- 195.05	-	TE	CONSTRUCTION	\$12,700,000	2003
ZVARIOUS	99- 195.06	-	TE	CONSTRUCTION	\$12,700,000	2004
ZVARIOUS	99- 206.10	-	SAF	CONSTRUCTION	\$5,000,000	2001
ZVARIOUS	99- 206.20	-	SAF	CONSTRUCTION	\$5,000,000	2002
ZVARIOUS	99- 207.00	-	NH	CONSTRUCTION	\$2,000,000	2003
ZVARIOUS	99- 208.00	-	NH	CONSTRUCTION	\$1,000,000	2004
ZVARIOUS	99- 209.00	-	SP	CONSTRUCTION	\$5,000,000	2003
ZVARIOUS	99- 212.05	I-75	SP	CONSTRUCTION	\$200,000	2001
ZVARIOUS	99- 212.06	I-75	SP	CONSTRUCTION	\$200,000	2002
ZVARIOUS	99- 212.07	I-75	SP	CONSTRUCTION	\$200,000	2003
ZVARIOUS	99- 212.08	I-75	SP	CONSTRUCTION	\$200,000	2004
ZVARIOUS	99- 219.01	-	CM	CONSTRUCTION	\$4,200,000	2001
ZVARIOUS	99- 219.02	-	CM	CONSTRUCTION	\$6,200,000	2002
ZVARIOUS	99- 219.03	-	CM	CONSTRUCTION	\$4,300,000	2003
ZVARIOUS	99- 219.04	-	CM	CONSTRUCTION	\$4,400,000	2004
ZVARIOUS	99- 228.00	-	BRZ	CONSTRUCTION	\$875,000	2002
ZVARIOUS	99- 233.00	-	BRO	CONSTRUCTION	\$550,000	2001
ZVARIOUS	99- 234.00	-	BRO	CONSTRUCTION	\$775,000	2002
ZVARIOUS	99- 235.40	-	SP	CONSTRUCTION	\$300,000	2001
ZVARIOUS	99- 235.50	-	SP	CONSTRUCTION	\$300,000	2002
ZVARIOUS	99- 235.60	-	SP	CONSTRUCTION	\$300,000	2003

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ZVARIOUS	99- 235.70	-	SP	CONSTRUCTION	\$300,000	2004
ZVARIOUS	99- 242.00	-	STP	CONSTRUCTION	\$2,000,000	2001
ZVARIOUS	99- 243.00	-	STP	CONSTRUCTION	\$750,000	2002
ZVARIOUS	99- 243.01	-	STP	CONSTRUCTION	\$2,000,000	2003
ZVARIOUS	99- 243.02	-	STP	CONSTRUCTION	\$500,000	2004
ZVARIOUS	99- 246.00	-	NH	CONSTRUCTION	\$1,500,000	2001
ZVARIOUS	99- 252.00	-	SP	CONSTRUCTION	\$1,500,000	2001
ZVARIOUS	99- 253.00	-	SP	CONSTRUCTION	\$1,500,000	2002
ZVARIOUS	99- 253.01	-	SP	CONSTRUCTION	\$1,500,000	2003
ZVARIOUS	99- 253.02	-	SP	CONSTRUCTION	\$1,500,000	2004
ZVARIOUS	99- 258.00	-	SP	CONSTRUCTION	\$500,000	2001
ZVARIOUS	99- 259.01	-	SP	CONSTRUCTION	\$500,000	2003
ZVARIOUS	99- 268.00	-	BRO	CONSTRUCTION	\$1,500,000	2001
ZVARIOUS	99- 269.00	-	BRO	CONSTRUCTION	\$1,500,000	2002
ZVARIOUS	99- 275.00	-	SAF	CONSTRUCTION	\$2,000,000	2001
ZVARIOUS	99- 276.00	-	SAF	CONSTRUCTION	\$2,000,000	2002
ZVARIOUS	99- 277.00	-	SP	CONSTRUCTION	\$5,000,000	2001
ZVARIOUS	99- 278.00	-	SP	CONSTRUCTION	\$9,000,000	2002
ZVARIOUS	99- 278.10	-	SP	CONSTRUCTION	\$5,000,000	2004
ZVARIOUS	99- 282.00	-	SP	DESIGN	\$500,000	2001
ZVARIOUS	99- 283.00	-	SP	DESIGN	\$500,000	2002
ZVARIOUS	99- 287.00	-	SP	DESIGN	\$300,000	2001
ZVARIOUS	99- 288.00	-	SP	DESIGN	\$300,000	2002
ZVARIOUS	99- 290.00	-	STP	CONSTRUCTION	\$300,000	2001
ZVARIOUS	99- 300.00	-	IM	CONSTRUCTION	\$4,000,000	2001
ZVARIOUS	99- 301.00	-	IM	CONSTRUCTION	\$18,000,000	2002
ZVARIOUS	99- 302.01	-	STP	DESIGN	\$100,000	2001
ZVARIOUS	99- 302.01	-	STP	CONSTRUCTION	\$1,000,000	2002
ZVARIOUS	99- 302.02	-	STP	DESIGN	\$50,000	2003
ZVARIOUS	99- 302.02	-	STP	CONSTRUCTION	\$500,000	2003
ZVARIOUS	99- 319.00	-	SP	CONSTRUCTION	\$2,000,000	2001
ZVARIOUS	99- 320.00	-	SP	CONSTRUCTION	\$2,000,000	2002
ZVARIOUS	99- 324.00	-	BRO	CONSTRUCTION	\$550,000	2003
ZVARIOUS	99- 325.00	-	BRO	CONSTRUCTION	\$500,000	2004
ZVARIOUS	99- 326.00	-	BRO	CONSTRUCTION	\$1,500,000	2003
ZVARIOUS	99- 327.00	-	BRO	CONSTRUCTION	\$1,500,000	2004
ZVARIOUS	99- 330.00	-	FH	CONSTRUCTION	\$300,000	2001
ZVARIOUS	99- 331.00	-	FH	CONSTRUCTION	\$300,000	2002
ZVARIOUS	99- 332.00	-	FH	CONSTRUCTION	\$300,000	2003
ZVARIOUS	99- 333.00	-	FH	CONSTRUCTION	\$300,000	2004
ZVARIOUS	99- 334.00	-	SP	CONSTRUCTION	\$2,000,000	2003

ZVARIOUS	99- 335.00	-	SP	CONSTRUCTION	\$2,000,000	2004
ZVARIOUS	99- 336.00	-	IM	CONSTRUCTION	\$9,000,000	2003
ZVARIOUS	99- 337.00	-	IM	CONSTRUCTION	\$15,000,000	2004
ZVARIOUS	99- 338.00	-	SP	DESIGN	\$500,000	2003
ZVARIOUS	99- 339.00	-	SP	DESIGN	\$500,000	2004
ZVARIOUS	99- 340.00	-	SP	DESIGN	\$300,000	2003
ZVARIOUS	99- 341.00	-	SP	DESIGN	\$300,000	2004
ZVARIOUS	99- 342.00	-	BRO	DESIGN	\$1,000,000	2002
ZVARIOUS	99- 343.00	-	BRO	DESIGN	\$1,200,000	2003
ZVARIOUS	99- 344.00	-	BRO	DESIGN	\$2,000,000	2004
ZVARIOUS	99- 345.00	-	BRZ	CONSTRUCTION	\$875,000	2003
ZVARIOUS	99- 346.00	-	BRZ	CONSTRUCTION	\$875,000	2004
ZVARIOUS	99- 347.00	-	BRZ	DESIGN	\$400,000	2002
ZVARIOUS	99- 348.00	-	BRZ	DESIGN	\$500,000	2003
ZVARIOUS	99- 349.00	-	BRZ	DESIGN	\$500,000	2004
ZVARIOUS	99- 350.00	-	NH	DESIGN	\$2,000,000	2003
ZVARIOUS	99- 351.00	-	SAF	CONSTRUCTION	\$2,000,000	2003
ZVARIOUS	99- 352.00	-	SAF	CONSTRUCTION	\$2,000,000	2004
ZVARIOUS	99- 353.00	-	SAF	CONSTRUCTION	\$7,000,000	2003
ZVARIOUS	99- 354.00	-	SAF	CONSTRUCTION	\$7,000,000	2004
ZVARIOUS	99- 355.00	-	SAF	CONSTRUCTION	\$2,000,000	2003
ZVARIOUS	99- 356.00	-	SAF	CONSTRUCTION	\$2,000,000	2004
ZVARIOUS	99- 357.02	-	SP	DESIGN	\$200,000	2001
ZVARIOUS	99- 357.03	-	SP	DESIGN	\$200,000	2002
ZVARIOUS	99- 357.04	-	SP	DESIGN	\$200,000	2003
ZVARIOUS	99- 357.05	-	SP	DESIGN	\$200,000	2004
ZVARIOUS	99- 360.00	-	BRO	DESIGN	\$1,500,000	2001
ZVARIOUS	99- 1051.00	-	SP	CONSTRUCTION	\$450,000	2001
ZVARIOUS	99- 1052.00	-	SP	CONSTRUCTION	\$450,000	2002
ZVARIOUS	99- 1060.00	-	BRX	CONSTRUCTION	\$250,000	2001
ZVARIOUS	99- 1061.00	-	BRX	CONSTRUCTION	\$250,000	2002
ZVARIOUS	99- 1062.00	-	BRX	CONSTRUCTION	\$250,000	2003
ZVARIOUS	99- 1063.00	-	BRX	CONSTRUCTION	\$250,000	2004
ZVARIOUS	99- 1064.00	-	SP	CONSTRUCTION	\$450,000	2003
ZVARIOUS	99- 1065.00	-	SP	CONSTRUCTION	\$450,000	2004
ZVARIOUS	99- 1066.00	-	BRX	DESIGN	\$500,000	2003
ZVARIOUS	99- 1067.00	-	BRX	DESIGN	\$1,000,000	2004
ZVARIOUS	99- 1068.00	-	BRX	CONSTRUCTION	\$4,000,000	2004
ZVARIOUS	99- 1069.00	-	BRZ	CONSTRUCTION	\$3,700,000	2004
ZVARIOUS	99- 5002.00	-	SP	CONSTRUCTION	\$1,000,000	2001

ZVARIOUS	99- 5003.00	-	SP	CONSTRUCTION	\$1,000,000	2002
ZVARIOUS	99- 5004.00	-	SP	CONSTRUCTION	\$1,000,000	2003
ZVARIOUS	99- 5006.00	-	SP	CONSTRUCTION	\$1,000,000	2004

Approved April 14, 1998

CHAPTER 614

(HB 85)

AN ACT relating to abortion.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 311.720 is amended to read as follows:

As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context otherwise requires:

- (1) "Abortion" shall mean the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death.
- (2) "Hospital" shall mean those institutions licensed in the Commonwealth of Kentucky pursuant to the provisions of KRS Chapter 216.
- (3) "Consent" as used in KRS 311.710 to 311.820 with reference to those who must give their consent shall mean an informed consent expressed by a written agreement to submit to an abortion on a written form of consent to be promulgated by the secretary for human resources.
- (4) "Cabinet" shall mean the Cabinet for Human Resources of the Commonwealth of Kentucky.
- (5) "Fetus" shall mean a human being from fertilization until birth.
- (6) "Human being" shall mean any member of the species homo sapiens from fertilization until death.
- (7) "Physician" shall mean any person licensed to practice medicine in the Commonwealth or osteopathy pursuant to the provisions of this chapter.
- (8) "Viability" shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother.
- (9) "Accepted medical procedures" shall mean procedures of the type performed in the manner and in a facility with equipment sufficient to meet the standards of medical care which physicians engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.
- (10) *"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.*
- (11) *"Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.*
- (12) *"Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the abortion is planned to be performed.*

SECTION 2. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

- (1) *No abortion shall be performed or induced except with the voluntary and informed written consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:*
 - (a) *At least twenty-four (24) hours prior to the abortion, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has verbally informed the woman of all of the following:*

1. *The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;*
 2. *The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and*
 3. *The medical risks associated with the pregnant woman carrying her pregnancy to term;*
- (b) *At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician, has informed the pregnant woman that:*
1. *The cabinet publishes the printed materials described in paragraphs (a) and (b) of subsection (2) of this section and that she has a right to review the printed materials and that copies will be provided to her by the physician, licensed nurse, physician assistant, or social worker free of charge if she chooses to review the printed materials;*
 2. *Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the cabinet; and*
 3. *The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion;*
- (c) *At least twenty-four (24) hours prior to the abortion, a copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials;*
- (d) *The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:*
1. *That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and*
 2. *That she consents to the particular abortion voluntarily and knowingly, and she is not under the influence of any drug of abuse or alcohol; and*
- (e) *Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed statement, on a form which may be provided by the physician, on which she consents to the abortion and that includes the certification required by paragraph (d) of this subsection.*
- (2) *By January 1, 1999, the cabinet shall cause to be published in English in a typeface not less than 12 point type the following materials:*
- (a) *Materials that inform the pregnant woman about public and private agencies and services that are available to assist her through her pregnancy, upon childbirth, and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the available agencies and a description of the services offered by the agencies and the telephone numbers and addresses of the agencies, and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The cabinet shall ensure that the materials are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section; and*
 - (b) *Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2) of four (4) week increments specified in this paragraph, a pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous*

manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

- (3) *Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies.*
- (4) *If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.*
- (5) *If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.*
- (6) *The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of disciplinary action pursuant to KRS 311.595.*
- (7) *The cabinet shall charge a fee for each copy of the materials distributed in accordance with subsections (1) and (3) of this section. The fee shall be sufficient to cover the cost of the administration of the materials published in accordance with subsection (2) of this section, including the cost of preparation and distribution of materials.*

Section 3. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Human Resources, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.

- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
- (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- ~~(11) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.726 shall be guilty of a Class A misdemeanor.~~
- ~~(12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.~~
- ~~(12)(13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.~~
- ~~(13)(14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.~~
- ~~(14)(15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.~~
- ~~(15)(16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.~~
- ~~(16)(17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.~~
- ~~(17)(18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.~~
- ~~(18)(19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.~~
- ~~(19)(20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.~~
- ~~(20)(21) Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.~~
- ~~(21)(22) Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.~~
- ~~(22)(23) Any person who violates KRS 311.914 shall be guilty of a violation.~~
- ~~(23)(24) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.~~
- ~~(24)(25) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;~~
- ~~(b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.~~
- ~~(25)(26) A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.~~
- ~~(26)(27) Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.~~
- ~~(27)(28) Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).~~
- ~~(28)(29) Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.~~

~~(29)~~~~(30)~~ Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).

~~(30)~~~~(31)~~ Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

Section 4. The following KRS sections are repealed:

311.726 Voluntary and informed consent of woman -- Certificate -- Emergencies -- Civil liability of physician.

311.729 Information on alternatives.

Passed over Governor's veto April 15, 1998

CHAPTER 615

(HB 321)

AN ACT relating to appropriations providing financing for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state supported activities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART I

OPERATING BUDGET

There is appropriated out of the General Fund, Road Fund, restricted funds accounts, or federal funds accounts for the fiscal year ending June 30, 1998, and for the fiscal year beginning July 1, 1998, and ending June 30, 1999, and for the fiscal year beginning July 1, 1999, and ending June 30, 2000, the following discrete sums, or so much thereof as may be necessary. Appropriated funds are included pursuant to KRS 48.700 and 48.710. Each appropriation is made by source of respective fund or funds accounts. Appropriations for the following officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and budget units of the state government, and any and all other activities of the government of the Commonwealth, are subject to the provisions of Chapters 12, 42, 45, and 48 of the Kentucky Revised Statutes and compliance with the conditions and procedures set forth in this Act. For column display purposes in this Act, 1999-00 represents fiscal year 1999-2000.

A. GOVERNMENT OPERATIONS

Budget Units

1. EXECUTIVE OFFICE OF THE GOVERNOR

a. Office of the Governor

	1998-99	1999-00
General Fund		9,189,500
Restricted Funds		400,000
Total	9,589,500	9,940,000

Included in the above General Fund appropriation in each year of the biennium is \$18,000 for the Governor's expense allowance and \$10,000 for the Lieutenant Governor's expense allowance to meet additional expenses associated with the position of Governor of Kentucky and the position of Lieutenant Governor as specified in KRS 64.710.

b. Governor's Office for Policy and Management

	1998-99	1999-00
General Fund		2,820,500
Restricted Funds		40,000

Total	2,860,500	3,098,000
c. State Planning Fund		

	1998-99	1999-00
General Fund		500,000
		500,000

The Governor is authorized to expend funds for the improvement and advancement of governmental purposes and activities. Included in the above General Fund appropriation is a \$25,000 grant in each fiscal year to be awarded to the Bluegrass State Games to assist with planning and production of the games.

TOTAL - EXECUTIVE OFFICE OF THE GOVERNOR

	1998-99	1999-00
General Fund		12,510,000
Restricted Funds		440,000
TOTAL		12,950,000
		13,538,000

2. SECRETARY OF STATE

	1998-99	1999-00
General Fund		2,254,300
Restricted Funds		142,500
Total	2,396,800	2,499,800

3. BOARD OF ELECTIONS

	1998-99	1999-00
General Fund		4,099,800
Restricted Funds		40,000
Total	4,139,800	4,212,100

Included in the above General Fund appropriation is \$2,801,500 in fiscal year 1998-1999 and \$2,835,000 in fiscal year 1999-2000 to pay the state's share of county election expenses (KRS 117.345) and the state's share of voter registration expenses (KRS 116.145 and KRS 117.343). Any unexpended balance remaining at the close of each fiscal year shall lapse to the credit of the General Fund Surplus Account. Any amount that the state is required to pay in excess of the above amounts under the provisions of KRS 116.145 and KRS 117.343 shall be deemed necessary governmental expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705). Included in the above General Fund appropriation is up to \$10,000 in each fiscal year for a reward program to deter election fraud and unlawful activities related to elections.

Special elections and additional precincts due to redistricting shall be deemed necessary governmental expenses and be paid from the General Fund Surplus Account (KRS 48.700).

4. TREASURY

	1998-99	1999-00
General Fund		2,228,500
		2,285,200

Included in the General Fund appropriation above is a Restricted Funds source replacement of \$166,500 in fiscal year 1998-99 and \$166,500 in fiscal year 1999-2000 for discontinued annual funding for services performed for the Cabinet for Families and Children by the Treasury Department.

5. ATTORNEY GENERAL

1997-98	1998-99	1999-00
General Fund		12,236,500
Restricted Funds		5,976,500
		12,710,200
		6,256,500

ACTS OF THE GENERAL ASSEMBLY

Federal Funds	56,000	1,639,500	1,595,500
Total 56,000	19,852,500	20,562,200	

Included in the above General Fund appropriation is \$200,000 in fiscal year 1998-99 and \$200,000 in fiscal year 1999-2000 for the Victim Witness Protection Program. Notwithstanding KRS 45.229, any funds appropriated for the Victim Witness Protection Program in fiscal year 1998-99 shall not lapse and shall be carried forward into fiscal year 1999-2000.

6. UNIFIED PROSECUTORIAL SYSTEM

a. Commonwealth's Attorneys

	1997-98	1998-99	1999-00
General Fund			19,055,000
Restricted Funds	22,500		130,000
Federal Funds	3,000		634,000
Total 25,500	19,819,000	20,909,900	20,092,400

Included in the above General Fund appropriation is \$267,600 in fiscal year 1998-99 and \$354,700 in fiscal year 1999-2000 to allow part-time Commonwealth's Attorneys to become full-time. Notwithstanding KRS 45.229, any unexpended balance of funds provided for part-time Commonwealth's Attorneys to become full-time totaling \$267,600 at the end of fiscal year 1998-99 may provide for staff positions for the Prosecutorial Advisory Council subject to the interim appropriation revision process in KRS 48.630.

Included in the above General Fund appropriation is \$247,500 in fiscal year 1998-99 and \$330,000 in fiscal year 1999-2000 for 15 additional victims advocates.

There is appropriated from the General Fund in fiscal year 1998-99 and fiscal year 1999-2000 the necessary funds, subject to the conditions and procedures provided in this Act, which are required to provide additional staff to handle workload generated from new judgeships contingent upon the passage of enabling legislation. These funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

b. County Attorneys

	1997-98	1998-99	1999-00
General Fund			17,429,200
Restricted Funds	30,200		35,000
Federal Funds	55,000		163,500
Total 85,200	17,627,700	18,556,500	18,349,000

There is appropriated from the General Fund in fiscal year 1998-99 and fiscal year 1999-2000 the necessary funds, subject to the conditions and procedures provided in this Act, which are required to provide additional staff to handle workload generated from new judgeships contingent upon the passage of enabling legislation. These funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

TOTAL - UNIFIED PROSECUTORIAL SYSTEM

	1997-98	1998-99	1999-00
General Fund			36,484,200
Restricted Funds	52,700		165,000
Federal Funds	58,000		797,500
TOTAL	110,700	37,446,700	39,466,400

7. AUDITOR OF PUBLIC ACCOUNTS

	1998-99	1999-00
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General Fund		5,515,800	5,749,400
Restricted Funds		3,783,500	3,978,500
Total	9,299,300	9,727,900	

Notwithstanding KRS 43.200, no funding is provided for Auditor's scholarships.

8. AGRICULTURE

	1998-99	1999-00	
General Fund		23,979,100	19,575,000
Restricted Funds		2,407,500	2,403,000
Federal Funds		1,894,100	1,898,000
Total	28,280,700	23,876,000	

Included in the above General Fund appropriation is \$456,300 in each fiscal year for Murray State University and \$370,000 in each fiscal year for the University of Kentucky for the diagnostic laboratories at each institution.

Included in the above General Fund appropriation is \$800,000 in each fiscal year for regional university agriculture programs, to be equally distributed among the four universities.

Included in the above General Fund appropriation is \$100,000 in each fiscal year for the Agriculture/Economic Development joint trade office in Mexico. Notwithstanding KRS 45.229, any unexpended funds for the Mexico Trade Office shall be continued into the succeeding fiscal year, and the Cabinet for Economic Development shall assist in seeking and obtaining matching funds for the joint office.

Included in the above General Fund appropriation is \$500,000 in each fiscal year for the Youth Tobacco Enforcement Program pursuant to KRS 438.330 and KRS 438.335. The Alcohol Beverage Control agency shall jointly participate in the program's enforcement.

Included in the above General Fund appropriation is \$5,641,500 for fiscal year 1998-99 and \$916,500 for fiscal year 1999-2000 for the new Agricultural Marketing Initiative. Notwithstanding KRS 45.229, any unexpended portion of \$5,641,500 in fiscal year 1998-99 shall be continued into the succeeding fiscal year.

Included in the above General Fund appropriation is \$75,000 in each fiscal year for personnel and operating expenditures necessary to implement the Farm Safety Initiative.

9. MILITARY AFFAIRS

	1998-99	1999-00	
General Fund		10,256,500	10,854,300
Restricted Funds		10,333,500	10,699,500
Federal Funds		8,958,500	8,960,000
Total	29,548,500	30,513,800	

There is appropriated from the General Fund the necessary funds to be expended, subject to the conditions and procedures provided in this Act, which are required as a result of the Governor's call of the Kentucky National Guard to active duty when an emergency or exigent situation has been declared to exist by the Governor. These necessary funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

There is appropriated from the General Fund the necessary funds, subject to the conditions and procedures in this Act, which are required to match federal aid to which the state would be eligible in the event of a presidentially-declared disaster or emergency. These necessary funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

Included in the above General Fund appropriation is an additional amount of \$200,000 in fiscal year 1998-99 and \$300,000 in fiscal year 1999-2000 for Disaster and Emergency Services County Offices.

Also included in the above General Fund appropriation is \$175,000 in fiscal year 1999-2000 for debt service for bonds to replace the communications system for the Division of Disaster and Emergency Services.

10. PERSONNEL BOARD

	1998-99	1999-00	
General Fund		526,200	544,200
Restricted Funds		5,000	5,000
Total	531,200	549,200	

11. LOCAL GOVERNMENT

	1997-98	1998-99	1999-00	
General Fund		196,500	10,646,900	10,182,900
Restricted Funds			456,000	456,000
Federal Funds			38,381,000	38,685,500
Total	196,500	49,483,900	49,324,400	

Included in the above General Fund appropriation is \$478,000 in fiscal year 1999-2000 for debt service for bonds for the Local Match Participation Program for statewide flood control projects.

Included in the above General Fund appropriation is an additional amount of \$433,000 in fiscal year 1998-99 and \$433,000 in fiscal year 1999-2000 for the Joint Funding Administration.

12. SPECIAL FUNDS

a. Local Government Economic Assistance Fund

	1998-99	1999-00	
General Fund		31,746,100	33,182,500

b. Local Government Economic Development Fund

	1998-99	1999-00	
General Fund		27,284,100	32,192,000

The above appropriations from the General Fund are based on the official estimate of the Secretary of the Finance and Administration Cabinet for severance tax collections during the biennium, distributed in accordance with KRS 42.450 to 42.495. Moneys transferred from the General Fund to the Local Government Economic Development Fund shall be calculated at the percentage of thirty-five percent (35%) effective July 1, 1998, and thirty-eight percent (38%) effective July 1, 1999, notwithstanding provisions set forth in KRS 42.4582. If actual severance tax receipts are different from the official estimate, the amount to be allotted to the Local Government Economic Assistance Fund shall be determined in accordance with KRS 42.450 to 42.495 and the amount to be allotted to the Local Government Economic Development Fund shall continue to be calculated at the percentages specified in this paragraph and otherwise in accordance with KRS 42.450 to 42.495.

Notwithstanding KRS 42.4582, the quarterly calculation and transfer of moneys from the General Fund to the Local Government Economic Development Fund pursuant to KRS 42.4582 shall be made only after each quarterly installment of the annual appropriation of \$1,026,000 in fiscal year 1998-99 and \$1,664,400 in fiscal year 1999-2000 has been credited to the Osteopathic Scholarship program within the Council on Postsecondary Education.

Notwithstanding KRS 42.4585, the quarterly calculation and transfer of the funds pursuant to KRS 42.4585 shall be made only after each quarterly installment of the annual appropriation of \$1,026,000 in fiscal year 1998-99 and \$1,664,400 in fiscal year 1999-2000 has been credited to the Osteopathic Scholarship program within the Council on Postsecondary Education.

Notwithstanding KRS 42.4585, effective July 1, 1998, the amount transferred annually from the Local Government Economic Development Fund into the Local Government Economic Assistance Fund under the provisions of KRS 42.4585 shall not be less than an amount equal to fourteen percent (14%) of the severance and processing taxes on coal collected annually and otherwise in accordance with KRS 42.450 to 42.495.

Notwithstanding KRS 42.4592, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$450,000 has been credited to the East Kentucky Corporation through a grant from the Cabinet for Economic Development in each year of the biennium.

Notwithstanding KRS 42.4592, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$350,000 has been credited to the West Kentucky Corporation through a grant from the Cabinet for Economic Development in each year of the biennium.

Notwithstanding KRS 42.4592, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$325,000 in fiscal year 1998-99 and \$320,000 in fiscal year 1999-2000, has been credited to the Coal County Development Office within the Cabinet for Economic Development.

Notwithstanding KRS 42.4592, the quarterly calculation for the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$510,000 in fiscal year 1998-99 and \$525,000 in fiscal year 1999-2000 has been credited to the Kentucky Appalachian Commission within the Office of the Governor.

Notwithstanding KRS 42.4586, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund to coal producing counties pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$916,300 has been credited to the Secondary Wood Products Development Fund in each year of the biennium.

Notwithstanding KRS 42.4588(2) and (4), the fiscal courts of the coal producing counties enumerated in this paragraph receiving allocations through the Local Government Economic Development Fund pursuant to KRS 42.4592 are authorized to expend Local Government Economic Development Program moneys for public purposes identified by the respective fiscal courts of the coal producing counties in the manner and amounts enumerated: Bell County - Pineville Water System Fire Hydrant Project - \$100,000, Bell County Historical Society Museum - \$100,000, Pine Mountain State Park Lake Development - \$500,000; Breathitt County - Breathitt County Craft Development Human Resources Center - \$1,500,000; Floyd County - Prestonsburg Recreational Park and Golf Course - \$1,000,000, Big Sandy Area Development District is provided \$50,000 each for the McDowell, the Mud Creek, the Betsy Layne, and the Wayland Civic/Community/Senior Citizens Centers for maintenance, expansion, and capital expenditures - \$200,000; Harlan County - \$4,350,000 for the following projects and related expenses: Sleepy Hollow Golf Course - \$600,000, Kingdom Come Economic Industrial Development Authority purchase of industrial site and industrial spec building - \$450,000, Benham Inn - \$1,600,000, Operating costs for the Benham Inn and Coal Mine Museum - \$250,000 in fiscal year 1998-99 and \$250,000 in fiscal year 1999-2000, City of Lynch water and sewer lines for industrial site - \$200,000, Harlan County Civic and Tourism Development Center - \$500,000 in fiscal year 1998-99 and fiscal year 1999-2000; Henderson County - Riverfront Improvement - \$500,000; Hopkins County - Dawson Springs Tradewater Trail Project - \$75,000; Jackson County - Area Vocational School - \$500,000; Johnson County - Homeplace Economic Development Program for renovation, maintenance, and capital expenditures - \$300,000; Knott County - \$4,000,000 for the following projects and related expenses: Red Fox Resort Development - \$1,000,000, Hindman Branch of the Hazard Community College Development - \$2,000,000, Knott County Central Community Recreational Field Renovation - \$250,000, Knott County Youth Development Center - \$250,000, Operation of the Arts and Crafts Complex in Knott County - \$250,000 in fiscal year 1998-99 and \$250,000 in fiscal year 1999-2000; Leslie County - Community Development Training Center - \$4,000,000; Letcher County - Red Fox Golf Course - \$700,000, Jenkins High School Renovation - \$1,500,000, Letcher County Recreational/Industrial Development Park in Whitesburg - \$500,000, City of Jenkins Welcome Center - \$500,000; McCreary County - Construction of McCreary County Branch of the Somerset Community College - up to \$500,000; Martin County - Improve Water Treatment Plant - \$3,000,000, Healthcare Clinic - \$1,000,000; Muhlenburg County - Muhlenburg Technology Center - \$200,000; Ohio County - Bill Monroe Museum - \$800,000; Perry County - Red Fox Golf Course - \$700,000; Pike County - Civic Center - \$7,000,000, Improvements at Fishtrap Reservoir - \$1,000,000, Water Treatment Facility at Russell Fork Area of Fishtrap Reservoir - \$2,000,000, South Williamson Treatment Plant - \$1,000,000, Pikeville Marketing Center - \$300,000; Webster County - Upgrade Water Plant - \$2,000,000; Wayne County - Monticello downtown renovation/historical museum - up to \$115,000; and Union County - Camp Breckinridge Museum - \$1,000,000. The \$250,000 in each fiscal year provided to the Arts and Crafts Foundation for the Knott County operation of the Arts and Crafts Complex is contingent upon the submission and approval by the

Knott County Fiscal Court of a line item, detailed budget prior to the obligation or expenditure of any funds. The source of funding identified in this paragraph shall not come from moneys deposited under KRS 42.4592(1)(c).

These projects are determined by the General Assembly to be important to the furtherance of the policy objectives and economic development purposes for which the Local Government Economic Development Program was established. Total expenditures from this source in fiscal year 1998-99 and fiscal year 1999-2000 shall not exceed the amounts listed in the preceding paragraph for any project or any county enumerated above. No project in any coal county receiving funds from the Local Government Economic Development Fund, pursuant to KRS 42.4592, shall commit or expend such funds except upon prior written public approval of the Fiscal Court as reported to the Kentucky Department for Local Government and the Kentucky Cabinet for Economic Development.

Pursuant to the authority authorized in KRS 42.485, the continuing appropriation amount from fiscal year 1997-98 to fiscal year 1998-99 and from fiscal year 1998-99 to fiscal year 1999-2000 shall equal the cash balance in the Local Government Economic Development and Local Government Economic Assistance Funds accounts at the close of the preceding fiscal year.

c. Area Development Fund

	1998-99	1999-00	
General Fund		1,000,000	1,000,000

Notwithstanding KRS 48.185, funds appropriated from the General Fund for the Area Development Fund shall be limited to these amounts.

TOTAL - SPECIAL FUNDS

	1998-99	1999-00	
General Fund		60,030,200	66,374,500

13. COMMISSION ON HUMAN RIGHTS

	1998-99	1999-00	
General Fund		1,905,400	1,962,400
Restricted Funds		8,500	8,500
Federal Funds		189,500	189,500
Total	2,103,400	2,160,400	

14. COMMISSION ON WOMEN

1997-98	1998-99	1999-00	
General Fund	65,000	246,100	253,600

15. KENTUCKY RETIREMENT SYSTEMS

1997-98	1998-99	1999-00	
Restricted Funds	1,047,000	14,588,600	15,613,500

16. KENTUCKY KARE HEALTH INSURANCE AUTHORITY

	1998-99	1999-00	
Restricted Funds		1,003,000	1,042,500

17. REGISTRY OF ELECTION FINANCE

	1998-99	1999-00	
General Fund		2,368,600	2,409,000
Restricted Funds		357,000	
Total	2,725,600	2,409,000	

Any amount in excess of \$1,000,000 in either fiscal year 1998-99 or 1999-2000 necessary to support the state share of Gubernatorial campaign financing (KRS 121A.030 and 121A.080) required for payment under the provisions

of KRS 121A.030 and 121A.080 shall be deemed necessary governmental expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

18. OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS

a.	Board of Accountancy			
		1998-99	1999-00	
	Restricted Funds		555,500	561,500
b.	Alcohol and Drug Counselors			
		1998-99	1999-00	
	Restricted Funds		76,000	77,500
c.	Board of Architects			
		1998-99	1999-00	
	Restricted Funds		162,500	202,500
d.	Board of Art Therapists			
		1998-99	1999-00	
	Restricted Funds		6,500	7,000
e.	Kentucky Athletic Commission			
		1998-99	1999-00	
	Restricted Funds		60,500	66,500
f.	Board of Auctioneers			
		1998-99	1999-00	
	Restricted Funds		259,500	268,500
g.	Board of Barbering			
		1998-99	1999-00	
	Restricted Funds		215,000	222,500
h.	Board of Chiropractic Examiners			
		1998-99	1999-00	
	Restricted Funds		132,000	139,500
i.	Board of Dentistry			
		1998-99	1999-00	
	Restricted Funds		343,000	364,500
j.	Board of Dietitians and Nutritionists			
		1998-99	1999-00	
	Restricted Funds		36,500	37,500
k.	Board of Embalmers and Funeral Directors			
		1998-99	1999-00	
	Restricted Funds		161,500	170,500
l.	Board of Engineers and Land Surveyors			
		1998-99	1999-00	

ACTS OF THE GENERAL ASSEMBLY

	Restricted Funds	998,000	1,033,000
m.	Board of Geologists		
		1998-99	1999-00
	Restricted Funds	61,500	68,000
n.	Board of Hairdressers and Cosmetologists		
		1998-99	1999-00
	Restricted Funds	891,500	876,000
o.	Board of Hearing Instrument Specialists		
		1998-99	1999-00
	Restricted Funds	29,000	32,000
p.	Board of Landscape Architecture		
		1998-99	1999-00
	Restricted Funds	45,000	47,000
q.	Board of Marriage and Family		
		1998-99	1999-00
	Restricted Funds	21,000	22,000
r.	Board of Medical Licensure		
		1998-99	1999-00
	Restricted Funds	1,604,000	1,669,500
s.	Board of Nursing		
		1998-99	1999-00
	Restricted Funds	2,720,000	2,739,000
Included in the above Restricted Funds appropriation is \$290,000 in fiscal year 1998-99 and \$200,000 in fiscal year 1999-2000 for the Nursing Incentive Scholarship Program.			
t.	Nursing Home Administrators Licensure Board		
		1998-99	1999-00
	Restricted Funds	73,000	80,500
u.	Board of Occupational Therapy		
		1998-99	1999-00
	Restricted Funds	40,000	41,500
v.	Board of Ophthalmic Dispensers		
		1998-99	1999-00
	Restricted Funds	26,000	27,000
w.	Board of Optometric Examiners		
		1998-99	1999-00
	Restricted Funds	129,500	135,500
x.	Board of Pharmacy		
		1998-99	1999-00
	Restricted Funds	594,500	621,000

y.	Board of Physical Therapy			
		1998-99	1999-00	
	Restricted Funds		249,500	255,000
z.	Board of Podiatry			
		1998-99	1999-00	
	Restricted Funds		9,500	9,500
aa.	Professional Counselors			
		1998-99	1999-00	
	Restricted Funds		12,000	14,000
ab.	Board of Psychology			
		1998-99	1999-00	
	Restricted Funds		178,000	190,500
ac.	Real Estate Appraisers Board			
		1998-99	1999-00	
	Restricted Funds		357,000	370,000
ad.	Real Estate Commission			
		1998-99	1999-00	
	Restricted Funds		1,969,000	2,043,000

Included in the above Restricted Funds appropriation is \$827,500 in fiscal year 1998-99 and \$852,500 in fiscal year 1999-2000 for Real Estate Education and Recovery.

ae.	Board of Respiratory Care			
		1998-99	1999-00	
	Restricted Funds		58,000	58,500
af.	Board of Social Workers			
		1998-99	1999-00	
	Restricted Funds		85,000	94,000
ag.	Board of Speech Pathologists and Audiologists			
		1998-99	1999-00	
	Restricted Funds		60,500	62,000
ah.	Board of Veterinary Examiners			
		1998-99	1999-00	
	Restricted Funds		86,500	95,000

TOTAL - OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS

		1998-99	1999-00	
	Restricted Funds		12,306,500	12,701,500
19.	GOVERNMENTAL SERVICES CENTER			
		1998-99	1999-00	
	Restricted Funds		1,237,000	1,276,000

20. EXECUTIVE BRANCH ETHICS COMMISSION

	1998-99	1999-00	
General Fund		270,700	281,400
Restricted Funds		3,000	3,000
Total	273,700	284,400	

21. MISCELLANEOUS APPROPRIATIONS

a. Judgments

	1998-99	1999-00	
General Fund		10,000,000	-0-

The above appropriation is for the payment of judgments as may be rendered against the Commonwealth by courts and orders of the State Personnel Board and where applicable, shall be subject to the provisions of KRS Chapter 45, and for the payment of medical malpractice judgments against the University of Kentucky and the University of Louisville in accordance with KRS 164.941 and 164.892. Notwithstanding KRS 45.229, any remaining appropriation in the Judgments account at the end of fiscal year 1997-1998 or fiscal year 1998-1999 shall not lapse but shall be carried forward into fiscal years 1998-99 and 1999-2000, respectively.

b. Attorney General Expense

	1998-99	1999-00	
General Fund		150,000	150,000

c. Board of Claims Awards

	1998-99	1999-00	
General Fund		300,000	300,000

Funds are appropriated from the General Fund for the repayment of awards or judgments made by the Board of Claims against departments, boards, commissions, and other agencies maintained by appropriations out of the General Fund. However, awards under \$1,000, in cases where the operating agency admits negligence, shall be paid from funds available for the operations of the agency.

d. Guardian Ad Litem

	1998-99	1999-00	
General Fund		2,000,000	2,000,000

Included in the above appropriation is funding for fees to be paid to the guardian ad litem appointed by the court pursuant to KRS 311.732. The fee shall be fixed by the court and shall not exceed \$500.

e. Prior Year Claims

	1998-99	1999-00	
General Fund		400,000	400,000

f. Unredeemed Checks Refunded

	1998-99	1999-00	
General Fund		300,000	300,000

Checks written by the State Treasurer and not cashed within the statutory period may be presented to the State Treasurer for reissuance in accordance with KRS 41.370.

g. Involuntary Commitments ICF/MR

	1998-99	1999-00	
General Fund		60,000	60,000

h. Frankfort in Lieu of Taxes

	1998-99	1999-00	
General Fund		195,000	195,000
i. Frankfort Cemetery			
General Fund	1998-99	1999-00	
		2,500	2,500
j. Police Officers and Firefighters--Life Insurance			
General Fund	1998-99	1999-00	
		300,000	300,000

Funds are appropriated for payment of benefits for state and local police officers and firefighters in accordance with KRS 61.315.

k. Master Commissioners--Employers Retirement			
General Fund	1998-99	1999-00	
		260,000	280,000
l. Master Commissioners--Social Security			
General Fund	1998-99	1999-00	
		161,000	166,000
m. Workers' Compensation			
General Fund	1998-99	1999-00	
		275,000	290,000

Funds are appropriated for workers' compensation premiums for fee officers in counties over 70,000 in population.

n. Medical Malpractice Liability Insurance Reimbursements			
General Fund	1998-99	1999-00	
		60,000	60,000

TOTAL - MISCELLANEOUS APPROPRIATIONS

General Fund	1998-99	1999-00	
		14,463,500	4,503,500

Included in the above appropriations is \$0 in fiscal year 1998-99 and \$0 in fiscal year 1999-2000 for refunding money paid into the State Treasury, which may later be determined not to be a lawful collection by the state. No money shall be refunded, however, after it has been paid into the State Treasury except by authority of the head of the department or agency to whom the money was originally paid and with the approval of the Secretary of the Finance and Administration Cabinet, subject to the conditions and procedures provided in this Act.

Funds required to pay the costs of items included within the Miscellaneous Appropriations category are appropriated, and any required expenditure over the above amounts is to be paid first from any available balance in the Judgments appropriation and then from either the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

22. KENTUCKY VETERANS' CENTER (NURSING HOME)

General Fund	1998-99	1999-00	
		5,618,300	5,909,400
Restricted Funds		10,677,000	11,304,500
Total	16,295,300	17,213,900	

TOTAL - GOVERNMENT OPERATIONS

1997-98	1998-99	1999-00	
General Fund	261,500	205,640,600	201,660,800
Restricted Funds	1,099,700	63,930,100	66,558,500
Federal Funds	114,000	51,860,100	52,168,500
TOTAL	1,475,200	321,430,800	320,387,800

B. CABINET FOR ECONOMIC DEVELOPMENT

23. CABINET FOR ECONOMIC DEVELOPMENT

Budget Units

a. Secretary

	1998-99	1999-00	
General Fund		3,483,000	4,491,000

Included in the above General Fund appropriations is \$450,000 for the East Kentucky Jobs Creation Corporation and \$350,000 for the West Kentucky Jobs Creation Corporation each fiscal year of the biennium. Both Corporations are required to submit a quarterly financial and status report to the Legislative Research Commission and to the Interim Joint Committee on Appropriations and Revenue. Also included in the above General Fund appropriations is \$325,000 in fiscal year 1998-99 and \$320,000 in fiscal year 1999-2000 for the Coal County Development Office. Notwithstanding KRS 42.4592, the General Fund appropriations for the East Kentucky Corporation, the West Kentucky Corporation, and the Coal County Development Office will be funded from the Local Government Economic Development Fund prior to any other statutory distribution from the Local Government Economic Development Fund.

b. Administration and Support

	1998-99	1999-00	
General Fund		1,899,000	2,008,000
Restricted Funds		254,000	223,000
Total	2,153,000	2,231,000	

c. Job Development

	1998-99	1999-00	
General Fund		2,333,000	2,413,000

d. Financial Incentives

	1998-99	1999-00	
General Fund		2,739,000	3,353,000
Restricted Funds		3,040,500	2,347,000
Total	5,779,500	5,700,000	

Included in the General Fund appropriation above is \$380,000 in fiscal year 1998-99 and \$381,000 in fiscal year 1999-2000 for the Louisville Waterfront Development Corporation.

The General Fund appropriation for fiscal year 1997-98 and succeeding fiscal years for the Bluegrass State Skills Corporation shall be continued and not lapse to the General Fund Surplus Account, notwithstanding KRS 45.229.

Notwithstanding KRS 154.12-207, the Secretary is directed to take such action as may be necessary to execute contractual agreements for designated skills training and education projects for which funds have been specifically appropriated.

No commitment for employee training shall be made beyond the ability of the Cabinet to fund the project within the appropriation for the current biennium.

Balances remaining in the Special Revenue Fund accounts after all appropriations authorized in this bill, shall lapse to the Capital Construction Surplus Account at the end of each fiscal year.

The Bluegrass State Skills Corporation shall submit a quarterly financial report to the Governor's Office for Policy and Management, the Legislative Research Commission, and the Interim Joint Committee on Appropriations and Revenue.

e.	Debt Service			
		1998-99	1999-00	
	General Fund			666,000
f.	Community Development			
		1998-99	1999-00	
	General Fund		3,033,000	3,162,000
	Restricted Funds		177,000	186,500
	Federal Funds		179,000	160,000
	Total	3,389,000	3,508,500	

Included in the above General Fund appropriation is \$300,000 for the Kentucky Technology Service Grant program each fiscal year of the biennium.

TOTAL - CABINET FOR ECONOMIC DEVELOPMENT

		1998-99	1999-00	
	General Fund		13,487,000	16,093,000
	Restricted Funds		3,471,500	2,756,500
	Federal Funds		179,000	160,000
	TOTAL		17,137,500	19,009,500

C. EDUCATION

24. EDUCATION

Budget Units

a.	Support Education Excellence in Kentucky (SEEK) Program		
		1998-99	1999-00
	General Fund	2,114,755,500	2,184,668,000

Accumulated earnings for the Common School Fund shall be transferred in each fiscal year to the Support Education Excellence in Kentucky program.

The above appropriations include \$1,524,123,500 in fiscal year 1998-99 and \$1,573,075,600 in fiscal year 1999-2000 for the base SEEK program as defined by KRS 157.360. Funds appropriated to the Support Education Excellence in Kentucky program shall be allotted to school districts in accordance with KRS 157.310 to 157.440, except that the total of the funds allotted shall not exceed the appropriations for this purpose except as provided in this Act. Included in the appropriation for base SEEK is \$174,743,900 in fiscal year 1998-99 and \$189,859,500 in fiscal year 1999-2000 for pupil transportation, notwithstanding KRS 157.360(2)(c).

Included in the above appropriation is \$120,236,800 in fiscal year 1998-99 and \$118,834,100 in fiscal year 1999-2000 for the Tier I component as established by KRS 157.440.

Included in the above appropriation is \$2,278,000 in fiscal year 1998-99 and \$2,346,000 in fiscal year 1999-2000 for vocational transportation.

Included in the above appropriation is \$19,623,000 in fiscal year 1998-99 and \$20,545,000 in fiscal year 1999-2000 to provide secondary vocational education in state-operated vocational schools.

Included in the above appropriation is \$43,150,300 in fiscal year 1998-99 and \$41,137,800 in fiscal year 1999-2000 to provide facilities equalization funding pursuant to the provisions of KRS 157.620 and KRS 157.440.

Included in the above appropriation is \$230,600,000 in fiscal year 1998-99 and \$238,870,000 in fiscal year 1999-2000 to enable local school districts to provide the employer match for qualified employees as provided for by KRS 161.550.

b. Executive Policy and Management

	1998-99	1999-00	
General Fund		3,430,400	3,536,700
Restricted Funds		384,800	405,700
Federal Funds		510,000	526,000
Total	4,325,200	4,468,400	

c. Management Support Services

	1997-98	1998-99	1999-00	
General Fund	2,335,000	282,808,800	297,278,300	
Restricted Funds		2,119,500	2,188,000	
Federal Funds		135,865,200	139,926,000	
Total	2,335,000	420,793,500	439,392,300	

Included in the above General Fund appropriation is \$15,000,000 in fiscal year 1998-99 and \$15,000,000 in fiscal year 1999-2000 for the education technology escrow account. Included in the General Fund appropriation for education technology is \$105,000 in each fiscal year to continue the existing professional development program located at Murray State University which provides training and professional development for teachers in technology utilization. The Department of Education shall, under a contractual arrangement, provide \$105,000 in each fiscal year to Murray State University for this purpose.

Included in the above General Fund appropriation is \$10,800,000 in each fiscal year for reimbursement to local school districts for the Out-of-District Children Program. Included in the funding support for the Out-of-District Children Program is \$50,000 in each fiscal year to support the educational costs associated with the establishment of a new day treatment program.

Included in the above General Fund appropriation is \$216,843,500 in fiscal year 1998-99 and \$230,797,000 in fiscal year 1999-2000 to provide health and life insurance coverage for employees of local school districts.

Included in the above General Fund appropriation is \$2,336,000 in fiscal year 1998-99 and \$2,406,000 in fiscal year 1999-2000 to enable the Department of Education to provide the employer match for qualified employees as provided by KRS 161.550.

Included in the above General Fund appropriation is \$150,000 in each fiscal year to fund three (3) demonstration projects in Jefferson County Elementary Schools that employ literacy and direct instruction with other instructional methodologies to enhance student learning. The projects shall be a joint initiative between Jefferson County Public Schools and the Jefferson County Teacher Association. Each demonstration project shall be provided \$50,000 in each fiscal year.

Included in the above General Fund appropriation is \$2,300,000 in fiscal year 1997-98 to support the Literacy Development Grant Program as established pursuant to enabling legislation. Notwithstanding KRS 45.229, any funds available at the end of fiscal year 1997-98 for the Literacy Development Grant Program Fund shall not lapse but shall continue forward to fiscal year 1998-99.

d. Learning Results Services

	1998-99	1999-00	
General Fund		32,415,300	32,962,900

Restricted Funds		3,146,000	150,500
Total	35,561,300	33,113,400	

Included in the above General Fund appropriation is \$10,000,000 in each fiscal year for the school rewards escrow account.

e. Learning Support Services

	1998-99	1999-00	
General Fund		174,015,200	195,229,200
Restricted Funds		2,100,000	2,160,500
Federal Funds		213,027,500	219,417,500
Total	389,142,700	416,807,200	

The above General Fund appropriation includes \$40,702,900 in fiscal year 1998-99 and \$43,554,800 in fiscal year 1999-2000 for Family Resource and Youth Services Centers. Also included in the above General Fund appropriation is \$4,874,100 in fiscal year 1998-99 and \$5,127,300 in fiscal year 1999-2000 for the Kentucky School for the Blind, and \$8,332,900 in fiscal year 1998-99 and \$8,895,900 in fiscal year 1999-2000 for the Kentucky School for the Deaf.

Included in the above General Fund appropriation is \$50,000 in each fiscal year for the Advisory Council for Gifted and Talented Education.

Included in the above General Fund appropriation is \$50,000 in each fiscal year to establish a Community After School Program in local school district number 441.

Included in the above General Fund appropriation is \$5,000,000 in fiscal year 1998-99 and \$10,000,000 in fiscal year 1999-2000 to support the Center for School Safety and safe school initiatives pursuant to enactment of enabling legislation. These funds shall be distributed as directed in Part IX, Special Provisions.

TOTAL - EDUCATION

	1997-98	1998-99	1999-00	
General Fund		2,335,000	2,607,425,200	2,713,675,100
Restricted Funds			7,750,300	4,904,700
Federal Funds			349,402,700	359,869,500
TOTAL		2,335,000	2,964,578,200	3,078,449,300

D. EDUCATION, ARTS AND HUMANITIES CABINET

Budget Units

25. OFFICE OF THE SECRETARY

	1998-99	1999-00	
General Fund		2,544,100	2,632,600
Restricted Funds		94,000	97,000
Total	2,638,100	2,729,600	

Included in the above General Fund appropriation is \$4,000 in each fiscal year for operating expenses related to the Martin Luther King Jr. Commission.

Included in the above General Fund appropriation is \$1,127,500 in fiscal year 1998-99 and \$1,161,500 in fiscal year 1999-2000 for the Governor's Scholars Program.

Included in the above General Fund appropriation is \$318,500 in fiscal year 1998-99 and \$328,000 in fiscal year 1999-2000 for the Governor's School for the Arts.

Included in the above General Fund appropriation is \$200,000 in each fiscal year for the East Kentucky Center for Science, Mathematics, and Technology.

26. KENTUCKY ARTS COUNCIL

	1998-99	1999-00
General Fund		4,095,800
Restricted Funds		362,500
Federal Funds		476,000
Total	4,934,300	5,002,100

27. TEACHERS' RETIREMENT SYSTEM

	1998-99	1999-00
General Fund		68,357,000
Restricted Funds		4,401,700
Total	72,758,700	80,561,100

General Fund moneys are appropriated to comply with the obligations of the state under the Teachers' Retirement System statutes as provided in KRS 161.220 to 161.716, notwithstanding the provisions of KRS 161.550.

The above General Fund appropriation, in conjunction with those included elsewhere within this Act for the Teachers' Retirement System, is based upon estimated funds needed to meet the requirements of KRS 161.220 to 161.716, notwithstanding KRS 161.550. If these combined General Fund appropriations are in excess of these requirements, the excess funds shall lapse to the credit of the General Fund.

In accordance with KRS 161.420, in each fiscal year an amount not greater than four percent (4%) of the receipts of the state accumulation fund shall be set aside into the expense fund or expended for the administration of the retirement system. No General Fund moneys are provided in fiscal year 1998-99 or fiscal year 1999-2000 for the cost of administration.

Included in the above General Fund appropriation is \$7,400,000 in fiscal year 1998-99 and \$15,300,000 in fiscal year 1999-2000 to provide, when combined with the annual one and one-half (1.5%) percent retirement allowance increase as provided for under KRS 161.620, a total increase in retirement allowances of eligible system members and beneficiaries of three percent (3%) in fiscal year 1998-99 and an additional three percent (3%) in fiscal year 1999-2000.

Included in the above General Fund appropriation is \$3,657,000 in fiscal year 1998-1999 and \$7,828,000 in fiscal year 1999-2000 to provide the cost of amortizing the requirements of KRS 161.155 (sick leave), as permitted pursuant to KRS 161.553.

28. SCHOOL FACILITIES CONSTRUCTION COMMISSION

	1998-99	1999-00
General Fund		58,162,500
		70,864,000

Included in the above General Fund appropriation is \$56,971,500 in fiscal year 1998-99 and \$56,860,600 in fiscal year 1999-2000 for debt service for bonds previously issued.

Included in the above General Fund appropriation is \$2,548,500 in fiscal year 1998-99 and \$4,251,400 in fiscal year 1999-2000 for debt service for previously authorized bonds.

Included in the above General Fund appropriation is \$2,621,500 in fiscal year 1998-99 and \$9,520,000 in fiscal year 1999-2000 for debt service for newly-authorized bonds. Offers of assistance for newly authorized bonds are limited to a total of \$201,000,000 as set forth in Part II, Capital Projects. Bond sales prior to June 30, 2000, are limited to the amount that can be supported on an annual basis by the amount of debt service appropriated above.

Notwithstanding KRS 45.229, General Fund moneys in the amount of \$4,200,000 shall continue forward from fiscal year 1997-98 to fiscal year 1998-99.

29. DEAF AND HARD OF HEARING

	1998-99	1999-00	
General Fund		775,300	853,200
Restricted Funds		200,000	200,000
Total	975,300	1,053,200	
30. KENTUCKY HERITAGE COUNCIL			
	1998-99	1999-00	
General Fund		880,400	901,900
Restricted Funds		95,500	114,000
Federal Funds		792,000	792,000
Total	1,767,900	1,807,900	
31. KENTUCKY EDUCATIONAL TELEVISION			
	1997-98	1998-99	1999-00
General Fund			14,392,700
Restricted Funds	310,000		868,000
Federal Funds	311,000		
Total	621,000	15,260,700	15,886,000
32. KENTUCKY HISTORICAL SOCIETY			
	1997-98	1998-99	1999-00
General Fund			5,333,600
Restricted Funds	75,000		399,500
Federal Funds			625,000
Total	75,000	6,358,100	6,432,100
Included in the above General Fund appropriation is \$2,918,000 in fiscal year 1998-99 and \$3,268,500 in fiscal year 1999-2000 for the Kentucky History Center.			
33. LIBRARIES AND ARCHIVES			
a. General Operations			
	1998-99	1999-00	
General Fund		6,560,200	6,611,000
Restricted Funds		1,360,000	1,490,000
Federal Funds		1,477,500	1,499,000
Total	9,397,700	9,600,000	
b. Direct Local Aid			
	1998-99	1999-00	
General Fund		6,443,000	6,614,500
Restricted Funds		8,500	9,000
Federal Funds		541,000	541,000
Total	6,992,500	7,164,500	

Included in the above General Fund appropriation is \$2,688,500 in each fiscal year to award per capita grants at the rate of seventy-three cents, notwithstanding KRS 171.201.

TOTAL - LIBRARIES AND ARCHIVES

	1998-99	1999-00	
General Fund		13,003,200	13,225,500
Restricted Funds		1,368,500	1,499,000
Federal Funds		2,018,500	2,040,000
Total	16,390,200	16,764,500	

34. KENTUCKY CENTER FOR THE ARTS

	1998-99	1999-00	
General Fund		625,500	625,500

35. ENVIRONMENTAL EDUCATION COUNCIL

	1998-99	1999-00	
General Fund		53,000	
Restricted Funds		262,000	262,000
Total	315,000	262,000	

Included in the above General Fund appropriation is \$53,000 in fiscal year 1998-99 to facilitate production of the Council’s Master Plan.

TOTAL - EDUCATION, ARTS, AND HUMANITIES CABINET

	1997-98	1998-99	1999-00	
General Fund			168,223,100	189,673,400
Restricted Funds		385,000	8,051,700	8,860,600
Federal Funds		311,000	3,911,500	3,434,000
TOTAL		696,000	180,186,300	201,968,000

E. CABINET FOR FAMILIES AND CHILDREN

Budget Units

36. SOCIAL INSURANCE

a. Administration

	1998-99	1999-00	
General Fund		54,959,700	55,027,200
Restricted Funds		40,180,500	43,195,500
Federal Funds		155,032,900	161,197,100
Total	250,173,100	259,419,800	

The Department for Social Insurance shall reimburse citizen members of the Public Assistance Appeals Board an amount not to exceed \$75 per day plus travel expenses.

If any portion of the above General Fund appropriation in either fiscal year is deemed to be in excess of the necessary expenses for administration of the department, the amount may be used for Temporary Assistance for Needy Families (TANF) Benefits in accordance with the statutes governing the functions and activities of the Department for Social Insurance. In no instance shall these excess funds be used without prior written approval of the State Budget Director of the Governor’s Office for Policy and Management to:

- (1) Establish a new program.

- (2) Expand the services of an existing program.
- (3) Increase rates or payment levels in an existing program.

Any transfer authorized under this section shall be approved by the Secretary of the Finance and Administration Cabinet upon recommendation of the State Budget Director of the Governor's Office for Policy and Management and shall be reported to the Interim Joint Committee on Appropriations and Revenue.

Notwithstanding KRS 45.229, General Fund moneys in the amount of \$1,500,000 shall continue from fiscal year 1998-99 into fiscal year 1999-2000.

b. Benefits

	1998-99	1999-00	
General Fund		77,047,500	73,773,500
Restricted Funds		5,640,000	1,960,000
Federal Funds		158,976,500	161,987,000
Total	241,664,000	237,720,500	

These funds are to be used for the payment of benefits in accordance with the statutes governing the functions and activities of the Department for Social Insurance.

Due to the demands placed upon the Cabinet to meet the increasing participation rates required for welfare reform, any General Fund appropriation unexpended in fiscal years 1997-98 and 1998-99 shall not lapse but shall be carried forward into the next fiscal year, notwithstanding KRS 45.229, in compliance with the General Provisions of this Act.

Any unexpended appropriations for Social Insurance - Benefits in excess of \$5,000,000 in fiscal year 1997-98 and any unexpended appropriations in fiscal year 1998-99 shall be used to fund the federally mandated Medicaid - Temporary Assistance to Needy Families (TANF) systems de-link and the state match for the Welfare-to-Work program. Any remaining unexpended appropriations may be used for other welfare reform-related expenditures or for implementation of the \$2.00 per day increase in the payment standard for Personal Care recipients within the Cabinet, subject to the approval of the State Budget Director of the Governor's Office for Policy and Management.

37. SOCIAL SERVICES

	1997-98	1998-99	1999-00	
General Fund		5,000,000	128,851,000	141,614,100
Restricted Funds			41,689,000	41,339,000
Federal Funds			141,908,700	143,607,400
Total	5,000,000	312,448,700	326,560,500	

Notwithstanding KRS 45.229, General Fund moneys in the amount of \$3,279,900 shall continue forward from fiscal year 1998-99 to fiscal year 1999-2000.

38. AGING SERVICES

	1998-99	1999-00
General Fund	23,244,500	23,337,000
Restricted Funds	6,877,700	12,640,300
Federal Funds	16,844,500	16,844,500
Total	46,966,700	52,821,800

39. ADMINISTRATION SERVICES

	1998-99	1999-00
General Fund	8,306,000	8,595,500

Restricted Funds		2,637,000	1,748,500
Federal Funds		6,889,000	7,095,500
Total	17,832,000	17,439,500	

TOTAL - CABINET FOR FAMILIES AND CHILDREN

	1997-98	1998-99	1999-00	
General Fund		5,000,000	292,408,700	302,347,300
Restricted Funds			97,024,200	100,883,300
Federal Funds			479,651,600	490,731,500
Total	5,000,000	869,084,500	893,962,100	

F. FINANCE AND ADMINISTRATION CABINET

40. FINANCE AND ADMINISTRATION CABINET

Budget Units

a. General Administration

		1998-99	1999-00	
General Fund			8,805,000	8,830,000
Restricted Funds			4,323,000	4,508,000
Federal Funds			58,133,000	58,132,000
Road Fund			125,000	125,000
Total		71,386,000	71,595,000	

Included in the above Restricted Funds appropriation is \$351,000 in fiscal year 1998-99 and \$362,000 in fiscal year 1999-2000 to fund the operating costs of the Office for Geographic Information Systems. These receipts will be derived from any state agency or university that directly benefits from the implementation of the Geographic Information Systems basemap technology. The Office of Geographic Information Systems shall recommend, and the Kentucky Information Resources Management (KIRM) Commission shall approve, the cost allocation plan. Upon approval by KIRM, the agencies and universities shall pay their proportional share of the plan.

Included in the above appropriations is \$125,000 from the Road Fund and \$466,000 in Restricted Funds in fiscal year 1998-99, and \$125,000 from the Road Fund and \$481,000 from Restricted Funds in fiscal year 1999-2000 to fund the Kentucky Information Resources Management Commission at a continuation level of funding. Should the Commission find it necessary to increase its level of spending, subject to the conditions and procedures in this Act, the additional expenses shall be offset by proposed charges to state agencies and university users.

Included in the above General Fund appropriation is \$400,000 in fiscal year 1998-1999 for the Affordable Housing Trust Fund which shall be matched with \$400,000 from the Kentucky Housing Corporation Housing Assistance Fund.

b. Debt Service

		1998-99	1999-00	
General Fund			142,743,000	169,864,000

Included in the above General Fund appropriation is \$1,012,000 in fiscal year 1999-2000 for new bonds for all KIA programs. Also included in the above General Fund appropriation is \$889,000 in fiscal year 1998-1999 and \$889,000 in fiscal year 1999-2000 for previously authorized but unissued bonds for all Kentucky Infrastructure Authority programs.

Also included in the above General Fund appropriation is \$10,734,000 in fiscal year 1998-99 and \$10,727,000 in fiscal year 1999-2000 for debt service on all previously issued bonds by the Kentucky Infrastructure Authority.

Included in the above General Fund appropriation is \$11,000,000 in fiscal year 1999-2000 for the Statewide Infrastructure Bond Project authorized in this Act.

c.	Administration		
		1998-99	1999-00
	General Fund		3,852,000
	Restricted Funds		8,063,000
	Road Fund		257,000
	Total	12,172,000	12,560,000
d.	Facilities Management		
		1998-99	1999-00
	General Fund		8,087,000
	Restricted Funds		19,097,000
	Total	27,184,000	28,823,000
e.	Information Systems		
		1998-99	1999-00
	Restricted Funds		48,933,000
f.	County Costs		
		1998-99	1999-00
	General Fund		16,186,000
	Restricted Funds		1,327,000
	Total	17,513,000	17,513,000

Included in the above General Fund appropriation is \$5,431,000 in fiscal year 1998-99 and \$5,431,000 in fiscal year 1999-00 for base court revenue. Funds required to pay county costs other than base court revenue funded by the General Fund are appropriated and additional funds may be allotted from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) by the Secretary of the Finance and Administration Cabinet, subject to the conditions and procedures provided in this Act.

g.	County Fees		
		1998-99	1999-00
	Restricted Funds		49,744,000
			51,771,000

TOTAL - FINANCE AND ADMINISTRATION CABINET

		1998-99	1999-00
	General Fund		179,673,000
	Restricted Funds		131,487,000
	Federal Funds		58,133,000
	Road Fund		382,000
	TOTAL		369,675,000
			402,510,000

G. CABINET FOR HEALTH SERVICES

Budget Units

41. MEDICAID SERVICES

a.	Administration		
		1998-99	1999-00

ACTS OF THE GENERAL ASSEMBLY

General Fund		19,183,000	19,425,000
Restricted Funds		7,493,200	7,118,100
Federal Funds		22,375,000	23,278,500
Total	49,051,200	49,821,600	

If any portion of the General Fund appropriation in either fiscal year is deemed to be in excess of the necessary expenses for administration of the Department, the amount may be used for Medicaid Benefits, in accordance with statutes governing the functions and activities of the Department for Medicaid Services. In no instance shall these excess funds be used without prior written approval of the State Budget Director of the Governor's Office for Policy and Management to:

- (1) Establish a new program.
- (2) Expand the services of an existing program.
- (3) Increase rates or payment levels in an existing program.

Any transfer authorized under this section shall be approved by the Secretary of the Finance and Administration Cabinet upon recommendation of the State Budget Director of the Governor's Office for Policy and Management.

b. Benefits

	1998-99	1999-00	
General Fund		616,996,000	640,355,400
Restricted Funds		225,629,500	183,769,600
Federal Funds		2,012,413,600	1,988,328,000
Total	2,855,039,100	2,812,453,000	

These funds are to be used for the payment of benefits in accordance with the statutes governing the functions and activities of the Department for Medicaid Services.

Any General Fund appropriation unexpended in fiscal years 1997-98 and 1998-99 shall not lapse, but shall be carried forward into the next fiscal year, notwithstanding KRS 45.229.

It is the intent of the General Assembly that the Secretary of the Cabinet for Health Services be permitted to transfer from Medicaid Benefits to Medicaid Administration up to one half of one percent (.5%) or \$4,000,000, whichever is less, of the combined General Fund and Restricted Funds appropriations to the Medicaid Administration budget to be used for technical assistance and costs associated with achieving Year 2000 compliance for the Medicaid Management Information System. The Secretary shall recommend any proposed transfer to the State Budget Director for review and concurrence prior to transfer. Upon concurrence of the State Budget Director and prior to the transfer, the Secretary shall present the proposed plan to the Interim Joint Committee on Appropriations and Revenue.

42. PUBLIC HEALTH

	1998-99	1999-00	
General Fund		55,277,300	56,291,700
Restricted Funds		10,088,000	9,408,000
Federal Funds		115,765,000	116,474,000
Total	181,130,300	182,173,700	

43. MENTAL HEALTH/MENTAL RETARDATION

	1998-99	1999-00	
General Fund		150,832,900	158,871,800
Restricted Funds		124,321,300	127,002,800
Federal Funds		35,150,500	34,990,000

	Total	310,304,700	320,864,600	
44.	CHILDREN WITH SPECIAL HEALTH CARE NEEDS			
		1998-99	1999-00	
	General Fund		3,817,700	6,190,600
	Restricted Funds		5,771,000	5,100,000
	Federal Funds		5,887,000	4,497,000
	Total	15,475,700	15,787,600	
45.	CERTIFICATE OF NEED			
		1998-99	1999-00	
	General Fund		127,800	131,500
	Restricted Funds		301,000	319,000
	Total	428,800	450,500	
46.	ADMINISTRATIVE SUPPORT			
		1998-99	1999-00	
	General Fund		22,410,700	22,904,800
	Restricted Funds		5,150,000	5,040,500
	Federal Funds		57,133,000	57,451,500
	Total	84,693,700	85,396,800	

Any General Fund appropriation unexpended in fiscal year 1998-99 for the Children's Health Initiative Program within Administrative Support shall not lapse, but shall be carried forward into fiscal year 1999-2000, notwithstanding KRS 45.229.

TOTAL - CABINET FOR HEALTH SERVICES

		1998-99	1999-00	
	General Fund		868,645,400	904,170,800
	Restricted Funds		378,754,000	337,758,000
	Federal Funds		2,248,724,100	2,225,019,000
	TOTAL		3,496,123,500	3,466,947,800

H. JUSTICE CABINET

47. JUSTICE OPERATIONS

Budget Units

a. Justice Administration

		1998-99	1999-00	
	General Fund		6,275,600	6,423,900
	Restricted Funds		5,426,500	5,409,500
	Federal Funds		12,791,000	12,993,000
	Total	24,493,100	24,826,400	

Included in the above General Fund appropriation is \$1,040,500 in fiscal year 1998-99 and \$1,080,500 in fiscal year 1999-2000 for operation of the State Parole Board.

Included in the above General Fund appropriation is \$1,500,000 in each fiscal year to provide free civil legal services for indigents.

Included within the above Restricted Funds appropriation is \$240,000 in fiscal year 1998-99 and \$230,000 in fiscal year 1999-2000 to support the Criminal Justice Council. These Restricted Funds shall come from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF). Any provisions to the contrary codified in KRS 15.430, 42.190, or 136.392 are suspended.

b. State Police

	1997-98	1998-99	1999-00	
General Fund		1,158,500	63,724,300	78,097,700
Restricted Funds		731,300	6,572,400	7,119,500
Road Fund			35,000,000	30,000,000
Federal Funds			9,068,500	9,433,000
Total	1,889,800	114,365,200	124,650,200	

Included in the above General Fund appropriation is \$1,158,500 in fiscal year 1997-98 for maintenance of essential operations related to the implementation of KRS 237.110. It is intended that a portion of this appropriation is transferred to the appropriate Restricted Funds account within the Department of State Police to offset a current year deficit in that account.

Included in the above Restricted Funds appropriation for fiscal year 1997-98 is \$731,300 for the maintenance of operations and essential services of the Department of State Police.

Included in the above General Fund appropriation is \$3,457,000 in fiscal year 1999-2000 for new debt service to fund the replacement of the basic radio system, the replacement of the integrated criminal apprehension program and the upgrade of the Kentucky Accident Reporting System.

Included within the above General Fund appropriation is \$265,000 in fiscal year 1999-2000 for debt service to fund the construction of state police posts at La Grange and at Hazard.

There is appropriated from the General Fund to the Department of State Police, subject to the conditions and procedures provided in this Act, funds which are required as a result of the Governor's call of the Kentucky State Police to extraordinary duty when an emergency situation has been declared to exist by the Governor. Funding is authorized to be provided from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

c. Criminal Justice Training

	1998-99	1999-00	
General Fund		35,000	
Restricted Funds		25,682,500	29,288,000
Total	25,717,500	29,288,000	

Under the provisions of the Kentucky Law Enforcement Foundation Program Fund, an eligible local unit of government shall be entitled to receive a supplement to each qualified police officer's annual base salary from the Law Enforcement Foundation Program Fund, to be paid to each officer in addition to the officer's regular salary as prescribed by KRS 15.460 and KRS 15.500. Included in the above appropriation is \$12,183,500 in fiscal year 1998-99 and \$12,482,000 in fiscal year 1998-2000 for training incentive payments pursuant to KRS 15.430 and KRS 15.440 from receipts pursuant to KRS 136.392. Also included in the above Restricted Funds appropriation, and subject to passage of enabling legislation in the 1998 Regular Session of the General Assembly, is \$1,269,100 in fiscal year 1998-99 and \$2,530,900 in fiscal year 1999-2000 for an increase in training incentive payments to each participant. The increase equates to \$250 per qualified police officer in fiscal year 1998-99 and an additional \$250 per officer in fiscal year 1999-2000 for a total of \$2,750 in fiscal year 1998-99 and \$3,000 in fiscal year 1999-2000 for each participant. Also subject to the passage of enabling legislation, there is provided in the appropriation above \$4,231,400 in fiscal year 1998-99 and \$4,616,100 in fiscal year 1999-2000 to make additional funds available to provide the pay incentive to all eligible sheriffs and deputies who qualify as well as all eligible police officers employed by a postsecondary educational institution. Also pending the passage of legislation, there is provided in the

appropriation above \$403,000 in fiscal year 1998-99 and \$364,000 in fiscal year 1999-2000 to establish a program to certify all law enforcement officers who meet certain professional criteria outlined in proposed legislation. If funds appropriated from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) for training incentive payments are not sufficient to ensure each participant a training incentive payment which is at least \$2,750 in fiscal year 1998-99 and \$3,000 in fiscal year 1999-2000, the General Assembly directs that any amounts available to KLEFPF be utilized to ensure the payment.

Any provisions to the contrary in KRS 15.430, 15.450, 42.190, or 136.392 are suspended.

Included in the above General Fund appropriation is \$35,000 in fiscal year 1998-99 to support the Owsley County Sheriffs' Law Enforcement Program.

Also included in the appropriation above is \$1,181,500 for debt service in fiscal year 1998-99 and \$1,185,500 in fiscal year 1999-2000 for bonds previously issued. New debt service in the amount of \$1,980,000 in fiscal year 1999-2000 is appropriated and included above for a new Law Enforcement Basic Training Complex on the campus of Eastern Kentucky University.

Notwithstanding KRS 15.430, 42.190, or 136.392, the fund balance reserve shall not exceed \$2,000,000 at the end of fiscal year 1997-98.

Notwithstanding KRS 15.430, 42.190, or 136.392, funds unexpended at the end of fiscal year 1998-99 and fiscal year 1999-2000 shall not lapse but shall be carried forward into the following fiscal year.

d. Juvenile Justice

	1997-98	1998-99	1999-00
General Fund		2,000,000	56,596,400
Restricted Funds			9,114,400
Federal Funds			15,057,000
Total	2,000,000	80,767,800	95,320,900

Included within the above General Fund appropriation is \$2,000,000 in fiscal year 1997-98 for private child care costs incurred by the Department of Juvenile Justice. Also included within the above General Fund appropriation is \$2,578,000 in fiscal year 1999-2000 for debt service for the construction of three additional juvenile detention facilities, a new maximum security facility, and expansion of the Breathitt County Detention Center.

It is intended that \$69,000 in General Fund appropriation in fiscal year 1997-98 be transferred from the operating budget to the capital budget to be applied toward the scope of the capital construction project titled "40-Bed Boot Camp," authorized in Part II of this Act.

Included in the above appropriation is \$693,700 in each fiscal year for education-related costs for students in day treatment programs. These funds shall be transferred to the Kentucky Department of Education, Management Support Services for distribution for these purposes. The Department of Juvenile Justice shall not reduce the payments to any currently operating day treatment programs unless the reduction required by Part VI, General Fund Budget Reduction Plan, of this Act is implemented.

TOTAL - JUSTICE OPERATIONS

	1997-98	1998-99	1999-00
General Fund		3,158,500	126,631,300
Restricted Funds		731,300	46,795,800
Road Fund			35,000,000
Federal Funds			36,916,500
Total	3,889,800	245,343,600	274,085,500

48. CORRECTIONS

Budget Units

a. Corrections Management

	1998-99	1999-00	
General Fund		6,842,200	9,756,200
Restricted Funds		271,000	161,000
Total	7,113,200	9,917,200	

Included in the General Fund appropriation above is \$2,473,000 in fiscal year 1999-2000 for new debt service to fund the construction of a 200-bed dorm at Blackburn Correctional Complex, Phase I Expansion at the Kentucky Correctional Institute for Women, the design and site acquisition for a medium security prison and the replacement of a water tank and water line at Northpoint Training Center.

b. Community Services and Local Facilities

	1997-98	1998-99	1999-00	
General Fund	4,129,000	63,939,400	69,833,700	
Restricted Funds		326,000	336,000	
Federal Funds		1,053,500	1,412,000	
Total	4,129,000	65,318,900	71,581,700	

Included in the General Fund appropriation is \$411,600 in fiscal year 1998-99 and \$773,900 in fiscal year 1999-2000 to provide a \$1,000 salary increase in fiscal year 1998-99 and an additional \$1,250 salary increase in fiscal year 1999-2000 for probation and parole officers.

Included in the above General Fund appropriation is \$4,129,000 in fiscal year 1997-98 for costs associated with housing additional inmates in county jails.

General Fund moneys are provided in the amount of \$21,000 in fiscal year 1998-99 and \$93,000 in fiscal year 1999-2000 to expand the Probation and Parole Career Ladder.

c. Adult Correctional Institutions

	1997-98	1998-99	1999-00	
General Fund			167,353,000	179,801,100
Restricted Funds	2,684,900	21,848,300	22,681,500	
Federal Funds			2,030,500	2,861,500
Total	2,684,900	191,231,800	205,344,100	

Included in the Restricted Funds appropriation is \$2,684,900 in fiscal year 1997-98 for the production of the final portion of the 1998 general issue of license plates in the Division of Correctional Industries.

Included in the General Fund appropriation is \$2,761,400 in fiscal year 1998-99 and \$5,460,100 in fiscal year 1999-2000 to provide a \$1,000 salary increase in each year of the biennium, totaling a \$2,000 salary increase over the biennium for security staff.

Included in the General Fund appropriation is \$2,160,800 in each fiscal year for contracting an additional 200 minimum security beds for men at the Otter Creek Correctional Complex starting July 1, 1998.

d. Local Jail Support

	1998-99	1999-00	
General Fund		14,568,500	14,568,500

Included in the General Fund appropriation is \$888,000 in fiscal year 1998-99 and \$888,000 in fiscal year 1999-2000 for medical care contracts to be distributed, upon approval of the Department of Corrections, to counties by the formula codified in KRS 441.206; \$300,000 in fiscal year 1998-99 and \$300,000 in fiscal year 1999-2000 is provided, on a partial reimbursement basis, for medical claims in excess of the statutory threshold pursuant to KRS 441.045. The funding support for medical contracts and catastrophic medical expenses for indigents shall be maintained in discrete accounts. Any medical claim which exceeds the statutory threshold may be reimbursed for that

amount in excess of the statutory threshold. In no event shall this apply to expenses of an elective, as opposed to emergency, basis, and expenses shall be paid according to the Kentucky Medical Assistance Schedule.

TOTAL - CORRECTIONS

	1997-98	1998-99	1999-00
General Fund		4,129,000	252,703,100
Restricted Funds		2,684,900	22,445,300
Federal Funds			3,084,000
Total	6,813,900	278,232,400	301,411,500

TOTAL - JUSTICE CABINET

	1997-98	1998-99	1999-00
General Fund		7,287,500	379,334,400
Restricted Funds		3,416,200	69,241,100
Road Fund			35,000,000
Federal Funds			40,000,500
TOTAL		10,703,700	523,576,000

I. LABOR

49. LABOR CABINET

Budget Units

a. General Administration and Support

	1998-99	1999-00
General Fund		518,000
Restricted Funds		4,484,500
Total	5,002,500	5,020,800

b. Workplace Standards

	1998-99	1999-00
General Fund		1,780,700
Restricted Funds		146,921,500
Federal Funds		2,828,500
Total	151,530,700	153,321,000

c. Workers Claims

	1998-99	1999-00
Restricted Funds		14,994,000
Total		15,637,000

d. Kentucky Occupational Safety and Health Review Commission

	1998-99	1999-00
Restricted Funds		309,000
Federal Funds		174,500
Total	483,500	494,000

TOTAL - LABOR CABINET

ACTS OF THE GENERAL ASSEMBLY

	1998-99	1999-00	
General Fund		2,298,700	2,367,300
Restricted Funds		166,709,000	169,102,500
Federal Funds		3,003,000	3,003,000
TOTAL		172,010,700	174,472,800

Budget Unit

50. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	1998-99	1999-00	
General Fund		19,000,000	19,000,000
Restricted Funds		149,905,500	152,337,500
Total	168,905,500	171,337,500	

TOTAL - LABOR

	1998-99	1999-00	
General Fund		21,298,700	21,367,300
Restricted Funds		316,614,500	321,440,000
Federal Funds		3,003,000	3,003,000
TOTAL		340,916,200	345,810,300

J. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

51. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Budget Units

a. General Administration and Support

	1998-99	1999-00	
General Fund		8,703,200	9,026,200
Restricted Funds		352,000	435,500
Federal Funds		2,065,000	2,166,000
Total	11,120,200	11,627,700	

b. Environmental Protection

	1998-99	1999-00	
General Fund		21,647,200	22,183,800
Restricted Funds		20,196,000	21,336,000
Federal Funds		18,731,500	16,191,500
Total	60,574,100	59,711,300	

Notwithstanding KRS 224.43-320, no funds are provided in the above appropriations for the assignment of full-time inspectors to each municipal solid waste landfill operating in the Commonwealth.

Included in the above General Fund appropriation is \$75,000 each year of the biennium for the annual Commonwealth Cleanup Campaign the fourth week of March.

c. Natural Resources

	1998-99	1999-00	
General Fund		13,494,700	13,666,300

Restricted Funds		5,522,500	5,053,500
Federal Funds		2,626,500	2,627,500
Total	21,643,700	21,347,300	

Not less than \$240,000 of the General Fund appropriation for each fiscal year shall be set aside for emergency forest fire suppression. There is appropriated from the General Fund the necessary funds, subject to the conditions and procedures provided in this Act, which are required as a result of emergency fire suppression activities in excess of the \$240,000 amount. Fire suppression costs in excess of \$240,000 annually shall be deemed necessary governmental expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

d. Surface Mining Reclamation and Enforcement

	1998-99	1999-00	
General Fund		9,922,200	10,188,100
Restricted Funds		5,793,000	5,988,000
Federal Funds		15,808,500	16,196,500
Total	31,523,700	32,372,600	

Included in the General Fund appropriation is \$675,000 in each fiscal year for the return of permit and acreage fees per KRS 350.139; any required expenditure for this purpose in excess of this amount in either fiscal year is appropriated to the department.

e. Abandoned Mine Land Reclamation Projects

	1998-99	1999-00	
Federal Funds		22,456,000	22,456,000

The above appropriation represent estimates of the funds to be received and expended for this program. If additional funds become available, the funds are appropriated subject to the conditions and procedures provided in this Act.

TOTAL - NATURAL RESOURCES AND ENVIRONMENTAL

PROTECTION CABINET

	1998-99	1999-00	
General Fund		53,767,300	55,064,400
Restricted Funds		31,863,500	32,813,000
Federal Funds		61,687,500	59,637,500
TOTAL		147,318,300	147,514,900

Budget Units

52. KENTUCKY RIVER AUTHORITY

	1998-99	1999-00	
General Fund		359,000	369,000
Restricted Funds		1,511,000	1,750,000
Total	1,870,000	2,119,000	

Included in the above Restricted Funds appropriation is \$194,000 in fiscal year 1998-99 and \$388,000 in fiscal year 1999-2000 for debt service for \$2,000,000 in previously authorized bonds and \$2,000,000 in new bond authorization.

53. ENVIRONMENTAL QUALITY COMMISSION

ACTS OF THE GENERAL ASSEMBLY

	1998-99	1999-00	
General Fund		251,100	249,800
Restricted Funds		4,000	2,000
Total	255,100	251,800	

54. KENTUCKY NATURE PRESERVES COMMISSION

	1998-99	1999-00	
General Fund		840,200	786,300
Restricted Funds		637,500	612,500
Federal Funds		25,000	25,000
Total	1,502,700	1,423,800	

Included in the above General Fund appropriation is \$40,000 in fiscal year 1998-99 and \$41,000 in fiscal year 1999-2000 to employ a regional nature preserves manager for the Blanton Forest, Pine Mountain, Hi Lewis, Bad Branch, and Kingdom Come Nature Preserves.

TOTAL - NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

	1998-99	1999-00	
General Fund		55,217,600	56,469,500
Restricted Funds		34,016,000	35,177,500
Federal Funds		61,712,500	59,662,500
TOTAL		150,946,100	151,309,500

K. PERSONNEL CABINET

55. PERSONNEL CABINET

Budget Units

a. General Operations

	1997-98	1998-99	1999-00	
General Fund			3,309,400	3,297,100
Restricted Funds	200,000		5,858,500	5,741,000
Total 200,000		9,167,900	9,038,100	

Notwithstanding KRS 18A.015(2), 18A.015(3), and 18A.015(4), the Personnel Cabinet shall collect \$2.00 per month per eligible employee in fiscal year 1998-99 and \$2.25 per month per eligible employee in fiscal year 1999-2000 from the budgeted premium for life and health insurance from all employers of state employees defined in KRS 18A.225(1)(b) for duly authorized use by the Personnel Cabinet in administering its statutory and administrative responsibilities, including but not limited to administration of the Commonwealth's life and health insurance programs.

b. Public Employees Deferred Compensation Authority

	1997-98	1998-99	1999-00	
Restricted Funds	350,000		3,552,000	3,692,500

c. Workers' Compensation Benefits and Reserve

	1998-99	1999-00	
Restricted Funds		16,872,000	17,666,000

The above appropriations represent estimates of the funds necessary to operate this program. If additional funds are required to adequately maintain this program, the necessary funds are appropriated, subject to the conditions and procedures provided in this Act.

TOTAL - PERSONNEL CABINET

	1997-98	1998-99	1999-00
General Fund			3,309,400
Restricted Funds		550,000	26,282,500
TOTAL		550,000	29,591,900

L. POSTSECONDARY EDUCATION

Budget Units

56. COUNCIL ON POSTSECONDARY EDUCATION

	1997-98	1998-99	1999-00
General Fund		700,000	54,251,200
Restricted Funds			528,000
Federal Funds			4,057,000
Total	700,000	58,308,200	107,385,900

The General Assembly reaffirms its commitment to the spirit, intent, and goals of the Kentucky Postsecondary Improvement Act of 1997. The General Assembly recognizes the continued need to provide improved access to postsecondary education for all of Kentucky's citizens. The General Assembly continues to encourage collaboration among all of the state postsecondary institutions. The General Assembly supports the budget recommendations of the Council of Postsecondary Education.

Included in the above Restricted Funds appropriation in fiscal year 1999-2000 is debt service in the amount of \$528,000 for the University of Kentucky Center for Rural Health in Hazard.

The above appropriation of \$700,000 from the General Fund for fiscal year 1997-98 is provided to support the Literacy Development Grant Program Fund established by 1998 Senate Bill 186.

Any General Fund appropriation unexpended in fiscal year 1997-98 in the Literacy Development Grant Program Fund shall not lapse but shall be carried forward into fiscal year 1998-99, notwithstanding KRS 45.229.

Included in the above General Fund appropriation is \$1,000,000 nonrecurring funding in each fiscal year for the Kentucky Rural Development Center. Included in the above General Fund appropriation is \$50,000 in fiscal year 1998-99 and \$100,000 in fiscal year 1999-2000 to establish a Professional Education Preparation Program (PEPP) at Pikeville Osteopathic Medical School comparable to the PEPP at the University of Kentucky and the University of Louisville.

The Postsecondary Education Improvement Act of 1997 fundamentally changed the funding mechanism for the postsecondary enterprise in the Commonwealth of Kentucky. In recognition that the limited time between the enactment of the Postsecondary Education Improvement Act of 1997 and the commencement of the 1998-2000 biennial budget process did not allow for sufficient time for the full consideration of programs not incorporated in the trust funds recommendation, the above General Fund appropriation for the Council on Postsecondary Education includes the following program items. Included in the above General Fund appropriation is \$450,000 in fiscal year 1999-2000 to support a full complement of faculty and operational costs associated with the University of Kentucky College of Engineering's implementation of undergraduate engineering programs in Paducah. Included in the above General Fund appropriation is \$1,470,000 in fiscal year 1998-99 and \$1,500,000 in fiscal year 1999-2000 to replace Robinson Forest Trust funds previously used to support the Lees College Branch of Hazard Community College. Included in the above General Fund appropriation is \$182,600 in each fiscal year to expand the services of the Labor Management Center at the University of Louisville's College of Business and Public Administration. Included in the above General Fund appropriation is \$180,000 in fiscal year 1998-99 and \$349,900 in fiscal year 1999-2000 to expand the University of Louisville's Family Residency Program in Glasgow. Included in the above General Fund appropriation is \$30,000 in fiscal year 1998-99 for an analysis of student demand and the feasibility of a collaborative social work program at the University of Louisville with one or more institutions in the Louisville metropolitan area. This study will identify funding sources if such a program is deemed appropriate.

Included in the above General Fund appropriation is \$125,000 in fiscal year 1998-99 and \$180,000 in fiscal year 1999-2000 to be distributed to Murray State University for the purpose of making lease purchase payments on the Crisp Center.

Included in the above General Fund appropriation is \$1,026,000 in fiscal year 1998-99 and \$1,664,400 in fiscal year 1999-2000 to fund the Osteopathic Medicine Scholarship Program to provide scholarships to students of the Pikeville College of Osteopathic Medicine in an amount which will reduce the tuition cost to these students to the same rate paid by in-state medical students at the University of Kentucky or the University of Louisville. Included in the above General Fund appropriation is \$2,396,500 in fiscal year 1998-99 and \$2,504,500 in fiscal year 1999-2000 for the Experimental Program to Stimulate Competitive Research.

Included in the above General Fund appropriation is \$215,000 in fiscal year 1998-99 and \$221,500 in fiscal year 1999-2000 for the Kentucky Commission on Community Volunteerism and Service, which is attached to the Council on Postsecondary Education for administrative purposes.

Included in the above General Fund appropriation is \$40,000,000 in fiscal year 1998-99 and \$86,863,000 in fiscal year 1999-2000 for the Strategic Investment and Incentive Funding Program as established by the Postsecondary Improvement Act of 1997. The appropriation shall be made to each of the following trust funds in the amounts listed below for the purposes and uses established by the Postsecondary Improvement Act of 1997.

a. Research Challenge Trust Fund

	1998-99	1999-00
General Fund		6,000,000
		6,000,000

b. Regional University Excellence Trust Fund

	1998-99	1999-00
General Fund		6,000,000
		6,000,000

c. Technology Initiative Trust Fund

	1998-99	1999-00
General Fund		8,000,000
		12,312,000

Included in the above fiscal year 1999-2000 General Fund appropriation to the Technology Initiative Trust Fund is debt service as indicated below to support the issuance of bonds by the State Property and Buildings Commission to partially finance the planning, design, and construction of the Kentucky Community and Technical College System (KCTCS) projects identified below and authorized in Part II of this Act: Central Regional Postsecondary Education Center, Western Kentucky University - debt service of \$478,000; Northeast Regional Postsecondary Education Center, Morehead State University - debt service of \$634,000; South Regional Postsecondary Education Center, Western Kentucky University - debt service of \$336,000; Southeast Regional Postsecondary Education Center, Eastern Kentucky University - debt service of \$478,000; West Regional Postsecondary Education Center, Murray State University - debt service of \$634,000; and KCTCS Automated Administrative System - debt service of \$147,000.

Also included in the above fiscal year 1999-2000 General Fund appropriation to the Technology Initiative Trust Fund is \$5,548,000 for debt service to support the issuance of bonds by the State Property and Buildings Commission for technology projects to be identified by the Council on Postsecondary Education as necessary for the implementation of the Commonwealth Virtual University.

d. Physical Facilities Trust Fund

	1998-99	1999-00
General Fund		31,551,000

Included in the above fiscal year 1999-2000 General Fund appropriation to the Physical Facilities Trust Fund is debt service as indicated below to support the issuance of bonds by the State Property and Buildings Commission to finance the planning, design and construction of the projects and capital construction pools identified below and authorized in Part II of this Act: Northern Kentucky University (NKU) - Natural Science Building - debt service of \$3,466,000; Morehead State University (MoSU) - Breckinridge Hall Renovation - debt service of \$1,330,000; University of Kentucky (UK) - Mechanical Engineering Building - debt service of \$1,862,000; Murray State University (MuSU) - Carr Health/Business/Education - debt service of \$967,000; Eastern Kentucky University (EKU)

- Student Service/Classroom Building - debt service of \$1,900,000; Kentucky State University (KSU) - Student Center Renovation/Expansion - debt service of \$785,000; University of Louisville (UL) - Research Building (Belknap Campus) - debt service of \$3,043,000; Western Kentucky University (WKU) - Postsecondary Education Improvement Act of 1997 Facility - debt service of \$1,758,000; UK - Aging/Allied Health Building Phase II - debt service of \$1,900,000; KCTCS - Deferred Maintenance and Government Mandates Pool - debt service of \$420,000; Council on Postsecondary Education (CPE) - Deferred Maintenance and Government Mandates Pool - debt service of \$1,958,000; CPE - Research Equipment and Lab Replacement or Acquisition Pool - debt service of \$4,856,000; KCTCS - Automated Administrative System - debt service of \$166,000; KCTCS - Central Regional Postsecondary Education Center - Phase I - debt service of \$803,000; KCTCS - Hazard Community College Classroom Building Phase II - debt service of \$619,000; KCTCS - Kentucky Tech College of Arts and Crafts - debt service of \$392,000; KCTCS - South Central Regional Postsecondary Education Center - debt service of \$623,000; KCTCS - Danville Regional Technology Center - Phase I - debt service of \$666,000; KCTCS - Madisonville Community College Science/Technical Classroom Building - debt service of \$468,000; KCTCS - Maysville Community College/Kentucky Tech New Technology Center - debt service of \$242,000; KCTCS - Shelby County New Kentucky Tech/Jefferson Community College Extension - debt service of \$1,022,000; KCTCS - Somerset Community College/Kentucky Tech Complex - debt service of \$975,000; KCTCS - South Regional Postsecondary Education Center - Phase I - debt service of \$539,000; and KCTCS - Southeast Regional Postsecondary Education Center Phase I - debt service of \$778,000.

e. Workforce Development Trust Fund

	1998-99	1999-00
General Fund		6,000,000
		6,000,000

Funding is provided to further cooperative efforts among the community colleges and the technical institutions and for the acquisition of equipment and technology necessary to provide quality education programs. In addition, funding may be used for a base funding equity adjustment for the technical institutions formerly a part of the Kentucky Tech System, if necessary, pursuant to an analysis of funding equity by the Council on Postsecondary Education.

f. Student Financial Aid and Advancement Trust Fund

	1998-99	1999-00
General Fund		14,000,000
		25,000,000

Included in the above appropriation is \$14,000,000 in fiscal year 1998-99 and \$15,000,000 in fiscal year 1999-2000 to fully fund the College Access Program, the Kentucky Tuition Grants Program and the Teacher Scholarship Program administered by the Kentucky Higher Education Assistance Authority. In addition, included in the above appropriation is \$7,000,000 in fiscal year 1999-2000 to begin implementation of a new merit based financial aid program pursuant to enabling legislation to be enacted by the 1998 General Assembly. This funding for the merit program shall not be allotted unless enabling legislation is enacted by the 1998 General Assembly, but shall lapse at the close of the fiscal year. If enabling legislation is enacted by the 1998 General Assembly, the appropriation shall be expended according to the provisions of the enabling legislation.

Included in the above General Fund appropriation is \$3,000,000 in fiscal year 1999-2000 for the Literacy Development Grant Program Fund.

57. KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

	1997-98	1998-99	1999-00
General Fund			30,603,200
Restricted Funds		452,000	15,844,000
Federal Funds			325,000
Total	452,000	46,772,200	46,987,700

Included in the above General Fund appropriation is \$19,452,700 in fiscal year 1998-99 and \$19,452,700 in fiscal year 1999-2000 for College Access Program (CAP) grants. Nothing in the foregoing shall be construed to limit the Authority's capability to use these funds to match Federal Funds, make grant awards, or promulgate administrative regulations that conform to requirements of federal laws and regulations for full participation in federally-funded

student financial assistance programs. Included in the above Restricted Funds appropriation is \$959,000 in fiscal year 1998-99 and \$569,000 in fiscal year 1999-2000 for the Teacher Scholarship Program.

The General Fund appropriation shall be used solely for the purpose of making awards to students.

Any General Fund appropriation unexpended in fiscal years 1997-98 or 1998-99 to the Kentucky Higher Education Assistance Authority shall not lapse but shall be carried forward into the next fiscal year, notwithstanding KRS 45.229.

Included in the above Restricted Funds appropriation is \$1,000,000 each fiscal year for the Kentucky Higher Education Assistance Authority's Work Study Program.

Notwithstanding any contrary provision of KRS 164.785(1)(b), eligible students attending nonprofit and for-profit institutions that otherwise meet the eligibility criteria of KRS 164.785 shall receive Kentucky Tuition Grant Program funds to the extent that funding is available.

Notwithstanding KRS 164A.080, bonding authority for the Kentucky Student Loan Corporation is authorized for a maximum of \$950,000,000 effective July 1, 1998.

58. EASTERN KENTUCKY UNIVERSITY

	1998-99	1999-00
General Fund		63,825,700
Restricted Funds		85,446,100
Federal Funds		21,414,800
Total	170,686,600	175,287,400

Included in the above General Fund appropriation is \$5,309,600 in fiscal year 1998-99 and \$5,317,400 in fiscal year 1999-2000 for debt service for previously issued bonds.

59. KENTUCKY STATE UNIVERSITY

	1998-99	1999-00
General Fund		20,364,100
Restricted Funds		15,893,000
Federal Funds		11,617,300
Total	47,874,400	49,201,300

Included in the above General Fund appropriation is \$2,223,800 in fiscal year 1998-99 and \$2,224,600 in fiscal year 1999-2000 for debt service for previously issued bonds.

60. MOREHEAD STATE UNIVERSITY

	1998-99	1999-00
General Fund		36,689,600
Restricted Funds		34,597,000
Federal Funds		33,173,500
Total	104,460,100	109,840,700

Included in the above General Fund appropriation is \$2,129,000 in fiscal year 1998-99 and \$2,128,400 in fiscal year 1999-2000 for debt service for previously issued bonds.

Included in the above General Fund appropriation is \$572,000 in fiscal year 1999-2000 for debt service.

61. MURRAY STATE UNIVERSITY

	1998-99	1999-00
General Fund		45,694,300
Restricted Funds		47,564,500

Federal Funds		6,819,000	7,214,500
Total	100,077,800	101,610,600	

Included in the above General Fund appropriation is \$3,392,700 in fiscal year 1998-99 and \$1,546,000 in fiscal year 1999-2000 for debt service for previously issued bonds.

62. NORTHERN KENTUCKY UNIVERSITY

	1998-99	1999-00	
General Fund		33,902,900	34,721,700
Restricted Funds		46,341,600	48,500,800
Federal Funds		4,761,500	4,761,500
Total	85,006,000	87,984,000	

Included in the above General Fund appropriation is \$5,054,400 in fiscal year 1998-99 and \$5,065,400 in fiscal year 1999-2000 for debt service for previously issued bonds.

63. UNIVERSITY OF KENTUCKY

	1998-99	1999-00	
General Fund		286,706,700	290,835,300
Restricted Funds		683,978,500	703,883,000
Federal Funds		81,237,500	82,831,000
Total	1,051,922,700	1,077,549,300	

Included in the above General Fund appropriation is \$12,701,500 in fiscal year 1998-99 and \$8,647,700 in fiscal year 1999-2000 for debt service for previously issued bonds.

Included in the above General fund appropriation is \$6,265,200 in fiscal year 1998-1999 and \$6,440,600 in fiscal year 1999-2000 to support the operations of the Lexington Community College.

Included in the above Restricted Funds appropriation is \$9,667,000 in fiscal year 1998-1999 and \$9,681,500 in fiscal year 1999-2000 to support the operations of the Lexington Community College.

Included in the above Federal Funds appropriation is \$4,149,000 in fiscal year 1998-1999 and \$4,167,000 in fiscal year 1999-2000 to support the operations of the Lexington Community College.

The University of Kentucky shall place the highest priority on improving the salaries of the Lexington Community College faculty and staff.

Included in the above General Fund appropriation is \$300,000 in each fiscal year for the Engineering Education Enhancement Program to be used by the professional engineering school in acquiring needed academic equipment, developing and implementing programs to attract or retain outstanding faculty, and developing programs to assist research activities by faculty. The General Fund appropriation related to Engineering Education Enhancement is contingent upon the University raising and committing to eligible engineering school initiatives \$2 in nonstate funds for each \$1 in state General Fund appropriation. Eligible nonstate funds must be raised after July 1, 1998. Allotment of this appropriation is contingent upon certification by the Council on Postsecondary Education that necessary conditions have been met.

64. UNIVERSITY OF LOUISVILLE

	1998-99	1999-00	
General Fund		158,097,500	163,357,500
Restricted Funds		222,614,500	229,174,500
Federal Funds		25,121,000	25,121,500
Total	405,833,000	417,653,500	

Included in the above General Fund appropriation is \$11,363,100 in fiscal year 1998-99 and \$11,366,700 in fiscal year 1999-2000 for debt service for previously issued bonds. Also included in the above General Fund appropriation is \$15,948,500 in fiscal year 1998-99 and \$16,506,700 in fiscal year 1999-2000 to fulfill the Commonwealth's contractual obligation relating to indigent care furnished via the Quality and Charity Care Trust Agreement.

The General Fund appropriation related to the Quality and Charity Care Trust Agreement in the first year of the biennium shall continue into the second year for this purpose, notwithstanding KRS 45.229. Any unused portion of the General Fund appropriation relating to the Quality and Charity Care Trust Agreement shall lapse to the credit of the General Fund at the end of fiscal year 1999-2000.

Included in the above General Fund appropriation is \$300,000 in each fiscal year for the Engineering Education Enhancement Program to be used by the professional engineering school in acquiring needed academic equipment, developing and implementing programs to attract or retain outstanding faculty, and developing programs to assist research activities by faculty. The General Fund appropriation related to Engineering Education Enhancement is contingent upon the University raising and committing to eligible engineering school initiatives \$2 in nonstate funds for each \$1 in state General Fund appropriation. Eligible nonstate funds must be raised after July 1, 1998. Allotment of this appropriation is contingent upon certification by the Council on Postsecondary Education that necessary conditions have been met.

65. WESTERN KENTUCKY UNIVERSITY

	1998-99	1999-00
General Fund		58,072,500
Restricted Funds		63,188,500
Federal Funds		15,200,000
Total	136,461,000	140,035,000

Included in the above General Fund appropriation is \$3,932,200 in fiscal year 1998-99 and \$3,936,100 in fiscal year 1999-2000 for debt service for previously issued bonds.

66. KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

	1998-99	1999-00
General Fund		157,213,900
Restricted Funds		88,648,500
Federal Funds		37,794,000
Total	283,656,400	292,953,400

Included in the above General Fund appropriation is \$912,000 in each fiscal year for the Lees College Branch of Hazard Community College.

Included in the above General Fund appropriation is \$10,613,400 in fiscal year 1998-99 and \$10,645,900 in fiscal year 1999-2000 for debt service for previously issued bonds.

Included in the above General Fund appropriation is \$956,000 in fiscal year 1999-2000 for debt service.

TOTAL - POSTSECONDARY EDUCATION

	1997-98	1998-99	1999-00
General Fund		700,000	945,421,600
Restricted Funds		452,000	1,304,116,200
Federal Funds			241,520,600
TOTAL		1,152,000	2,491,058,400

M. PUBLIC PROTECTION AND REGULATION CABINET

Budget Units

67. BOARD OF CLAIMS/CRIME VICTIMS' COMPENSATION

	1998-99	1999-00	
General Fund		399,900	411,900
Restricted Funds		1,420,500	1,445,500
Federal Funds		351,000	351,000
Total	2,171,400	2,208,400	

68. ALCOHOLIC BEVERAGE CONTROL

	1997-98	1998-99	1999-00	
General Fund		340,500	2,526,900	2,622,400
Restricted Funds			802,500	787,500
Total	340,500	3,329,400	3,409,900	

The Department shall receive funds from the Department of Agriculture and cooperate with the Department of Agriculture in order to implement laws relating to the sale and use of tobacco products, pursuant to KRS 438.330.

69. FINANCIAL INSTITUTIONS

	1998-99	1999-00	
Restricted Funds		9,556,000	9,807,500

Included in the above appropriation is a transfer of \$2,500,000 in each fiscal year to the General Fund Surplus Account, notwithstanding KRS 287.485.

70. KENTUCKY RACING COMMISSION

	1997-98	1998-99	1999-00	
General Fund		350,000	1,419,100	1,356,900
Restricted Funds			14,017,000	13,719,500
Total	350,000	15,436,100	15,076,400	

Notwithstanding KRS 230.217(3), no guaranteed General Fund support for an annual Breeders' Award Fund beginning balance of \$3,750,000 is provided in each fiscal year.

71. HOUSING, BUILDINGS AND CONSTRUCTION

	1998-99	1999-00	
General Fund		3,480,500	3,576,800
Restricted Funds		25,409,500	27,426,500
Total	28,890,000	31,003,300	

Under the provisions of the Firefighters Foundation Program Fund, an eligible local unit of government shall be entitled to receive a supplement to each qualified firefighter's annual base salary from the Firefighters Foundation Program Fund, to be paid to each firefighter in addition to his regular salary as prescribed by KRS 95A.250. The supplemental payments per qualified professional firefighters shall increase to \$2,750 in fiscal year 1998-99 and \$3,000 in fiscal year 1999-2000. As prescribed by KRS 95A.262, an annual allotment is provided for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and all other organized volunteer fire departments recognized by the Department of Housing, Buildings and Construction as fire departments operated and maintained on a nonprofit basis. The State Aid Grants shall increase to \$6,500 in fiscal year 1998-99 and \$7,500 in fiscal year 1999-2000. Notwithstanding KRS 136.392, the power of the Secretary of the Revenue Cabinet to adjust the insurance surcharge rate is suspended. Notwithstanding KRS 42.190 and 95A.220(2), all funds remaining at the

end of fiscal year 1998-99 and fiscal year 1999-2000 in accounts established pursuant to KRS 95A.220(1) and 95A.262 shall not lapse.

72. INSURANCE

a. General Operations

	1998-99	1999-00	
Restricted Funds		14,051,000	14,639,500

Notwithstanding KRS 304.2-400(3), all funds remaining at the end of fiscal year 1998-99 and fiscal year 1999-2000 shall not lapse.

b. Health Purchasing Alliance

	1998-99	1999-00	
Restricted Funds		8,523,000	8,567,000

TOTAL - INSURANCE		22,574,000	23,206,500
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73. MINES AND MINERALS

	1998-99	1999-00	
General Fund		10,380,300	10,074,400
Restricted Funds		810,000	810,000
Federal Funds		629,500	591,000
Total	11,819,800	11,475,400	

Notwithstanding KRS 353.590, the following fee shall be charged: oil gas permit transfer-\$25.

74. PUBLIC ADVOCACY

1997-98	1998-99	1999-00	
General Fund		16,637,100	17,182,100
Restricted Funds	317,700	3,689,000	3,895,000
Federal Funds		1,075,000	1,128,000
Total 317,700	21,401,100	22,205,100	

Included in the above appropriation are additional Restricted Funds for the Grants to Counties Program for fiscal year 1997-98.

75. PUBLIC SERVICE COMMISSION

	1998-99	1999-00	
General Fund		9,177,400	8,656,400
Restricted Funds		22,500	22,500
Federal Funds		219,000	229,000
Total	9,418,900	8,907,900	

Included in the above General Fund appropriation is \$109,000 in fiscal year 1999-2000 for debt service for the issuance of additional bonds for the new office building authorized by the 1996 General Assembly.

Also included in the above General Fund appropriation is \$300,000 in fiscal year 1998-99 to support a comprehensive study of the taxation of public service companies that supply utility service to the citizens of the Commonwealth. These funds are generated from the millage surcharge imposed on utility companies pursuant to KRS 278.130. Any unexpended balance on June 30,1999, shall be continued and appropriated for expenditure into fiscal year 1999-2000.

76. SECRETARY

a.	General Operations			
		1998-99	1999-00	
	Restricted Funds		1,483,000	1,554,000
b.	Petroleum Storage Tank Environmental Assurance Fund			
		1998-99	1999-00	
	Restricted Funds		40,353,500	40,830,500
	TOTAL - SECRETARY		41,836,500	42,384,500
77.	BOARD OF TAX APPEALS			
		1998-99	1999-00	
	General Fund		410,200	422,000
	TOTAL - PUBLIC PROTECTION AND REGULATION CABINET			
		1997-98	1998-99	1999-00
	General Fund	690,500	44,431,400	44,302,900
	Restricted Funds	317,700	120,137,500	123,505,000
	Federal Funds		2,274,500	2,299,000
	TOTAL	1,008,200	166,843,400	170,106,900

N. REVENUE

Budget Units

78. REVENUE CABINET

		1998-99	1999-00	
	General Fund		58,147,900	60,236,900
	Road Fund		1,352,000	1,352,000
	Restricted Funds		2,928,000	2,722,000
	Federal Funds		40,000	40,000
	Total	62,467,900	64,350,900	

Notwithstanding KRS 136.392, the insurance surcharge rate shall be calculated at a rate to provide sufficient funds in the 1998-2000 fiscal biennium for the Firefighters Foundation Program Fund and the Kentucky Law Enforcement Foundation Program Fund, including the administration of training programs, pay supplements prescribed by statute, and debt service for the respective program funds specified in KRS 15.410 to 15.510, KRS 42.190, and KRS 95A.220 in fiscal year 1998-99 and fiscal year 1999-2000. The calculation of sufficient funds for the above-named programs shall include any Restricted Funds carried forward from fiscal years 1998-99 and 1999-2000 provided by the General Assembly in this Act.

The above Road Fund appropriation represents the cost of the Road Fund Compliance and Motor Vehicle Property Tax programs within the Revenue Cabinet and are to be used exclusively for that purpose. In accordance with the provisions of KRS 134.400, the administration of the Delinquent Tax Fund is in the Department of Property Valuation. Proceeds shall be deposited to this account except that the first \$100,000 shall be deposited exclusively to the General Fund.

Notwithstanding KRS 365.390, included in the above Restricted Funds appropriation is \$111,000 in fiscal year 1998-99 and \$110,500 in fiscal year 1999-2000 from the accumulated balance in the Cigarette Enforcement Fund account for the administrative activities of the Revenue Cabinet.

Notwithstanding KRS 136.180, included in the above Restricted Funds appropriation is \$189,000 in fiscal year 1998-99 and \$89,500 in fiscal year 1999-2000 from the accumulated balance in the Public Service Corporation Assessment Fund account for the administrative activities of the Revenue Cabinet.

79. PROPERTY VALUATION ADMINISTRATORS

	1998-99	1999-00	
General Fund		21,902,000	22,972,500
Restricted Funds		2,387,500	2,549,500
Total	24,289,500	25,522,000	

TOTAL - REVENUE CABINET

	1998-99	1999-00	
General Fund		80,049,900	83,209,400
Road Fund		1,352,000	1,352,000
Restricted Funds		5,315,500	5,271,500
Federal Funds		40,000	40,000
TOTAL		86,757,400	89,872,900

O. TOURISM DEVELOPMENT CABINET

Budget Units

80. OFFICE OF THE SECRETARY

	1998-99	1999-00	
General Fund		1,232,800	1,276,100

Included in the General Fund appropriation is \$270,000 in each fiscal year for Outdoor Drama Grants.

81. BREAKS INTERSTATE PARK

	1997-98	1998-99	1999-00	
General Fund		30,000	200,000	200,000

An appropriation up to \$200,000 in each fiscal year is provided contingent upon the Commonwealth of Virginia providing an appropriation which would be matched dollar for dollar up to the maximum amount. Any portion not matched by the Commonwealth of Virginia shall lapse to the General Fund at the close of each fiscal year.

82. TRAVEL DEVELOPMENT

	1997-98	1998-99	1999-00	
General Fund			6,992,400	7,177,800
Restricted Funds			4,000	4,000
Federal Funds		50,000		
Total	50,000	6,996,400	7,181,800	

Included in the General Fund appropriation is \$2,592,000 in fiscal year 1998-99 and \$2,655,000 in fiscal year 1999-2000 for the Comprehensive Advertising Contract and \$800,000 in each fiscal year for the Local and Regional Matching Funds Program.

83. PARKS

	1997-98	1998-99	1999-00	
General Fund		1,837,000	27,276,800	28,625,600
Restricted Funds			44,483,000	45,684,500

Total	1,837,000	71,759,800	74,310,100
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Included in the above appropriation are General Fund dollars of \$150,000 each year of the biennium for personnel and operating expenses for the Sleepy Hollow Golf course and Coal Mine Museum.

Included in the above appropriation are General Fund dollars of \$240,000 in fiscal year 1998-99 and \$150,000 in fiscal year 1999-2000 for personnel and operating expenses to conduct an employee and customer service training program.

Included in the above General Fund appropriation is \$25,000 each fiscal year of the biennium for appropriate upgrades, as determined by the Commissioner of Parks, of Professional Golfers' Association class A professionals at the State Parks 18 hole golf courses.

Included in the above General Fund appropriation is \$25,000 in fiscal year 1998-99 for a study of the Little Shepherd's Trail from Junction U.S. 119 in Letcher County to Kingdom Come State Park, and \$50,000 each fiscal year of the biennium for the Glasgow Highland Games in preparation for the 2001 International Scottish Games.

Included in the above General Fund appropriation is \$35,000 in fiscal year 1998-99 and \$37,000 in fiscal year 1999-2000 to support a park ranger's position at Carr Creek State Park. Also included in the above General Fund appropriation is \$525,000 in fiscal year 1999-2000 for debt service on a \$5.5 million bond for an 18 hole golf course and club house at Dale Hollow State Resort Park.

84. KENTUCKY HORSE PARK

	1998-99	1999-00	
General Fund		1,631,500	1,632,000
Restricted Funds		3,859,000	3,982,000
Total	5,490,500	5,614,000	

85. KENTUCKY STATE FAIR BOARD

	1998-99	1999-00	
General Fund		407,000	407,000
Restricted Funds		26,129,000	27,702,000
Total	26,536,000	28,109,000	

Included in the Restricted Funds appropriation is \$371,000 in each year of the biennium for debt service for Project 55.

Included in the General Fund appropriation is \$407,000 in each year of the biennium for the North American International Livestock Exposition.

86. FISH AND WILDLIFE RESOURCES

	1998-99	1999-00	
Restricted Funds		23,262,000	24,492,500
Federal Funds		7,164,000	7,331,500
Total	30,426,000	31,824,000	

TOTAL-TOURISM DEVELOPMENT CABINET

	1997-98	1998-99	1999-00	
General Fund		1,867,000	37,740,500	39,318,500
Restricted Funds			97,737,000	101,865,000
Federal Funds		50,000	7,164,000	7,331,500
TOTAL		1,917,000	142,641,500	148,515,000

P. TRANSPORTATION CABINET

87. TRANSPORTATION CABINET

Budget Units

a. Air Transportation

	1998-99	1999-00	
General Fund		2,201,000	2,267,000
Restricted Funds		29,500	30,500
Federal Funds		359,000	359,000
Total	2,589,500	2,656,500	

b. Revenue Sharing

	1998-99	1999-00	
Road Fund		204,091,500	208,717,000

1. Included in the above Road Fund appropriation is \$77,188,000 in fiscal year 1998-99 and \$78,946,000 in fiscal year 1999-2000 for the County Road Aid program in accordance with KRS 177.320, 179.410, 179.415, and 179.440. Notwithstanding KRS 177.320(2), the above amount has been reduced by \$54,900 in fiscal year 1998-99 and \$56,700 in fiscal year 1999-2000 which has been appropriated to the Highways appropriation unit for the support of the Kentucky Transportation Center.

2. Included in the above Road Fund appropriation is \$93,573,000 in fiscal year 1998-99 and \$95,702,000 in fiscal year 1999-2000 for the Rural Secondary program in accordance with KRS 177.320, 177.330, 177.340, 177.350, and 177.360. Notwithstanding KRS 177.320(1), the above amount has been reduced by \$66,600 in fiscal year 1998-99 and \$68,800 in fiscal year 1999-2000 which has been appropriated to the Highways appropriation unit for the support of the Kentucky Transportation Center. Notwithstanding KRS 177.320(1), \$2,500,000 in fiscal year 1998-99 and \$2,000,000 in fiscal year 1999-2000 is appropriated for the support of the Phase II County Bridge Program. Notwithstanding KRS 45.229, the moneys appropriated for the Phase II County Bridge Program in fiscal years 1997-98 and 1998-99 shall not lapse but shall carry forward into the next fiscal year.

3. Included in the above Road Fund appropriation is \$32,455,500 in fiscal year 1998-99 and \$33,194,000 in fiscal year 1999-2000 for the Municipal Road Aid program in accordance with KRS 177.365 to 177.369. Notwithstanding KRS 177.365(1), the above amount has been reduced by \$23,100 in fiscal year 1998-99 and \$23,900 in fiscal year 1999-2000 which has been appropriated to the Highways appropriation unit for the support of the Kentucky Transportation Center.

4. Included in the above Road Fund appropriation is \$875,000 in each fiscal year for the Energy Recovery Road Fund in accordance with KRS 177.977 to 177.981.

c. Rail Transportation

	1998-99	1999-00	
General Fund		69,500	72,000

The above General Fund appropriation is for the Kentucky Railroad Commission.

d. Public Transportation

	1998-99	1999-00	
General Fund		3,916,000	4,007,000
Restricted Funds		48,038,500	50,068,500
Federal Funds		5,996,500	5,102,000
Total	57,951,000	59,177,500	

Included in the above General Fund appropriation is \$2,500,000 in each fiscal year for nonpublic school transportation.

Included in the above Federal Funds appropriation is \$1,000,000 in fiscal year 1998-99 to provide capital assistance to transit authorities around the state.

e. Highways

	1998-99	1999-00
Restricted Funds		63,328,000
Federal Funds		27,065,000
Road Fund		398,599,500
Bond Funds		382,602,500
Total	1,095,261,000	1,077,713,000

1. Included in the above Road Fund appropriation is \$239,249,700 in fiscal year 1998-99 and \$264,002,200 in fiscal year 1999-2000 for the State Funded Construction Program.

Included in the State Funded Construction Program is \$61,300,000 in fiscal year 1998-99 and \$63,000,000 in fiscal year 1999-2000 from the Road Fund for the State Resurfacing Program.

Included in the State Funded Construction Program is \$450,000 in each fiscal year from the Road Fund for the Specialized Contracts account.

Included in the State Funded Construction Program is \$142,814,700 in fiscal year 1998-99 and \$165,552,200 in fiscal year 1999-2000 from the Road Fund for state construction projects in the 1998-2000 Biennial Highway Construction Program.

2. Included in the above Bond Funds appropriation in fiscal year 1999-2000 is \$5,000,000 in Investment Income Earnings from the issuance of the \$200,000,000 in Economic Development Road Revenue Bonds authorized herein.

3. Notwithstanding KRS 176.460(1), projects in the enacted 1998-99 Biennial Highway Construction Program listed as fiscal year 1997-98 are so listed in order to continue their current authorization into the 1998-2000 biennium, and are reauthorized in this Act.

Included in the State Funded Construction Program is \$35,000,000 in each fiscal year for the Highway Construction Contingency Account.

4. Notwithstanding KRS 177.320(4), included in the above Road Fund appropriation is \$290,000 in fiscal year 1998-99 and \$290,000 in fiscal year 1999-2000 for the Kentucky Transportation Center.

5. Notwithstanding KRS 45.229, any unexpended balance remaining at the close of the 1997-98 fiscal year in the Snow and Ice Removal Reserve Fund, as reestablished by the 1996 General Assembly, shall not lapse, but shall continue into fiscal year 1998-99 for the same purpose.

No funds shall be expended from the Snow and Ice Removal Reserve Fund until the Transportation Cabinet's cumulative snow and ice removal expenditures exceed \$11,500,000 in any fiscal year of the 1998-2000 biennium. If this provision is implemented, the Secretary of the Transportation Cabinet shall certify to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Transportation the documented need and usage of this fund.

Notwithstanding KRS 45.229, any unexpended balance remaining in the Snow and Ice Removal Reserve Fund at the close of the 1998-99 fiscal year shall not lapse, but shall continue into fiscal year 1999-2000.

6. Notwithstanding KRS 48.710, Restricted Funds are appropriated in the amount of \$1,000,000 in each fiscal year from the sale of surplus equipment to purchase new highway equipment.

7. Included in the above Restricted Funds appropriation is \$12,877,400 in fiscal year 1998-99 in Investment Income Earnings from previously authorized Economic Development Road Revenue Bonds.

f. Vehicle Regulation

	1997-98	1998-99	1999-00
Restricted Funds			2,472,500
			2,572,000

Federal Funds		1,500,000	1,500,000
Road Fund	2,300,000	27,408,000	29,304,000
Total	2,300,000	31,380,500	33,376,000

Included in the above Road Fund appropriation is \$2,300,000 in fiscal year 1997-98 to support issuance of license plates. Notwithstanding KRS 45.229, any unexpended balance remaining from the appropriation for license plates at the close of fiscal year 1997-98 shall not lapse but shall continue into fiscal year 1998-99.

g. Debt Service

	1998-99	1999-00	
Road Fund		153,027,500	168,633,500

1. Included in the above Road Fund appropriation is \$14,589,500 in fiscal year 1998-99 and \$3,478,000 in fiscal year 1999-2000 for toll road lease rental payments.

2. Included in the above Road Fund appropriation is \$43,670,000 in fiscal year 1998-99 and \$53,447,000 in fiscal year 1999-2000 for Resource Recovery Road lease rental payments. The Secretary of the Transportation Cabinet shall use Road Fund resources to meet the lease rental payments to the Kentucky Turnpike Authority for Resource Recovery Road projects in the amount certified by the Transportation Cabinet, pursuant to KRS 143.090. However, if Road Fund resources are not sufficient to meet lease rental payments, the additional amount required to meet the obligation shall be transferred from the proceeds of the tax levied on the severance or processing of coal by KRS 143.020.

3. Included in the above Road Fund appropriation is \$94,768,000 in fiscal year 1998-99 and \$92,714,500 in fiscal year 1999-2000 for Economic Development Road lease rental payments relating to projects financed by Economic Development Road Revenue Bonds previously issued by the Turnpike Authority of Kentucky.

4. Included in the above Road Fund appropriation is \$18,994,000 in fiscal year 1999-2000 for Economic Development Road lease rental payments to the Turnpike Authority of Kentucky relating to projects financed by \$200,000,000 in Economic Development Road Revenue Bonds hereby authorized by the General Assembly to be issued in the 1998-2000 fiscal biennium for the payment of the cost of the Economic Development Road Projects.

5. Any moneys not required to meet lease-rental payments or to meet the administrative costs of the Turnpike Authority shall be transferred to the State Construction account.

6. Notwithstanding KRS 175.505, no portion of the revenues to the state Road Fund provided by the adjustments in KRS 138.220(2), excluding KRS 177.320 and 177.365, shall accrue to the Debt Payment Acceleration Fund account during the 1998-2000 biennium.

h. General Administration and Support

	1998-99	1999-00	
Restricted Funds		21,198,000	22,142,000
Road Fund		56,686,500	63,202,000
Total	77,884,500	85,344,000	

Included in the above Road Fund appropriation is \$6,468,000 in fiscal year 1999-2000 for debt service for newly authorized bonds to construct a new Transportation Cabinet Office Building.

Included in the above Road Fund appropriation is \$70,000 in fiscal year 1998-99 to support the further development of the Six Year Road Plan Information System and other highway related information that is directed by the statutory budget memorandum.

i. Judgments

Road Fund resources required to pay judgments shall be transferred from the State Construction Account at the time when actual payments must be disbursed from the State Treasury.

Notwithstanding KRS 45.229, any funds not expended by June 30, 1998, shall not lapse, and shall carry forward to fiscal year 1998-99 and remain available throughout the 1998-2000 biennium.

TOTAL - TRANSPORTATION CABINET

1997-98	1998-99	1999-00	
General Fund		6,186,500	6,346,000
Restricted Funds		135,066,500	101,878,000
Federal Funds		406,455,000	389,563,500
Road Fund	2,300,000	974,547,000	1,032,902,000
Bond Funds		100,000,000	105,000,000
TOTAL	2,300,000	1,622,255,000	1,635,689,500

Q. WORKFORCE DEVELOPMENT CABINET

Budget Units

88. GENERAL ADMINISTRATION AND PROGRAM SUPPORT

	1998-99	1999-00	
General Fund		2,502,000	2,553,500
Restricted Funds		5,247,500	5,474,000
Federal Funds		5,722,500	2,012,500
Total	13,472,000	10,040,000	

89. STATE BOARD FOR ADULT AND TECHNICAL EDUCATION

	1998-99	1999-00	
General Fund		30,000	30,500

90. TECHNICAL EDUCATION

1997-98	1998-99	1999-00	
General Fund	294,000	19,245,100	19,515,700
Restricted Funds		18,654,500	19,416,000
Federal Funds	450,000	15,650,000	15,200,000
Total 744,000	53,549,600	54,131,700	

Included in the above General Fund appropriation is \$1,873,000 in each fiscal year for equipment procurement. Included in the above General Fund appropriation is \$250,000 in each fiscal year for the expanded programs at the Henderson County Vocational Area Center, and \$200,000 in each fiscal year for programs and equipment at the Marion County Area Vocational Center.

91. ADULT EDUCATION AND LITERACY

	1998-99	1999-00	
General Fund		12,411,200	12,779,400
Restricted Funds		874,000	915,500
Federal Funds		8,243,000	8,643,000
Total	21,528,200	22,337,900	

92. VOCATIONAL REHABILITATION

	1998-99	1999-00	
General Fund		9,621,100	9,872,800
Restricted Funds		2,391,500	2,406,500
Federal Funds		37,651,500	39,069,500

ACTS OF THE GENERAL ASSEMBLY

	Total	49,664,100	51,348,800
93.	DEPARTMENT FOR THE BLIND		
		1998-99	1999-00
	General Fund		2,055,200
	Restricted Funds		2,131,100
	Federal Funds		3,275,000
	Total	6,871,000	6,457,500
94.	STATE BOARD FOR PROPRIETARY EDUCATION		
		1998-99	1999-00
	Restricted Funds		110,500
			116,000
95.	JOB TRAINING COORDINATING COUNCIL		
		1998-99	1999-00
	Federal Funds		132,500
			139,000
96.	TEACHERS' RETIREMENT-EMPLOYER'S CONTRIBUTION		
		1998-99	1999-00
	General Fund		4,313,500
			4,530,500

The above General Fund appropriation includes the employer match for salaries paid to Workforce Development Cabinet employees who participate in the Teachers' Retirement System. This match shall be forwarded to the Teachers' Retirement System pursuant to KRS 161.560.

97. TRAINING AND REEMPLOYMENT

		1998-99	1999-00
	Restricted Funds		17,500
	Federal Funds		17,500
	Total	36,807,000	40,493,000
		36,824,500	40,510,500
98.	EMPLOYMENT SERVICES		
	1997-98	1998-99	1999-00
	General Fund		581,900
	Restricted Funds		599,100
	Federal Funds	5,889,500	6,021,000
	Total	2,000,000	298,008,000
		304,479,400	302,773,000
			309,393,100

Notwithstanding KRS 341.835, funds from the Unemployment Insurance Penalty and Interest Account shall be used during each fiscal year by the Department for Employment Services to operate employment and training programs.

Included in the above Restricted Funds appropriation is \$4,389,500 in fiscal year 1998-99 and \$4,521,000 in fiscal year 1999-2000 which shall be transferred from the Cabinet for Families and Children to provide job placement and training services to Temporary Assistance for Needy Families (TANF) recipients through a contractual agreement.

There is appropriated out of the Federal Funds made available to Kentucky under Section 903 of the Social Security Act, as amended, the sum of \$1,500,000 during the 1998-2000 biennium to be used under the direction of the Department for Employment Services for the purpose of administration of its unemployment compensation law and public employment offices.

TOTAL - WORKFORCE DEVELOPMENT CABINET

1997-98	1998-99	1999-00	
General Fund	294,000	50,760,000	52,012,600
Restricted Funds		36,460,000	37,534,500
Federal Funds	2,450,000	409,085,500	414,787,500
TOTAL	2,744,000	496,305,500	504,334,600

PART II

CAPITAL PROJECTS BUDGET

Moneys in the Capital Construction Fund are appropriated for the following capital projects subject to the conditions and procedures in this Act. Items listed without appropriated amounts are previously authorized for which no additional amount is required. These items are listed in order to continue their current authorization into the 1998-2000 biennium. Unless otherwise specified, reauthorized projects shall conform to the original authorization enacted by the General Assembly.

A. GOVERNMENT OPERATIONS

Budget Unit	1998-99	1999-00	
1. Attorney General			
a. Franklin County - Lease			
2. Unified Prosecutorial System			
a. Jefferson County - Lease			
3. Department of Military Affairs			
a. Environmental Pool			
Federal Funds		771,000	957,000
Investment Income		50,000	50,000
Total	821,000	1,007,000	
b. Facilities Building - Reauthorization			
c. Maintenance Pool - Bluegrass Station			
Restricted Funds		762,000	1,324,000
d. Major Maintenance Pool			
Investment Income		950,000	950,000
e. Re-Roof Building 6 (4 Bays) - Bluegrass Station			
Restricted Funds		749,000	
f. Training Complex Development, Phase III			
Federal Funds - Additional			5,176,000
g. Aircraft Maintenance Pool			
Investment Income		300,000	300,000
h. Emergency Operations Center (EOC) Automation Upgrade			
Federal Funds		2,395,000	
i. Two-Way Communications for Statewide Emergency Responses			
Bond Funds		1,200,000	
4. Department of Local Government			

a.	Local Match Participation Program for Flood Control	
	Bond Funds	5,000,000
5.	Kentucky Retirement Systems	
a.	Enhanced Imaging Processor	
	Restricted Funds	348,000
b.	Franklin County - Lease	

B. CABINET FOR ECONOMIC DEVELOPMENT

Budget Unit	1998-99	1999-00
1.	Economic Development Projects	
a.	Economic Development Bond Pool	
	Reauthorization (\$29,051,000 - Bond Funds)	
	Bond Funds - Additional	7,000,000

Notwithstanding KRS 154.12-100(6), the amounts shown above reflect project amounts.

C. EDUCATION

Budget Unit	1998-99	1999-00
1.	Department of Education	
a.	Kentucky School for the Blind - Roof Replacement	
	Capital Construction Surplus	282,000
b.	Jackson County Area Vocational School	
	Reauthorization	

D. EDUCATION, ARTS, AND HUMANITIES CABINET

Budget Unit	1998-99	1999-00
1.	Teachers' Retirement System	
a.	Imaging System	
	Restricted Funds	700,000
2.	School Facilities Construction Commission	
a.	School Facilities Construction Commission	
	Reauthorization (\$35,700,000-Bond Funds)	
	Bond Funds - Additional	201,000,000
3.	Kentucky Educational Television	
a.	Channel 15 Acquisition	
	Capital Construction Surplus	1,100,000
4.	Kentucky Historical Society	
a.	Legacy II - Kentucky History Center Enhancement	
	Other Funds (1997-98 - \$1,599,000)1,599,000	
b.	Kentucky History Center Network/Communications	
	General Fund	958,000
	Other Funds	349,000

Total	1,307,000		
5. Kentucky Center for the Arts			
a. Maintenance Pool			
Investment Income		350,000	150,000

E. CABINET FOR FAMILIES AND CHILDREN

Budget Unit	1998-99	1999-00	
1. Administration Services			
a. Maintenance Pool			
Investment Income		300,000	300,000
b. Kenton County - Lease			
c. Warren County - Lease			
d. Campbell County - Lease			
e. Hardin County - Lease			
f. Kenton County - Lease			
g. Jefferson County - Lease			
h. Franklin County - Lease			
i. Fayette County - Lease			

F. FINANCE AND ADMINISTRATION CABINET

Budget Unit	1998-99	1999-00	
1. General Administration			
a. Kentucky Infrastructure Authority - Wastewater Revolving Loan and Grant Fund-A (Wastewater Fund-A1; Water Supply Fund-A2) Reauthorization (\$9,351,000 - Bond Funds)			
Bond Funds - Additional		5,600,000	
Federal Funds		40,000,000	
Total	45,600,000		

Included in the above Bond Funds appropriation is the funding required in each fiscal year for the state match necessary to receive Federal Funds for the Rural Communities Hardship Grants program administered by the Natural Resources and Environmental Protection Cabinet.

The Kentucky Infrastructure Authority is authorized to expend the cash balances from loan repayments on deposit at the trustee bank for financial assistance, in the form of low interest loans, to governmental agencies for professional planning and preliminary engineering design work required for eligible Fund A wastewater projects.

b. Kentucky Infrastructure Authority - Fund F Loans - Drinking Water			
Bond Funds		5,000,000	
Federal Funds		25,000,000	
Total	30,000,000		
c. Statewide Digital Basemap			
Investment Income		1,121,000	

Federal Funds	1,231,000
Total	2,352,000

d. Kentucky Infrastructure Authority - Fund B Waterline/Sewer Grant Program

Restricted Funds	13,000,000
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Notwithstanding KRS 224A.112, the Kentucky Infrastructure Authority is authorized to expend the cash balances from loan repayments on deposit at the trustee bank for financial assistance, in the form of grants, totaling \$2,500,000 to Meade County Fiscal Court for the waterline extension project, \$3,000,000 for the Hindman Sewer Infrastructure Project, \$3,500,000 for the Midway Wastewater Treatment Plant Project, and \$4,000,000 for the Richmond sewer infrastructure project.

Notwithstanding the provisions of KRS 224A.112(5) and (6), the Kentucky Infrastructure Authority may use funds available in the Infrastructure Revolving Fund to develop a program for construction of drinking water projects. The Kentucky Infrastructure Authority shall establish project prioritization criteria in consultation with the Water Resources Development Commission.

2. Department for Administration

For the major equipment purchases displayed in this section as Restricted Funds supported projects, it is anticipated that these funds shall be transferred from the Operating Budget as funds are available and needed.

a. Bar Code Printing and Sorting Equipment

Restricted Funds (1997-98 - \$73,000)

b. Franklin County - Lease (300 Myrtle Avenue)

3. Department for Facilities Management

a. Winchester State Office Building

Bond Funds	2,500,000
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b. Ballard County Jail

General Fund	100,000
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c. Ben C. Clement Mineral Museum

General Fund	169,000
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d. Breckinridge County Courthouse Elevator

General Fund	150,000
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e. Campbell County Fire Training Center

General Fund	240,000
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f. Caverna Memorial Hospital Renovation

General Fund	350,000
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g. Center for Women and Families Roof

General Fund	75,000
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h. Children's Advocacy/Spouse Abuse Projects

General Fund	1,500,000
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i. Estill County Courthouse Renovation

General Fund	200,000
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j. Hancock County Emergency Vehicle Building

General Fund	100,000
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k. Kentucky Advanced Technical Institute Wood Industries

	General Fund	100,000	
l.	Lancaster City Hall Renovation		
	General Fund	200,000	
m.	Letcher County Athletic Project		
	General Fund	29,000	
n.	Oak and Acorn		
	General Fund	250,000	
o.	Scott County Vegetable Processing		
	General Fund	50,000	
p.	The CASA Center/New Directions Housing		
	General Fund	250,000	
q.	Americans with Disabilities Act Compliance		
	Investment Income	250,000	
r.	Capital Construction and Equipment Purchase Contingency Fund		
	Investment Income	7,500,000	
s.	Capital Plaza Complex Repairs		
	Investment Income	1,374,000	1,026,000
t.	Emergency Repair, Maintenance and Replacement Fund		
	Investment Income	5,000,000	
u.	Kentucky State Capitol Dome Renovation/Restoration		
	Investment Income (1997-98 - \$698,000)		
v.	Kentucky State Capitol Master Plan/Programming		
	Investment Income	950,000	
w.	Maintenance Pool		
	Restricted Funds	500,000	
	Investment Income	1,175,000	1,449,000
	Total	1,675,000	1,449,000

The Restricted Funds appropriation in fiscal year 1998-99 shall be funded from the State Surplus Property program.

x.	Maintenance Pool - Statewide Deferred		
	Investment Income	1,000,000	
y.	New Capitol Complex Parking Structure Repairs		
	Investment Income		1,000,000

4. Office of the Secretary

Community Infrastructure Projects

The Community Infrastructure Projects displayed in this section are funded from the General Fund.

a.	Allen County - 4-Way Stop Park	350,000	
b.	Allen County - Roadside Park	50,000	

c.	Ashland Summer Motion Concert	5,000	5,000
d.	Bellevue - Parks Renovation	100,000	
e.	Boyd County Sewer Project	1,500,000	
f.	Casey County Youth & Community Center	110,000	
g.	Chickasaw Park Pond Dioxin Study	30,000	30,000
h.	Dayton - Parks Renovation	100,000	
i.	Dema - Rescue Squad Fire Department	200,000	
j.	Dewey Lake - Environmental Cleanup	50,000	
k.	Elizabethtown - Children's Science and Learning Center	500,000	
l.	Estill Co. Board of Education Swimming Pool Renovation	75,000	
m.	Estill Co. Community & Economic Development Consolidation Facility	240,000	
n.	Fayette County - Aviation Museum of KY	125,000	
o.	Fayette County - Cardinal Run Park Development	100,000	
p.	Fish Trap Lake - Environmental Cleanup	50,000	
q.	Floyd County - Samuel May House	50,000	
r.	Capital Area Community Improvement Pool	175,000	
s.	Hardin County - Challenger Center for Space Science	350,000	
t.	Harrodsburg/Mercer County Parks	250,000	
u.	Hart County Water Project	550,000	
v.	Hazard Senior Citizens Center Addition - Kitchen/Meeting Room/Dining Area	250,000	
w.	Henry County Community Park	150,000	
x.	High Bridge Park Restoration	100,000	
y.	Hopkinsville Convention Center - Design	350,000	
z.	Irvine Equipment Shelter	15,000	
aa.	Jefferson County - Dare to Care, Inc.	250,000	
ab.	Jenny Wiley Theater Debts/Renovation	200,000	
ac.	Kentucky Horse Park - Calumet Trophies	1,500,000	
ad.	Kite - Topmost Fire Department	50,000	
ae.	Lancaster - Owsley House - New Carriage House/Picnic Area	20,000	
af.	Loretto Child Care Center	75,000	
ag.	Louisville - Iroquois Park Horse Trails	25,000	
ah.	Marydale Little League Ballpark Repairs	15,000	

ai.	Mayfield - Ice House Project	25,000	
aj.	Mayfield - Main Street Project	100,000	
ak.	Maysville Convention Center Study	50,000	
al.	Mousie - Fire Department	50,000	
am.	Nebo Community Center	30,000	
an.	Oakland - Improvements to City Hall and Community Center	40,000	
ao.	Okolona Public Library	10,000	
ap.	Old Bardstown Village, Inc. - Renovation of Facilities and Miscellaneous Development	75,000	
aq.	Owen County Industrial Development Authority	150,000	
ar.	Prestonsburg Recreational Park and Golf Course	2,000,000	
as.	Prestonsburg Water and Sewer Project	1,500,000	
at.	Richmond Area Arts Center - Southeast Arts Consortium	50,000	50,000
au.	Sandy Hook - Downtown Revitalization	30,000	
av.	Scott County - Senior Citizens Facility	300,000	
aw.	Shively Police Dept. Trunk Mounted Radar Unit	3,000	
ax.	Simpson County- Industrial Park	200,000	
ay.	Smith's Grove - Sidewalks Historic Downtown	85,000	
az.	Taylorsville Lake Campground - Design of Pool	150,000	
ba.	Terryville Water Project	250,000	
bb.	Upton Community Center	50,000	
bc.	Warren County - Riverfront Development	700,000	
bd.	Williamsburg Community Center and Water Park	125,000	
be.	Williamstown Lake Dam & Spillway, Grant County	200,000	
bf.	WKU Multi-purpose Livestock Holding Pen	215,000	
bg.	Woodford County Park - Kitchen and Restroom	50,000	
bh.	Woodford County - Jack Jouett House Roof Repair	10,000	
bi.	University Press Foundation	300,000	
bj.	Jefferson County Community Center	450,000	
bk.	Bourbon County Alternative School	400,000	
bl.	Elkhorn City Park Renovation	75,000	
bm.	West Louisville Environmental Justice/Air Pollution Project	150,000	150,000
bn.	Air Monitoring and Citizen Education - West		

ACTS OF THE GENERAL ASSEMBLY

Louisville	25,000	25,000
bo. Hickman County Recreational Project		40,000
bp. City of Carlisle Project		50,000
bq. Bracken County Water Line		300,000
br. City of Hindman Water System Improvements	250,000	
bs. City of Hindman Community Center/City Office Building	500,000	
bt. Big Sandy Area Development District - Prestonsburg Senior Citizens Facility		400,000
bu. Big Sandy Area Development District - Martin Senior Citizens Facility		300,000
bv. Big Sandy Area Development District - Wheelwright Senior Citizens Facility		100,000
bw. Kentucky River Area Development District - Jackson Community Center/Senior Center	500,000	
bx. City of Wayland Community Center		50,000
by. Wheelwright Water and Sewer Project		300,000
bz. Breathitt County High School Recreational Facility		400,000
ca. Tri-Cities - Harlan County Community Improvement Pool		500,000
cb. Casey County Fire Departments Communication Network Equipment		10,000
cc. Local Rescue Squads Grant Program		275,000
cd. Local Fire Departments Capital Assistance Program		715,000
TOTAL	20,498,000	385,000

Included in the Capital Area Community Improvement Pool are the following individual projects and related amounts: City of Frankfort design and construction costs for the road to Fort Hill - \$80,000; City of Frankfort park furniture - \$8,000; Franklin County Fiscal Court for the Bald Knob Water District Project - \$30,000; Franklin County Fiscal Court for the Stoney Creek Bridge - \$30,000; Franklin County Fiscal Court for the Industrial Park improvements - \$22,000; and Franklin County Fiscal Court for identifying road signs to assist 9-1-1 calls - \$5,000. Included in the Tri-Cities - Harlan County Community Improvement Pool are the following individual projects and related amounts: Southeast Community College for 4 tennis courts - \$85,000; Benham Fire Station - \$50,000; Blair Community Park - \$25,000; Gulston Community Park - \$25,000; Cloverfork Community Park - \$25,000; Wallins Fellowship Center - \$25,000; Green Hill Community Park - \$25,000; Cloverfork Multi-Purpose Center - \$25,000; Industrial Development Inducement activities identified by the Kingdom Come Industrial Development Authority in Cumberland, Kentucky - \$215,000. The \$1,500,000 for the Boyd County Sewer Project shall be used to replace the existing debt obligation within the current project scope for the Boyd County U.S. 60/I-64 Corridor Sewer Project.

Included in the Local Rescue Squads Grant Program are the following grants: \$100,000 each for the Floyd County Rescue Squad and the Left Beaver Creek Rescue Squad, and \$75,000 for the Johnson County Rescue Squad.

Included in the Local Fire Departments (FD) Capital Assistance Program are the following individual grants: Monroe County - Monroe County FD - \$25,000, Fountain Run FD - \$10,000, Flippin FD - \$10,000, Mud Lick FD - \$10,000, and Thompkinsville FD, \$10,000; Cumberland County - Burkesville FD - \$25,000, and Marrowbone FD - \$15,000; Wayne County - Wayne County FD - \$40,000; McCreary County - West McCreary County FD - \$10,000, McCreary County FD - \$10,000, North McCreary County FD - \$15,000, South McCreary County FD - \$25,000, and

Eagle/Sawyer FD - \$25,000; Whitley County - Woodbine FD - \$15,000, Oak Grove FD - \$15,000, Rockhold FD - \$15,000, Pleasant View FD - \$15,000, Emlyn FD - \$15,000, South Whitley FD - \$15,000, Patterson Creek FD - \$15,000, and West Central FD, \$15,000; City of Shively FD - \$65,000; \$50,000 each for the Robertson County, Lewis County and Carter County Volunteer Fire Departments; and \$25,000 each for the following Knott County fire departments - Hindman, Ball Creek, Fisty, Carr Creek, Caney Creek and Sassafras.

5. Department of Information Systems

For the major equipment purchases displayed in this section as funded from Restricted Funds, it is anticipated that these funds shall be transferred from the Operating Budget funds as funds are available and needed.

a.	Kentucky Information Highway Upgrade/Expansion		
	Restricted Funds	1,500,000	1,500,000
b.	Disk Storage Complex Expansion		
	Restricted Funds	418,000	
c.	Enterprise Disk Controller		
	Restricted Funds	345,000	
d.	Enterprise Disk Controller		
	Restricted Funds		345,000
e.	Enterprise Disk Storage Group		
	Restricted Funds	460,000	
f.	Enterprise Disk Storage Group		
	Restricted Funds		460,000
g.	Enterprise Server		
	Restricted Funds	4,470,000	
h.	Enterprise Server		
	Restricted Funds		3,335,000
i.	Imaging System		
	Restricted Funds	1,150,000	
j.	Processor Complex Expansion		
	Restricted Funds	2,588,000	
k.	Tape Controller and Transports		
	Restricted Funds		313,000
l.	Tape Controller and Transports		
	Restricted Funds	313,000	
m.	Teleprocessing Controller		
	Restricted Funds	525,000	
n.	Franklin County - Lease (100 Fair Oaks)		
6.	Lottery Corporation		
a.	Contingency on Property Adjacent to New Headquarters		
	Other Funds	1,500,000	
b.	Instant Ticket Vending Machines		

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	Other Funds	3,420,000	3,420,000
c.	Play Centers for Retail Outlets		
	Other Funds	325,000	325,000
d.	Potential Buyout of On-line Gaming System		
	Other Funds	24,447,000	

A decision by the Lottery Corporation Board to exercise the buyout option authorized here must first obtain the concurrence and approval of the Secretary of the Finance and Administration Cabinet.

e.	Pull Tab Ticket Vending Machines		
	Other Funds	2,304,000	2,304,000
f.	Automate Sales Force Communications		
	Other Funds	275,000	
g.	Data Processing, Telecommunications and Related Equipment		
	Other Funds	3,350,000	
h.	Replacement of Personal Computers		
	Other Funds	160,000	160,000
i.	Upgrade AS 400 Disk Capacity		
	Other Funds	375,000	
j.	Upgrade AS 400 to RISC Technology		
	Other Funds	1,020,000	
k.	Upgrade Communications of Regional Offices to ATM		
	Other Funds	350,000	
l.	Upgrade to Distributed Processing Model		
	Other Funds	300,000	

The Kentucky Lottery Corporation may acquire properties related to the consolidation of the Kentucky Lottery's facilities assuming one or more of the properties becomes available for purchase. The purchase price of the properties shall not exceed \$1,500,000 in the aggregate.

G. CABINET FOR HEALTH SERVICES

Budget Unit	1998-99	1999-00
1. Department for Mental Health/Mental Retardation Services		
a. Emergency Generator Replacement - Glasgow Skilled Nursing Facility		
Capital Construction Surplus (1997-98 - \$550,000)		
b. Emergency Generator Replacement - Central State Hospital		
Capital Construction Surplus (1997-98 - \$550,000)		
c. Franklin County - Lease (Fair Oaks Building)		
d. Maintenance Pool		
Investment Income	450,000	450,000
e. Miscellaneous Roof Replacement/Repair Pool		
Investment Income	400,000	

H. JUSTICE CABINET

Budget Unit	1998-99	1999-00	
1. Department of State Police			
a. Maintenance Pool			
Investment Income		200,000	200,000
b. Inductively Coupled Mass Spectrometer			
Federal Funds		150,000	
Capital Construction Surplus		50,000	
Total	200,000		
c. Microspectrometer			
Federal Funds		90,000	
Capital Construction Surplus		30,000	
Total	120,000		
d. Integrated Criminal Apprehension Program (ICAP) Upgrade			
Bond Funds		1,583,000	
e. Kentucky State Police - Automated Fingerprint Identification System (AFIS)			
Federal Funds		1,871,000	
f. Kentucky State Police - Kentucky Accident Reporting System (CRASH)			
Federal Funds		913,000	
Bond Funds		1,587,000	
Total	2,500,000		
g. Replacement of Basic Radio System			
Bond Funds		20,082,000	
h. La Grange State Police Post			
Bond Funds		1,200,000	
i. Hazard State Police Post			
Bond Funds		1,450,000	
2. Department of Juvenile Justice			
a. 40-Bed Bootcamp			
Federal Funds (1997-98 - \$621,000)			
b. Expansion of Breathitt County Detention Center			
Bond Funds		2,500,000	
c. Maintenance Pool			
General Fund		500,000	
Investment Income		400,000	400,000
Total	900,000	400,000	
d. New Maximum Security Facility			
Bond Funds		8,410,000	
e. Northern Kentucky Treatment Center - HVAC Replacement			

	General Fund	558,000	
f.	Secure Juvenile Detention Facility #1		
	Bond Funds	5,357,000	
g.	Secure Juvenile Detention Facility #2		
	Bond Funds	5,357,000	
h.	Secure Juvenile Detention Facility #3		
	Bond Funds	5,357,000	
3.	Department of Corrections		
a.	Blackburn Correctional Complex - 200-Bed Minimum Security Dorm-Phase I		
	Bond Funds	5,195,000	
b.	Correctional Industries Warehouse/Office Complex		
	Restricted Funds	2,741,000	
c.	Execution Building		
	General Fund	643,000	
d.	Kentucky Correctional Institution for Women Expansion - Phase I		
	Bond Funds	16,434,000	
e.	Maintenance Pool		
	Investment Income	1,400,000	1,400,000
f.	Northpoint Training Center-Water Storage Tank and Water Line Replacement		
	Bond Funds	849,000	
g.	New 1,790-Bed Medium Security Facility for Men (Design and Site Acquisition Only)		
	Bond Funds	3,440,000	
h.	Replace Fire Alarm System		
	Investment Income	450,000	
i.	Correctional Industries/Heidelberg Print Press		
	Restricted Funds	151,000	
j.	Correctional Industries - Unitized Tooling		
	Restricted Funds	109,000	
k.	Embroidery Machine		
	Restricted Funds	110,000	
l.	HPM Press-License Tags		
	Restricted Funds	165,000	
m.	Kluge Letter Press		
	Restricted Funds	110,000	
n.	Washer System		
	Restricted Funds	112,000	
o.	Automated Fingerprinting and Photo System		

Restricted Funds	90,000	90,000
p. Jefferson County - Lease (Probation and Parole)		
q. Jefferson County - Lease (Criminal Justice Training)		

I. LABOR

Budget Unit	1998-99	1999-00
1. Office of the Secretary		
a. Computer Imaging System		
Restricted Funds - Additional	656,000	470,000
b. Franklin County - Lease (127 Building South)		
2. Department of Workers Claims		
a. Franklin County - Lease (1270 Louisville Road)		

J. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Budget Unit	1998-99	1999-00
1. General Administration and Support		
a. Kentucky Heritage Land Conservation Fund - Reauthorization		
Restricted Funds - Additional	7,500,000	3,500,000
b. Maintenance Pool		
Investment Income	100,000	100,000
2. Department for Environmental Protection		
a. State-Owned Dam Repair - Reauthorization		
Investment Income - Additional	500,000	500,000
<p>These funds shall not be expended for the repair of dams owned by the Kentucky Department of Fish and Wildlife Resources or the Kentucky Transportation Cabinet.</p>		
b. State-Funded Leaking Underground Storage Tanks - Reauthorization		
Restricted Funds - Additional	500,000	500,000
c. Hazardous Waste Management Fund - Reauthorization		
Restricted Funds - Additional	2,100,000	2,100,000
d. Franklin County - Lease (Ash Properties)		
e. Franklin County - Lease (Air Quality)		
f. Maxey Flats Monitoring Equipment		
General Fund	191,000	
3. Department for Natural Resources		
a. Forestry Underground Storage Tank Removal		
Investment Income	200,000	

b.	Forestry Equipment		
	General Fund	500,000	
4.	Department for Surface Mining Reclamation and Enforcement		
a.	Franklin County - Lease (Hudson Hollow)		
5.	Kentucky River Authority		
a.	Locks and Dams - Acquisition		
	Reauthorization		
b.	Kentucky River Water Release System -		
	Reauthorization (\$2,000,000 - Agency Bonds)		
	Restricted Funds - Additional	800,000	
	Agency Bonds - Additional	2,000,000	
	Total	2,800,000	
c.	Kentucky River Lock 6 Repairs		
	Restricted Funds	302,000	
6.	Kentucky Nature Preserves Commission		
a.	Nature Preserves Acquisition Fund -		
	Reauthorization		
	Restricted Funds - Additional	30,000	30,000
	Other Funds - Additional	300,000	300,000
	Total	330,000	330,000

K. PERSONNEL CABINET

Budget Unit	1997-98	1998-99	1999-00
1.	Personnel		
a.	Franklin County - Lease		
b.	Public Health Insurance		
	Database/Imaging System		
	Restricted Funds	1,600,000	

L. POSTSECONDARY EDUCATION

Budget Unit	1998-99	1999-00
1.	Council on Postsecondary Education	
a.	Agency Bond Pool	
	Agency Bonds	35,000,000
b.	Commonwealth Virtual University Technology Pool	
	Bond Funds	30,000,000
c.	Deferred Maintenance and Government Mandates Pool	
	Restricted Funds	20,613,000
	Bond Funds	20,613,000
	Total	41,226,000

d.	Research Equipment and Lab Replacement or Acquisition Pool		
	Bonds Funds	26,250,000	
e.	University of Kentucky Center for Rural Health		
	Agency Bonds	6,100,000	
2.	Kentucky Higher Education Assistance Authority		
a.	Kentucky Higher Education Assistance Authority Office Building		
	Restricted Funds (1997-98 - \$310,000)	1,400,000	
	Agency Bonds	9,000,000	
	Total	10,400,000	
b.	Development Departmental Processor Upgrade		
	Restricted Funds	275,000	
c.	Imaging System Upgrade		
	Restricted Funds	250,000	
d.	Franklin County - Lease		
e.	Production Departmental Processor Upgrade		
	Restricted Funds	650,000	
f.	System Laser Upgrade		
	Restricted Funds	275,000	
g.	Tape Management System		
	Restricted Funds	250,000	
3.	Eastern Kentucky University		
a.	Americans with Disabilities Act Compliance		
	Restricted Funds	2,560,000	
b.	E & G Life Safety Begley Elevator		
	Restricted Funds	750,000	
c.	Law Enforcement Basic Training Complex		
	Agency Bonds	20,000,000	
d.	Minor Projects Maintenance		
	Restricted Funds	6,000,000	6,000,000
e.	Parking Garage		
	Restricted Funds	7,200,000	
f.	Property Acquisition		
	Restricted Funds	2,000,000	3,000,000
g.	Residence Hall Major Renovation		
	Restricted Funds	10,000,000	
h.	Student Service/Classroom Building		
	Bond Funds	20,000,000	
i.	Electronic Security System for Law Library		

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	Restricted Funds	110,000	
j.	Fourier Transformer Nuclear Magnetic Resonance Spectrometer		
	Restricted Funds	135,000	
k.	Minor Projects Equipment		
	Restricted Funds	2,500,000	2,500,000
l.	Academic Computing Upgrades		
	Restricted Funds	120,000	120,000
m.	Administrative Computing System Upgrade/Replacement		
	Restricted Funds	490,000	490,000
n.	Campus Data Network Expansion/Upgrade		
	Restricted Funds	950,000	950,000
o.	Distance Learning System Component Acquisition		
	Restricted Funds	2,960,000	
p.	Education Reform Computing Telecommunications Expansion		
	Restricted Funds	700,000	750,000
4.	Kentucky State University		
a.	Americans with Disabilities Act Projects Pool		
	Restricted Funds	650,000	
b.	Chiller Additions		
	Restricted Funds	2,168,000	
c.	Combs Hall Renovation		
	Restricted Funds		1,235,000
d.	General Maintenance Projects		
	Restricted Funds	1,150,000	
e.	Guard Houses		
	Restricted Funds		56,000
f.	Hill Student Center Renovation/Addition		
	Bond Funds	8,250,000	
g.	Hillcrest Renovation and Landscaping		
	Restricted Funds	382,000	
h.	Hunter Hall Renovation		
	Restricted Funds	1,257,000	
i.	Kentucky State University Foundation Building		
	Other Funds		1,715,000
j.	McCullin Hall Renovation		
	Restricted Funds	1,642,000	
k.	Road and Walkway Improvements		
	Restricted Funds - Additional	22,000	

1.	University Motor Coach		
	Restricted Funds	285,000	
5.	Morehead State University		
a.	1990 Clean Air Act Amendment Compliance		
	Restricted Funds	1,100,000	1,100,000
b.	Americans with Disabilities Act Compliance - E & G		
	Restricted Funds	1,025,000	1,000,000
c.	Americans with Disabilities Act Compliance - Auxiliary Enterprise		
	Restricted Funds	1,100,000	1,075,000
d.	Breckinridge Hall Renovation		
	Bond Funds	14,000,000	
e.	Central Campus Reconstruction		
	Restricted Funds	650,000	
f.	Equine Teaching Facilities/Renovation of Richardson Arena		
	Restricted Funds - Additional	480,000	
g.	Fire Safety/Auxiliary Facilities		
	Restricted Funds	610,000	610,000
h.	Head Start Facility		
	Restricted Funds	144,000	
	Federal Funds	576,000	
	Total	720,000	
i.	Land Acquisitions Related to Campus Master Plan		
	Restricted Funds	1,337,000	
j.	Life Safety: Claypool-Young Air Quality, Health and Safety		
	Restricted Funds	400,000	
k.	Life Safety: Dam Repair/Restoration		
	Restricted Funds	800,000	
l.	Life Safety: Elevator Repairs		
	Restricted Funds	850,000	
m.	Plant Facilities Construction		
	Restricted Funds	2,000,000	
n.	Protect Investment in Auxiliary Facilities		
	Restricted Funds	1,210,000	1,210,000
o.	Protect Investment in E & G Facilities		
	Restricted Funds	1,650,000	1,650,000
p.	Renovation of Family Housing Complexes		
	Restricted Funds	2,000,000	
q.	Instructional Technology Initiatives		

	Restricted Funds	1,702,000	
r.	Instructional and Support Equipment		
	Restricted Funds	1,366,000	
s.	Nuclear Magnetic Resonance Apparatus		
	Restricted Funds	210,000	
t.	Tour Bus		
	Restricted Funds	330,000	
u.	Administrative and Office Systems Support Initiatives		
	Restricted Funds	1,250,000	
v.	Distance Learning Technology Initiatives		
	Restricted Funds	2,725,000	
w.	Library Automation and Information Support Initiatives		
	Restricted Funds	900,000	
x.	Microcomputer/LANs/Peripherals - Instructional		
	Restricted Funds	1,800,000	
y.	Networking/Infrastructure Initiatives		
	Restricted Funds	1,508,000	
z.	West Liberty Extended Campus Building		
	Bond Funds	6,000,000	
aa.	Development of Wellness Facilities - Phase II		
	Reauthorization		
	Agency Bonds		

(Original authorization for item aa.: Council on Higher Education - 1996-98 University Restricted Funds Bond Pool Project)

6.	Murray State University		
a.	Americans with Disabilities Act Compliance: Architectural Barriers		
	E & G Pool less than \$400,000		
	Restricted Funds	1,229,000	1,192,000
b.	Americans with Disabilities Act Compliance: Architectural Barriers		
	Blackburn Science		
	Restricted Funds		1,367,000
c.	Americans with Disabilities Act Compliance: Architectural Barriers		
	H & D Pool less than \$400,000		
	Restricted Funds	415,000	475,000
d.	Asbestos Abatement: E & G Pool less than \$400,000		
	Restricted Funds	58,000	
e.	Asbestos Abatement: H & D Pool less than \$400,000		
	Restricted Funds	501,000	180,000
f.	Chlorofluorocarbon Compliance: E & G Chillers Replacement		

	Restricted Funds	476,000	421,000
g.	Chlorofluorocarbon Compliance: H & D Chillers and Monitoring System		
	Restricted Funds	370,000	370,000
h.	Carr Health/Business Building Renovations and Education Building Addition		
	Bond Funds	10,184,000	
	Other Funds	4,000,000	
	Total	14,184,000	
i.	Deferred Maintenance: H & D Pool less than \$400,000		
	Restricted Funds	868,000	894,000
j.	Deferred Maintenance: E & G Pool less than \$400,000		
	Restricted Funds	2,177,000	2,855,000
k.	Energy Conservation: E & G Pool less than \$400,000		
	Restricted Funds	496,000	
l.	Life Safety: E & G Pool less than \$400,000		
	Restricted Funds	450,000	628,000
m.	Life Safety: H & D Pool less than \$400,000		
	Restricted Funds	296,000	306,000
n.	National Scouting Museum, BSA Phase III		
	Restricted Funds - Additional		300,000
o.	Miscellaneous E & G Projects less than \$400,000		
	Restricted Funds	1,236,000	1,132,000
p.	Miscellaneous H & D Projects less than \$400,000		
	Restricted Funds	50,000	70,000
q.	Replace Clark or Franklin Hall/College		
	Restricted Funds	6,500,000	
r.	Replace Richmond Hall		
	Restricted Funds	6,500,000	
s.	Air Testing and Monitoring Equipment		
	Restricted Funds		125,000
t.	Arts Educational Equipment		
	Restricted Funds	683,000	115,000
u.	Breathitt Lab Equipment		
	Restricted Funds		661,000
v.	Equipment less than \$100,000		
	Restricted Funds	864,000	572,000
w.	General Lab Equipment Replacement		
	Restricted Funds		602,000
	Federal Funds		85,000

	Total	687,000	
x.	Replace Family and Consumer Studies Lab Equipment		
	Restricted Funds		353,000
y.	Purchasing and Accounts Payable System		
	Restricted Funds	113,000	115,000
z.	Telecommunications Switching Systems		
	Restricted Funds	120,000	
7.	Northern Kentucky University		
a.	Americans with Disabilities Act Compliance		
	Restricted Funds	400,000	
b.	Alumni and Faculty/Staff Center		
	Other Funds	3,000,000	
c.	Athletic Fields - Phase I		
	Other Funds	7,000,000	
d.	Chiller Replacements/Chlorofluorocarbon		
	Restricted Funds	4,500,000	
	Other Funds	2,600,000	
	Total	7,100,000	
e.	Covington Campus - Urban Learning Center		
	Other Funds	10,000,000	
f.	Energy Conservation/Management Pool		
	Restricted Funds	400,000	
g.	Fire Safety: E & G Sprinklers		
	Restricted Funds	400,000	
h.	Land Acquisition (1998-2000)		
	Restricted Funds	2,000,000	
i.	Landrum Structural Safety Repairs		
	Restricted Funds	650,000	
j.	Landscape Enhancement (1998-2000)		
	Other Funds	1,000,000	
k.	Minor Projects Pool (1998-2000)		
	Restricted Funds	1,095,000	
l.	Natural Science Building		
	Bond Funds - Additional	36,500,000	
m.	Northern Kentucky Convocation Center Feasibility Study		
	Restricted Funds	500,000	
n.	New Printing Press		
	Restricted Funds	175,000	

o.	Alpha Computer Expansion		
	Restricted Funds	135,000	
p.	Automatic Tape System		
	Restricted Funds	155,000	
q.	Digital Copier		
	Restricted Funds	315,000	
r.	Laser Printer		
	Restricted Funds	125,000	
s.	Voice Mail System		
	Restricted Funds	180,000	
t.	Voice-Response/Touch-Tone System		
	Restricted Funds	205,000	
8.	University of Kentucky - University System		
a.	4 KV to 12 KV Electrical Conversion		
	Restricted Funds	400,000	
b.	Academic and Research Renovation (College of Medicine)		
	Restricted Funds	625,000	
c.	Administration Building - Exterior Repair		
	Restricted Funds	1,400,000	
d.	Aging/Allied Health Building, Phase II		
	Restricted Funds	13,000,000	
	Bond Funds	20,000,000	
	Total	33,000,000	
e.	Agricultural Plant Science Facility		
	Restricted Funds	18,365,000	
f.	Agricultural Science Greenhouses - Renovation		
	Restricted Funds	750,000	
g.	Agriculture Information Center		
	Restricted Funds	800,000	
h.	Agriculture North Renovation		
	Restricted Funds	3,150,000	
i.	Agriculture Science South - Animal Care Facility Upgrade		
	Restricted Funds	900,000	
j.	Bowman Hall Renovation		
	Restricted Funds	4,300,000	
k.	Boyd Hall - HVAC		
	Restricted Funds		1,100,000
l.	Chemistry Laboratory Renovation		

ACTS OF THE GENERAL ASSEMBLY

	Restricted Funds	1,050,000	
m.	Chilled Water Additions		
	Restricted Funds	700,000	
n.	Chiller Replacement - Cooling #3		
	Restricted Funds	1,000,000	
o.	Clinical Development Space (College of Medicine)		
	Restricted Funds	500,000	
p.	Clinical Lab-Computer Assisted Learning Facility		
	Restricted Funds	450,000	
q.	Commonwealth Stadium Expansion		
	Agency Bonds	24,000,000	
r.	Cooling #3 to Limestone Street Chilled Water Pipe		
	Restricted Funds	1,800,000	
s.	Cooling Secondary Pumping		
	Restricted Funds	2,000,000	
t.	Cooper House Renovation		
	Restricted Funds	750,000	
u.	Cooperstown/Shawneetown III		
	Restricted Funds	4,500,000	
v.	Crisp Building Replacement		
	Restricted Funds	2,200,000	
w.	Deferred Maintenance and Roof Replacement Project Pool		
	Restricted Funds	9,297,000	
x.	Electrical Substation #1 and #2 Connections		
	Restricted Funds	1,500,000	
y.	Energy Conservation Project (Medical Center)		
	Restricted Funds	2,000,000	
z.	Engineering Information Center		
	Restricted Funds	650,000	
aa.	Erikson Hall Renovation		
	Restricted Funds		2,250,000
ab.	Gatton College Addition for International Business and Management Center		
	Restricted Funds	1,500,000	
ac.	Handicapped Access Pool		
	Restricted Funds	2,425,000	
ad.	High Security Isolation Facility		
	Restricted Funds		9,800,000
ae.	Holmes Hall - HVAC		

	Restricted Funds	950,000	
af.	Jewell Hall - HVAC		
	Restricted Funds		700,000
ag.	Keeneland Hall - HVAC		
	Restricted Funds		1,900,000
ah.	Kentucky Clinic Annex Replacement Building		
	Restricted Funds	6,000,000	
ai.	King South Renovation		
	Restricted Funds	10,365,000	
aj.	Lancaster Aquatics Center Expansion		
	Restricted Funds	2,573,000	
ak.	Land Acquisition		
	Restricted Funds	4,000,000	
al.	Life Safety Project Pool		
	Restricted Funds	11,400,000	
am.	Long Range Utility Planning		
	Restricted Funds	600,000	
an.	Mechanical Engineering Building		
	Restricted Funds	4,000,000	
	Bond Funds	19,600,000	
	Total	23,600,000	
ao.	Medical Center Addition		
	Restricted Funds		11,400,000
ap.	Medical Center Chilled Water Loop		
	Restricted Funds	500,000	
aq.	Medical Center Information Center		
	Restricted Funds	1,550,000	
ar.	Outpatient Clinic Expansion - Dentistry		
	Restricted Funds		2,000,000
as.	Parking Structure Expansion		
	Restricted Funds	5,654,000	
at.	Patterson Hall Renovation		
	Restricted Funds		2,950,000
au.	Pharmacy Dispensing Lab		
	Restricted Funds	600,000	
av.	Pollution Controls, Medical Center Heating Plant		
	Restricted Funds	1,333,000	
aw.	Publishing Services Building Addition		

ACTS OF THE GENERAL ASSEMBLY

	Restricted Funds	450,000
ax.	Renovation of Biological Sciences Research Space	
	Restricted Funds	1,300,000
ay.	Renovation of Funkhouser - Phase IV	
	Restricted Funds	700,000
az.	Seaton Center Addition/Renovation	
	Restricted Funds	15,350,000
ba.	Singletary Center Renovation of Auditoria and Public Spaces	
	Restricted Funds	1,850,000
bb.	Slone Building Renovation	
	Restricted Funds	3,900,000
bc.	South Campus Communications Infrastructure	
	Restricted Funds	2,294,000
bd.	Specialized Greenhouses	
	Restricted Funds	3,550,000
be.	Steam Line Expansion - Rose Street	
	Restricted Funds	700,000
bf.	Steam and Condensate Pipe Repair	
	Restricted Funds	2,100,000
bg.	Storm Sewer Improvements - Funkhouser	
	Restricted Funds	800,000
bh.	Student Center Sprinkler System	
	Restricted Funds	700,000
bi.	Student Housing/Fraternity House Replacement	
	Restricted Funds	5,600,000
bj.	Substation #2 Renovation	
	Restricted Funds	2,000,000
bk.	4.7 Tessler Human Scanner	
	Restricted Funds	4,000,000
bl.	600 MHz Nuclear Magnetic Resonance System	
	Restricted Funds	1,500,000
bm.	600 MHz Nuclear Magnetic Resonance	
	Restricted Funds	300,000
	Federal Funds	700,000
	Total	1,000,000
bn.	800 MHz Nuclear Magnetic Resonance System	
	Restricted Funds	2,500,000
bo.	9.4 Tessler Scanner	

	Restricted Funds	750,000	
bp.	ABS DNA Sequencer		
	Restricted Funds	120,000	
bq.	Area Detector Diffractometer		
	Restricted Funds	100,000	
	Federal Funds	210,000	
	Total	310,000	
br.	Autoradiography		
	Restricted Funds	207,000	
bs.	Calorimeter		
	Restricted Funds	104,000	
bt.	Confocal Microscope		
	Restricted Funds	315,000	
bu.	Confocal Microscope System		
	Restricted Funds	120,000	
bv.	DNA Sequencer		
	Restricted Funds	150,000	
bw.	DNA Sequencer		
	Restricted Funds	130,000	
bx.	DNA Sequencer		
	Restricted Funds	120,000	
by.	DNA Sequencer/Gene Mapping		
	Restricted Funds	130,000	130,000
bz.	DNA Synthesizer		
	Restricted Funds	100,000	
ca.	Differential Flow Calorimeter/Thermomechanical Analyzer		
	Restricted Funds	175,000	
cb.	Dissecting Confocal Microscope		
	Restricted Funds	200,000	
cc.	Electron Spin Resonance Instrument		
	Restricted Funds	65,000	
	Federal Funds	135,000	
	Total	200,000	
cd.	Electrophysiologic Analysis System		
	Restricted Funds	200,000	
ce.	Environmental Test System		
	Restricted Funds	125,000	
cf.	Epi-Flourescence Microscope		

	Restricted Funds	130,000
cg.	Faraday Balance	
	Restricted Funds	60,000
	Federal Funds	140,000
	Total	200,000
ch.	Flow Cytometry Lab	
	Restricted Funds	375,000
ci.	Fluorescence Activated Cell Sorter	
	Restricted Funds	200,000
cj.	Fluorescent Activated Cell Sorter	
	Restricted Funds	230,000
ck.	Freeze-Thaw Apparatus	
	Restricted Funds	100,000
cl.	GT Ultracentrifuges	
	Restricted Funds	345,000
cm.	Garbage Truck Front Loader - Replacement	
	Restricted Funds	150,000
cn.	Gas Analyzer	
	Restricted Funds	100,000
co.	Gas Chromatograph - Mass Spectrometer	
	Restricted Funds	250,000
cp.	Gas Chromatograph - Mass Spectrophotometer System	
	Restricted Funds	210,000
cq.	Gas Chromatography/Atomic Emission Detector (GC/AED)	
	Restricted Funds	120,000
cr.	HPLC to Measure Cellular Metabolites	
	Restricted Funds	100,000
cs.	HPLC/Mass Spectrometer System	
	Restricted Funds	300,000
ct.	High Power Carbon Dioxide Laser	
	Restricted Funds	250,000
cu.	High Pressure Liquid Chromatography and Accessories	
	Restricted Funds	100,000
	Federal Funds	100,000
	Total	200,000
cv.	High Resolution Mass Spectrometer	
	Restricted Funds	500,000
cw.	High Resolution Phosphor Imager	

	Restricted Funds	200,000
cx.	High Resolution STEM 400 KV	
	Restricted Funds	1,500,000
cy.	High Temperature Optical Microscope	
	Restricted Funds	105,000
cz.	High-Speed Digital Signal Processing Development System	
	Federal Funds	150,000
da.	High-Temperature X-Ray Diffractometer	
	Restricted Funds	225,000
db.	Holographic System with Image Analyzer	
	Restricted Funds	110,000
dc.	Hydro Flume	
	Restricted Funds	130,000
dd.	Image Analysis System	
	Restricted Funds	200,000
de.	Image Analyzer System	
	Restricted Funds	200,000
df.	Incinerator Replacement	
	Restricted Funds	1,600,000
dg.	Inductive Coupled Argon Plasma Unit	
	Restricted Funds	110,000
dh.	Integrated TGA/Differential Scanning Calorimeter/MS	
	Restricted Funds	120,000
di.	Inverted Microscope Including Fluoroscope	
	Restricted Funds	150,000
dj.	Isolate Cell Calcium Detector	
	Restricted Funds	110,000
dk.	Laser	
	Restricted Funds	104,000
dl.	Laser Ablation Sampling System/Attachment for ICP/MS	
	Restricted Funds	200,000
dm.	Laser Confocal Microscope	
	Restricted Funds	303,000
dn.	Laser System	
	Restricted Funds	80,000
	Federal Funds	170,000
	Total	250,000
do.	Lighting System	

	Restricted Funds	237,000
dp.	MB Ultracentrifuges	
	Restricted Funds	354,000
dq.	MB/GT Phospho-Imager	
	Restricted Funds	128,000
dr.	Motion Analysis System Upgrade	
	Restricted Funds	204,000
ds.	Nuclear Magnetic Resonance Spectrometer 300 MHz Upgrade	
	Restricted Funds	400,000
dt.	Offset Printing Press	
	Restricted Funds	150,000
du.	Oxymax Open Circuit Calorimeter	
	Restricted Funds	100,000
dv.	Plot Combine with Weighing System	
	Restricted Funds	125,000
dw.	Protein Synthesizer	
	Restricted Funds	200,000
dx.	Real Time Confocal Microscope	
	Restricted Funds	300,000
dy.	Research Grade Light Microscope	
	Restricted Funds	100,000
dz.	Solids NMR Spectrometer	
	Restricted Funds	900,000
ea.	Sterilizer	
	Restricted Funds	100,000
eb.	Sterilizing/Cleaning System	
	Restricted Funds	234,000
ec.	Stiff Testing Machine	
	Restricted Funds	140,000
ed.	Studio Recording Equipment	
	Restricted Funds	113,000
ee.	Thermal Analyzer and Powder Diffractometer	
	Restricted Funds	310,000
ef.	Three-Dimensional Scaling Device	
	Federal Funds	100,000
eg.	Tinius Olsen Ductometer	
	Restricted Funds	100,000
eh.	Transmission Electron Microscope	

	Restricted Funds	200,000	
ei.	Ultra High Vacuum Chamber		
	Restricted Funds	80,000	
	Federal Funds	170,000	
	Total	250,000	
ej.	Ultracentrifuge		
	Restricted Funds	113,000	
ek.	Upgrade of 400 MHz Nuclear Magnetic Resonance		
	Restricted Funds	160,000	
	Federal Funds	340,000	
	Total	500,000	
el.	Virtual Environment Simulator		
	Restricted Funds	125,000	
em.	Whole Body Composition Analyzer		
	Restricted Funds	150,000	
en.	X-Ray Fluorescence Instrument		
	Restricted Funds		130,000
eo.	X-Ray Fluorescence System		
	Restricted Funds	175,000	
ep.	X-Ray Laue Unit - Single Crystal		
	Restricted Funds	150,000	
eq.	3.7 Satellite Uplink		
	Restricted Funds	304,000	
er.	CAD/CAM System		
	Restricted Funds	184,000	
es.	Community College System Network Upgrade		
	Restricted Funds	1,187,000	
et.	Compressed Video - Hazard		
	Restricted Funds	136,000	
eu.	Database Testbed		
	Restricted Funds	225,000	
ev.	Department Computer Upgrade		
	Restricted Funds	225,000	
ew.	Digital Radiograph/Imaging System		
	Restricted Funds	200,000	
ex.	Distributed Testbed System		
	Restricted Funds	250,000	
ey.	Engineering Research Computing System		

	Restricted Funds	440,000	
ez.	General Chemistry Computerization		
	Restricted Funds	385,000	
fa.	Healthcare Network		
	Restricted Funds	3,000,000	
fb.	Imaging Systems I		
	Restricted Funds	328,000	
fc.	Instructional Multi-Media, Phase II		
	Restricted Funds	576,000	1,150,000
fd.	Language Lab		
	Restricted Funds	300,000	
fe.	NSF Fileserver		
	Restricted Funds	150,000	
ff.	Network Replacement		
	Restricted Funds	100,000	
fg.	Optical Disk Server		
	Restricted Funds	180,000	
fh.	Patient Classification Equipment Rural Health		
	Restricted Funds	250,000	
fi.	Satellite Uplink - Rural Health		
	Restricted Funds	400,000	
fj.	Storage Management System I		
	Restricted Funds	328,000	
fk.	Supercomputer Upgrade I		
	Restricted Funds	1,574,000	1,574,000
fl.	Telemedicine Equipment - Rural Health		
	Restricted Funds	400,000	
fm.	Telemedicine Systems		
	Restricted Funds	600,000	
fn.	Upgrading/Establishing Communication System		
	Restricted Funds	365,000	462,000
fo.	Virtual Reality Computing System		
	Restricted Funds	150,000	
fp.	College of Medicine - Clinical/Educational - Lease		
fq.	College of Medicine Clinical - Lease		
9.	Kentucky Community and Technical College System		
a.	Central Regional Postsecondary Education Center - Phase I		
	Western Kentucky University		

	Bond Funds	13,452,000
b.	Deferred Maintenance and Government Mandates Pool	
	Restricted Funds	4,387,000
	Bond Funds	4,387,000
	Total	8,774,000
c.	Hazard Community College Classroom Building - Phase II	
	Bond Funds	6,500,000
d.	Kentucky Advanced Technology Institute - Land Acquisition	
	General Fund	265,000
e.	Kentucky Tech College of Arts and Crafts	
	Bond Funds	4,100,000
f.	South Central Regional Postsecondary Education Center	
	Bond Funds	6,537,000
g.	Kentucky Tech Danville: Regional Technology Center - Phase I	
	Bond Funds	6,985,000
h.	Madisonville Community College - Science/Technical Classroom Building	
	Bond Funds	4,900,000
	Federal Funds	500,000
	Total	5,400,000
i.	Madisonville Community College: Muhlenberg County Classroom Building	
	Restricted Funds	3,500,000
j.	Maysville Community College and Kentucky Tech Maysville: New Technology Center	
	Bond Funds	7,500,000
k.	New Kentucky Tech Shelby County Campus and Jefferson Community College Extension Center	
	Bond Funds	10,758,000
l.	Northeast Regional Postsecondary Education Center Morehead State University	
	Bond Funds	6,650,000
m.	Paducah Community College Engineering Building Infrastructure Completion	
	General Fund	709,000
n.	Paducah Community College Engineering Building Instructional Labs	
	General Fund	734,000
o.	Paducah Community College Library Renovation	
	General Fund	1,150,000
p.	Somerset Community College and Kentucky Tech - Academic Support/Technical Education Complex	

	Bond Funds	10,258,000
q.	South Regional Postsecondary Education Center - Phase I Western Kentucky University	
	Bond Funds	9,000,000
r.	Southeast Regional Postsecondary Education Center - Phase I Eastern Kentucky University	
	Bond Funds	13,185,000
s.	West Regional Postsecondary Education Center Murray State University	
	Bond Funds	6,650,000
t.	Hazard Regional Technology Center: Articulating Grader	
	Restricted Funds	187,000
u.	Hazard Regional Technology Center: Bulldozer	
	Restricted Funds	478,000
v.	Hazard Regional Technology Center: Endloader	
	Restricted Funds	161,000
w.	Automated Administrative Systems	
	Restricted Funds (1997-98 - \$10,300,000)	
	Bond Funds (1997-98 - \$3,200,000)	
x.	Belinda Mason Academic/Technical Building	
	Bond Funds	5,000,000
y.	Jefferson Community College - Interactive Television	
	Restricted Funds	100,000
z.	Maysville Community College - Interactive Television	
	Restricted Funds	100,000
10.	University of Kentucky Hospital	
a.	Biohazard/Environmental Protection I	
	Restricted Funds	1,500,000
b.	Building Connectors II	
	Restricted Funds	2,200,000
c.	Building/Site Upgrade II	
	Restricted Funds	710,000
d.	Data Systems Expansion I	
	Restricted Funds	595,000
e.	Diagnostic Service Upgrade VII	
	Restricted Funds	1,100,000
f.	Diagnostic Services Upgrade VIII	
	Restricted Funds	1,100,000

g.	HVAC Upgrade		
	Restricted Funds		3,500,000
h.	Hospital Kitchen Renovation I		
	Restricted Funds	1,000,000	
i.	Hospital Kitchen Renovation II		
	Restricted Funds	520,000	
j.	Hospital Parking Expansion		
	Restricted Funds		3,100,000
k.	Imaging Services		
	Restricted Funds	3,500,000	
l.	Implementation of Land Use Plan II		
	Restricted Funds	2,500,000	
m.	Intra-Hospital Transportation Systems III		
	Restricted Funds	700,000	
n.	Limited Stay Facility		
	Restricted Funds	5,200,000	
o.	Markey Fourth Floor Renovation		
	Restricted Funds	3,800,000	
p.	Materials Handling Storage/Distribution Center		
	Restricted Funds	970,000	
q.	Nursing Unit Modification VI		
	Restricted Funds	940,000	
r.	Nursing Unit Modification VIII		
	Restricted Funds	3,500,000	
s.	Outpatient Care Facility		
	Restricted Funds	3,500,000	
t.	Outpatient Diagnostic and Treatment Center		
	Restricted Funds	14,000,000	
u.	Outpatient Services		
	Restricted Funds	3,600,000	
v.	Parking Structure I		
	Restricted Funds	6,600,000	
w.	Parking Structure II		
	Restricted Funds	6,600,000	
x.	Patient Care Facility/Women's Cancer Center		
	Restricted Funds	8,000,000	
y.	Primary Care Center		
	Restricted Funds	13,200,000	

z.	Utility System Upgrade III	
	Restricted Funds	1,500,000
aa.	Angiographic Unit	
	Restricted Funds	1,950,000
ab.	Automated Screening System	
	Restricted Funds	200,000
ac.	Breast Radiographic	
	Restricted Funds	250,000
ad.	CT Scanner	
	Restricted Funds	1,600,000
ae.	Cardiac Catheterization Lab	
	Restricted Funds	4,000,000
af.	Cardiac Ultrasound	
	Restricted Funds	300,000
ag.	Catheterization Lab	
	Restricted Funds	2,500,000
ah.	Digital Enhancement	
	Restricted Funds	850,000
ai.	Digital Radiology	
	Restricted Funds	1,750,000
aj.	Digital Radiology	
	Restricted Funds	800,000
ak.	Digitract Orbitor Camera	
	Restricted Funds	250,000
al.	EKG Management System	
	Restricted Funds	250,000
am.	EKG Unit	
	Restricted Funds	400,000
an.	EMG Unit	
	Restricted Funds	200,000
ao.	Echocardiography Equipment	
	Restricted Funds	300,000
ap.	Electrophysiology Lab	
	Restricted Funds	1,500,000
aq.	Electrophysiology Laboratory	
	Restricted Funds	1,250,000
ar.	Endoscopy Video/Ultrasound	
	Restricted Funds	250,000

as.	Endoscopy Video/Ultrasound	
	Restricted Funds	300,000
at.	Fluoroscopy Unit	
	Restricted Funds	500,000
au.	Gamma Knife Upgrade	
	Restricted Funds	2,000,000
av.	General Radiography Unit	
	Restricted Funds	800,000
aw.	General Radiography/Fluoroscopic Unit	
	Restricted Funds	500,000
ax.	General Radiology Unit	
	Restricted Funds	500,000
ay.	General Radiology Unit	
	Restricted Funds	800,000
az.	Hyperbaric Chamber	
	Restricted Funds	150,000
ba.	Infectious Disease Detection System	
	Restricted Funds	102,000
bb.	Laboratory Analyzer	
	Restricted Funds	200,000
bc.	Laboratory Analyzer	
	Restricted Funds	200,000
bd.	MRI	
	Restricted Funds	2,500,000
be.	MRI Upgrade	
	Restricted Funds	500,000
bf.	Mobile Fluoroscopy	
	Restricted Funds	200,000
bg.	Mobile Radiology Unit	
	Restricted Funds	200,000
bh.	Neuro-Radiography Unit	
	Restricted Funds	1,500,000
bi.	Nuclear Medicine Camera	
	Restricted Funds	750,000
bj.	OB Ultrasound	
	Restricted Funds	300,000
bk.	Radiation Therapy Unit	
	Restricted Funds	1,800,000

bl.	Radiology Ultrasound	
	Restricted Funds	400,000
bm.	SPECT System	
	Restricted Funds	750,000
bn.	Scrub Dispenser	
	Restricted Funds	225,000
bo.	Surgical Laser	
	Restricted Funds	200,000
bp.	Surgical Laser	
	Restricted Funds	200,000
bq.	Surgical Microscope	
	Restricted Funds	300,000
br.	Surgical Mirroscope	
	Restricted Funds	300,000
bs.	Treatment Planning System	
	Restricted Funds	1,200,000
bt.	UROL Table	
	Restricted Funds	300,000
bu.	Vascular Ultrasound	
	Restricted Funds	300,000
bv.	ALIS	
	Restricted Funds	800,000
bw.	Clinical Information System	
	Restricted Funds	1,000,000
bx.	Clinical Information System	
	Restricted Funds	3,000,000
by.	Clinical System Enterprise	
	Restricted Funds	5,000,000
bz.	Digital Imaging	
	Restricted Funds	750,000
ca.	Digital Medical Record Expansion	
	Restricted Funds	2,000,000
cb.	Infrastructure Communication Enterprise	
	Restricted Funds	5,000,000
cc.	Managed Care Enterprise	
	Restricted Funds	1,000,000
cd.	Mass Storage Capability	
	Restricted Funds	300,000

ce.	Mass Storage Capability		
	Restricted Funds	200,000	
cf.	Patient System Enterprise		
	Restricted Funds	4,000,000	
cg.	Perioperative Clinical		
	Restricted Funds	350,000	
ch.	State Communication Enterprise		
	Restricted Funds	3,000,000	
ci.	Telecommunications		
	Restricted Funds	800,000	
cj.	Telecommunications		
	Restricted Funds	1,250,000	
ck.	Upgrade Disk Capacity		
	Restricted Funds	450,000	
cl.	Upgrade Disk Capacity		
	Restricted Funds	250,000	
cm.	Upgrade HIS Computing Facilities		
	Restricted Funds	2,500,000	
cn.	Upgrade Printing Capacity		
	Restricted Funds	400,000	
co.	Upgrade Tape Capacity		
	Restricted Funds	250,000	
cp.	Upgrade Telecommunications Facilities		
	Restricted Funds	250,000	
cq.	Upgrade Telecommunications Facilities		
	Restricted Funds	750,000	
11.	University of Louisville		
	a. Americans with Disabilities Act Project Pool		
	Restricted Funds	6,729,000	
	b. Chlorofluorocarbon Project-Phase II		
	Restricted Funds	1,325,000	
	c. Chlorofluorocarbon Project, Phase III		
	Restricted Funds		1,851,000
	d. Code Improvements-Fire Safety Pool		
	Restricted Funds	2,588,000	
	e. Dental Clinic and Sterilization Renovation		
	Other Funds		3,000,000
	f. Early Childhood "EDUCARE" Center		

	Restricted Funds	3,300,000	
g.	Environmental Health and Safety Projects		
	Restricted Funds	1,224,000	
h.	HSC Parking Garage - Two Additional Floors		
	Restricted Funds	4,454,000	
i.	Humanities Classroom Renovation		
	Restricted Funds	721,000	
j.	Land Purchase East of University Hospital - HSC		
	Restricted Funds		5,000,000
k.	MDR Renovation - Phase I - Building 51		
	Restricted Funds	1,548,000	
l.	MDR Renovation - Phase II - Building 51		
	Restricted Funds		1,595,000
m.	MDR Renovation - Phase III - Building 51		
	Restricted Funds		2,583,000
n.	Major Maintenance Pool - Phase I		
	Restricted Funds	6,142,000	
o.	Medical School Lab Renovation - Building 55A		
	Restricted Funds	1,717,000	
p.	New Residence Hall and West Utilities		
	Other Funds	18,277,000	
q.	Purchase Parking Spaces on Health Sciences Campus		
	Restricted Funds	825,000	
r.	Research Building (Belknap)		
	Bond Funds	32,040,000	
s.	Research Resources Center Expansion		
	Restricted Funds	1,588,000	
t.	Social Work-Practice Center - Marine Hospital (Portland)		
	Other Funds		7,865,000
u.	Support Services Land Acquisition (Northeast)		
	Restricted Funds		3,820,000
v.	Transgenic Facility		
	Restricted Funds		2,261,000
w.	University Park - Parkway Field/Baseball Stadium		
	Other Funds	2,392,000	
x.	University Park - Track and Field - Soccer and Field Hockey Facility		
	Other Funds	4,987,000	
y.	Utility Distribution Improvements - South		

	Restricted Funds	6,541,000	
z.	Three-Dimensional Echocardiographic Package		
	Restricted Funds	140,000	
aa.	49-Foot Research Vessel		
	Restricted Funds	100,000	
	Federal Funds	400,000	
	Total	500,000	
ab.	750 MHz Nuclear Magnetic Resonance Spectrometer		
	Restricted Funds	400,000	
	Federal Funds	800,000	
	Total	1,200,000	
ac.	Acoustic Imaging 5200 Envision		
	Restricted Funds	176,000	
ad.	Animal Irradiator		
	Restricted Funds	154,000	
ae.	Atomic Absorption (AA) Spectrometer, High Resolution		
	Restricted Funds	110,000	
af.	Autoclave, Large pass-thru		
	Restricted Funds	300,000	
ag.	Automated DNA Sequencer		
	Restricted Funds	149,000	
ah.	Automated Synthesizer		
	Restricted Funds		100,000
	Federal Funds		100,000
	Total	200,000	
ai.	Backside Mask Aligner		
	Restricted Funds		154,000
aj.	Bruker AMX 500 Console Upgrade		
	Restricted Funds		100,000
	Federal Funds		100,000
	Total	200,000	
ak.	Capillary Electrophoresis		
	Restricted Funds		50,000
	Federal Funds		50,000
	Total	100,000	
al.	Computerized Cardiac Laboratory		
	Restricted Funds	256,000	
am.	Digital Micro-Luminography System for Transmission Electron		

	Restricted Funds	120,000	
an.	Diode Laser		
	Restricted Funds	100,000	
ao.	EPR Spectrometer Update		
	Restricted Funds		60,000
	Federal Funds		65,000
	Total	125,000	
ap.	Echocardiograph Vascular System		
	Restricted Funds	300,000	
aq.	Electronic Darkroom		
	Restricted Funds	113,000	
ar.	Epifluorescence Microscope		
	Restricted Funds		50,000
	Federal Funds		55,000
	Total	105,000	
as.	Excimer Laser		
	Restricted Funds		600,000
at.	FT IR Spectrometer		
	Restricted Funds		75,000
	Federal Funds		75,000
	Total	150,000	
au.	Fluorescence Activated Cell Sorter		
	Restricted Funds	352,000	
av.	Gas Chromatography - Mass Spectrometer (GC-MS) High-Resolution		
	Restricted Funds	110,000	
aw.	Gel/Blot Image Analysis System		
	Restricted Funds	140,000	
ax.	High Definition Video System		
	Restricted Funds	300,000	
ay.	High Resolution SEM with Backscatter Detector		
	Restricted Funds		160,000
az.	High Resolution/Mass Spectrometer (GC/MS) System		
	Restricted Funds	470,000	
ba.	Imaging Raman Spectrometer		
	Restricted Funds	85,000	
	Federal Funds	85,000	
	Total	170,000	
bb.	In Vivo Thrombosis Detection and Quantitation System		

	Restricted Funds	168,000
bc.	Integrated Multi-Detector Imaging System	
	Restricted Funds	545,000
bd.	Intermediate Voltage Transmission Electron Microscope	
	Restricted Funds	350,000
be.	Liquid Chromatograph - Mass Spectrometer	
	Restricted Funds	150,000
	Federal Funds	300,000
	Total	450,000
bf.	MALDI Mass Spectrometer	
	Restricted Funds	200,000
	Federal Funds	200,000
	Total	400,000
bg.	Message Board - University Park	
	Restricted Funds	300,000
bh.	Metabolic Stress System and Bike	
	Restricted Funds	106,000
bi.	Molecular Imaging System	
	Restricted Funds	50,000
	Federal Funds	55,000
	Total	105,000
bj.	Nailfold Microvascular Analysis System	
	Restricted Funds	119,000
bk.	Peak 3D Computerized Motion Measurement and Analysis System	
	Restricted Funds	115,000
bl.	Peptide Sequencer	
	Restricted Funds	145,000
bm.	Plasma Enhanced Chemical Deposition System	
	Restricted Funds	133,000
bn.	Protein Sequencer	
	Restricted Funds	191,000
bo.	Radiographic/Fluoroscopic Imaging Unit	
	Restricted Funds	195,000
bp.	Radiographic/Fluoroscopic X-Ray System	
	Restricted Funds	317,000
bq.	Rapid Prototyping System	
	Restricted Funds	376,000
br.	SEM Accessories for Elemental Analysis	

	Restricted Funds		165,000
bs.	SIMS: Materials Characterization Apparatus		
	Restricted Funds		165,000
bt.	Scanning Electron Microscope		
	Other Funds	160,000	
bu.	Scanning Electron Microscope		
	Restricted Funds		115,000
	Federal Funds		115,000
	Total	230,000	
bv.	Scanning Tunnelling Microscope		
	Restricted Funds		50,000
	Federal Funds		53,000
	Total	103,000	
bw.	Small Artery Reactivity Diagnostic System		
	Restricted Funds		138,000
bx.	Small Vein in Vivo Diagnostic System		
	Restricted Funds	197,000	
by.	Spectrofluometer		
	Restricted Funds		50,000
	Federal Funds		50,000
	Total	100,000	
bz.	Stress Echo System		
	Restricted Funds	127,000	
ca.	Surface Analysis Microscope System		
	Restricted Funds		200,000
	Federal Funds		200,000
	Total	400,000	
cb.	Trash Compactor		
	Restricted Funds	125,000	
cc.	Ultra High Vacuum Chamber		
	Other Funds	310,000	
cd.	Vascular Smooth Muscle Analyzer		
	Restricted Funds	144,000	
ce.	Video Diagnostic Analysis System		
	Restricted Funds	154,000	
cf.	White Blood Cell Velocity Measurement System		
	Restricted Funds	126,000	
cg.	X-Ray Deffractometer with Area Detector		

	Restricted Funds		225,000
	Federal Funds		225,000
	Total	450,000	
ch.	Array Processor/Parallel Processor		
	Restricted Funds		200,000
ci.	Broadcasting Facilities Equipment		
	Restricted Funds	250,000	
	Federal Funds	250,000	
	Total	500,000	
cj.	Client/Server System		
	Restricted Funds	200,000	200,000
ck.	Compressed Video Conferencing Room and Instructional Lab		
	Other Funds	446,000	
cl.	Computer File Server		
	Restricted Funds	220,000	220,000
cm.	Computer Processing System		
	Restricted Funds		3,000,000
cn.	Computer Workstations		
	Restricted Funds		500,000
co.	Dental Clinical Computer System		
	Restricted Funds	500,000	
cp.	Digital Communications Network		
	Restricted Funds	300,000	250,000
cq.	Disk Storage Sub-Systems		
	Restricted Funds	500,000	500,000
cr.	Electronic Medical Record		
	Restricted Funds	2,044,000	
cs.	Engineering/Scientific Processor		
	Restricted Funds	400,000	500,000
ct.	Expand Medical Information Technology Infrastructure		
	Restricted Funds	440,000	
cu.	Fiber Optic LAN/Computer-Based Instruction System		
	Restricted Funds	427,000	
cv.	Mid-Range Computer Systems		
	Restricted Funds	200,000	200,000
cw.	Molecular Dynamics Software and Computer Workstation		
	Restricted Funds	63,000	
	Federal Funds	62,000	

	Total	125,000	
cx.	Network Switching System		
	Restricted Funds	300,000	150,000
cy.	Satellite Uplink		
	Restricted Funds	140,000	
	Federal Funds	240,000	
	Total	380,000	
cz.	Telemarketing System		
	Restricted Funds	133,000	
da.	Theoretical Research Computer System		
	Restricted Funds	54,000	
	Other Funds	50,000	
	Total	104,000	
12.	Western Kentucky University		
a.	Americans with Disabilities Act Accessibility Projects		
	Restricted Funds	816,000	
b.	Academic Complex Roof Replacement		
	Restricted Funds	400,000	
c.	Agriculture Exposition Center HVAC Improvements Phase II		
	Restricted Funds	650,000	
d.	Air Conditioning for Academic - Athletic No. 1		
	Restricted Funds	1,700,000	
e.	Building Envelope/Exterior Door Deferred Maintenance Projects		
	Restricted Funds	444,000	
f.	Campus Energy Conservation		
	Other Funds	2,165,000	
g.	Cherry Hall Window Replacement		
	Restricted Funds	635,000	
h.	Chiller Conversion (R-12 to R-123)		
	Restricted Funds	569,000	
i.	Cooling Towers and Chiller Renovations		
	Restricted Funds	574,000	
j.	McLean Hall Renovation		
	Restricted Funds	3,444,000	
k.	E & G Buildings Interior Projects		
	Restricted Funds	487,000	
l.	E & G Life Safety: Deferred Maintenance Projects		
	Restricted Funds	522,000	

m.	Electrical Deferred Maintenance Projects		
	Restricted Funds	764,000	
n.	Equine Science Teaching Facility		
	Restricted Funds (1997-98 - \$205,000)		
o.	Grise Hall/Tate Page Roof Replacement		
	Restricted Funds	808,000	
p.	HVAC/Plumbing Deferred Maintenance Projects		
	Restricted Funds	544,000	
q.	Ivan Wilson Center Chillers Replacement		
	Restricted Funds	500,000	
r.	Campus Improvements		
	Restricted Funds	1,209,000	
s.	Life Safety Fire Alarm Improvements		
	Restricted Funds	476,000	
t.	Postsecondary Education Improvement Act of 1997 Facility		
	Bond Funds	18,500,000	
u.	Property Acquisition		
	Restricted Funds		370,000
v.	Public Radio and Television Transmission Tower		
	Restricted Funds		615,000
w.	Renovation of Craig Alumni Center		
	Restricted Funds		250,000
x.	Renovation of Former Science Library in TCCW		
	Restricted Funds	639,000	
y.	Renovation of Theatre 100 in Gordon Wilson Hall		
	Restricted Funds		450,000
z.	Repair/Replacement of Walks and Lots		
	Restricted Funds	746,000	
aa.	Roof Repair/Replacement - Deferred Maintenance Projects		
	Restricted Funds	877,000	
ab.	Thompson Complex North Wing HVAC		
	Restricted Funds	1,375,000	
ac.	University Farms Improvements		
	Restricted Funds	750,000	
ad.	WKU Primary Electrical Service (State II)		
	Restricted Funds	1,500,000	
ae.	Western Kentucky University Alumni Center		
	Other Funds	1,200,000	10,800,000

ACTS OF THE GENERAL ASSEMBLY

af.	Window Repair/Replacement		
	Restricted Funds	596,000	
ag.	Americans with Disabilities Act Accessible Shuttle Buses		
	Restricted Funds	330,000	
ah.	Confocal Microscope		
	Restricted Funds		110,000
ai.	Mass Spectrometer		
	Restricted Funds	126,000	
aj.	Administrative Computing System Upgrade/Replacement		
	Restricted Funds	2,100,000	
ak.	Computing Network Expansion and Upgrade		
	Restricted Funds	855,000	
al.	Satellite Uplink		
	Restricted Funds	426,000	
am.	Telephone Infrastructure Upgrade		
	Restricted Funds	750,000	
an.	Video Server		
	Restricted Funds	801,000	

M. PUBLIC PROTECTION AND REGULATION CABINET

Budget Unit	1998-99	1999-00
1. Department of Insurance		
a. Franklin County - Lease		
2. Public Advocacy		
a. Franklin County - Lease		
3. Public Service Commission		
a. Franklin County - Lease		
b. Public Service Commission Building		
Bond Funds		1,100,000

N. REVENUE

Budget Unit	1998-99	1999-00
1. Office of the Secretary		
a. Technology Infrastructure Support		
Investment Income		425,000
b. Franklin County - Lease (100 Fair Oaks)		
c. Franklin County - Lease (200 Fair Oaks)		
d. Franklin County - Lease (Perimeter Park)		

O. TOURISM DEVELOPMENT CABINET

Budget Unit	1998-99	1999-00
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The total non-General Fund project costs shown do not reflect additions to the operating budget appropriations.

1.	Kentucky State Fair Board			
	a.	Maintenance Pool		
		Investment Income	300,000	
		Restricted Funds	700,000	1,000,000
		Total	1,000,000	1,000,000
	b.	Roof Replacement		
		Restricted Funds	800,000	800,000
	c.	Outdoor Horse Ring		
		Restricted Funds	800,000	
2.	Department of Fish and Wildlife Resources			
	a.	Land Acquisition		
		Restricted Funds	500,000	500,000
	b.	Maintenance Pool		
		Restricted Funds	200,000	200,000
3.	Kentucky Horse Park			
	a.	Additional Stalls		
		Investment Income - Additional	435,000	
	b.	Maintenance Pool		
		Investment Income	375,000	375,000
	c.	Capital Outlay		
		General Fund	100,000	
	d.	National Horse Center - Infrastructure Development		
		Capital Construction Surplus (1997-98 - \$377,000)		
	e.	Primary Electric Line Renovation		
		Investment Income	747,000	
4.	Department of Parks			
	a.	Maintenance Pool		
		Investment Income	4,200,000	4,200,000
	b.	Capital Outlay		
		General Fund	2,000,000	
	c.	Technology - Capital Outlay		
		General Fund	244,000	
	d.	Dale Hollow Golf Course and Club House		
		Bond Funds	5,500,000	
5.	Breaks Interstate Park			
	a.	Additional Lodge Rooms		

General Fund 1,350,000

P. TRANSPORTATION CABINET

Budget Unit	1998-99	1999-00
1. Department of Administrative Services		
a. Bowling Green District Office - Reauthorization/Modification (\$1,400,000 - Road Fund) Road Fund - Additional		2,263,000
b. Building Renovation and Emergency Repairs - Reauthorization Road Fund - Additional		500,000
c. Bullitt County Maintenance Facility Road Fund		845,000
d. Heating, Ventilation, and Cooling Maintenance and Repair Road Fund	200,000	200,000
e. Hopkins County Maintenance Facility Road Fund		645,000
f. Hydraulic Hoists for Heavy Equipment - Reauthorization Road Fund - Additional		100,000
g. Lewis County Maintenance Facility Road Fund	708,000	
h. Loadometer Station and Rest Area Maintenance and Repair Road Fund	400,000	400,000
i. Magoffin County Maintenance Facility - Reauthorization Road Fund - Additional	458,000	
j. Meade County Maintenance Facility - Reauthorization Road Fund - Additional	233,000	
k. Metcalfe County Maintenance Facility Road Fund	745,000	
l. Painting and Roof Replacement Road Fund	400,000	400,000
m. Paving and Landscaping Road Fund	100,000	100,000
n. Pikeville District Office Addition Road Fund		424,000

o.	Road Maintenance/Various Parks - Reauthorization		
	Road Fund - Additional	1,250,000	1,000,000
p.	Road Resurfacing - Kentucky Horse Park		
	Road Fund	250,000	
q.	Transportation Cabinet Office Building - Reauthorization/Modification (\$18,900,000 - Bond Funds)		
	Bond Funds - Additional	68,100,000	
r.	Various Environmental Site Investigations/Remediations - Reauthorization		
	Road Fund - Additional		500,000
s.	Various Maintenance Facilities - Secondary Structures		
	Road Fund	250,000	250,000
t.	Various Salt Storage Structures and Repair		
	Road Fund	250,000	250,000
u.	Various Waste Water Treatment and Water Supply Projects - Reauthorization		
	Road Fund-Additional	75,000	75,000
v.	Chemical Testing Equipment		
	Road Fund	175,000	
w.	Highway Design Microfilm Equipment		
	Road Fund	148,000	
x.	Nuclear Density Gauges		
	Road Fund	40,000	35,000
y.	Printing Press		
	Road Fund		204,000
z.	Superpave Testing Equipment		
	Road Fund	200,000	
aa.	Weigh In Motion/Traffic Data Collection Equipment (WIM/TCD)		
	Road Fund	292,000	301,000
ab.	Digitized Drivers Licensing		
	Road Fund		900,000
ac.	Vehicle Titling and Registration System (KVIS) - Technology Trust Fund		
	Road Fund		1,714,000
ad.	Harlan County Salt Dome		
	Road Fund	65,000	
ae.	Pike County Maintenance Facility		

Road Fund 250,000

Q. WORKFORCE DEVELOPMENT CABINET

Budget Unit	1998-99	1999-00
1. General Administration and Program Support		
a. Maintenance Pool		
Investment Income	250,000	250,000
2. Vocational Rehabilitation		
a. Franklin County - Lease		
3. Department for the Blind		
a. Franklin County - Lease		
4. Office of Training and Reemployment		
a. Franklin County - Lease		
5. Department for Employment Services		
a. Unemployment Insurance Imaging System		
Federal Funds	736,000	1,010,000
b. Unemployment Insurance Scanner		
Federal Funds	981,000	
6. Department for Technical Education		
a. Network Connectivity/Vesis Upgrade		
General Fund		2,100,000

 CAPITAL PROJECTS BUDGET PROVISIONS
 FOR PART II, CAPITAL PROJECTS

1. All appropriations to existing line-item capital construction projects expire on June 30, 1998, unless reauthorized in this Act with the following exceptions: (1) a construction contract for the project shall have been awarded by June 30, 1998; (2) permanent financing or a short-term line of credit sufficient to cover the total authorized project scope shall have been obtained in the case of projects authorized for bonds; (3) grant or loan agreements, if applicable, have been finalized and properly signed by all necessary parties. Notwithstanding the criteria set forth in this section, the disposition of 1996-98 appropriated major maintenance pools shall remain subject to the provisions of KRS 45.770(4)(c) and (d). Purchases of major items of equipment require reauthorization if a purchase order has not been executed by June 30, 1998.

2. Bond projects authorized for the first time in this section which have debt service supported by state General Fund appropriations are authorized in the first year of the biennium so that preliminary work on the projects may proceed. However, debt service has been included beginning in fiscal year 1999-2000. Therefore, the sale of any permanent bonds to finance these projects shall occur after January 1, 1999.

3. If any authorized capital construction or major equipment projects are canceled, any General Fund appropriated debt service for those same projects shall lapse to the credit of the General Fund.

4. Investment income earned from bond proceeds beyond that which is required to satisfy Internal Revenue Service arbitrage rebates and penalties may be used to pay debt service according to the Internal Revenue Service Code and accompanying regulations. Notwithstanding the provisions of KRS 48.720, KRS 48.010, or any section of this Act, the first \$1,500,000 of any General Fund excess investment income in fiscal year 1998-99 and fiscal year 1999-2000, respectively, is credited to the General Fund if determined to be excess to the General Fund appropriation needed for the payment of debt service as a direct result of the application of investment income earned on bond proceeds to debt service payments. Any funds above this amount shall be credited to the Deferred Maintenance Pool

Account each year. Unneeded debt service resulting due to any other circumstance shall lapse in accordance with KRS 48.720, KRS 48.010, and other provisions of this Act.

5. Investment income earned from funds credited to the Technology Trust Fund account in the Finance and Administration Cabinet shall accrue to the Capital Construction Investment Income account effective July 1, 1998.

6. The Council on Postsecondary Education subheading in this Part includes a project entitled "Agency Bond Pool." For the Agency Bond Pool, \$35,000,000 in projects is authorized to be funded from Restricted Funds-supported bonds. This pool provides funding for individual projects to be recommended by the Council on Postsecondary Education to the Secretary of the Finance and Administration Cabinet from the project listings previously identified and recommended by the Council for funding in the 1998-2000 biennium. Also eligible for funding from this authorization is the McLean Hall Renovation project at Western Kentucky University.

The provisions of KRS 45.750 to 45.816 notwithstanding, capital construction projects at institutions of higher education involving no state or federal funds may be authorized between regular sessions of the General Assembly if the projects receive prior approval from both the Council on Postsecondary Education and the Secretary of the Finance and Administration Cabinet, and the Capital Projects and Bond Oversight Committee receives prior notification.

7. Before any economic development bonds are issued, the proposed bond issue shall be approved by the Secretary of the Finance and Administration Cabinet and the State Property and Buildings Commission under the provisions of KRS 56.440 to 56.590. In addition to the terms and conditions of KRS 154.12-100, administration of the Economic Development Bond program by the Secretary of the Cabinet for Economic Development is subject to the following guideline: project selection shall be documented when presented to the Secretary of the Finance and Administration Cabinet. Included in the documentation shall be the rationale for selection and expected economic development impact.

8. Inasmuch as the identification of specific projects in a variety of areas of the state government cannot be ascertained with absolute certainty at this time, amounts are appropriated for specific purposes to projects which are not individually identified in this Act in the following areas: Repair of State-Owned Dams, Land Acquisition, Purchase of Agricultural Conservation Easements (PACE), Economic Development projects, Infrastructure projects, Asbestos Abatement projects, Technology Trust Fund projects, systems, and initiatives authorized in Part X of this Act, and the Council on Postsecondary Education Agency Bond Pool. Any projects estimated to cost over \$400,000 and equipment estimated to cost over \$100,000 shall be reported to the Capital Projects and Bond Oversight Committee. All moneys transferred to the Finance and Administration Cabinet for capital construction from any appropriations, including income from investments, shall be expended, accounted for, and otherwise treated in the same manner as funds appropriated directly to the Finance and Administration Cabinet for capital construction. Notwithstanding any provision in this Act, the first \$1,500,000 available from invested income shall be credited to the General Fund.

9. If any authorized capital construction project is constructed within the city limits of Frankfort, funding for the project shall include an amount sufficient to meet fifty percent (50%) of the cost of correcting any drainage problems in the area surrounding the capital construction project.

PART III

GENERAL PROVISIONS

1. Restricted Funds designated in the biennial budget bills are classified in the state financial records and reports as the Agency Revenue Funds, State Enterprise Funds (State Parks, State Fair Board, Industries for the Blind, Insurance Administration, and Kentucky Horse Park), Internal Services Funds (Computer Services, Central Stores, Telecommunications, Prison Industries, Central Printing, Risk Management and Property Management) and selected Fiduciary Funds (Unemployment Compensation and Other Expendable Trust). Separate funds records and reports shall be maintained in a manner consistent with the branch budget bills.

The sources of Restricted Funds appropriations in this Act shall include all fees (which include fees for board and room, athletics, and student activities) and rentals, admittances, sales, bond proceeds, licenses collected by law, gifts, subventions, contributions, income from investments, and other miscellaneous receipts produced or received by a budget unit, except as otherwise specifically provided, for the purposes, use and benefit of the budget unit as authorized by law. Restricted Funds receipts shall be credited and allotted to the respective fund or account out of which a specified appropriation is made in this Act. All receipts of Restricted Funds shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

The sources of Federal Funds appropriations in this Act shall include federal subventions, grants, contracts or other Federal Funds received, income from investments and other miscellaneous federal receipts received by a budget unit, except as otherwise provided, for the purposes, use, and benefit of the budget unit as authorized by law. Federal Funds receipts shall be credited and allotted to the respective fund account out of which a specified appropriation is made in this Act. All Federal Funds receipts shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

2. If receipts received or credited to the Restricted Funds accounts or Federal Funds accounts of a budget unit during fiscal year 1998-99 or fiscal year 1999-2000, and any balance forwarded to the credit of these same accounts from the previous fiscal year, exceed the appropriation made by specific sum for these accounts of the budget unit as provided in Part I, Operating Budget, of this Act for the fiscal year in which the excess occurs, the excess funds in the accounts of the budget unit shall become available for expenditure for the purpose of the account during the fiscal year only upon compliance with the conditions and procedures specified in KRS 48.400 to 48.800 and this Act, and with the authorization of the State Budget Director of the Governor's Office for Policy and Management and approval of the Secretary of the Finance and Administration Cabinet.

3. Except as otherwise provided in KRS 48.630(9) and (10) and in this Act, a budget unit may requisition for expenditure from its Restricted Funds accounts or Federal Funds accounts, through the Finance and Administration Cabinet, during the fiscal year ending June 30, 1999, and during the fiscal year ending June 30, 2000, all receipts placed to the credit of its funds accounts in each respective year, in addition to any balance which the budget unit may have had forwarded from the preceding year on or before August 31, of the then current fiscal year, by the Finance and Administration Cabinet.

On or before the beginning of each fiscal year, and, if applicable, during each fiscal year, each budget unit shall document and submit to the Finance and Administration Cabinet, the Governor's Office for Policy and Management, and the Legislative Research Commission a record of Restricted Funds and Federal Funds for each budget unit showing the most current estimates of receipts by sources and expenditures by uses, a comparative statement of any revised estimated receipts and proposed expenditures with appropriation sums specified in the enacted Budget of the Commonwealth, and statements which explain the cause, source, and use for a variance which may exist.

Each budget unit shall submit its reports in print and electronic format consistent with the Restricted Funds and Federal Funds records contained in the FB 1998-2000 Branch Budget Request Manual and according to the following schedule in each fiscal year: (1) on or before the beginning of each fiscal year; (2) on or before October 1; (3) on or before January 1; and (4) on or before April 1.

4. Funds appropriated in this Act shall not be expended for any purpose not specifically authorized by the General Assembly in this Act nor shall funds appropriated in this Act be transferred to or between any cabinet, department, board, commission, institution, agency, or budget unit of state government unless specifically authorized by the General Assembly in this Act and the provisions of KRS 48.400 to 48.800. Compliance with the provisions of this subsection shall be reviewed and determined by the Interim Joint Committee on Appropriations and Revenue.

5. No state agency, cabinet, department, office, or program shall incur any obligation against the General Fund or Road Fund appropriations contained in this Act unless the obligation may be reasonably determined to have been contemplated in the enacted budget and is based upon supporting documentation considered by the General Assembly, legislative and executive records, and the statutory budget memorandum.

6. Any General Fund or Road Fund appropriation made in anticipation of a lack, loss, or reduction of Federal Funds shall lapse to the General Fund or Road Fund Surplus Account respectively to the extent the Federal Funds otherwise become available.

7. A state agency entitled to Federal Funds which would represent one hundred percent (100%) of the cost of a program shall conform to KRS 48.730.

8. Pursuant to KRS 48.720, any excess General Fund or Road Fund debt service shall lapse to the respective surplus account.

9. No appropriation from any fund source shall exceed the sum specified in this Act until the agency has documented the necessity, purpose, use, and source, and the documentation has been submitted to the Interim Joint Committee on Appropriations and Revenue for its review and action in accordance with KRS 48.630. Proposed revisions to an appropriation contained in the enacted State/Executive Budget or allotment of an unbudgeted appropriation shall conform to the conditions and procedures of KRS 48.630 and this Act.

Notwithstanding KRS 48.630(3), (4), and (5), any proposed and recommended actions to increase appropriations for funds specified in Section 3 of this Part shall be scheduled consistent with the timetable contained in that section in order to provide continuous and timely budget information.

10. Allotments within appropriated sums for the activities and purposes contained in the enacted State/Executive Budget shall conform to KRS 48.610 and may be revised pursuant to KRS 48.605 and this Act.

11. All statutory continuing appropriations in existence at the time this Act takes effect are discontinued and suspended by this Act except as provided by Chapters 42, 96A, 164, 183, 278, and 441 of the Kentucky Revised Statutes. All statutes and portions of statutes in conflict with any of the provisions of this Section, to the extent of the conflict, are suspended, unless otherwise provided by this Act.

12. Except as otherwise explicitly authorized by this Act, nothing in this Act shall be construed to repeal any appropriation made herebefore or hereafter for the fiscal year ending June 30, 1998, and nothing in this Act is to be construed as amending or altering the provisions of Chapters 42, 45, and 48 of the Kentucky Revised Statutes pertaining to the duties and powers of the Secretary of the Finance and Administration Cabinet except as otherwise provided in this Act.

13. All questions that arise in interpreting any appropriation in this Act as to the purpose or manner for which the appropriation may be expended shall be decided by the Secretary of the Finance and Administration Cabinet pursuant to KRS 48.500, and the decision of the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

14. The Secretary of the Finance and Administration Cabinet shall cause the Governor's Office for Policy and Management, within sixty (60) days upon adjournment of the 1998 Regular Session of the General Assembly, to publish a final enacted budget document, styled the Budget of the Commonwealth, based upon the recommended State/Executive Budget, Judicial Budget and Legislative Budget as enacted by the 1998 Regular Session of the General Assembly as well as other Acts which contain appropriation provisions for the 1998-2000 biennium, and based upon supporting documentation and legislative records as considered by the 1998 Regular Session of the General Assembly and the statutory budget memorandum. This document shall include for each agency and budget unit a consolidated budget summary statement of available regular and continuing appropriated revenue by fund source, corresponding appropriation allocations by program or subprogram as appropriate, budget expenditures by principal budget class and for the State/Executive Budget, any other fiscal data and commentary considered necessary for budget execution by the Governor's Office for Policy and Management and oversight by the Interim Joint Committee on Appropriations and Revenue. The enacted State/Executive Budget shall be revised or adjusted only upon approval by the Governor's Office for Policy and Management as provided in each part of this Act and by KRS 48.400 to 48.800, and upon review and action by the Interim Joint Committee on Appropriations and Revenue.

15. Pursuant to KRS 48.400, the Secretary of the Finance and Administration Cabinet shall monitor and report on the financial condition of the Commonwealth.

16. The Secretary of the Finance and Administration Cabinet is authorized to establish a system or formula or a combination of both for prorating the administrative costs of the Finance and Administration Cabinet, the Department of Treasury, and the Office of the Attorney General relative to the administration of programs in which there is joint participation by the state and federal governments for the purpose of receiving the maximum amount of participation permitted under the appropriate federal laws and regulations governing the programs. The receipts and allotments under this section shall be reported to the Interim Joint Committee on Appropriations and Revenue prior to any transfer of funds.

17. The Secretary of the Transportation Cabinet shall use Road Fund resources to meet the lease rental payments to the Kentucky Turnpike Authority for Resource Recovery Road projects in the amount certified by the Secretary of the Transportation Cabinet. However, if Road Fund resources are not sufficient to meet lease rental payments, the additional amount required for meeting lease rental payments as certified by the Secretary of the Transportation Cabinet under KRS 143.090 shall be transferred from coal severance tax receipts to meet the obligation.

18. Nothing in this Act shall be construed to confirm or ratify, under KRS 12.027 or 12.028, any executive reorganization order unless the executive order was confirmed or ratified by appropriate amendment to the Kentucky Revised Statutes in another Act of the 1998 Regular Session of the General Assembly. If any executive reorganization order issued from sine die adjournment of the 1996 Regular Session to sine die adjournment of the 1998 Regular Session is not confirmed by the 1998 Regular Session of the General Assembly, the Secretary of the Finance and

Administration Cabinet shall, in consultation with agency heads and with notification to the Legislative Research Commission, transfer the balance of funds for any affected program or function for fiscal year 1997-98 and any related appropriations and funds for each of the next two fiscal years from the budget unit in which the program or function was placed by the executive reorganization order to the budget unit in which the program or function resided prior to the reorganization action or in which it was placed by action of the 1998 Regular Session of the General Assembly. The Legislative Research Commission shall forward the documentation to the appropriate committees.

19. Notwithstanding KRS 48.705(2), there shall be no General Fund surplus revenue receipts or unexpended balances of appropriations deposited in the budget reserve trust fund account for fiscal year 1998-99 or fiscal year 1999-2000 except as otherwise provided in this Act. Existing funds in the account in an amount specified in this Act may be used as provided otherwise in this Act or as designated in Part VI, General Fund Budget Reduction Plan, if General Fund receipts during fiscal year 1998-99 or fiscal year 1999-2000 are not sufficient to meet the level of General Fund appropriations included in biennial budget bills or any enactment by the 1998 General Assembly which contains an appropriation provision.

20. Notwithstanding KRS 61.565, the employer contribution rate for the Kentucky Employees Retirement System from July 1, 1998, through June 30, 2000, shall be no more than 8.03 percent for nonhazardous duty employees and 18.66 percent for hazardous duty employees; for the same period, the employer contribution for employees of the State Police Retirement System shall be no more than 23.41 percent.

21. By August 15, 1999, the Finance and Administration Cabinet, in conjunction with the Consensus Forecast Group, shall provide to each branch of government, pursuant to KRS 48.117, a budget planning report.

22. By October 15, 1999, the Finance and Administration Cabinet shall provide to each branch of government detailed estimates for the General Fund and Road Fund for the current and next two fiscal years of the revenue loss effected by tax expenditures. The Revenue Cabinet shall provide assistance and furnish data which is not restricted by KRS 131.190. "Tax expenditure" means an exemption, exclusion, or deduction from the base of a tax, a credit against the tax, a deferral of a tax, or a preferential tax rate. The estimates shall include for each tax expenditure the amount of revenue loss, a citation of the legal authority for the tax expenditure, the year in which it was enacted, and the tax year in which it became effective.

23. Any appropriation item and sum in this Act and in an appropriation provision in another act of the 1998 Regular Session which constitute a duplicate appropriation shall be governed by KRS 48.312.

24. KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

25. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provision is found by a court of competent jurisdiction in a final, unappealable order to be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

26. It is the intent of the General Assembly that the Executive Branch implement actions necessary to achieve cost savings as intended, authorized, and directed by 1996 Kentucky Acts, Chapter 380, Part X, by authorizing the Executive Branch, within the limitations provided for in this Act, to transfer General Fund appropriation amounts related to Technology Trust Fund savings from one budget unit to another budget unit solely within the Cabinets for Families and Children, Finance and Administration, Health Services, Justice, Natural Resources and Environmental Protection, Workforce Development, and the Department of Education. Any transfer of General Fund appropriation amounts related to Technology Trust Fund savings from one budget unit to another budget unit shall be made only within each specified Cabinet and the Department of Education and shall be limited to the General Fund cost savings amounts identified in the 1998-2000 Executive Branch budget recommendation and executive records. The Secretary of any of the specified cabinets and the Commissioner of the Department of Education may submit requests to the State Budget Director of the Governor's Office for Policy and Management for the transfer of General Fund appropriation authority. Such requests shall specify the need for the transfer of General Fund appropriation authority and the manner in which such a transfer would better achieve the General Fund cost savings. Any transfers made under this provision for any of the cabinets identified above or the Department of Education shall result in no change to the total value of the General Fund cost savings amounts as identified in the 1998-2000 Executive Branch budget recommendation and executive records for the individual cabinets specified above or the Department of Education. Any transfer made under this provision shall be made pursuant to KRS 48.500 and shall be reported, in writing, to the Interim Joint Committee on Appropriations and Revenue.

27. It is the intent of the General Assembly that the Secretary of the Finance and Administration Cabinet, the Secretary of the Governor's Executive Cabinet, and the State Budget Director of the Governor's Office for Policy and

Management shall implement actions for the Executive Branch necessary to achieve the General Fund cost savings intended and authorized by the 1996 Kentucky Acts, Chapter 380, Part X. The General Assembly hereby recognizes and ratifies the actions of the Secretary of the Finance and Administration Cabinet, upon recommendation of the State Budget Director of the Governor's Office for Policy and Management, revising the General Fund allotment schedule for fiscal year 1997-98 for purposes of making unavailable for expenditure General Fund allotments equal in value to the General Fund cost savings amounts identified in the 1998-2000 Executive Branch budget recommendation and executive records.

28. For fiscal year 1998-99 and fiscal year 1999-00, the first \$6,000,000 of any unclaimed prize money held in the corporate operating account of the Kentucky Lottery Corporation shall be added to the pool from which future prizes are to be awarded or used for special prize promotions, and any amount in excess of \$6,000,000 shall be transferred to the affordable housing trust fund established by KRS 198A.710.

29. There is created in the State Treasury a tobacco settlement account to be credited with any funds received from a national settlement agreement between the tobacco industry and the Attorney General or any federal legislation related to the agreement. Any funds from the settlement agreement or related federal legislation shall not be expended until appropriated by the General Assembly. The General Assembly's highest priority for distributing any funds from this account shall be for tobacco farmers and tobacco-impacted communities and health-related areas.

30. Notwithstanding the provisions in Parts I, II, IX, or X of this Act, the amount from the undesignated fiscal year 1998-99 General Fund balance (General Fund Surplus Account, KRS 48.700) that is carried forward to fiscal year 1999-2000 for budgeted purposes shall be specified in the statutory budget memorandum. This amount may be adjusted in accordance with KRS 48.120(3).

31. Notwithstanding the amendment to KRS 142.311 contained in 1998 House Bill 315, the dispensing or delivering of outpatient prescription drugs in this state shall be taxed at the rate of fifteen cents (\$0.15) per prescription for which any initial payment is received after June 30, 1999.

32. Notwithstanding the amendment to KRS 141.010 contained in 1998 House Bill 315, there shall be excluded from adjusted gross income for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, seventy percent (70%) of any amounts paid for health insurance which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents for the taxable year.

33. Notwithstanding KRS 134.580, no taxpayer shall be refunded or credited for any overpayment of tax collected under KRS Chapter 141 to the extent the overpayment is attributable to the filing of a consolidated, combined, or unitary business return for any taxable year ending before December 31, 1995 if the refund claim or any amended refund claim is filed after December 22, 1994.

34. Notwithstanding Section 1 of 1998 Kentucky Acts Chapter 106 (Senate Bill 63), all health benefit plans shall provide coverage, including therapeutic, respite, and rehabilitative care, for the treatment of autism of a child covered under the policy.

35. Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, to the extent that any governmental agency purchases motor vehicle liability insurance, sovereign immunity shall be waived to the extent of the insurance coverage.

36. For purposes of administering the tax and revenue statutes of the Commonwealth upon which appropriations in this Act are based, the definition of "adjusted gross income" set forth in KRS 141.010(10) shall be modified and adjusted to exclude any capital gains income attributable to property taken by eminent domain.

37. The Secretary of the Finance and Administration Cabinet and the State Budget Director of the Governor's Office for Policy and Management shall implement actions for the Executive Branch necessary to achieve the General Fund debt service cost savings for fiscal year 1999-2000 authorized in this Act, and based upon legislative and executive records and the statutory budget memorandum. Actions taken under this provision shall be made pursuant to KRS 48.500, and a record of the actual debt service savings accomplished pursuant to this section shall be reported in writing to the Interim Joint Committee on Appropriations and Revenue.

PART IV

STATE SALARY/COMPENSATION AND EMPLOYMENT POLICY

1. Notwithstanding KRS 18A.010(2), for the 1998-2000 fiscal biennium, the total number of filled permanent positions in the agencies of the Executive Branch is limited to the number authorized in the enacted State/Executive

Budget of the Commonwealth for the 1998-2000 fiscal biennium. The provisions of this section do not apply to the employees of the General Assembly, the Legislative Research Commission, or the Court of Justice.

2. On July 1, 1998, the Personnel Cabinet shall establish a record of budgeted permanent and other equivalent positions based upon the enacted State/Executive Budget of the Commonwealth and any adjustments authorized by provisions in this Act. The total number of filled and vacant positions of permanent and other equivalent employees shall not exceed the authorized complements pursuant to this section. When an agency head certifies that an emergency employment situation exists for a limited time within a fiscal year, the State Budget Director may approve, and the Secretary of Personnel may authorize, the employment of individuals in addition to the authorized complement for the duration of the limited time period so authorized within the fiscal year. A copy of records, certifications, and actions authorized in this section shall be provided to the Interim Joint Committee on Appropriations and Revenue on a monthly basis.

3. Pursuant to KRS 18A.355, an increment of five percent (5%) is provided in both fiscal year 1998-99 and fiscal year 1999-2000 on the base salary or wages of each eligible state employee on his anniversary date.

PART V

FUNDS TRANSFER

1. It is the finding of the General Assembly of the Commonwealth of Kentucky that the financial condition of state government requires the following action.

2. Notwithstanding the requirements of the statutes set forth below, there is transferred from the Restricted Funds enumerated below to the General Fund the following amounts in fiscal year 1998-99 and fiscal year 1999-2000.

	1998-99	1999-00
1. Fire and Tornado Insurance Fund (KRS 56.095; 56.150; 56.180)	3,000,000	3,000,000
2. Insurance Premium Surcharge (KRS 136.392)		2,500,000
3. Charitable Gaming Regulatory Account (KRS 238.570)	2,000,000	2,000,000
4. Bond Repayments (1996 Ky. Acts ch. 380)	2,000,000	2,000,000
5. Investment Income (KRS 42.500 (12))	3,000,000	3,000,000
6. Department of Financial Institutions (KRS 287.485)	2,500,000	2,500,000
7. Asbestos Litigation Recoveries Fund Finance and Administration Cabinet	2,350,000	
Total	14,850,000	15,000,000

Surplus Restricted Funds in the Asbestos Litigation Recoveries Fund (Account Number 14-39-750-AVOO) shall be transferred to the General Fund from the General Administration budget unit of the Finance and Administration Cabinet in fiscal year 1998-99.

PART VI

GENERAL FUND BUDGET REDUCTION PLAN

Pursuant to KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for state government in the event of an actual or projected deficit in estimated General Fund revenue receipts of \$6,169,065,000 in fiscal year 1998-99 and \$6,469,702,000 in fiscal year 1999-2000 as modified by related Acts and actions of the General Assembly in an extraordinary or regular session. Direct services, obligations essential to the minimum level of

constitutional functions, and other items that may be specified in this Act, are exempt from the requirements of this Plan. No budget revision action shall be taken by a branch head in excess of the actual or projected deficit.

The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in allotments and appropriations only for their respective branch budget units as may be necessary as well as take other measures which shall be consistent with the provisions of this Part and general branch budget bills.

In the event of a revenue shortfall under the provisions of KRS 48.120, General Fund budget reduction actions shall be implemented in the following sequence:

(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act.

(2) Unappropriated funds available in the General Fund Surplus Account established in KRS 48.700 shall be applied toward the revenue shortfall.

(3) Transfers of excess unappropriated and unbudgeted Restricted Funds other than fiduciary funds shall be applied as determined by the head of each branch for its respective budget units.

(4) Excess General Fund appropriations derived from reduced debt service requirements pursuant to the provisions in this Act.

(5) Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.

Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth.

(6) Funds available in the Budget Reserve Trust Fund shall be applied in an amount not to exceed twenty-five percent (25%) of the trust fund balance in fiscal year 1998-99 and fifty percent (50%) of the trust fund balance in fiscal year 1999-2000.

(7) If the actions contained in subsections (1) through (6) of this section are insufficient to eliminate the revenue shortfall up to five percent (5%) of the enacted General Fund revenue receipts, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in the preceding subsection and subject to the limit imposed under KRS 48.130 and 48.600.

PART VII

ROAD FUND BUDGET REDUCTION PLAN

Pursuant to KRS 48.130, there is established a Road Fund Budget Reduction Plan for fiscal year 1998-99 and fiscal year 1999-2000. In the event of an actual or projected deficit in Road Fund revenue receipts of five percent (5%) or less than the revenue estimates of \$1,021,407,900 in fiscal year 1998-99 and \$1,062,707,300 in fiscal year 1999-2000 as determined under KRS 48.120(3), the Governor shall implement sufficient reductions as may be required to protect the highest possible level of service in accordance with KRS 48.130. No budget revision action shall be taken in excess of the actual or projected deficit.

PART VIII

ROAD FUND SURPLUS EXPENDITURE PLAN

Notwithstanding KRS 48.140 and pursuant to KRS 48.710, there is established a plan of expenditures from the Road Fund Surplus Account in excess of \$9,709,800 in fiscal year 1997-98 and \$10,659,700 in fiscal year 1998-99 as provided in the enacted Road Fund budget. All moneys in the Road Fund Surplus Account shall be deposited in the State Construction Account and utilized to support projects in the 1998-2000 Biennial Highway Construction Program.

PART IX

SPECIAL PROVISIONS

GOVERNMENT OPERATION

1. ATTORNEY GENERAL

a. Legal Services Contracts: The Attorney General shall present proposals to state agencies specifying legal work that is presently accomplished through Personal Service Contracts that indicate the Office of the Attorney General's capacity to perform the work at a lesser cost. State agencies shall agree to make arrangements with the Attorney General to perform the legal work and compensate the Attorney General for the legal services. Immediately upon the time of the agreement, twenty-five percent (25%) of the estimated total cost of the agreed cost of legal services shall be credited to a restricted fund account out of which expenditures may be made. Over the balance of the terms of the agreement, quarterly installments shall be credited to the account. The final quarterly payment shall be made within thirty (30) days of the completion of the legal agreement. A copy of the legal services agreement and financial terms shall be provided to the Finance and Administration Cabinet. The Finance and Administration Cabinet shall execute the financial arrangements as provided under this section, notwithstanding any other provision of the Kentucky Revised Statutes. State agencies shall submit any proposals for legal services to the Office of the Attorney General to determine if the legal services can be performed by the Attorney General.

If the Attorney General determines that the provisions in this section require additional staff positions, the Personnel Cabinet and the Governor's Office of Policy and Management shall take timely action to enable the Attorney General to recruit and employ the personnel the Attorney General has determined as necessary. Actions taken under the terms of this section shall be reviewed by the Interim Joint Committee on Appropriations and Revenue as provided in this Act.

b. Deputy and Assistant Attorneys General Salaries: Notwithstanding KRS 15.100, the Attorney General may set the salary for the deputy attorney general and the salary for the two (2) assistant deputy attorneys general at a rate less than that required in KRS 15.100.

c. Health Care Rate Intervention: In addition to such funds as may be appropriated, this Office may request from the Finance and Administration Cabinet, as a necessary government expense, such funds as may be necessary for expert witnesses pursuant to KRS 304.17A-095. The Department of Insurance shall provide the Office of the Attorney General any available information to assist in the preparation of a rate hearing pursuant to KRS 304.17A-095.

d. Tobacco Rebate Program: Any fund balance in the Tobacco Rebate Account maintained by the Office of the Attorney General, as of June 30, 1998, shall be expended pursuant to Administrative Order 97-4. At least 30% of the fund balance shall be for agricultural equipment to address labor market shortage areas.

e. Asbestos Litigation Reimbursement: This Office shall request from the Governor's Office for Policy and Management and the Finance and Administration Cabinet reimbursement for actual administrative costs related to Asbestos Litigation Recovery. Reimbursement shall not exceed \$20,000 for fiscal year 1997-98 and a total of \$98,500 for fiscal biennium 1998-2000. Reimbursement is contingent on receipt and deposit of recoveries to the State Treasury after April 15, 1998, sufficient to fund such costs. Any asbestos litigation funds received in excess of the amounts specified above, up to a maximum of \$145,000 in fiscal year 1998-99 and \$145,000 in fiscal year 1999-2000, shall be transferred to the Unified Prosecutorial System for prosecutorial training subject to procedures and conditions contained in Part III.

f. Annual and Sick Leave Service Credit: Notwithstanding any statutory or regulatory restrictions to the contrary, any former employee of the Unified Prosecutorial System who has been appointed to a permanent full time position under KRS Chapter 18A shall be credited annual and sick leave based on service credited under the Kentucky Retirement System. This provision shall only apply to any new appointment or current employee as of July 1, 1998.

2. AUDITOR OF PUBLIC ACCOUNTS

a. State Agencies Audit Services Contracts: No state agency shall enter into any contract with a nongovernmental entity for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request. The agency requesting the audit shall furnish the Auditor of Public Accounts a comprehensive statement of the scope and nature of the proposed audit.

b. **Audit Records and Status Reports:** The Auditor of Public Accounts shall report in writing each sixty (60) days to the Interim Joint Committee on Appropriations and Revenue the progress of all state audits, together with copies of all completed audits. The auditor shall maintain a record of all time and expenses for each audit or investigation.

c. **Charges for Federal, State, and Local Audits:** Any additional expense incurred by the Auditor of Public Accounts for auditing Federal Funds, when the audits are mandated by a cognizant federal audit agency, shall be charged to the audited agency when the costs may be charged against Federal Funds. The Auditor of Public Accounts is authorized to increase the audit fees for conducting county audits if additional revenues are needed to continue the operation of the office. The Auditor shall maintain a record of all costs and expenditures associated with this provision.

Each quarter, the Auditor of Public Accounts shall notify the Finance and Administration Cabinet concerning the collection status of the fees charged for county audits. If a county government is delinquent in its payment to the Auditor of Public Accounts, the Finance and Administration Cabinet shall withhold any moneys due that county government for the term of one hundred twenty (120) days or until the Auditor of Public Accounts has received full payment from the county. The Auditor of Public Accounts is authorized to increase the audit fees for conducting county audits if additional revenues are needed to continue the operations of the office.

The "Single Audit Act of 1984" (OMB Circular No. A-128) has changed the method by which federal moneys to state agencies are audited. As a result of this federal change, the Auditor of Public Accounts is budgeted to receive additional agency receipts which shall be allotted by the Governor's Office for Policy and Management for programs authorized in the enacted budget for the Auditor of Public Accounts by the 1998 General Assembly, subject to the conditions and procedures provided in this Act.

Any additional expenses incurred by the Auditor of Public Accounts for auditing a state agency upon its request, or when the audit is not required by those standards governing the audit of the Commonwealth's Comprehensive Financial Report, or the provisions contained in the "Single Audit Act of 1984," shall be charged to the agency requesting the audit.

Any expense incurred by the Auditor of Public Accounts for auditing individual governmental entities shall be charged to the agency receiving audit services when expenses are mutually agreed upon.

d. **EMPOWER Kentucky Audit Expenses:** The Auditor of Public Accounts shall charge for any consultation, training, and technology upgrade expenses incurred because of EMPOWER Kentucky and shall be paid by the client agencies.

3. DEPARTMENT OF AGRICULTURE

a. **Kentucky Farm Winery Corporation:** The Kentucky Farm Winery Corporation shall be attached to the Department of Agriculture for administrative purposes. The Department shall include \$50,000 each year from the Marketing Initiative program for a viticulturist position at Murray State University.

b. **Breathitt Veterinary Center:** Included in the General Fund appropriation is \$456,300 in fiscal year 1998-99 and \$456,300 in fiscal year 1999-2000 for the Breathitt Veterinary Center. Notwithstanding KRS 48.130 and 48.600, there shall be no reduction in funding.

4. PERSONNEL BOARD

a. **Administrative Hearings Notice:** Notwithstanding KRS 13B.050(2), the Personnel Board shall send notices of administrative hearings by first-class mail.

5. LOCAL GOVERNMENT

a. **Flood Control Matching Fund Project Review:** The Department for Local Government shall transmit a copy of the application for a flood-related project to be funded from the flood control matching fund to the Natural Resources and Environmental Protection Cabinet with a request for a review of the project pursuant to KRS Chapter 151.

6. KENTUCKY VETERANS' CENTER

a. **Weekend and Holiday Premium Pay Incentive:** The Kentucky Veterans' Center is authorized to continue the weekend and holiday premium pay incentive component of the Personnel Pilot Program for the fiscal biennium 1998-2000.

b. Operating Funds for Veterans' Nursing Home Projects: The Secretary of the Finance and Administration Cabinet is authorized to make available from the identified and certified lapse of General Fund appropriations in fiscal year 1999-2000 the necessary operating funds for the Veterans' Nursing Home - East Kentucky (Priority #1) and the Veterans' Nursing Home - West Kentucky (Priority #2). Prior to any action, the Secretary shall report to the Interim Joint Committee on Appropriations and Revenue.

ECONOMIC DEVELOPMENT

7. OFFICE OF THE SECRETARY

a. East and West Kentucky Corporations' and Regional Offices' Strategic Plan: The East and West Kentucky Corporations shall each submit an annual plan to the Interim Joint Committee for Appropriations and Revenue and to the Cabinet for Economic Development defining and outlining their respective roles and responsibilities as they relate to, but do not duplicate, the programs of the Cabinet for Economic Development. The Cabinet for Economic Development shall provide to the Interim Joint Committee for Appropriations and Revenue an annual plan for the Regional Offices defining and outlining their efforts toward maximizing return on investments and reducing duplicative efforts with other regional development groups.

b. Regional Industrial Park Program Reports: The Cabinet shall provide a progress report of the Regional Industrial Park Program to the Legislative Research Commission for referral to the appropriate committees by December first of each fiscal year.

8. FINANCIAL INCENTIVES

a. Bluegrass State Skills Corporation: If legislation is enacted by the General Assembly to utilize training investment credits for workforce training, the Bluegrass State Skills Corporation shall submit quarterly progress reports of this program to the Legislative Research Commission for referral to appropriate committees.

b. Kentucky Woods Product Competitiveness Corporation Reports: Notwithstanding KRS 154.47-035, beginning on or before January 15, 1999, and every year thereafter, the Kentucky Woods Product Competitiveness Corporation shall submit a written status report on its projects and activities to the Legislative Research Commission for referral to the appropriate committees. The annual report shall also include the amount of expenditure by activity within each county and the number of employees and relative salaries within the Corporation.

9. COMMUNITY DEVELOPMENT

a. Regional Offices: The Regional Offices shall submit quarterly program and status reports to the Legislative Research Commission for referral to the appropriate committees.

b. Flexible Manufacturing Network Program Reports: The Cabinet shall continue to provide quarterly program and financial status reports of the Flexible Manufacturing Network program to the Legislative Research Commission for referral to the appropriate committees.

DEPARTMENT OF EDUCATION

10. SUPPORT EDUCATION EXCELLENCE IN KENTUCKY (SEEK) PROGRAM

a. Allocation of Support Education Excellence in Kentucky Funds: The General Fund appropriations to the base Support Education Excellence in Kentucky (SEEK) program are intended to provide a base guarantee of \$2,839 per student in average daily attendance in fiscal year 1998-99 and \$2,924 per student in average daily attendance in fiscal year 1999-2000 as well as to meet the other requirements of KRS 157.360, notwithstanding KRS 157.360(2)(c). Excess funds that exist after the SEEK base has been fully funded shall be reallocated as follows: forty percent (40%) to adjustment factors where funds are insufficient to fully fund the adjustment factor, and sixty percent (60%) on a pro rata average daily attendance (ADA) basis to those districts that provide a full day program for entry level students. Any transfer shall require approval of the Governor upon the written recommendation of the Secretary of the Finance and Administration Cabinet and the written request of the Commissioner of Education.

If amounts appropriated for the state's assessment program are insufficient to meet the costs of the testing program, funds may be transferred from the pupil transportation component of the Support Education Excellence in Kentucky (SEEK) Program; however, the total amount expended for the testing program shall not exceed \$8,100,000 in each fiscal year.

Funds appropriated to the Support Education Excellence in Kentucky program shall be allotted to school districts in accordance with KRS 157.310 to 157.440, except that the total of the funds allotted shall not exceed the appropriations for this purpose except as provided in this Act. The total appropriation for the Support Education

Excellence in Kentucky (SEEK) program shall be measured by, or construed as, estimates of the state expenditures required by KRS 157.310 to 157.440. If the required expenditures exceed these estimates, the Secretary of the Finance and Administration Cabinet, upon the written request of the Commissioner of Education and with approval of the Governor, may increase the appropriation by such amount as may be available and necessary to meet, to the extent possible, the required expenditures under the cited sections of the Kentucky Revised Statutes, but any increase of the total appropriation to the Support Education Excellence in Kentucky program is subject to Part III, General Provisions, of this Act, and the provisions of KRS Chapter 48. If funds appropriated to the Support Education Excellence in Kentucky program are insufficient to provide the amount of money required under KRS 157.310 to 157.440, allotments to local school districts may be reduced in accordance with KRS 157.430.

b. Minimum Statewide Salary Schedules: The following is the minimum statewide salary schedule for fiscal year 1998-99 and fiscal year 1999-2000.

Rank	I	II	III	IV	V
Experience					
0-3 years	25,200	22,580	19,910	17,150	15,810
4-9 years	27,840	25,200	22,580	17,150	15,810
10-14 years	31,260	28,600	25,950	17,150	15,810
15-19 years	32,260	29,610	26,950	17,150	15,810
20 years and over	32,760	30,110	27,450	17,150	15,810

c. Local School District Calendar: Notwithstanding any other statute to the contrary, in any school district that adopted a calendar for the 1997-98 school year in which the equivalent of one thousand and fifty (1,050) hours of instruction was completed in less than one hundred seventy-five (175) instructional days, the certified staff shall not be required to work more than four (4) in-service days, one (1) day for opening school and one (1) day for closing school, and shall be paid for four (4) holidays in addition to the instructional year, in order for the district and employees to receive full credit. If a school district required teachers to work additional days to meet the one hundred eighty-five (185) day requirement under the provisions of KRS 158.070 during the 1997-98 school year, up to four (4) days may be carried forward to meet the professional development and planning requirements under the provisions of KRS 158.070 for each of the 1998-99 and 1999-2000 school years.

d. Secondary Vocational Education and Technology Centers Operations: Notwithstanding KRS 151B.025, 151B.035, 151B.110, or any other statute to the contrary, a local board of education may petition the State Board for Adult and Technical Education to assume authority for the management and control of a state-operated secondary vocational education and technology center. The petition shall address, at a minimum, the following areas of concern: the local board's plan for continuing those programs and services to students from other school districts who are using the center at the time of the transfer, and a plan of collaboration with the districts being served to meet local vocational curriculum needs, including the intention to involve these districts in future needs assessments, program, and curriculum changes.

The State Board may, at its option, enter into an agreement to transfer all equipment, supplies, and any General Fund moneys appropriated to the Department of Technical Education relating to the operations of the center to the local board of education, provided that the local board shall guarantee all employee rights and benefits accumulated under the State Board of Adult and Technical Education. In addition, all funds generated pursuant to students being enrolled in the center in accordance with the Support Education Excellence in Kentucky (SEEK) Program, as provided by KRS 157.360, 157.370, or any other statute, shall be transferred to the local board of education for distribution to the secondary school operating center. All funds, equipment, and supplies transferred to the local board of education pursuant to assuming the management and control of a state-operated secondary vocational education and technology center shall be provided to the secondary school operating the center and may only be utilized for the operation of the center.

e. Consumer Price Index: In accordance with the enactment of legislation directing the identification of the percent increase in the average annual Consumer Price Index for all urban consumers between the two (2) most recent calendar years, it is determined this percentage increase for calendar years 1996 and 1997 is two and three-tenths percent (2.3%).

f. Minimum School Term: Notwithstanding KRS 158.070, the McCracken County School District shall be allowed one (1) day of mourning and shall be required to complete the equivalent of one hundred seventy-four (174) instructional days during the 1997-1998 school year.

11. EXECUTIVE POLICY AND MANAGEMENT

a. Employment of Personnel: The Department of Education may fill, through memoranda of agreement, not more than fifty percent (50%) of its existing authorized positions below the division director level with individuals employed as school administrators and educators in Kentucky.

b. Applicants for Superintendent: Notwithstanding KRS 160.380, an applicant for superintendent may be appointed by a local school board of a district that also employs a sibling of the applicant if the sibling has been employed by the district for one (1) academic school year.

12. MANAGEMENT SUPPORT SERVICES

a. Funding for Employer Health and Life Insurance and Retirement Contributions: If the costs for health insurance or life insurance coverage for employees of local school districts exceed the levels of appropriated funds, any unexpended Support Education Excellence in Kentucky appropriations may be used to offset the unbudgeted costs. Any transfer shall be subject to approval of the Governor upon the written recommendation of the Secretary of the Finance and Administration Cabinet pursuant to the written request of the Commissioner of Education. If the appropriations for either local school district teachers' retirement employer match or local district health and life insurance fall short of statutory requirements, any surplus funds from the other appropriation unit may be transferred to the appropriation unit experiencing the shortfall. Any transfer shall be subject to approval of the Governor upon the written recommendation of the Secretary of the Finance and Administration Cabinet pursuant to the written request of the Commissioner of Education. Notwithstanding the provisions of KRS 45.229, any unexpended local school district teachers' retirement employer match funds shall not lapse at the end of fiscal year 1998-99 but shall be available if needed in fiscal year 1999-2000.

Included within the General Fund appropriation for local school district employee health and life insurance is funding to cover costs associated with the Personnel Cabinet's administrative activities including providing life and health insurance for local school district employees. Accordingly, the sum of \$2.00 per month per employee participating in the state-provided life and health insurance program in fiscal year 1998-99 and \$2.25 per month per employee participating in the state-provided life and health insurance program in fiscal year 1999-2000 shall be remitted to the Personnel Cabinet by the Department of Education from the General Fund appropriation for local school district health and life insurance.

b. Kentucky Education Technology System: Area Vocational Education Centers shall be fully eligible to participate in the Kentucky Education Technology System. Notwithstanding KRS 157.650 to 157.665, the School Facilities Construction Commission in consultation with the Kentucky Board of Education and the Kentucky Department of Education shall develop administrative regulations which identify a methodology by which the average daily attendance for Area Vocational Education Centers may be equated to the average daily attendance of other local school districts in order that they may receive their respective distributions of these funds.

The Department of Education shall conduct a study of the effectiveness of the use of technology in education. The study, at a minimum, shall include the effects and uses of technology in the classroom; training or professional development provided for teachers, staff, and students; effective ratios of computers to students and teachers; utilization of technology by education administrators, including principals, superintendents, board members, and staff of the Kentucky Department of Education; effectiveness and use of funds provided to local school districts for technology; and actual expenditures for technology by local school districts. Any costs incurred by the Department of Education pursuant to this study shall be provided from funds retained by the Department of Education for administration of the technology system. Offers of assistance provided to local school districts shall not be less than the level provided for fiscal year 1997-98.

c. Teachers' Compensation Pilot Project: The Kentucky Board of Education shall recommend a comprehensive professional compensation plan for certified staff and conduct a pilot program in one (1) or more local school districts. The pilot project shall recognize a teacher's professional competency, skills, and knowledge; contributions to improve schools and student achievement and learning; professional involvement in local, state, and national organizations; and certification from the National Board for Professional Teaching Standards.

d. Assessment Testing: If amounts appropriated for the assessment program are insufficient to meet the costs of the testing program, funds may be transferred from the pupil transportation component of the Support Education

Excellence in Kentucky (SEEK) Program; however, the total amount expended for the testing program shall not exceed \$8,100,000 in each fiscal year.

13. LEARNING RESULTS SERVICES

a. School Rewards Trust Fund: Distribution of rewards to local schools shall be based on policy established by the Kentucky Board of Education.

b. Kentucky Education Technology System: The School for the Deaf and the School for the Blind shall be fully eligible, along with local school districts, to participate in the Kentucky Education Technology System in a manner that takes into account the special needs of the students of these two schools.

c. Distinguished Educators: Notwithstanding KRS Chapter 158 and KRS Chapter 161, all Distinguished Educators assigned to a school or district on or after July 1, 1998, shall receive a salary supplement of thirty-five percent (35%) of their annual salary for each year of service in that capacity. This salary supplement shall not be included in the total salary compensation calculation for any cost-of-living adjustment or retirement benefits to which the employee may be entitled.

d. Commonwealth School Improvement Fund: Notwithstanding KRS 157.067, \$3,000,000 shall be transferred from the Kentucky Successful Schools Trust Fund to the Commonwealth School Improvement Fund, established in KRS 158.805, and appropriated to fund grants to schools in which the proportion of successful students declined in the 1996-97 and 1997-98 school years.

14. LEARNING SUPPORT SERVICES

a. Family Resource and Youth Services Centers: Funds appropriated to establish Family Resource and Youth Services Centers shall be transferred in fiscal year 1998-99 and in fiscal year 1999-2000 to the Cabinet for Families and Children consistent with the intent of KRS 156.497. The Cabinet for Families and Children is authorized to use, for administrative purposes, no more than three percent (3%) of the total funds transferred from the Department of Education for the Family Resource and Youth Services Centers. The Department of Education is authorized to retain \$70,400 in fiscal year 1998-99 and \$74,300 in fiscal year 1999-2000 from the funds appropriated for the Family Resource and Youth Services Centers. If a certified person is employed as a director or coordinator of a Family Resource or Youth Services Center, that person shall retain his or her status as a certified employee of the school district.

If seventy percent (70%) or more of the funding level provided by the state is utilized to support the salary of the director of a center, that center shall provide a report to the Cabinet for Families and Children identifying the salary of the director. The Cabinet for Families and Children shall transmit any reports received from Family Resource and Youth Service Centers pursuant to this provision to the Legislative Research Commission.

b. Education Professional Standards Board (EPSB): Notwithstanding any statute to the contrary, the EPSB may collect fees for the issuance of certifications. EPSB may charge the following fees at the corresponding amounts: issuance or reissuance (renewal) of regular certificate (to include all previously issued certifications and endorsements) - \$50; each transaction to add area(s) of certification or rank - \$50; issuance of five-year substitute certificate - \$15; issuance of duplicate certificate - \$25; reissuance of limited certification - \$35.

c. Community After School Programs: The Department of Education, Extended School Services Program, shall establish at least three (3) Community After School Programs focused on children in grades K-8, and at a minimum these programs shall be located within local school districts 365, 415, and 441.

d. Kentucky School for the Deaf - Personnel Cap: The Kentucky School for the Deaf is authorized to fill up to eleven (11) staff positions above the total filled permanent position complement identified as of August 1, 1997.

e. School-Based Decision Making Councils: Notwithstanding KRS 160.345, the parent representatives on the council may not be employees of that school or the district central office, or relatives of an employee of that school or relatives of a district central office employee, and a local board member or their spouse may not be a parent representative. Notwithstanding KRS 160.345, a teacher who is not a resident of Kentucky may be representative on the school council.

Each school council shall adopt a policy to be implemented by the principal relating to the procedures to assist the council with consultation in the selection of personnel by the principal, including but not limited to meetings, timelines, interviews, review of written applications, and review of references.

f. Allocation of Safe Schools Funds: Notwithstanding Section 7 of 1998 House Bill 330, or any statute to the contrary, not more than twenty percent (20%) of the funds appropriated in fiscal year 1998-99 for safe schools initiatives shall be utilized to support the operations of the Center for School Safety and not more than ten percent (10%) of the funds appropriated in fiscal year 1999-2000 shall be utilized to support the operations of the Center for School Safety. The remaining funds for fiscal year 1998-99 shall be distributed as grants to local school districts by the Kentucky Department of Education for the purpose of supporting appropriate alternative education programs based on qualitative criteria and guidelines established by the department. The remaining funds for fiscal year 1999-2000 shall be distributed by the Center for School Safety based on an application process established by the Center, in collaboration with the Kentucky Department of Education, and approved by the board of directors. At a minimum, the application process shall include eligibility guidelines and funding levels for grants; the process shall include as first priority those programs applying for alternative programs. Other programs which may receive funding include community-based programs; intensive academic intervention programs; programs utilizing school resource officers; training programs for certified and classified staff, students, parents, and community members; and other violence prevention programs.

g. Advisory Council for Gifted and Talented Education - Expenditure of Appropriated Funds: Any funds appropriated to the Advisory Council for Gifted and Talented Education shall be expended only upon a recommendation by the Council.

EDUCATION, ARTS, AND HUMANITIES

15. OFFICE OF THE SECRETARY

a. East Kentucky Center for Science, Math, and Technology Resources/Exhibits Work Center: The East Kentucky Center for Science, Math, and Technology Resource/Exhibit work center, coal mine simulation project, and planetarium/multi-media center, including outdoor study area, referenced as project number 0029, Part X, General Fund Surplus Expenditure Plan, shall be located on the campus of Prestonsburg Community College.

b. Four Rivers Center: If the Secretary of the Finance and Administration Cabinet determines that the amount of actual General Fund undesignated fund balance available for expenditure in fiscal years 1997-98 or 1998-99 is sufficient to fund Four Rivers Center - Paducah (Priority # 23) of the Statewide Infrastructure Fund, the appropriated funds shall be made available to the Four Rivers Center for the Performing Arts, Incorporated as soon as a Memorandum of Agreement is executed between the Four Rivers Center for the Performing Arts, Incorporated and the Education, Arts and Humanities Cabinet and approved by the Governor's Office for Policy and Management. The Memorandum of Agreement shall set out requirements to assure proper oversight, reporting, and accountability, and shall specifically set out procedures for handling funds prior to construction.

16. TEACHERS' RETIREMENT SYSTEM

a. Distinguished Educators' Retirement Benefits: Notwithstanding KRS Chapter 158 and KRS Chapter 161, salary supplements received by persons selected as distinguished educators on or after July 1, 1998, shall not be included in the total salary compensation for any retirement benefits to which the employee may be entitled.

17. SCHOOL FACILITIES CONSTRUCTION COMMISSION

a. Local Districts Facilities Plans: Notwithstanding the provisions of KRS 157.622(3), funds allocated by the School Facilities Construction Commission to local school districts for fiscal year 1998-99 and fiscal year 1999-2000 shall be applied to the projects listed in the most current facility plan approved for the district by the Kentucky Board of Education and the funds shall be applied to projects in the priority order listed in the plan, except any funds received by local school district number 175 pursuant to KRS 157.611 to 157.640 shall be utilized to complete the construction and renovation of any constructed or authorized projects for academic or nonacademic facilities prior to initiating any new construction or renovation projects.

b. Accumulated School Facilities Construction Credits: Notwithstanding KRS 157.622(5), a local school district may accumulate credit, subject to the availability of funds, for its unused state allocation for a period not to exceed six (6) years. In addition, the General Assembly directs that the inadvertent expiration of accumulated credits, as provided by KRS 157.620 to 157.622 and 750 KAR 1:010, allowed by public school district number 491 be restored and shall not effect any future offers of assistance as provided by KRS 157.620 to 157.622 made to public school district 491.

c. Participation in the Education Technology Program by Area Vocational Education Centers: Area Vocational Education Centers shall be fully eligible to participate in the Kentucky Education Technology System. Notwithstanding KRS 157.650 to 157.665, the School Facilities Construction Commission in consultation with the

Kentucky Board of Education and the Kentucky Department of Education shall develop administrative regulations which identify a methodology by which the average daily attendance for Area Vocational Education Centers may be equated to the average daily attendance of other local school districts in order that they may receive their respective distributions of these funds. The School Facilities Construction Commission shall include Area Vocational Education Centers in any offers of assistance to local school districts for technology assistance during the 1998-2000 fiscal biennium.

FAMILIES AND CHILDREN

18. CABINET FOR FAMILIES AND CHILDREN

a. **Maximizing Federal Funds:** Pursuant to compliance with the State/Executive Budget Bill and the Statutory Budget Memorandum, the Cabinet shall maximize all Federal Funds for programs within the Cabinet. Prior to any application, revised application, or receipt of unbudgeted Federal Funds as provided in this section, the Cabinet shall submit the application and related financial information to the Legislative Research Commission for referral to appropriate committees, including the Interim Joint Committee on Appropriations and Revenue, for review. The Cabinet may consider and comply with the actions of the committees prior to the final application.

b. **Reorganization:** Pursuant to the provisions of KRS Chapter 18A, a state employee who is affected by an act related to the reorganization or privatization of the department or agency in which the employee is employed shall have the right to refuse a position which is more than fifty (50) miles from the employee's residence. A state employee whose position is currently protected by the provisions of KRS Chapter 18A and who is affected by layoff or reorganization of the department or agency in which the employee is employed shall not be placed in a position which is not covered by the provisions of that chapter.

c. **Fund Transfers:** To maximize funding including child care federal funds and to meet the needs of the Temporary Assistance to Needy Families (TANF) recipients and other low income families, the cabinet shall request, through the interim appropriation increase process pursuant to KRS 48.630, any transfers of funds between appropriation units or any additional resources, not appropriated, to accomplish these purposes.

19. SOCIAL INSURANCE - BENEFITS

a. **Energy Assistance Trust Fund:** Notwithstanding KRS 42.560, only those Restricted Funds necessary to supplement Federal Funds in order to maintain program levels as appropriated, are authorized from the Energy Assistance Trust Fund for fiscal year 1998-99 for the Home Energy Assistance and Weatherization programs.

b. **Education for Recipients of Public Assistance:** The Department for Social Insurance shall make available to a minimum of 3,700 public assistance recipients, or 7% of total public assistance recipients, placements in Postsecondary or Vocational education. The recipients shall receive all support services provided to employed public assistance recipients including transportation and child care. The funding source shall be determined by the Cabinet for Families and Children. Work requirements shall include those required by the Postsecondary or Vocational educational placement as part of the required program of study or financial assistance. If allowable by Federal regulations related to Welfare Reform work participation rates, work requirements shall be limited to those required by the Postsecondary or Vocational educational placement as part of the required program of study or financial assistance.

c. **Personal Care Homes:** The Cabinet for Families and Children shall implement a \$2.00 per day increase in the payment standard for Personal Care recipients effective upon promulgation of 904 KAR 2:015. The source of funds for this increase is General Fund moneys for state fiscal year 1997-98 and the Food Stamp Enhanced Funding Account Number 63-48-708-L540 or General Fund carry forward dollars for state fiscal year 1998-99. The Department for Medicaid Services shall request federal waivers to utilize Medicaid funding for Personal Care recipients in the State Supplementation Program.

20. DEPARTMENT FOR SOCIAL SERVICES

a. **Emergency Shelter:** The General Fund appropriation for Alternatives for Children Program includes \$450,000 each year for Private Child Care Emergency Shelter at the Home for the Innocents for temporary emergency services.

b. **Outreach Programs:** General Fund appropriation of \$150,000 each year is provided for Outreach Resource Centers Services for adults and children services expansion through the Mountain Outreach in McRoberts (\$100,000 operating expenses each year) and Sarah's Place Women's Resource Center in Sandy Hook (\$50,000 operating and renovation expenses each year).

c. Budget and Financial Administration: Prior to June 1, 1998, the Finance and Administration Cabinet shall establish separate appropriation units for fiscal years 1998-99 and 1999-2000 within the Department for Social Services (DSS) to record and report administration costs distinct from direct services costs with their respective sources of funding. The DSS administration costs shall include, but not be limited to, central office employees, contracted employees in the central office and through state universities, and district managers. The DSS direct services costs shall include, but not be limited to, field family service workers, foster care payments, and private child care contract payments. Placement of other costs such as county office managers shall be determined by the commissioner of DSS. Expenditures by unit shall be provided for each appropriation unit and shall include, but is not limited to, Family Based Services, Private Child Care, Foster Care, Adult Services, and Child Day Care. By July 1, 1998, DSS shall provide (a) a description of costs components including position titles within each appropriation unit, (b) a distribution of the enacted budget between the two appropriation units, and (c) a comparative distribution of fiscal year 1996-97 actual expenditures and fiscal year 1997-98 revised budget between the two appropriation units.

d. Salary Increases: General Fund appropriation of \$247,300 in fiscal year 1998-99 for a seven percent (7%) salary increase and \$412,900 in fiscal year 1999-2000 is provided for an additional three and one-half percent (3.5%) salary increase for employees in the Department for Social Services with the job classifications of Family Services Worker, Family Services Worker Senior, Family Services Worker Chief, Family Services Clinician, Youth Counselor, Youth Counselor Senior, Youth Treatment Specialist Assistant, Juvenile Treatment Series, Guardianship Field Worker Series, Support Service Aide, Institutional Recreational Leader, and Reeducation Counselor with five (5) or more years of state service who make less than \$25,000 per year as of July 1, 1998.

e. Private Child Care Contract Reimbursements: Appropriations of \$50,150,000 in fiscal year 1998-99 and \$50,304,500 in fiscal year 1999-2000 are provided for Private Child Care contract reimbursements based upon reimbursement rates effective October 1, 1997, and any funds not expended for this purpose shall carry forward into the next fiscal year notwithstanding KRS 45.229, and shall provide a one time payment each year to each private child care agency for an amount equal to the difference in each agency's total reimbursement for the past fiscal year and the reimbursement total based on reimbursement rates prior to the October 1, 1997 reduction in rates.

21. AGING SERVICES

a. Medicaid Services Waivers: By January 1, 1999, the Department for Medicaid Services shall request federal waivers, to be effective by July 1, 1999, to utilize Medicaid funding for the following: (a) homecare services, (b) adult day care/alzheimer's respite care, (c) personal care attendants, and (d) a long term care case management demonstration project. The demonstration project shall expire June 30, 1999. Funds for expansion with Medicaid dollars for six months of fiscal year 1998-99 are provided for all waivers that may become effective prior to July 1, 1999.

b. Homecare Match: Notwithstanding KRS 205.460, entities contracting with the Cabinet to provide essential services under KRS 205.455 and this provision shall provide equal to or greater local match than the amount in effect during the fiscal year 1997-98. Local match may include any combination of materials, commodities, transportation, office space, personal services or other types of facility services, or funds. The Secretary of the Cabinet for Families and Children shall prescribe the procedures to certify the local match assurance.

FINANCE AND ADMINISTRATION

22. FINANCE AND ADMINISTRATION CABINET

a. Federally Assisted Wastewater Loan Fund and Federally Assisted Water Supply Revolving Fund: \$9,351,000 in bonds is reauthorized for the Federally Assisted Wastewater Loan Fund and the Federally Assisted Water Supply Revolving Fund. The Secretary of the Finance and Administration Cabinet shall utilize the bond funds to maximize Federal Funds available for both funds.

HEALTH SERVICES

23. CABINET FOR HEALTH SERVICES

a. Maximizing Federal Funds: Pursuant to compliance with the State/Executive Budget Bill and the Statutory Budget Memorandum, the Cabinet shall maximize all Federal Funds for programs within the Cabinet. Prior to any application, revised application, or receipt of unbudgeted Federal Funds as provided in this section, the Cabinet shall submit the application or approval letter and related financial information to the Legislative Research Commission for referral to the appropriate interim joint committees, including the Interim Joint Committee on Appropriations and Revenue, for review. The Cabinet may consider and comply with the actions of the Committee prior to the final application.

24. MEDICAID ADMINISTRATION

a. Medicaid Waiver Requests: By January 1, 1999, the Department for Medicaid Services shall request federal waivers, to be effective July 1, 1999, to utilize Medicaid funding for the following: (a) substance abuse services for pregnant women; (b) homecare services; (c) Alzheimer's respite care; (d) personal care attendants; and (e) personal care homes/state supplementation payments to the extent that current federal law would allow recipients to be limited to state supplementation clients.

b. Medicaid Waiver Process: Funds for implementation of Medicaid expansion requests within the Cabinet for Health Services and Cabinet for Families and Children shall be available upon approval of the waivers by the Health Care Financing Administration (HCFA). The Cabinets shall proceed aggressively on developing waiver applications for submission to HCFA for their review and approval.

25. MEDICAID SERVICES - BENEFITS

a. Hospital Indigent Patient Reporting: Notwithstanding KRS 205.640(5)(d)1., hospitals shall report indigent inpatient and outpatient care for which, under federal law, the hospital is eligible to receive disproportionate share payments.

b. Hospital Indigent Patient Billing: Notwithstanding KRS 205.640(6), hospitals shall not bill patients for services where the services have been reported to the Cabinet and the hospital has received disproportionate share payments for the specific services.

c. Provider Tax Information: Any provider who posts a sign or includes information on customer receipts or any material distributed for public consumption indicating that they have paid provider tax shall also post, in the same size type set as the provider tax information, the amount of payment received from the Department for Medicaid Services during the same period the provider tax was paid. Providers who fail to meet this requirement shall be excluded from the Disproportionate Share Hospital and Medicaid Program. The Division of Licensing and Regulation shall include this provision in facilities' annual licensure inspection.

d. Indigent Care Posting: Any provider who receives payment from the Disproportionate Share Hospital Program shall post a sign conspicuously in the lobby, in at least a 16-point type set, stating that they participate in the Disproportionate Share Hospital Program and are consequently required to provide indigent care. Failure to comply with this provision shall result in suspension from the Disproportionate Share Hospital Program. The Division of Licensing and Regulation shall include this provision in facilities' annual licensure inspection.

e. Settlement of Obligations Incurred Prior to Prepaid Capitation: The Department is authorized to fulfill financial obligations incurred prior to implementation of prepaid capitation.

f. Disproportionate Share Hospital Payments: Disproportionate Share Hospital payments shall not exceed the maximum amounts established in the Federal Balanced Budget Act of 1997.

g. Quality and Charity Care Trust Fund: No hospital may be reimbursed from both the Quality and Charity Care Trust Fund and the Hospital Indigent Care Assurance Program (HICAP) for the same service to the same patient. Any hospital that willfully violates this provision shall be subject to a penalty equal to three times the amount of the improper charge to the funds, which amount shall be credited to the General Fund. The Secretary of the Cabinet for Health Services shall have the authority to secure the patient information as needed from the participating facilities in order to determine compliance and enforce this provision. Each facility billing and receiving reimbursements from the Quality and Charity Care Trust Fund shall be required to identify each patient by Social Security number and indicate whether the patient is classified as indigent or medically needy. Notwithstanding any other provision of this Act or law, in any fiscal year for which all the parties to the Quality and Charity Care Trust Agreement so agree, the General Fund appropriation to fulfill the Commonwealth's contractual obligation relating to the Quality and Charity Care Trust Agreement or any portion thereof, together with any other funds paid to the Quality and Charity Care Trust contractual obligation of the parties, or any portion thereof, shall be transferred to the Department for Medicaid Services as part of its Restricted Funds appropriation for Benefits. In any fiscal year for which all the parties to the Quality and Charity Care Trust Agreement do not agree to transfer all or any portion of the Trust's revenues to the Department of Medicaid Services for Benefits, the Quality and Charity Care Trust shall operate pursuant to its contractual provisions.

h. Nursing Facility Budget: The Medicaid nursing facility allocation for fiscal year 1997-98 of \$504,000,000 shall be increased a minimum of three percent (3%) in each year of the biennium.

i. Medicaid Budget Analysis Reports: The Department for Medicaid Services shall submit a quarterly budget analysis report to the Interim Joint Committee on Appropriations and Revenue. The report shall provide monthly detail of actual expenditures, eligibles, and average monthly cost per eligible by eligibility category along with current trailing 12 month averages for each of these figures. The report shall also provide actual figures for all categories of noneligible-specific expenditures such as Supplemental Medical Insurance premiums, Kentucky Patient Access to Care, nonemergency transportation, drug rebates, cost settlements, and Disproportionate Share Hospital payments. The report shall compare the actual expenditure experience with those underlying the enacted or revised enacted budget, explain any significant variances which may occur, and distinguish between expenditures for continuing and new programs. Measurement of any savings initiatives instituted shall compare budgeted savings with actual savings.

j. Children's Crisis Stabilization Units: Federal Funds of \$700,000 in fiscal year 1998-99 and \$800,000 in fiscal year 1999-2000 for existing and new children's crisis stabilization units shall be distributed in the amount of \$100,000 each fiscal year to each of the following entities: (a) Mountain Comprehensive Care Center, (b) Kentucky River Community Care, Inc., (c) Pennyroyal Regional Mental Health/Mental Retardation Board, Inc., (d) Lifeskills, Inc., (e) Seven Counties Services, Inc., (f) Pathways, Inc., (g) Communicare, Inc, and in fiscal year 1999-2000, (h) Lake Cumberland Mental Health/Mental Retardation Board, Inc. State matching dollars required to generate Federal Funds for children's crisis stabilization units shall be provided by the Department for Mental Health/Mental Retardation.

k. Adult/Children's Crisis Stabilization Units/Care Systems: Federal Funds in the amount of \$150,700 in fiscal year 1998-99 and \$200,000 in fiscal year 1999-2000 for new crisis stabilization units/care systems shall be distributed as follows: (a) Mountain Comprehensive Care Center - \$100,000 in each year for an adult crisis stabilization unit, and (b) Comprehend, Inc. Regional Mental Health/Mental Retardation Board - \$50,700 in fiscal year 1998-99 and \$100,000 in fiscal year 1999-2000 for an adult and children's crisis stabilization care system.

l. Crisis Stabilization Units: The Cabinet for Health Services may pursue funding strategies that would provide for the establishment of crisis stabilization units for children and adults in each Regional Mental Health/Mental Retardation Board service area not otherwise funded in the budget.

m. Substance Abuse Treatment Services: The Cabinet for Health Services may pursue Medicaid funding strategies for screening, assessment, intensive outpatient, residential treatment, and intensive case management for substance-abusing pregnant women and women of childbearing age in each Regional Mental Health/Mental Retardation Board service area not otherwise funded in the budget.

n. Targeted Mental Health/Mental Retardation Services: The Cabinet for Health Services may pursue alternative Medicaid funding and program strategies for the mentally retarded or other targeted populations in each Regional Mental Health/Mental Retardation Board service area utilizing state and local matching funds available to the boards to draw Federal Funds to be utilized within the Regional Mental Health/Mental Retardation Board service areas.

26. DEPARTMENT FOR PUBLIC HEALTH

a. Fund Reallocations: The \$220,000 General Fund allotment for the eastern and western Kentucky mobile dental units shall be reallocated as follows: (a) Morehead State University Wellness Program, \$120,000 in each year to expand community services and provide regional comprehensive wellness services including substance abuse services and a physical fitness program; and (b) \$100,000 in fiscal year 1998-99 to establish the Letcher County Community Health Education Center in the Harry M. Caudill Library.

b. Public Health Department Services for Indigent Persons: Kentucky Public Health Departments shall, to the extent possible, continue to provide clinical services for the indigent people of Kentucky including, but not limited to, the following services: Primary Care, Communicable Disease, AIDS, Adult Health, Child Health Services, Dental Health, Family Planning, Nutrition Services, Epidemiology and Disease Prevention, the Women, Infants and Children (WIC) Program, the Maternal and Child Health Program, and Laboratory Services.

c. Feasibility Study: The nonrecurring sum of \$25,000 General Fund in fiscal year 1998-99 shall be allocated to the University of Kentucky Center for Rural Health to conduct a study on the feasibility of providing rehabilitation services in eastern Kentucky for stroke, cardiac, and other similar types of patients.

d. Prescription Tracking System: Any unexpended dollars in fiscal year 1998-99 for the prescription tracking system shall not lapse but shall be carried forward to fiscal year 1999-2000 to be utilized for the same purpose. This funding shall be used to fill up to three (3) staff positions above the total filled permanent positions complement identified as of August 1, 1997.

e. Poison Control Center Contract: Personal Service Contract 980065, in the amount of \$325,000 in fiscal year 1997-98 to maintain a statewide poison control and information center twenty-four hours per day, 365 days per year, shall be continued and reissued by the Department for Public Health, Cabinet for Health Services, for the General Fund amounts of \$1,000,000 in fiscal year 1998-99 and \$1,000,000 in fiscal year 1999-2000. Included in each year of the biennium in the Department for Public Health budget is \$325,000 in the base and additional funds of \$675,000 which shall be utilized solely for the Poison Control Center Personal Service Contract 980065.

27. DEPARTMENT FOR MENTAL HEALTH/MENTAL RETARDATION

a. Computer System: Any unexpended dollars from the \$3,000,000 budgeted in fiscal year 1997-98 for hardware, software, or any other enhancements to the Department for Mental Health/Mental Retardation's (MH/MR) computer system which would enable them to collect and monitor information from the MH/MR boards/centers and state facilities shall not lapse but carry forward into fiscal year 1998-99 and fiscal year 1999-2000 to continue for the same purpose, notwithstanding KRS 45.229.

b. Lifeskills Comprehensive Care Board: The sum of \$100,000 General Fund in each year of the biennium shall be allocated to the Association of Retarded Citizens, or an appropriate affiliate, for the following purposes: (a) to purchase and operate a disabilities equipped vehicle to meet the transportation needs of their clients; (b) administrative costs thereof, not to exceed ten percent (10%) of this appropriation; and (c) other required services for clients served to be covered by the excess of this appropriation over the amount required to purchase and operate the disabilities equipped vehicle.

c. Assistive Technology Loan Fund: The sum of \$100,000 General Fund in each year of the biennium shall be allocated to the Vocational Rehabilitation Program in the Workforce Development Cabinet to establish a revolving loan pool for the Assistive Technology Loan Fund for persons with disabilities pursuant to KRS 151B.470.

d. Children's Crisis Stabilization Units: The appropriations for existing and new children's crisis stabilization units of \$1,525,200 from the General Fund and \$279,800 Restricted Funds in fiscal year 1998-99, and \$1,814,200 from the General Fund and \$265,800 Restricted Funds in fiscal year 1999-2000, shall be distributed as follows: (a) Mountain Comprehensive Care Center - \$215,000 from the General Fund each year; (b) Kentucky River Community Care, Inc. - \$215,000 from the General Fund each year; (c) Pennyroyal Regional Mental Health/Mental Retardation Board, Inc. - \$275,000 from the General Fund each year; (d) Lifeskills, Inc. - \$275,000 from the General Fund each year; (e) Seven Counties Services, Inc. - \$275,000 from the General Fund each year; (f) Pathways, Inc. - \$270,200 from the General Fund and \$4,800 Restricted Funds in fiscal year 1998-99, and \$275,000 from the General Fund in fiscal year 1999-2000; (g) Communicare, Inc. - \$275,000 Restricted Funds in fiscal year 1998-99 and \$275,000 from the General Fund in fiscal year 1999-2000; and, in fiscal year 1999-2000, (h) Lake Cumberland Mental Health/Mental Retardation Board, Inc. - \$9,200 from the General Fund and \$265,800 Restricted Funds.

e. Adult/Children's Crisis Stabilization Units/Systems: General Fund in the amount of \$414,300 in fiscal year 1998-99 and \$550,000 in fiscal year 1999-2000 for new crisis stabilization units/care systems shall be distributed as follows: (a) Mountain Comprehensive Care Center - \$275,000 in each year for an adult crisis stabilization unit; and (b) Comprehend Inc. Regional Mental Health/Mental Retardation Board - \$139,300 in fiscal year 1998-99 and \$275,000 in fiscal year 1999-2000 for an adult and children's crisis stabilization care system.

f. Cost Saving Measures: The Department for Mental Health/Mental Retardation shall report to the Interim Joint Committee on Appropriations and Revenue prior to implementation, any projects or initiatives resulting in significant cost savings to the Commonwealth of Kentucky and the estimated amount of such savings.

g. Crisis Stabilization Units: The Cabinet for Health Services may pursue funding strategies that would provide for the establishment of crisis stabilization units for children and adults in each Regional Mental Health/Mental Retardation Board service area not otherwise funded in the budget.

h. Substance Abuse Treatment Services: The Cabinet for Health Services may pursue alternative funding strategies for screening, assessment, intensive outpatient, residential treatment, and intensive case management for substance-abusing pregnant women and women of childbearing age in each Regional Mental Health/Mental Retardation Board service area not otherwise funded in the budget.

i. Targeted Mental Health/Mental Retardation Services: The Cabinet for Health Services may pursue alternative funding and program strategies for the mentally retarded or other targeted populations in each Regional Mental Health/Mental Retardation Board service area utilizing state and local matching funds available to the boards to draw Federal Funds to be utilized within the Regional Mental Health/Mental Retardation Board service areas.

28. CERTIFICATE OF NEED

a. Certificate of Need Exemption: Notwithstanding KRS 216B.020, the issuance of a certificate of need shall not apply to the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of a hospital or the following health services performed on site in an existing health facility when the amortization cost per year is less than six hundred thousand dollars (\$600,000) and the provider gives notice of intent to perform the services by December 30, 1991; psychiatric care where chemical dependency services are provided, level one (1) and level two (2) neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are performed on site as of July 15, 1990.

29. ADMINISTRATIVE SUPPORT

a. Appropriation Revisions: Any authorizations in the State/Executive Budget Bill with respect to transfer, increase, or decrease of appropriated funds for the Cabinet for Health Services and Cabinet for Families and Children shall comply with the General Provisions of this Act.

b. Program Administration Contract Reporting: A summary of all Program Administration contracts shall be provided to the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Appropriations and Revenue on a monthly basis. A summary of managed care-related contracts shall also be provided to the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Appropriations and Revenue on a monthly basis.

JUSTICE

30. JUSTICE ADMINISTRATION

a. Legal Aid Restrictions: These funds shall be used for providing and arranging civil legal representation for eligible low-income Kentuckians who are currently underserved and for purposes consistent with federal law and regulations. These funds shall not be used for lobbying on issues related to abortion. The recipient of this appropriation shall report annually to the Interim Joint Committee on Appropriations and Revenue on the dispositions of the grant.

31. STATE POLICE

a. Salary Policies: The Department of State Police is directed to apply a sufficient vacancy credit to achieve the following salary increases. A sufficient vacancy credit shall be maintained in fiscal year 1999-2000 to support continuation funding for this increase.

General Fund moneys in the amount of \$2,468,200 in fiscal year 1998-99 and \$5,081,900 in fiscal year 1999-2000 are provided to support a \$2,000 pay raise in fiscal year 1998-99 and an additional \$2,000 raise in fiscal year 1999-2000 for sworn officers. This raise effectively raises the sworn officer salary by \$2,000 in fiscal year 1998-99 and by \$4,000 in fiscal year 1999-2000 over the current salary.

General Fund moneys in the amount of \$216,200 in fiscal year 1998-99 and \$649,400 in fiscal year 1999-2000 are provided to support a \$1,250 pay raise in fiscal year 1998-99 and an additional \$2,500 raise in fiscal year 1999-2000. This raise effectively raises the dispatcher salary by \$1,250 in fiscal year 1998-99 and by \$3,750 in fiscal year 1999-2000 over the current salary.

General Fund moneys in the amount of \$50,500 in fiscal year 1998-99 and \$106,100 in fiscal year 1999-2000 are provided to support a \$2,000 pay raise in fiscal year 1998-99 and an additional \$2,000 raise in fiscal year 1999-2000 for bomb and arson investigators. This raise effectively raises the dispatcher salary by \$2,000 in fiscal year 1998-99 and by \$4,000 in fiscal year 1999-2000 over the current salary.

32. CORRECTIONS MANAGEMENT

a. Medium Security Prison Feasibility Study: Prior to the expenditure or obligation of any funds, from interim or permanent financing sources, that may be related to the design and site acquisition of a new 1,790-Bed Medium Security Facility for Men, as authorized in Part II, Capital Projects, Section H., Item 3.g., the Secretary of Finance and Administration, in collaboration with the Justice Cabinet, shall conduct a cost and location feasibility study for the location and operation of two 895-bed facilities in Elliott and Knott Counties. In addition, the interim study and findings shall be presented to, and reviewed by, the Interim Joint Committee on Appropriations and Revenue. The Secretaries of Finance and Administration and Justice shall evaluate and report the costs and benefits to be derived from the location and operation of these two facilities compared with one facility.

33. COMMUNITY SERVICES AND LOCAL FACILITIES

a. Fiscal Year 1997-98 Appropriation Revision: Authorization is given for the receipt and expenditure of \$2,800,000 in General Fund appropriations in fiscal year 1997-98 from the Adult Institutions appropriation unit to the Community Services and Local Facilities appropriation unit in order to offset a fiscal year 1997-98 impending budget deficit. Due to the delayed opening of previously authorized capital construction facilities, there exists a surplus of \$2,800,000 in operating funds in Adult Institutions that will be used in Community Services and Local Facilities to offset the unbudgeted cost of housing additional inmates in county jails.

b. Probation and Parole Career Ladder Program: Notwithstanding the provisions of KRS 196.076(1), (2), and (3) to the contrary, additional General Fund support totaling \$21,000 in fiscal year 1998-99 and \$93,000 in fiscal year 1999-2000 shall be used to expand the Probation and Parole Career Ladder in each year of the biennium. Probation and parole officers qualifying for this improvement shall meet the provisions of KRS 196.076(4), (5), (6), and (7). Salary improvements pursuant to this authority shall be in addition to any other salary adjustments afforded all state employees. The Justice Cabinet, Department of Corrections, shall submit a quarterly program and financial status report to the Interim Joint Committee on Appropriations and Revenue which identifies the expenditure of funds and the status of the Probation and Parole Officer Career Ladder Program.

c. Reimbursement to Counties for Interstate Inmate Detainees: The Department of Corrections shall reimburse fifty percent (50%) of documented expense claims for prior year costs incurred by counties for holding interstate inmate detainees awaiting transfer in local jails and the sum of \$40,000 in fiscal year 1999-2000 is included in the General Fund appropriation for this purpose.

34. ADULT INSTITUTIONS

a. Fiscal Year 1997-98 Appropriation Revision: Authorization is given for the receipt and expenditure of \$2,800,000 in General Fund appropriations in fiscal year 1997-98 from the Adult Institutions appropriation unit to the Community Services and Local Facilities appropriation unit in order to offset a fiscal year 1997-98 impending budget deficit. Due to the delayed opening of previously authorized capital construction facilities, there exists a surplus of \$2,800,000 in operating funds in Adult Institutions that will be used in Community Services and Local Facilities to offset the unbudgeted cost of housing additional inmates in county jails.

b. Inmate Projection/Bed Status and Financial Reports: The Justice Cabinet, Department of Corrections, shall provide a quarterly update report regarding inmate population projections, relating to state prisoners, to the Interim Joint Committee on Appropriations and Revenue. This report shall provide, at a minimum, any deviations in excess of one percent (1%) from the projections utilized in the preparation of the 1998-2000 Biennial Budget. The Justice Cabinet, Department of Corrections, shall provide a monthly status of all bed space utilized to house state prisoners, including state penitentiaries, adult correctional facilities, local jails, regional jails, halfway houses, community confinement programs, and diversion programs. The Justice Cabinet, Department of Corrections, shall provide a quarterly program and financial status report which identifies the expenditure of these funds to the Interim Joint Committee on Appropriations and Revenue. The report shall provide, at a minimum, the purpose for which the expenditure was made; the projected goal to be accomplished and outcomes, and their status; and the number of participants.

c. Private Prison Bed Expansion: The Department of Corrections shall give preference to Eastern Kentucky inmates when filling the additional beds, to allow for easier visitation by family members.

d. Reporting Requirements: The Department of Corrections shall require and Private Prison Bed Contractors shall provide to the Department of Corrections an annual report that contains, at a minimum, personnel data that includes a pay scale/job classification structure for all employees; information detailing salaries of personnel and related benefits by pay scale/job classification structure; and the minimum, average, and maximum salary, plus fringe benefits provided for all employed persons. The information provided shall be consistent with the Department of Corrections pay scale and job classification structure for all Department of Corrections employees. Fringe benefits shall be identified separately from salary expense. The Department of Corrections shall annually furnish a report containing the above information plus like data for persons employed in comparable positions within Adult Correctional Facilities statewide to the Legislative Research Commission.

e. Private Prison Custody Levels: Notwithstanding KRS 197.505, the Department of Corrections shall not enter into a contract for the operation or management of any facility authorized for new construction in this Act which is intended or designed to house prisoners classified above the minimum or community-custody level.

35. GENERAL ADMINISTRATION AND SUPPORT

a. Monthly Reporting: The Labor Cabinet shall report monthly to the Interim Joint Committee on Appropriations and Revenue its monthly expenditures of Restricted Funds and the nature of the expenditures. Separate reporting shall be done by each department within the Labor Cabinet.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

36. GENERAL ADMINISTRATION AND SUPPORT

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the General Administration and Support budget unit for cabinet-wide technology improvements. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

b. EMPOWER Kentucky Simplified Regulatory Initiative: Funds from the Technology Trust Fund shall be allotted to the Cabinet for the approved EMPOWER Kentucky Simplified Regulatory Initiatives in the following priority order and amounts. In fiscal biennium 1998-2000, a total of \$15,302,000 shall be allotted as follows: (a) Surface Mining - \$2,781,200, (b) Waste Water - \$3,012,600, (c) Solid Waste - \$1,384,400, (d) Air Quality - \$2,721,900, (e) Floodplain - \$1,111,000, (f) Drinking Water - \$2,124,800, (g) Hazardous Waste - \$1,111,000, and (h) Water Withdrawal - \$1,055,100.

37. DEPARTMENT FOR NATURAL RESOURCES

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the Natural Resources budget unit for the purpose of employing additional foresters. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

b. Jenny Wiley Trail: The Task Force comprised of representatives from the Tourism Development Cabinet, the Division of Forestry, and the Transportation Cabinet shall continue to maintain and manage the Jenny Wiley Trail.

38. DEPARTMENT FOR ENVIRONMENTAL PROTECTION

a. Clean Air Task Force and Quarterly Reports: The Clean Air Task Force membership and reporting requirements established by the 1992 General Assembly shall be continued. The Task Force shall include representatives of the industry, the environmental community, and the Cabinet, and shall report quarterly to the Legislative Research Commission for referral to appropriate committees. The Cabinet shall also report quarterly to the Legislative Research Commission for referral to appropriate committees on the development and implementation status of programs required by the 1990 Amendments to the Federal Clean Air Act.

39. DEPARTMENT FOR SURFACE MINING RECLAMATION AND ENFORCEMENT

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the Natural Resources budget unit for the purpose of employing additional foresters or to the General Administration and Support budget unit for cabinet-wide technology improvements. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

b. Surface Coal Mining Permits: The permit block provisions of KRS 350.085(6) shall apply both to surface coal mining and reclamation operations owned or controlled by the applicant, and those operations owning or controlling the applicant. The Cabinet shall continue in effect the current state regulations regarding ownership and control provided that a due process hearing shall be afforded at the time that the Cabinet makes a preliminary determination to impose a permit block.

40. KENTUCKY RIVER AUTHORITY

a. Water Withdrawal Fees: The water withdrawal fees imposed by the Kentucky River Authority shall not be subject to state and local taxes. Notwithstanding that portion of the provision of KRS 151.710(10) that directs the Natural Resources and Environmental Protection Cabinet to provide administrative services for the Kentucky River

Authority, Tier I water withdrawal fees shall be used to support the operations of the Authority and for contractual services for water supply and quality studies.

41. ENVIRONMENTAL QUALITY COMMISSION

a. Administrative Accountability: The Environmental Quality Commission shall be attached to the Secretary's Office, but shall remain a separate budget unit. The Secretary, with the approval of the Commissioners of the Environmental Quality Commission, shall employ a director and other necessary Commission staff who shall serve at the pleasure of the Commission and the Secretary.

PERSONNEL

42. PERSONNEL CABINET

a. Pay Equity Study: The Personnel Cabinet shall report its findings and recommendations of the Pay Equity Study to the Legislative Research Commission for referral to appropriate committees by September 1, 1998.

b. State Group Health Insurance Plan: Notwithstanding KRS 304.17A-010(17)(a), state employees as defined in KRS 18A.228 shall not be construed to be mandatory members of the Kentucky Health Purchasing Alliance.

PUBLIC PROTECTION AND REGULATION

43. ALCOHOL BEVERAGE CONTROL

a. Restricted Funds Limitation: The amounts of \$500,000 in fiscal year 1998-99 and \$500,000 in fiscal year 1999-2000 from Restricted Funds generated by the fee, license, and permit charges authorized by 1998 House Bill 550 are required to be deposited to the credit of the General Fund.

44. PUBLIC SERVICE COMMISSION

a. Public Service Commission Building: Proceeds from the sale of the Meter Lab Building at the University of Kentucky shall be utilized exclusively for reducing the amount of bonds authorized for the construction of the new Public Service Commission building.

45. HOUSING, BUILDINGS AND CONSTRUCTION

a. Fire Dispatcher Training: The Commission on Fire Protection Personnel Standards and Education shall pay all expenses for fire dispatchers to attend dispatcher training at the Department of Criminal Justice Training at Eastern Kentucky University.

POSTSECONDARY EDUCATION

46. COUNCIL ON POSTSECONDARY EDUCATION

a. Regional Postsecondary Education Centers: The Council on Postsecondary Education shall resolve any disputes between or among institutions in the design, planning, or use of each Regional Postsecondary Education Center in accordance with this Act.

b. Programs of Distinction or Research Initiatives: Notwithstanding the provisions of KRS 45.760(7), any item of equipment costing \$100,000 or more in cash or other consideration, and associated with a Council on Postsecondary Education approved program of distinction or research initiative that receives General Fund moneys from the Research or Regional Excellence Incentive Trust Funds for fiscal year 1997-98 or in the 1998-2000 fiscal biennium, is not required to be included in this Act. A complete listing, description, and cost of any equipment item costing \$100,000 or more shall be included in the approved program description and shall be reported for information purposes to the Capital Projects and Bond Oversight Committee.

c. Facilities Maintenance Plan: Operations and maintenance funds shall not be allotted to an institution of postsecondary education until the institution submits for the Council on Postsecondary Education's approval a facilities maintenance plan establishing and committing to a maintenance standard for facilities at the institution.

d. Maintenance Standard: Capital construction project funds shall not be allotted until an institution submits for the Council on Postsecondary Education's approval a facilities maintenance plan establishing and committing to a maintenance standard for facilities at the institution and a technology replacement plan establishing and committing to a technology replacement standard for the institution.

e. Research Challenge Trust Fund Account: The proceeds of the endowment program authorized in Part X, Section IV, Item 1(a) of this Act shall be deposited in the Research Challenge Trust Fund Account and invested at the direction of the Council on Postsecondary Education until such time as the Council receives a certification from the President of the University of Kentucky or from the President of the University of Louisville stating that formal commitments have been secured by the respective universities to provide the matching requirements as determined by the Council. Upon receipt of the certification, the Council shall transfer the endowment funds from the account to the respective universities for management and investment by the university foundations if the foundations have been previously created to manage and invest private gifts and donations on behalf of the universities over time, otherwise by the university itself. The proceeds of the Research Challenge Trust Fund Account transferred to the universities shall not be managed or invested by an independent board or foundation separate from the foundations previously created to manage and invest funds on behalf of the respective universities.

f. Regional University Excellence Trust Fund: The proceeds of the endowment program authorized in Part X, Section IV, Item 1(b) of this Act shall be deposited in the Regional University Trust Fund Account and invested at the direction of the Council on Postsecondary Education until such time as the Council receives a certification from the Presidents of Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, and Western Kentucky University stating that formal commitments have been secured by the respective universities to provide the matching requirements as determined by the Council. Upon receipt of the certification, the Council shall transfer the endowment funds from the account to the respective universities for management and investment by the university foundations if the foundations have been previously created to manage and invest private gifts and donations on behalf of the universities over time, otherwise by the university itself. The proceeds of the Regional Excellence Trust Fund transferred to the universities shall not be managed or invested by an independent board or foundation separate from the foundations previously created to manage and invest funds on behalf of the respective universities.

g. Regional Postsecondary Education Centers: Eastern Kentucky University, Morehead State University, Murray State University, Western Kentucky University, and the Kentucky Community and Technical College System shall analyze the student and community needs within the regions defined above to determine the most appropriate facilities needed to meet the academic and student needs of the regions. Each of these institutions is encouraged to examine opportunities for collaboration with providers of postsecondary education within the respective regions in the planning, design, utilization, and operation of regional postsecondary education centers including consideration of the construction of jointly owned and operated buildings. An analysis of the academic and student needs of a region may not justify joint building facilities within a region. If such a determination is made by the institutions, ratified, and reported to the Capital Projects and Bond Oversight Committee by the Council on Postsecondary Education, funding is authorized to provide for separate facilities within a region. If the institutions and the Council determine that the region can best be served by pooling funds appropriated in this Act, then any facility built with such pooled funds shall be operated under a plan mutually agreed to by the cooperating institutions, approved by the Council on Postsecondary Education, and reported to the Capital Projects and Bond Oversight Committee.

h. Professional Education Preparation Program: The Council on Postsecondary Education shall contract with the Pikeville Osteopathic Medical School to develop and administer a Professional Education Preparation Program comparable to the Professional Education Preparation Program at the University of Louisville and the University of Kentucky. The amount of \$50,000 in fiscal year 1998-99 and \$100,000 in fiscal year 1999-2000 is provided for this purpose.

i. University of Kentucky Center for Rural Health: The Council on Postsecondary Education is authorized to approve a new building facility to meet the academic and programming needs of the University of Kentucky Rural Health Center and Hazard Community College. This facility shall be financed by the issuance of tax exempt bonds by the State Property and Buildings Commission. Lease rental payments from the University of Kentucky to the Appalachian Regional Hospital Corporation in the amount of \$383,000 per year and lease rental payments by Hazard Community College to the Appalachian Regional Hospital Corporation in the amount of \$145,000 per year provide the fund source of lease rental payment to the State Property and Buildings Commission for the purpose of providing debt service for bonds to fund the facility. The facility is authorized in an amount not to exceed \$6,100,000. It is recognized that the lease rental payments by the University of Kentucky and by Hazard Community College to the Appalachian Regional Hospital Corporation are necessary to provide the space needs of the University of Kentucky and Hazard Community College until the completion of the new building facility. Therefore, these lease rental payments are not available for lease rental payments to the State Property and Buildings Commission for the issuance of the tax exempt bonds to be used to finance the project until the completion of the new building. The Office for Financial Management and Economic Analysis shall work with the Council on Postsecondary Education to provide an interim financing program that allows for the issuance of tax exempt bonds, or other interim financing program to

allow for the construction of the new facility, without diversion of the lease rental payments by the University of Kentucky and the Hazard Community College, to the Appalachian Regional Hospital Corporation, and to the State Property and Buildings Commission until such time as the new facility is completed.

j. Bonds to Replace Local Support of Capital Construction Projects: Debt service in the amount of \$2,863,000 is provided in fiscal year 1999-2000 for \$30,173,200 of bonds to replace local support of capital construction projects where local support is unavailable. The Council on Postsecondary Education shall review by July 1, 1998, each Kentucky Community and Technical College System project involving local match funds, as recommended by the Council on November 3, 1997, to determine the availability of local matching funds. Local or private funding shall be used, in place of bond funds, to provide local support for Capital Construction Projects when available.

47. MURRAY STATE UNIVERSITY

a. Breathitt Veterinary Center: Included in the General Fund appropriation is \$2,256,000 in fiscal year 1998-99 and \$2,319,800 in fiscal year 1999-2000 for the Breathitt Veterinary Center. Included in the Restricted Funds appropriation is \$237,000 in each fiscal year for the Breathitt Veterinary Center. Notwithstanding KRS 48.130 and 48.600, there shall be no reduction in funding for these programs.

48. KENTUCKY COMMUNITY TECHNICAL COLLEGE SYSTEM

a. Community College System Faculty and Nonexecutive Management Staff Salaries: The number one budget request priority of the Community College System is to correct the historically low salaries of the faculty and staff. The average 1996-97 salary of a community college faculty member is approximately \$7,180 less than the midpoint between the average 1996-97 salary of a Kentucky high school teacher and the average salary of a faculty member in Kentucky's other state-supported higher education institutions. The Kentucky Community Technical College System shall place the highest priority on improving the salaries of the Community College System faculty and nonexecutive management staff.

b. Belinda Mason Academic Technical Center: The Science Technology/Center on the Whitesburg Campus of Southeast Community College authorized in Part II, Capital Projects Budget, shall be named the Belinda Mason Academic Technical Center.

c. Lees College Branch of Hazard Community College: The Kentucky Community and Technical College System shall transfer \$912,000 each fiscal year of the biennium from the funding for the Paducah Engineering project to the Lees College Branch of Hazard Community College.

d. Space Allocation: The Prestonburg Community College Classroom Health Education Building, authorized by the 1996 Kentucky Acts, Chapter 380, Part X (House Bill 379), shall be located on the campus of Prestonburg Community College and administered by Prestonburg Community College. The Northeast Regional Postsecondary Education Center, Part II, Capital Projects Budget, Section L, Item 9.1., in this Act shall be located on the campus of Prestonburg Community College. Morehead State University and Prestonburg Community College shall develop a space and utilization plan for the two buildings; the Plan shall address whether joint or separate facilities will best meet the academic and student needs of the region. The Plan shall be submitted to the Council on Postsecondary Education for its approval.

TOURISM DEVELOPMENT

49. OFFICE OF THE SECRETARY

a. Golf Course Initiatives: The Commonwealth of Kentucky is committed to becoming an integral part of the "First Tee" initiatives of the PGA Tour, PGA, LPGA, Tiger Woods Foundation, National Minority Golf Foundation, USGA, Augusta National and Golf Course Superintendents of America, with involvement of PGA Tour Players for the purposes of promoting golf and making golf more accessible and affordable throughout the Commonwealth of Kentucky.

b. Golf Course Design: It is important in the design and development process of finding the uniqueness of each geographic area of the Commonwealth to select designers and developers who bring knowledge of what is expected both nationally and locally who possess the ability to coordinate and communicate with national and state golf organizations and seek their advice and counsel as to the development of new golf facilities within the Commonwealth.

50. DEPARTMENT OF TRAVEL

a. Marketing Strategy Report: The Cabinet shall provide a quarterly report to the Legislative Research Commission for referral to the appropriate committees summarizing the Kentucky Department of Travel's marketing strategy and the economic impact of Caesars Indiana on the Kentucky Tourism Industry.

51. DEPARTMENT OF PARKS

a. Jenny Wiley Trail: The Jenny Wiley Trail Task Force, comprised of representatives from the Tourism Development Cabinet, the Division of Forestry, and the Transportation Cabinet, shall continue to maintain and manage the Jenny Wiley Trail. The Task Force shall provide a progress report to the Legislative Research Commission for referral to the appropriate committees by December first of each year.

b. Golf Course Professionals: All golf professionals certified by the Professional Golfers' Association, who are approved by the Commissioner of Parks, are authorized to teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time, as determined by guidelines established by the Commissioner of Parks.

c. Park Renovation Projects: The Cabinet shall continue to provide a quarterly status report to the Legislative Research Commission for referral to the appropriate committees summarizing the progress of the Park Renovation Projects.

d. Capital Maintenance and Renovation Fund: The Cabinet shall provide to the Interim Joint Committee on Appropriations and Revenue by January first of each fiscal year a priority listing of maintenance and renovation needs of park facilities.

~~e. Golf Course and Coal Mine Museum: The Sleepy Hollow Golf Course and Coal Mine Museum are transferred to the Department of Parks.~~

52. KENTUCKY HORSE PARK

a. Leasing of Horse Park property: No group which leases portions of the Horse Park property for recreational purposes for a nominal fee may sublet any portion of the leased property to another group for recreational purposes for any more than a nominal fee.

53. DEPARTMENT OF FISH AND WILDLIFE

a. Analysis of Compensation levels: The Department of Fish and Wildlife shall contract with the Personnel Cabinet to conduct an analysis of compensation levels of employees assigned to Fish and Wildlife classifications. These findings shall be reported to the Legislative Research Commission for referral to the appropriate committees on or before July 1, 1999. In conducting the analysis the Personnel Cabinet shall consider evaluating and comparing the Department of Fish and Wildlife Resources to other similar state and local employee classifications both in the Commonwealth and in other states.

b. Financial Report: The Department of Fish and Wildlife shall provide a written program and financial report identifying the expenditure of funds by the Department to the Legislative Research Commission for referral to the appropriate committees no later than 60 days following the end of each fiscal year. The report shall provide, at a minimum, a summary of all obligated funds included in the projected ending balance.

TRANSPORTATION

54. TRANSPORTATION

a. Transportation Cabinet Office Building Provisions: The Transportation Cabinet shall relinquish the rights to the existing State Office Building in return for the General Fund-supported previously authorized but unissued \$18,900,000 bonds that are reauthorized in Part II, Section P, Item 87 of this Act. The General Assembly declares that the new Transportation Cabinet Office Building shall be owned by the Transportation Cabinet and that any surplus bond proceeds or debt service appropriations shall be deposited in the State Construction Account. Any revenue generated from the leasing of office space in the new Transportation Cabinet Office Building shall be deposited in the Road Fund. The Finance and Administration Cabinet shall present to the Interim Joint Committee on Appropriations and Revenue a cost comparison of the site options for review prior to selecting the preferred site.

b. New Economic Development Road Bond Usage: The General Assembly directs that the Transportation Cabinet fully utilize the bond proceeds from the New Economic Development Road Bonds to advance federal projects due to the lack of federal highway moneys resulting from a failure by the United States Congress to enact new highway authorization legislation.

c. State Match Provisions: The Transportation Cabinet is authorized to utilize state construction moneys to match federal highway moneys in the event that unanticipated additional federal funds are provided to Kentucky and the state match appropriations have been exhausted.

d. Excess Debt Service/Lease-Rental Appropriations: Any Road Fund appropriations that are not needed to pay lease-rental payments to the Kentucky Turnpike Authority or debt service on the new Transportation Cabinet Office Building shall be credited in the State Construction Account.

e. Permanent Positions Cap: The Transportation Cabinet's personnel cap shall be 6,431 permanent positions.

f. Financial Reports: The Transportation Cabinet shall provide the Interim Joint Committee on Appropriations and Revenue a detailed account of the Road Fund tax components that contributed to the Road Fund Surplus Account. Additionally, the Transportation Cabinet shall also furnish to the Interim Joint Committee on Appropriations and Revenue a detailed report of all Restricted Funds accounts. The report shall include the amount of interest that has accrued to the various accounts each fiscal year along with the disposition of the interest earnings.

g. Public Transportation: Federal Surface Transportation Program moneys that are appropriated in the amount of \$1,000,000 in fiscal year 1998-99 to Public Transportation shall be utilized to support the operations of public transit authorities. The urban transit authorities of Louisville, Lexington, and Northern Kentucky shall utilize sixty percent (\$600,000) of these moneys and the rural transit authorities shall utilize forty percent (\$400,000). The Transportation Cabinet is authorized to utilize portions of the \$1,000,000 federal Surface Transportation Program (STP) appropriation to provide financial assistance to agencies around the state that provide transportation to the elderly.

h. A-A Highway Traffic Accident Study: The Department of Highways shall conduct an intensive traffic accident study on the A-A Highway in fiscal year 1999-2000. It shall include an analysis of visibility, signage, lighting, turn lanes, and road striping at each public and private access. The accidents shall be identified by location and by fatalities, major injury, noninjury, and minor injury. Causes for the accidents shall be summarized and recommendation made to reduce the high level of accidents on the A-A Highway. A public hearing shall be held on the results of the study at a convenient location along the A-A Highway Corridor.

~~[i. Access Permits: Charges for any access permits granted by the Department of Highways shall be based on the price of the property being purchased back for the access. This property value shall be the price paid originally for the right of way and the normal inflationary uplifts. No administrative cost shall be charged. The permits access fees refunds outlined in the FB 1996-98 Final Budget Memorandum shall be granted only for the state portion of the fees in calendar year 1998. Any refunds that this provision requires the Transportation Cabinet to pay is appropriated in the highways appropriation unit.]~~

j. Highway Plans: The Transportation Cabinet shall monthly transmit electronic data to the General Assembly through the Legislative Research Commission on all activity relating to all projects in the execution of the enacted 1998-2004 six-year road plan. The data for each project shall contain all cabinet activity on projects funded through the Road Fund, Federal Funds, Restricted Funds, and Bond Funds, including resurfacing and rural and secondary projects, and shall also include but not be limited to the following:

(a) District number and project item number which shall remain in effect throughout the entire life of the project, subject to the following conditions:

1. If a project is split into more than one project during its life, the project shall maintain the same item number with a suffix;

2. If two or more projects are merged then the projects shall be identified by the new merged project maintaining the project item number of one (1) of the projects being merged. The total cost of the merged project shall be set forth; and

3. If a project that has been merged with another project and all funds authorized for the initial project that is subsequently shifted to the new merged project shall remain in the 1998-2004 six-year road plan and shall be identified with a cross-reference to the superseded project and superseded project item number; and

(b) County name and county number.

k. Motor Vehicle License Plates: The Secretary of the Finance and Administration Cabinet shall determine, in consultation with the Secretaries of Transportation and Justice Cabinets, the unit price and total cost of

license plates to be produced by Correctional Industries. If sufficient moneys are not provided in the Vehicle Regulation budget for this cost, the Secretary of the Finance and Administration Cabinet is authorized to transfer sufficient Road Fund moneys from the State Construction program in Highways to Vehicle Regulation to meet the supplemental costs. Excess moneys shall be transferred to the State Construction program.

l. Motor Pool Vehicles: Notwithstanding KRS 186.065, all motor vehicles that are purchased through the state motor pool or issued by the motor pool to state agencies shall carry the statement "For Official Use Only" on the side door panels. This provision shall not apply to state vehicles used as unmarked vehicles in any type of investigation.

m. Federal Aid Highway Funds: If additional federal highway moneys are made available to Kentucky by the United States Congress, the funds shall be used according to the following priority: (a) any demonstration or project specific money shall be used on the project identified; and (b) all other funds shall be used to insure that projects in the 1998-2000 Biennial Highway Program are funded with special consideration given to pavement rehabilitation projects on the Western Kentucky Parkway. If additional federal moneys remain after these priorities are met, the Transportation Cabinet may select projects from the four year preconstruction program that are identified in 1998 House Joint Resolution 92.

WORKFORCE DEVELOPMENT CABINET

55. DEPARTMENT FOR TECHNICAL EDUCATION

a. Participation in the Education Technology Program by Area Vocational Education Centers: Area Vocational Education Centers shall be fully eligible to participate in the Kentucky Education Technology System. Notwithstanding KRS 157.650 to 157.665, the School Facilities Construction Commission in consultation with the Kentucky Board of Education and the Kentucky Department of Education shall develop administrative regulations which identify a methodology by which the average daily attendance for Area Vocational Education Centers may be equated to the average daily attendance of other local school districts in order that they may receive their respective distributions of these funds. The School Facilities Construction Commission shall include Area Vocational Education Centers in any offers of assistance to local school districts for technology assistance during the 1998-2000 fiscal biennium.

b. Secondary Vocational Education and Technology Centers Operations: Notwithstanding KRS 151B.025, 151B.035, 151B.110, or any other statute to the contrary, a local board of education may petition the State Board for Adult and Technical Education. The application by a local board to assume authority for the management and control of a state-operated secondary vocational education and technology center shall address, at a minimum, the following areas of concern: the local board's plan for continuing those programs and services to students from other school districts who are using the center at the time of the transfer, and a plan of collaboration with the districts being served to meet local vocational curriculum needs, including the intention to involve these districts in future needs assessments, program, and curriculum changes.

The State Board may, at its option, enter into an agreement to transfer all equipment, supplies, and any General Fund moneys appropriated to the Department for Technical Education relating to the operations of the center to the local board of education, provided that the local board shall guarantee all employee rights and benefits accumulated under the State Board of Adult and Technical Education. In addition, all funds generated pursuant to students being enrolled in the center in accordance with the Support Education Excellence in Kentucky (SEEK) Program, as provided by KRS 157.360, 157.370, or any other statute, shall be transferred to the local board of education for distribution to the secondary school operating center. All funds, equipment, and supplies transferred to the local board of education pursuant to assuming the management and control of a state-operated secondary vocational education and technology center shall be provided to the secondary school operating the center and may only be utilized for the operation of the center.

PART X

GENERAL FUND SURPLUS EXPENDITURE PLAN

1. Pursuant to KRS 48.700 and notwithstanding KRS 48.140, there is established a plan for the expenditure of General Fund surplus moneys pursuant to a General Fund Surplus Plan contained in this Part for fiscal years 1998-99 and 1999-2000 notwithstanding the provisions of KRS 48.140(1) and (2). Pursuant to the enactment of the Surplus Expenditure Plan, General Fund moneys in the General Fund undesignated fund balance (General Fund Surplus Account) are appropriated to the following: the Budget Reserve Trust Fund established in KRS 48.705; a State Technology Projects Fund, as established in this Part of this Act; a School Technology Projects Fund as established in this Part of this Act; and a Statewide Infrastructure and Endowment Fund as established in this Part of

this Act. Collectively, these four component funds comprise the General Fund Surplus Expenditure Plan for fiscal years 1998-99 and 1999-2000.

2. The General Fund amount appropriated to the Surplus Expenditure Plan from the undesignated fund balance in the General Fund at the close of fiscal year 1997-98 and fiscal year 1998-99 respectively shall not exceed the total for the appropriations made for fiscal years 1998-99 and 1999-2000 combined. If the undesignated fund balance in the General Fund at the close of fiscal year 1997-98 and at the close of fiscal year 1998-99 totals less than the total combined Surplus Funds appropriation amounts for fiscal year 1998-99 and fiscal year 1999-2000, the amount available for appropriation for fiscal year 1998-99 and for fiscal year 1999-2000 pursuant to this section shall be the total undesignated fund balance amount at June 30, 1998, and at June 30, 1999, for the respective years. These amounts are appropriated in fiscal year 1998-99 and in fiscal year 1999-2000, and shall be allocated in the following manner: a proportional amount of the total General Fund Surplus balance to the Budget Reserve Trust Fund, not to exceed \$20,000,000 in fiscal year 1998-99 and \$22,000,000 in fiscal year 1999-2000; a proportional amount of the total General Fund Surplus balance to the State Technology Projects Fund, not to exceed \$25,700,000 in fiscal year 1998-99 and \$67,800,000 in fiscal year 1999-2000; a proportional amount of the total General Fund Surplus balance to the School Technology Projects Fund, not to exceed \$25,700,000 in fiscal year 1998-99 and \$71,600,000 in fiscal year 1999-2000; a proportional amount of the total General Fund Surplus balance to the Endowment Fund, not to exceed \$110,000,000 in fiscal year 1998-99; and a proportional amount of the total General Fund Surplus balance to the Infrastructure Fund not to exceed \$107,730,000 in fiscal year 1998-99 or in fiscal year 1999-2000. Projects in the amount of \$127,000,000 are authorized with Bond Funds.

3. The Secretary of the Finance and Administration Cabinet shall determine, within thirty (30) days after the close of fiscal year 1997-98, and the close of fiscal year 1998-99, based on the official financial records of the Commonwealth, the amount of actual General Fund undesignated fund balance for the General Fund Surplus Account that may be available for expenditure pursuant to the Plan respectively in fiscal year 1998-99 and fiscal year 1999-2000.

The Secretary of the Finance and Administration Cabinet shall certify the amount of actual General Fund undesignated fund balance available for expenditure to the Legislative Research Commission.

Subsequent to June 30, 1998, funds that are certified as being available in the actual General Fund undesignated fund balance for the General Fund Surplus Account are appropriated for expenditure in fiscal year 1998-99 pursuant to the Plan.

Each component Fund identified as part of the General Fund Surplus Expenditure Plan in this Part of this Act shall be appropriated its discrete proportional amount of the total General Fund Surplus balance share of the total undesignated fund balance. Nonrecurring project amounts are hereby appropriated in priority rank order for the individual component funds set out above in this Part. Notwithstanding KRS 45.229, any funds appropriated pursuant to this Part of this Act in fiscal year 1998-99 shall not lapse, but shall carry forward and remain appropriated in fiscal year 1999-2000 in order to effectuate the terms of this Act.

4. To the extent that projects are enumerated in the priority ranking and sufficient General Fund moneys are not certified to be available for expenditure and appropriation in fiscal year 1998-99, the remaining projects in the same priority order set forth in this Part are appropriated from the actual General Fund undesignated fund balance for the General Fund Surplus Account effective July 1, 1999, for fiscal year 1999-2000.

5. Individual project priority rankings have been established within each of the four component funds enumerated. Nonrecurring appropriations are approved in the priority rank order for the projects listed within each component fund enumerated below and within the proportional amount of the total General Fund Surplus balance amounts provided above:

<u>Priority</u>	<u>General Fund Surplus Appropriations</u>
I. Budget Reserve Trust Fund: \$20,000,000 in fiscal year 1998-99 and \$22,000,000 in fiscal year 1999-2000.	42,000,000
II. State Technology Projects Fund: \$25,700,000 in fiscal year 1998-99 and \$67,800,000 in fiscal year 1999-2000	

Budget Unit

1. Workforce Development Cabinet - Department for Technical Education - Area
Legislative Research Commission PDF Version

	Vocational Education Centers/Equipment,	6,000,000	
2.	Finance and Administration Cabinet - Year 2000 Conversion,	6,700,000	
3.	Justice Cabinet - Department of State Police - Automated Fingerprint System,		
		5,800,000	
4.	Justice Cabinet-Justice Administration - Unified Criminal Justice Information System,		
		5,000,000	
5.	Finance and Administration Cabinet - Technology Trust Fund,		
		70,000,000	
	Subtotal		93,500,000
III.	School Technology Projects Fund		
1.	Kentucky Department of Education-Management Support Services - Kentucky Educational Technology System, \$25,700,000 in fiscal year 1998-99 and \$71,600,000 in fiscal year 1999-2000.		
		97,300,000	

IV. Statewide Infrastructure and Endowment Fund

Priority General Fund Surplus Appropriations

ENDOWMENT FUND

A. Council on Postsecondary Education

Budget Unit Research Challenge Trust Fund

1.	Endowed Chairs		100,000,000
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The total amount is appropriated in fiscal year 1998-99.

Budget Unit Regional Universities Excellence Trust Fund

2.	Endowed Chairs,		
	The total amount is appropriated in fiscal year 1998-99.	10,000,000	

Endowment Fund subtotal 110,000,000

STATEWIDE INFRASTRUCTURE FUND

To the extent the proportional amount of the total General Fund Surplus balance amount allocated for the purpose of the Infrastructure Fund totals up to \$11,000,000 in fiscal year 1998-99, the following Bond funds supported projects and related amounts shall receive first priority funding allowance and Bond Funds are authorized in the following amounts for these projects.

Bond Funds

a. Finance and Administration Cabinet

Budget Unit General Administration

1.	Veterans' Nursing Home - East Kentucky	4,725,000
2.	Veterans' Nursing Home - West Kentucky	4,725,000

b. Cabinet for Economic Development

Budget Unit Office of the Secretary

3.	Northern Kentucky Airport	17,000,000
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c. Tourism Development Cabinet

Budget Unit Kentucky State Fair Board

4.	Louisville/Jefferson County	International	
	Airport		20,000,000
d.	Postsecondary Education		
	Budget Unit University of Kentucky		
5.	University System - Coldstream Research		
	Campus Infrastructure		5,500,000
e.	Cabinet for Economic Development		
	Budget Unit Office of the Secretary		
6.	Columbia Sewer Lines		2,000,000
7.	Adair County Industrial Park Development Fund		500,000
8.	Green County Industrial Park Development Fund		460,000
9.	Russell County Industrial Park Development Fund		100,000
10.	Russell County Gas Line		2,000,000
f.	Tourism Development Cabinet		
	Budget Unit Department of Parks		
11.	Greenbo State Park Wastewater Plant		1,000,000
12.	Rough River Marina Improvements		800,000
13.	Barren River - Dock Replacement		450,000
14.	Audubon Golf Course Erosion		300,000
15.	Boonesborough Electric Upgrade		885,000
16.	Jefferson Davis - Repair		450,000
17.	Cumberland Falls - Water Lines		550,000
18.	Whitehall HVAC		175,000
19.	Blue Licks Lodge		2,500,000
20.	Dale Hollow Lodge		1,500,000
21.	Pineville Golf Course		3,000,000
g.	Cabinet for Economic Development		
	Budget Unit Financial Incentives		
22.	Louisville Riverfront		4,000,000
h.	Education, Arts and Humanities Cabinet		
	Budget Unit Office of the Secretary		
23.	Four Rivers Center - Paducah		12,000,000
i.	Cabinet for Economic Development		
	Budget Unit Office of the Secretary		
24.	Bowling Green - Warren County	Airport	6,000,000
j.	Tourism Development Cabinet		
	Budget Unit Office of the Secretary		
25.	Artisans Center - Berea		6,000,000

k.	Finance and Administration Cabinet	
	Budget Unit General Administration	
	26. Hindman Educational Complex	3,000,000
l.	Government Operations	
	Budget Unit Department for Local Government	
	27. Springfield Water and Wastewater Projects	2,000,000
m.	Tourism Development Cabinet	
	Budget Unit Department of Parks	
	28. Golf Course/Road - Yatesville Lake	6,000,000
n.	Education, Arts and Humanities Cabinet	
	Budget Unit Office of the Secretary	
	29. East Kentucky Center for Science, Math, and Technology	2,640,000
o.	Government Operations	
	Budget Unit Department for Local Government	
	30. Versailles/Woodford County Community Center	3,000,000
p.	Tourism Development Cabinet	
	Budget Unit Office of the Secretary	
	31. Country Music Hall of Fame	2,168,000
	32. Coca Cola Museum	2,000,000
q.	Cabinet for Economic Development	
	Budget Unit Office of the Secretary	
	33. Radcliff/Vine Grove Industrial Park	960,000
	34. a. RiverPark Center - Owensboro	1,500,000
	b. Bluegrass Museum	1,500,000
r.	Postsecondary Education	
	Budget Unit Murray State University	
	35. Renovate Animal, Health Technology Center	700,000
	Budget Unit Kentucky Community and Technical College System	
	36. Maysville Community College Extension Campus at Cynthiana	2,500,000
s.	Government Operations	
	Budget Unit Department for Local Government	
	37. Edmonson County/City of Brownsville Natural Gas line and Infrastructure	950,000
	38. Harlan County Infrastructure and Renovation Projects Pool	1,000,000
t.	Cabinet for Families and Children	

Budget Unit Administration Services

39.	Lincoln County Senior Citizens Center	360,000
	Bond Funds Supported subtotal	127,000,000

To the extent that the proportional amount of the total General Fund Surplus balance amount allocated to the Statewide Infrastructure and Endowment Fund exceeds \$110,000,000, Surplus Fund appropriations are made in the amounts specified to the following projects:

u. Finance and Administration Cabinet

Budget Unit General Administration

40.	Pike County Community Projects Pool	6,000,000
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v. Tourism Development Cabinet

Budget Unit Department of Parks

41.	Paintsville Lake Campground	2,850,000
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w. Government Operations

Budget Unit Department for Local Government

42.	Grayson County Courthouse	150,000
43.	Mount Sterling/Montgomery County Community Center	1,000,000
44.	Greenup County Water/Fire Departments Projects	525,000

x. Tourism Development Cabinet

Budget Unit Department of Parks

45.	Lost River	125,000
46.	Kentucky Railway Museum, Inc.	500,000

y. Education, Arts and Humanities

Budget Unit Kentucky Center for the Arts

47.	Kentucky Center for the Arts	4,500,000
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z. Postsecondary Education

Budget Unit University of Kentucky

48.	University System - Coldstream Research Building	1,200,000
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aa. Government Operations

Budget Unit Department for Local Government

49.	Tollesboro Industrial Site	250,000
50.	Larue and Nelson County Water Lines	1,000,000
51.	Clay County Wastewater Plant Upgrade/Water Line Construction	1,900,000
52.	City of Lebanon Community Center	300,000
53.	Mayfield/Graves County Senior Citizens Center	700,000

ab. Education, Arts and Humanities

Budget Unit Office of the Secretary

54.	Underground Railroad Artifacts	50,000
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ac.	Finance and Administration		
Budget Unit	Office of the Secretary		
55.	Consolidated Community Projects Pool		5,000,000
ad.	Government Operations		
Budget Unit	Department for Local Government		
56.	Exceptional Center - Marshall County		100,000
57.	Grayson County Airport		200,000
58.	Park City Park Improvement		50,000
59.	Cave City Downtown Improvement		100,000
60.	Carter County Water Lines		600,000
61.	City of Berea Oldtown Infrastructure Project	300,000	
62.	East Pulaski County Community Park		40,000
ae.	Tourism Development Cabinet		
Budget Unit	Department of Parks		
63.	Golf Course - Mineral Mound		5,000,000
af.	Government Operations		
Budget Unit	Department for Local Government		
64.	Williamsburg/Whitley County Airport		2,000,000
65.	Cutshin Water Project		250,000
66.	Mason County Water Lines/Fire Departments Projects		200,000
67.	Bath County Courthouse Renovation		700,000
ag.	Finance and Administration		
Budget Unit	Office of the Secretary		
68.	Breckinridge County Water Line Project		550,000
ah.	Tourism Development Cabinet		
Budget Unit	Department of Parks		
69.	Jessamine/Mercer/Boyle Counties Projects	1,000,000	
ai.	Government Operations		
Budget Unit	Department for Local Government		
70.	Owsley/Lee/Wolfe Regional Jail		500,000
71.	Oldham County Sewer		3,000,000
aj.	Tourism Development Cabinet		
Budget Unit	Department of Parks		
72.	Lake Malone Road		173,000
ak.	Government Operations		
Budget Unit	Department for Local Government		
73.	Mount Olivet Sewer Project		400,000
al.	Tourism Development Cabinet		

Budget Unit	Department of Parks		
74.	Pennyrile Golf Course Renovation		3,000,000
am.	Economic Development Cabinet		
Budget Unit	Office of the Secretary		
75.	Business Development Job Training Center		2,000,000
an.	Government Operations		
Budget Unit	Department for Local Government		
76.	Salyersville Wastewater Expansion		500,000
77.	Red Fox Golf Course		3,000,000
78.	Louisville Zoo		2,000,000
79.	Flatwoods Infrastructure		75,000
80.	Paramount Theater - Ashland		2,150,000
81.	Hart County Jail		600,000
82.	Powell County Volunteer Fire Districts		300,000
83.	Marshall County/Draffenville Sewer Project		500,000
ao.	Tourism Development Cabinet		
Budget Unit	Department of Parks		
84.	Perryville Battlefield Development Project	800,000	
85.	Grayson Lake Golf Course		500,000
86.	Multiple Projects Pool		4,027,000
ap.	Government Operations		
Budget Unit	Department for Local Government		
87.	Metcalf County Park		150,000
88.	Menifee County Wellness Center		50,000
aq.	Cabinet for Economic Development		
Budget Unit	Office of the Secretary		
89. a.	Bluegrass Museum		1,500,000
b.	RiverPark Center - Owensboro		1,500,000
ar.	Government Operations		
Budget Unit	Department for Local Government		
90.	Brandenburg Riverport Dock Project		600,000
91.	Black Oak/Vanceburg Water Lines		200,000
as.	Cabinet for Economic Development		
Budget Unit	Office of the Secretary		
92.	Business Development Incubator		1,050,000
at.	Postsecondary Education		
Budget Unit	Morehead State University		
93.	Morehead State University Wellness Center		900,000

au.	Government Operations		
	Budget Unit	Department for Local Government	
	94.	East Clark County Water Lines	400,000
av.	Cabinet for Families and Children		
	Budget Unit	Administration Services	
	95.	Dare to Care Warehouse	250,000
aw.	Tourism Development Cabinet		
	Budget Unit	Department of Parks	
	96.	Consolidated Harlan County Projects Pool	2,000,000
ax.	Government Operations		
	Budget Unit	Department for Local Government	
	97.	Mason County Jail Remodeling	250,000
ay.	Tourism Development Cabinet		
	Budget Unit	Department of Parks	
	98.	Old Kentucky Home Golf Course	2,400,000
az.	Cabinet for Health Services		
	Budget Unit	Administrative Support	
	99.	Group Homes (3) Lexington/Fayette County	1,000,000
ba.	Finance and Administration		
	Budget Unit	Office of the Secretary	
	100.	Ohio County Water Line Project	500,000
bb.	Government Operations		
	Budget Unit	Department for Local Government	
	101.	Wilderness Trace Child Development Center	450,000
	102.	Clay County Education Center	235,000
	103.	Nicholas County Public Health	400,000
	104.	Greenup County Athletic Complex	250,000
	105.	Louisville Science Center	500,000
	106.	Simpson County-Industrial Park	200,000
	107.	Hickman - Fulton County Riverport	700,000
	108.	Western Kentucky Information/Tourism Center	200,000
	109.	Robertson County Water Project	200,000
bc.	Tourism Development Cabinet		
	Budget Unit	Department of Parks	
	110.	Nolin Lake State Park Campground/Infrastructure	2,000,000
bd.	Cabinet for Economic Development		
	Budget Unit	Office of the Secretary	
	111.	Fleming County Industrial Land Purchase	300,000

be. Government Operations

Budget Unit Department for Local Government

112. Park Improvements/Development - Lexington/Fayette County 4,000,000

bf. Cabinet for Health Services

Budget Unit Administrative Support

113. Beacon House 250,000

bg. Tourism Development Cabinet

Budget Unit Department of Parks

114. Kincaid Lake Golf Course 3,000,000

bh. Government Operations

Budget Unit Department for Local Government

115. Nicholasville Swimming Pool 600,000

116. Black Oak Speculative Building 100,000

117. Manchester Emergency Services 125,000

118. West Liberty Water Plant 1,000,000

119. Farm Youth Center Grant 50,000

120. Knob Lick Water Lines 300,000

121. Marshall County Rescue Squad 20,000

122. Johnson County Rescue Squad Building 125,000

123. Hacker Volunteer Fire Department 20,000

124. Horse Creek Volunteer Fire Department 20,000

125. Highview Hill Park 100,000

126. Hardin County Public Library 40,000

127. Vanceburg Depot Renovation 50,000

128. Mason County Clerk's Office Remodeling 150,000

129. Logan/Todd Regional Water Project 2,000,000

bi. Tourism Development Cabinet

Budget Unit Department of Parks

130. Dale Hollow Golf Course 500,000

bj. Government Operations

Budget Unit Department for Local Government

131. Anderson County Park (City Park) 150,000

132. Scottsville Water Flow 250,000

133. Menifee Community Education Center 50,000

134. Henderson Riverfront Improvement 1,500,000

bk. Education

Budget Unit Department of Education

135. Jackson County Area Vocational School 2,000,000

bl. Government Operations		
Budget Unit	Department of Agriculture	
136.	Purchase of Development Rights	750,000
Budget Unit Department for Local Government		
137.	Irvington Community Development	50,000
138.	Greenup County 911 System	35,000
139.	Carlisle County Sewage Treatment Plant	900,000
bm. Natural Resources and Environmental Protection		
Budget Unit	Kentucky River Authority	
140.	Kentucky River Parks	1,000,000
bn. Education, Arts and Humanities		
Budget Unit	Kentucky Educational Television Authority	
141.	Transmitters Replacement	6,000,000
bo. Government Operations		
Budget Unit	Department for Local Government	
142.	Hancock County Volunteer Fire Department Building	100,000
bp. Finance and Administration		
Budget Unit	Office of the Secretary	
143.	Grayson County Water Line Project	500,000
bq. Government Operations		
Budget Unit	Department for Local Government	
144.	Miscellaneous Projects Pool	2,641,000
145.	Crystal Lake Dam Improvement, Kenton County	100,000
146.	Consolidated Projects Pool	350,000
Statewide Infrastructure General Fund Surplus subtotal		107,730,000
TOTAL SURPLUS PLAN		450,530,000

Projects enumerated above in the Statewide Infrastructure with priority ranking one (1) to thirty-nine (39) and related project amounts are authorized for bond issuance up to the total amount for Bond Funds supported projects if conditions of Part X are met in fiscal year 1998-99. General Fund debt service is provided for in the Finance and Administration Cabinet, Debt Service budget unit, and shall remain available in fiscal year 1999-2000 for payment. The Secretary of Finance and Administration Cabinet is directed to effect necessary actions to accomplish the purposes of this section, and then to certify action to the Legislative Research Commission.

The appropriation provided above for the Louisville/Jefferson County International Airport (Priority #4) is authorized to be used by the Regional Airport Authority to acquire the residential property designated by the Authority under the Voluntary Buyout Program. The Regional Airport Authority agrees to, in turn, deed over \$20 million worth of property to the Kentucky State Fair Board, which would include the Ashton-Adair and South Prestonia areas. The deeding of the \$20 million of property to the State will be consistent with the framework of the existing September 1994 agreement between the State and the Regional Airport Authority on the first part of the Ashton-Adair property. State funds shall not be utilized until the Finance and Administration Cabinet and the Capital Projects and Bond Oversight Committee are satisfied that the following parameters are met:

(1) The \$20 million appropriation shall be made available to the State Fair Board within 60 days after the effective date of this Act. The Regional Airport Authority shall provide to the Auditor of Public Accounts for review copies of its existing audits prepared by independent certified public accountants in order that the Auditor of Public Accounts may determine what additional financial or management audits, if any, are warranted.

(2) All costs for infrastructure within the boundaries of the Innovative Housing Program subdivision development shall be borne by the Innovative Housing Program.

(3) The Regional Airport Authority shall use land purchased in the Voluntary Buyout Program only for airport-related uses (commercial and industrial), fairgrounds/airport compatible uses (commercial and industrial), and airport-compatible uses (commercial and industrial). Uses that shall be prohibited include: aviaries and zoos; boarding and lodging houses; churches, parish halls, temples, convents, and monasteries; community residences; country clubs; dance halls; dancing instruction; day care centers, day nurseries, nursery schools, and kindergartens; dwellings, two-family or single-family, except for caretakers, custodians and watchmen; family care homes; fraternities, sororities, clubs, and lodges; funeral homes; home occupations; homes for the infirmed and aged; hospitals, health care facilities, and institutions; land fills; mobile home parks; multiple-family dwellings; music and vocal instruction; nursing homes; outdoor amphitheaters and music shells; schools (except airport-related); single-family dwellings; and social rehabilitation residences.

The appropriations provided above for projects at the University of Kentucky - University System - Coldstream Research Campus Infrastructure (Priority # 5) and the Coldstream Research Building (Priority # 48) are authorized to be used for the following purposes: infrastructure, research building development, or other necessary costs related to the development of the Coldstream Research Park. If economic opportunities or project planning necessitate a modification in the use of either or both of these appropriations for the Coldstream Research Park, that modification is authorized upon recommendation of the President of the University of Kentucky and the Secretary of the Economic Development Cabinet to the Secretary of the Finance and Administration Cabinet. The Secretary of the Finance and Administration Cabinet shall report any modification of the authorized projects to the Legislative Research Commission's Capital Projects and Bond Oversight Committee consistent with the provisions of KRS 45.750 to 45.810.

The appropriation provided above for the Adair County Industrial Park Development Fund (Priority #7) shall go through the Adair County Industrial Authority.

Of the \$2.5 million appropriated above for the Blue Licks Lodge (Priority #19) up to ten percent (10%) may be used for the purchase of additional land for the Blue Licks State Resort Park.

The appropriation provided above for the Hindman Educational Complex projects (Priority # 26), except as otherwise directed in this paragraph, shall be administered by the Knott County Arts and Crafts Foundation, a public body corporate, to be established by the Knott County Fiscal Court according to the provisions of Section 501(c)(3) of the Internal Revenue Code. The Foundation shall be governed by a Board of Directors consisting of the following: three members appointed by the Knott County Judge/Executive; two members appointed by the Mayor of Hindman; two members appointed by the Governor; and two members appointed by the President of the Kentucky Community and Technical College System. Included in the above appropriation is \$750,000 for the Knott County Public Library for construction and equipment, if the library is constructed on land owned by the Knott County Fiscal Court in fee simple title; \$1,250,000 for the construction, site development, equipment purchases, and other necessary expenses related to construction of the Hindman Branch of Hazard Community College; and \$1,000,000 for the Foundation Board for capital expenditures.

Included in the Harlan County Infrastructure and Renovation Projects Pool (Priority # 38) are the following individual projects and related amounts: Harlan Regional sewer project - \$425,000; Green Hills water project - \$275,000; Wallins Creek water project - \$250,000; and Evarts Depot renovation project - \$50,000.

Included in the Pike County Community Projects Pool (Priority # 40) are the following individual projects and related amounts: Pike County Civic Center - \$5,500,000, eight Pike County High School Recreational Facilities projects - \$200,000, Elkhorn City Pool and Park Improvements - \$75,000, Elkhorn Creek-Dorton area Recreational Facility - \$75,000, Pikeville/Pike County Skate Park Phase II - \$25,000, Black Gem Recreational Facilities - \$25,000, Lick Creek Park Phase II Improvements - \$25,000, Grapevine Park Phase II Improvements - \$25,000, and Pike County Domestic Violence Board - \$50,000.

Included in the Greenup County Water/Fire Departments Projects (Priority # 44) are the following individual projects and related amounts: Greenup County Water Project - \$475,000, and the Greenup County Volunteer Fire Departments - \$50,000 to be shared equally.

Included in the Consolidated Community Projects Pool (Priority # 55) are the following individual projects and related amounts: Northern Kentucky University Land Acquisition - \$300,000; Union County Fairgrounds/Arena - \$900,000; Wilder Civic Center - \$500,000; and the Woodford County Community Center, Scope Expansion -

\$1,000,000; Emergency Management Service Command Center, Carroll County Services to Grant and Trimble Counties - \$150,000; Nichols Water Line, Bullitt County - \$500,000; Shepherdsville/Bullitt County Convention Center - \$360,000; Bullitt County/North Nelson Water Extension - \$400,000; Bernheim Forest Streetlights/Highway 245 - \$100,000; \$5,000 each to Volunteer Fire Departments in Bedford, Milton, Warsaw, Glencoe, Sparta, and Gallatin; Gamaliel Community Center - \$30,000; Cumberland County Adult Literacy Center - \$70,000; Hardin County Fire Departments - \$5,000 each to Central Hardin County, Glendale, Kentucky 86, Rineyville, Sonora, Stephensburg, Upton, Valley Creek, Vine Grove, West 84, West Point, and White Mills; Lewis County Recycling Center - \$50,000; Rust Drive/Taylor Mill Water Project - \$50,000; and City of Hindman Water Line Expansion - \$500,000.

The appropriation provided above for the Williamsburg/Whitley County Airport (Priority # 64) is authorized to be used for the development or enhancement of industrial locations in Whitley County if there are any funds in excess of meeting the federal aviation match.

Included in the Mason County Water Lines/Fire Departments Projects (Priority # 66) are the following individual projects and related amounts - Mason County Water Lines - \$100,000, and the Mason County Fire Departments - \$100,000 to be shared equally.

The appropriation provided above for the Breckinridge County Water Line Project (Priority #68), the Ohio County Water Line Project (Priority #100), and the Grayson County Water Line Project (Priority #143) shall be used to provide financial assistance under the Kentucky Rural Water Act for these projects. The Lincoln Trail Area Development District is directed to coordinate the financing for the projects including, but not limited to, tax exempt bonds, notes, or other securities suitable for completion of the projects.

The appropriation for the Jessamine/Mercer/Boyle Counties Projects (Priority # 69) shall include the following individual projects and related amounts: Camp Nelson - Civil War Battlefield Trust - \$850,000; Burgin Independent School System - \$20,000; Harrodsburg/Mercer County Parks - \$100,000 which is in addition to the appropriation provided in Part II, Section F., Item 4.t.; and the Court Appointed Special Advocate (CASA) project in Boyle County - \$30,000.

The appropriation for the Red Fox Golf Course (Priority # 77) provided above, as well as the appropriations provided in Part I, Section A, Item 12.b. of this Act related to the Red Fox Golf Course projects shall be administered through a new tri-county cooperative authority comprised of equal membership from Letcher, Knott, and Perry Counties.

Included in the Multiple Projects Pool (Priority #86) are the following individual projects and related amounts: sewer line extension in Kevil, Ballard County - \$150,000; Hickman County Recreational Project - \$10,000 which is in addition to the appropriation provided in Part II, Section F., Item 4.bo.; City of Milburn, Carlisle County, Water System Improvements - \$40,000; Whitehall State Shrine, Lighting - \$180,000; Pennyrile State Forest Nature Trail and Pedestrian Bridge - \$77,000; Allen County 4-Way Stop Park - \$100,000 which is in addition to the appropriation provided in Part II, Section F., Item 4.w.; City of Vicco - \$15,000, City of Hazard - \$10,000, City of Buckhorn - \$5,000, and City of Hyden - \$5,000; Perry County Schools - \$15,000; Hazard City Schools - \$5,000; Leslie County Schools - \$5,000; Horse Park Chinese Exhibit - \$50,000 to be matched with private funds; Providence City Water Towers Refurbishing - \$50,000; Bailey Switch Fire Department - \$15,000; Anderson County Park Improvements - \$100,000; City of Lawrenceburg Senior Citizens - \$150,000; Lake Barkley Lodge Trap Shoot - \$550,000; Campbell County Waterline Extension - \$225,000; Rockcastle Fire and Rescue Squad - \$100,000; Rockcastle County Brindle Ridge Fire Department - \$25,000; Russell County Little League - \$15,000; and Clinton County/Albany Community Park - \$25,000; Paintsville City Golf Course Improvements - \$100,000; Jack Jouett House - \$5,000; Freedom Hall Floor Refrigeration/Dehumidification Project - Kentucky Fair and Exposition Center - \$2,000,000; Jakes Branch Volunteer Fire Department - \$2,000, Viper Volunteer Fire Department - \$2,000, Troublesome Creek Volunteer Fire Department - \$4,000, Buckhorn Volunteer Fire Department - \$2,000, Grapevine/Chavies Volunteer Fire Department - \$4,000, Lotts Creek Volunteer Fire Department - \$4,000, Lost Creek Volunteer Fire Department - \$4,000, Awawan Volunteer Fire Department - \$2,000, Vicco/Sassafras Volunteer Fire Department - \$4,000, Cornettsville Volunteer Fire Department - \$2,000, Leatherwood Volunteer Fire Department - \$4,000, Fisty Volunteer Fire Department - \$4,000, Hazard Volunteer Fire Department - \$4,000, Stinnett Volunteer Fire Department - \$2,000, Thousandstix Volunteer Fire Department - \$2,000, Coon Creek Volunteer Fire Department - \$2,000, Hyden Volunteer Fire Department - \$2,000, Wooton Volunteer Fire Department - \$2,000, Cutshin Volunteer Fire Department - \$2,000.

The appropriation provided above for the Brandenburg Riverport Dock Project (Priority # 90) is authorized to be used for the riverfront development, amphitheater, and museum.

The appropriation provided above for the Business Development Incubator (Priority #92) supports funding of a community partnership with local small business development organizations to establish a incubator for small start-up businesses in Lexington. Funds will be made available to the nonprofit Community Ventures Corporation's current microenterprise program.

Included in the Consolidated Harlan County Projects Pool (Priority #96) are the following individual projects and related amounts: Sleepy Hollow Golf Course expansion - \$850,000; Watts Creek water project - \$250,000; Benham Theater Project - \$100,000; United Glove - \$100,000; and Mine Portal #31 development project - \$700,000.

The appropriation provided above for the Nolin Lake State Park (Priority # 110) shall be used for the design and development of a 60 site camping area with shower/restroom building and a control station. The project also includes funding infrastructure required to support the camping area.

The appropriation provided above for the Kincaid Lake Golf Course (Priority #114) shall be used for the purpose of constructing a nine-hole golf course.

The appropriation provided above for the West Liberty Water Plant, (Priority # 118) shall be a joint project between the City of West Liberty and Morgan County. Funds shall not be allotted until a Memorandum of Agreement, which includes a detailed plan of site selection, planning, design, construction, and operation is executed between the City of West Liberty and Morgan County and approved by the Governor's Office for Policy and Management.

The appropriation provided above for the Dale Hollow Golf Course (Priority # 130) is authorized to be used for design, construction, or equipment, and any excess funds may be used to design or construct a meeting facility.

Included in the Miscellaneous Projects Pool (Priority # 144) are the following individual projects and related amounts - Neon Downtown Revitalization Project - \$100,000; Murray State University Animal Waste Fermentation Project - \$100,000; St. Anthony Outreach Program - \$100,000; Georgetown City Revitalization Project for utilities, lighting, and sidewalks - \$100,000; Department of Agriculture Farm Safety Program - \$125,000; Harlan County Communities Revitalization Program - \$250,000 to be shared equally by the communities of Wallins Creek, Harlan, Loyall, Evarts, and Cumberland; Benham Community Project - \$25,000; Lynch Community Project - \$25,000; Letcher County Carcassone Recreation Center - \$50,000; Community Improvement Grants to Brooksville - \$25,000 and Augusta - \$25,000; Blanton Forest Economic Feasibility Study - \$150,000; Paintsville Lake Primitive Campground and Route 4 Improvements - \$80,000; Providence Fire Truck - \$100,000; Boyd County Highland Museum - \$100,000; Gap Knob Water Project - \$346,000; Bloomfield Water Project - \$600,000; and Nelson County Water Improvements - \$60,000; Pineville Senior Citizen Center - \$100,000; Whitesville Municipal Park Lighting - \$75,000; City of Providence Fire Truck - \$100,000; and White Plains Veterans' Memorial - \$5,000; Blackey Waterline Project - \$100,000.

Included in the Consolidated Projects Pool (Priority #146) are the following individual projects and related amounts - Campbellsville Beautification Project - \$200,000; Warsaw Volunteer Fire Department - \$5,000; Glencoe Volunteer Fire Department - \$5,000; Sparta Volunteer Fire Department - \$5,000; Gallatin Volunteer Fire Department - \$5,000; Bedford Volunteer Fire Department - \$5,000; Milton Volunteer Fire Department - \$5,000; Installation of Fire Hydrants and Valves - City of Falmouth - \$40,000; Hardin County Public Library - \$20,000; Challenger Center for Space Science -Hardin County - \$20,000 which is in addition to the appropriation provided in Part II, Section F., Item 4.s.; and Route 8 Bridge Project - City of Ludlow - \$40,000.

The funding for each project appropriated above is provided in furtherance of the declared public policy objectives of the Commonwealth including economic development, community improvement, and infrastructure needs. The funding for each project identified in this Part of this Act, Statewide Infrastructure and Endowment Fund, is appropriated to the Executive Branch budget unit identified with that project. This identification by established appropriation unit is for the purpose of ensuring that all funds and all projects appropriated as part of the General Fund Surplus Plan in this Part of this Act are subject to established statutory administrative procedures and appropriate General Assembly oversight required by KRS 45.750 to 45.810.

6. (a) To the extent that the available General Fund Surplus in fiscal year 1997-98 exceed the total component fund amounts allocated to fiscal year 1998-99, then the additional available General Fund Surplus amount is appropriated for fiscal year 1999-2000 allocation to the component funds.

(b) Notwithstanding KRS 48.140 and the provisions of Part X 1. to 5. above, if the total undesignated fund balance in the General Fund in fiscal year 1997-98 and 1998-99 respectively exceeds the total combined General Fund Surplus Plan appropriation amount, there is appropriated in fiscal year 1999-2000 to the Budget Reserve Trust

Fund an amount, in addition to the \$42,000,000 above combined appropriation, that enables the Budget Reserve Trust Fund to contain a fund balance up to five percent (5%) of the actual General Fund revenue in fiscal year 1998-99.

The Technology Trust Fund identified in Part X 5. II. 4. above is the Technology Trust Fund established by the 1996 Kentucky Acts, Chapter 380, Part X, to empower Kentucky state government through technology and redesigned business systems. The following provisions apply to that Technology Trust Fund and any additional amounts made available and appropriated to it in this Part of this Act. It is separate and distinct from the new State Technology Projects Fund as established for the first time in this Part of this Act.

7. The General Assembly has determined that the following provisions shall apply to all General Fund appropriations in this Act to the Technology Trust Fund originally authorized and appropriated by the 1996 Kentucky Acts, Chapter 380, Part X.

8. Appropriations allotted from the Technology Trust Fund for each project, initiative, or system, as well as all other associated resources made available from regular appropriations for the same purpose from a budget unit shall be transferred and credited to, and accounted for and expended from a discrete account established for the individual project, initiative, or system item in the Operating Budget and the Capital Budget.

9. In addition to the General Fund appropriations in this Part for the Technology Trust Fund, Restricted Funds, Federal Funds, the Road Fund, private funds, and any matching fund appropriations required are appropriated in support of the projects and priorities identified by the Redesign Steering Committee. However, KRS 45.760(14), 45.770, 45.780, and 45.800 notwithstanding, no funds from the emergency repair, maintenance and replacement account or the capital construction and equipment purchase contingency account shall be used for Technology Trust Fund projects, systems, or initiatives.

10. Figures for amounts in all determinations, authorizations, and appropriations under the Plan shall be rounded to the lower hundredth dollar.

11. Notwithstanding KRS 45.229, appropriations from the General Fund for the projects, systems, and initiatives identified and authorized as part of the Plan shall be continued appropriations and not lapse to the General Fund. Appropriations made to components of the Plan in fiscal year 1998-99 shall be continued in fiscal year 1999-2000.

12. Nothing in this Part shall be construed as modifying, suspending, or superseding the Model Procurement Code as set forth in KRS Chapter 45A.

13. Nothing in this Part shall be construed as modifying, suspending, or superseding the provisions of KRS Chapter 18A on the merit system.

STATE/EXECUTIVE BRANCH BUDGET SUMMARY

OPERATING BUDGET

	1997-98	1998-99	1999-00	
General Fund	18,435,500	5,959,253,000	6,283,915,500	
Restricted Funds		6,220,600	2,835,455,600	2,833,032,300
Federal Funds		2,925,000	4,363,117,600	4,354,658,800
Road Fund	2,300,000	1,011,281,000	1,064,649,000	
Bond Funds		100,000,000	105,000,000	
Subtotal	29,881,100	14,269,107,200	14,641,255,600	

CAPITAL PROJECTS BUDGET

	1997-98	1998-99	1999-00	
General Fund		36,263,000	385,000	
Restricted Funds		12,488,000	623,868,000	121,601,000
Federal Funds		621,000	79,266,000	8,871,000
Bond Funds	3,200,000	758,600,000		
Road Fund		9,302,000	8,843,000	

Agency Bonds		96,100,000	
Capital Construction Surplus	1,477,000	1,462,000	
Investment Income	698,000	31,152,000	13,100,000
Other Funds	1,599,000	97,661,000	29,889,000
Subtotal	20,083,000	1,733,674,000	182,689,000

TOTAL-STATE/EXECUTIVE BUDGET

	1997-98	1998-99	1999-00	
General Fund	18,435,500	5,995,516,000	6,284,300,500	
Restricted Funds		18,708,600	3,459,323,600	2,954,633,300
Federal Funds		3,546,000	4,442,383,600	4,363,529,800
Road Fund	2,300,000	1,020,583,000	1,073,492,000	
Bond Funds	3,200,000	858,600,000	105,000,000	
Agency Bonds			96,100,000	
Capital Construction Surplus		1,477,000	1,462,000	
Investment Income		698,000	31,152,000	13,100,000
Other Funds	1,599,000	97,661,000	29,889,000	
TOTAL FUNDS		49,964,100	16,002,781,200	14,823,944,600

The above capital projects are directly funded in Part II, Capital Projects Budget, of this Act.

Approved in part, vetoed in part, April 16, 1998